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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Unpublished Opinion No. 2015-UP-303 (Ct.App. filed June 24, 2015)

Charleston County Assessor, ... Petitioner,

v.

LMP Properties, Inc., ... Respondent.

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Volume II of II

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
Attorneys for Petitioner

Stanley C. Rodgers, Esquire
LAW OFFICE OF STANLEY C. RODGERS, LLC
101 Queen Street, Suite 200
Charleston, South Carolina 29401
(843) 958-9881
Attorney for Respondent

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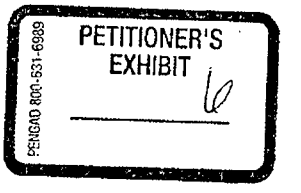
121 Condominium Units, The Legends, 1100 Legends Club Drive, Mt. Pleasant, *SC*

RECONSTRUCTED OPERATING INCOME/EXPENSE STATEMENT: SUBJECT 121 UNITS:

GROSS POTENTIAL INCOME (See Economic & Contract Rent):			**1,297,200**
Vacancy & Collection Loss (averaged/stabilized):		8.00%	($103,776)
Concessions		4.00%	($51,888)
Other Income		8.00%	$103,776
EFFECTIVE GROSS INCOME:			**$1,193,424**
OPERATING EXPENSES			
A General & Administrative	3.0%	$35,803	
B Utilities (Heat, Common Area Electric, & Vacancy Periods)	1.5%	$17,901	
C Maintenance	5.5%	$65,638	
D Payroll	8.0%	$95,474	
E Management & Commissions	4.3%	$51,317	
F Insurance	4.2%	$50,124	
G Taxes	9.8%	$116,956	
H Reserves for Replacement	2.6%	$31,029	
TOTAL EXPENSES		**$464,242**	**$464,242**
Expenses Per Unit	**38.9%**	$3,837	
NET INCOME			**$729,182**
VALUE = Net Operating Income / Capitalization Rate =		$729,182 / 0.0750 =	**$9,722,428**
INDICATED VALUE VIA INCOME CAPITALIZATION APPROACH (Rounded)			**$9,725,000**

Capitalization Rate: **7.50%**

BAA Allocated Reduction in Value for the Subject Apartment Complex (11.94%)	**$1,161,165**
BAA Calculated Value for the Subject Apartment Complex	**$8,563,835**
INDICATED VALUE OF 121 UNIT APARTMENT COMPLEX AS OF DECEMBER 31, 2003:	**$8,565,000**



PROPOSED SCHEDULE OF SALES & RENTAL OF UNITS AS OF 12/31/2003

		Year 0 End 12/03		Year 1 End 12/04		Year 2 End 12/05		Year 3 End 12/06	
POTENTIAL GROSS REVENUE									
UNIT SALES	Price/	Units	Sales Income	Units	Income by	Units	Income by	Units	Income by
Sales of Condo Units	Unit	Sold	By Model	Sold	Model	Sold	Model	Sold	Model
1 BR Units Sold	$122,959	0	$0	24	$2,951,016	24	$2,951,016	13	$1,598,467
2 BR Units Sold	$154,869	0	$0	24	$3,716,856	12	$1,858,428	12	$1,858,428
3 BR Units Sold	$148,606	0	$0	4	$594,424	4	$594,424	4	$594,424
Units Sold & Potential Sales Income		0	$0	52	$7,262,296	40	$5,403,868	29	$4,051,319
UNIT RENTALS	Rent	Units	Rent Income	Units	Rent Income	Units	Rent Income	Units	Rent Income
Rental of Condo Units	Month	Rented	By Model	Rented	By Model	Rented	By Model	Rented	By Model
1 BR Units Rented - (Total - Previously Sold - 50% To Be Sold)	$700	49	$411,600	25	$210,000	7	$54,600	0	$0
2 BR Units Rented - (Total - Previously Sold - 50% To Be Sold)	$850	36	$367,200	18	$183,600	6	$61,200	0	$0
3 BR Units Rented - (Total - Previously Sold - 50% To Be Sold)	$1,100	10	$132,000	6	$79,200	2	$26,400	0	$0
Units Rented & Potential Rental Income		95	$910,800	49	$472,800	15	$142,200	0	$0
General Vacancy (Percentage of Rental Income)		20%	$182,160	20%	$94,560	20%	$28,440	20%	$0
Collection Loss (Percentage of Rental Income)		3%	$27,324	3%	$14,184	3%	$4,266	3%	$0
TOTAL POTENTIAL RENTAL INCOME			$701,316		$364,056		$109,494		$0
EFFECTIVE GROSS REVENUE			$701,316		$7,626,352		$5,513,362		$4,051,319
EXPENSES									
OPERATING EXPENSES	Cost/								
(Based on Remaining Unsold Units)	Unit								
Real Estate Taxes									
1 Bedroom Units	$1,269		$62,181		$31,725		$8,249		$0
2 Bedroom Units	$2,022		$72,792		$36,396		$12,132		$0
3 Bedroom Units	$2,305		$23,050		$13,830		$4,610		$0
Homeowners Association Dues									
1 BR Units - (Regime Fees = $124)/Mo	$1,488		$72,912		$37,200		$9,672		$0
2 BR Units - (Regime Fees = $190)/Mo	$2,280		$82,080		$41,040		$13,680		$0
3 BR Units - (Regime Fees = $245)/Mo	$2,940		$29,400		$17,640		$5,880		$0
Insurance (Liability as owner) (1BR-$300; 2BR-$420; 3BR-$540)	Varies		$35,220		$18,300		$5,550		$0
Maintenance & Management: (Interior)	$500		$60,500		$34,500		$14,500		$0
Replacement Reserves (Interior/Appliances)	$150		$18,150		$10,350		$4,350		$0
Miscellaneous (Rental Units)	$75		$9,075		$5,175		$2,175		$0
TOTAL OPERATING EXPENSES			$465,360		$246,156		$80,798		$0
SALES/MARKETING & CAPITAL COSTS	Expense/								
(Based on Sold Units)	Unit								
Sales Commissions (Upon Sale)	3.00%		$0		$217,869		$162,116		$121,540
Marketing Costs - Allowance (Marketed Units)	0.50%		$36,311		$27,019		$20,257		$0
Unit Improvement Allowance (Marketed Units)	$1,500		$78,000		$60,000		$43,500		$0
Structural Repairs/Maintenance (HOA Responsibility)	$0		$0		$0		$0		$0
TOTAL SALES & CAPITAL COSTS			$114,311		$304,888		$225,873		$121,540
TOTAL EXPENSES			$579,671		$551,044		$306,670		$121,540
CASH FLOW OF SELLOUT (Before Debt Service & Income Tax)			$121,645		$7,075,308		$5,206,692		$3,929,779
DISCOUNT RATE/ANNUAL FACTOR	9.5%		1.0000		0.9132		0.8340		0.7617
NET PRESENT VALUE OF INCOME			$121,645		$6,461,468		$4,342,438		$2,993,132

PENGAD 800-631-6989
PETITIONER'S EXHIBIT 7

DISCOUNTING OF CASH FLOW

This Cash Flow is then discounted at a rate commensurate with current and projected market conditions. Currently it is our opinion that an appropriate discount rate is 9.5%. A present worth based on this discount is considered typical and consistent with current market conditions, current contractual lease agreements, and this type of multi-family/condominium investment property.

2003 DISCOUNTED CASH FLOW (121 Units)

Analysis Period		Year Ending	Annual Cash Flow	PV of Cash Flow @ 9.50%
Base Year	0	12/31/2003	$121,645	$121,645
Year	1	12/31/2004	$7,075,308	$6,461,468
Year	2	12/31/2005	$5,206,692	$4,342,438
Year	3	12/31/2006	$3,929,779	$2,993,132
Total Cash Flow - 3 years ('04 - '06)			$16,211,779	$13,797,038
12/31/2003 DISCOUNTED CASH FLOW (121 Subject Units)				**$13,800,000**

PETITIONER'S EXHIBIT 11-A

PENCIL: 800-631-6989

The discounted value of all the years of income is added together to reflect the aggregate present worth of the projected income stream AS OF 12/31/2003 for typical 1, 2, & 3 bedroom units. The value of each type of unit – 1, 2, & 3 bedroom units – is extracted from the total, resulting in the following values. Finally, since the subject is only 121 Units, I have multiplied the unit breakdown (within the 121 units) to arrive at the Net Present Value for the 121 units:

1 Bedroom		2 Bedroom		3 Bedroom	
% Total Sale Price	Total Value/ Unit	% Total Sale Price	Total Value/ Unit	% Total Sale Price	Total Value/ Unit
0%	$0	0%	$0	0%	$0
41%	$2,625,602	51%	$3,306,991	8%	$528,876
55%	$2,371,376	34%	$1,493,395	11%	$477,667
39%	$1,180,954	46%	$1,373,014	15%	$439,163

	$6,177,932		$6,173,400		$1,445,706
1 Bedroom		2 Bedroom		3 Bedroom	
PV/UNIT	$101,278	PV/UNIT	$128,613	PV/UNIT	$120,475

1 BR Units	Total Value	2 BR Units	Total Value	3 BR Units	Total Value
61	$6,177,932	48	$6,173,400	12	$1,445,706

12/31/2003 Net Present Value of All 121 Units	$13,797,038

Rounded: = **$13,800,000**

NOTE: The discounted cash flow is the discounted value of the sale of the remaining units over time, not the actual price sold. The market value of the units is represented by prospective buyers in the marketplace for individual units as determined by valuing the individual units (see following).

PETITIONER'S EXHIBIT 1-B
PENGAD 800-631-6989

CHARLESTON COUNTY
BOARD OF ASSESSMENT APPEALS
DECISION

Re:	OWNER:	LMP Properties, Inc.
	PID#:	08/Various 1231
	BAA#:	08-0004
	Date of Decision:	November 10, 2009

The Charleston County Board of Assessment Appeals met on November 4, 2009, for the purpose of hearing the above-referenced taxpayer's appeal from the Charleston County Assessor's assessment of the above-referenced property for tax year 2008.

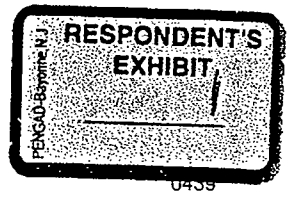
The subject of this appeal is 121 rental condo units located at The Legends and owned by LMP Properties, Inc. There are 11 different plans that are under appeal. The Assessor was represented by Toy Glennon, Steve Everman and Angela Sawadske. Mr. and Mrs. Ron Follman, the property owners, as well as Frank Headley, Leonard Krawcheck and Lydia Davidson were also present.

Ms. Glennon started the meeting with the particulars of the Tamsburg case which was decided in the 1990's. To qualify under Tamsburg the following criteria must be met: 1) units must be deeded only for financing, 2) units must be contiguous, 3) units are not marketed and 4) units were in a bad location. In the case of The Legends, the condos have been continuously marketed and as 57 have been sold, the units are scattered throughout the complex. Also, Mt. Pleasant is a very desirable location. Mr. Everman stated there are sales of over 200 condominiums in the area, so there is a sales market currently. Mr. Sawadske estimated the value of the 121 units at $16,493,000 for tax year 2008. The values for the Plans are as follows:

Dogwood	$110,000	Azalea	$105,000	Azalea Elongated	$107,000
Magnolia	$134,000	Jasmine	$145,000	Jasmine Elongated	$155,000
Jasmine Garage	$175,000	Oleander	$157,000	Oleander Garage	$182,000
Camellia	$170,000	Camellia Garage	$$195,000		

These values represent reductions from the current values.

Mr. Follmann stated the complex was converted to condos in 2006 and 57 units sold; however, the 121 units on appeal have been managed and maintained as rental units. The highest and best use of these units is as apartments. Mr. Headley submitted that condominium projects use discounting techniques to determine value. The comparables of Heron Reserve and Sabal Palms west of the Ashley are examples of condominium projects that either had low sales or no sales or converted back to an apartment complex. His estimate of value is $7,602,367 for tax year 2008. Mr. Krawcheck discussed Tamsburg as it applied to The Legends:



1) Contiguity – there are 13 buildings, 58 units have sold and there are still 121 rentals, 2) units are operated on a short-term rental basis, and 3) unmarketable – a unit did not sell in all of 2008. The income method should be used to value the subject if the Tamsburg test holds true and financing should not be a determining factor.

After carefully considering the information presented, the Charleston County Board of Assessment Appeals sets a Compromised Value of $10,090,500 for tax year 2008.

Floor Plan Values

	Current Value	Assessor Recommended	Board Value	Units	Total Value
1 Bedroom					
Azalea	$115,000	$105,000	$ 64,000	13	$ 832,000
Azalea Elongated	$120,000	$107,000	$ 65,800	10	$ 658,000
Dogwood	$120,000	$110,000	$ 66,500	33	$ 2,194,500
Magnolia Garage	$145,000	$134,000	$ 82,000	5	$ 410,000
2 Bedroom					
Jasmine	$175,000	$145,000	$ 89,000	2	$ 178,000
Jasmine Elongated	$180,000	$155,000	$ 96,000	1	$ 96,000
Jasmine Garage	$200,000	$175,000	$107,500	6	$ 645,000
Oleander	$182,000	$157,000	$ 96,000	38	$ 3,648,000
Oleander Garage	$205,000	$182,000	$ 112,000	1	$ 112,000
3 Bedroom					
Camellia	$205,000	$170,000	$ 104,500	9	$ 940,500
Camellia Garage	$230,000	$195,000	$ 125,500	3	$ 376,500
				121	$10,090,500

GENERAL USE CODE DEFINITIONS/CHANGES

Revised 9/22/00

Indicates Changes to Use Codes or New Codes

CODE	CAMA DESCRIPTION	DEFINITION AND INTENDED USE	SPECIAL APPRIASER
SFR	SNGL_FAM_RES	Used where the site is improved with a single family home(s). There are some exceptions to this in Peninsula Charleston for homes that have extra units in which the SFR use dominates the value or dominates the site. An SFR may have more than one residential unit on the PID. The Parcel Use Classes associated with this code are 10R RESIDENTIAL, 95R COMM_APR_RES, and 10M MOBILE_RE.	NO
DUP	DUPLEX	Used where the site is improved with 2 attached units, usually roughly equal in size. Often they are side by side identical, or up and down identical, although they may not always be equal. This code is not to be used for properties where there are two single family homes on one parcel, or a home and a mobile home. Currently properties coded like this will generally have a residence record. In the future, these MAY be collected with section/group data only, to facilitate use of GRM's for value. Must be coded Parcel Use Class 10R, unless the property is a "Tamsberg" property. NOTE: Tamsbergs are few and far between.	NO
APT	APARTMENT BLDG	Used for properties with more than ~~20~~ 25# units on a single PID, or for Tamsberg properties. They are to be collected with section/group data only. Properties with four to ~~twenty~~ 25# units are to be coded to General Use Code SMA - SMALL APTS. The Parcel Use Class for both APT and SMA is 100 - APT BLDG. For true dormitories, use APT with Parcel Use Class 121 Group Living.	YES #34
PAT	PATIO_HOME	10R will be the Parcel Use Class	NO
CNC	CONDO_COMMON	not taxable, this is the common area for a condominium complex, or the base PID	NO
CNU	CONDO_UNIT	Parcel Use Class will vary by the use of the unit (i.e. 10R for res condos,etc.)	NO
TWH	TOWNHOUSE	10R will be the Parcel Use Class.	NO
MBH	MOBILE HOME	This General Use Code is no longer in use. DO NOT create more of these.	N/A
CRC	COMM/RESID	We are trying to get away from this one. Use it when the highest and best use is residential, but there is a commercial element. Examples of this are some "houses" on Church Street in the Peninsula that have a downstairs retail or office use but the upstairs is still one (nice) SFR. Limit the use of this carefully. If the property is best valued as residential, you can collect it as residential and make a comment about the commercial element. In general a property needs a section and group to be coded CRC, the exception to this is Mobile Home Parks Discuss the use of this with your appraisal supervisor, be careful in using this one.	NO
TRI	TRIPLEX	Used where the site is improved with 3 attached units, usually roughly equal in size to each other. Often they are side by side identical or up and down identical, although the units may not always be equal. This code is not to be used for properties where there are three single family homes on one PID, or three mobile homes. Triplexes currently have a residence record. In the future, theu MAY have section and group records only to allow use of GRM's for valuation. Unless a TRIPLEX is a Tamsberg property it should be coded to Parcel Use Class 10R. There are not many Tamsberg properties.	NO
ROW	ROW_HOUSE	Only used in Peninsula Charleston, not to be confused with TWH.	NO
SMA	SMALL APTS	This is a new General Use Code based on residential unit count. This code captures small apartment complexes mostly with 4 to 20 units. They will be valued using GRM's for the upcoming reassessment. These may be coded to the residential appraisal district where they are situated or to which they are adjacent.They may be coded to a commercial appriasal district. The Parcel Use Class should be 100 APT BLDG . Properties coded SMA will be handled by one assigned appraiser, countywide. Small dormitories (with 4 to 20 units) should be coded SMA with Parcel Use Class 121 GROUP_LIV.	YES #61

RESPONDENT'S EXHIBIT 2

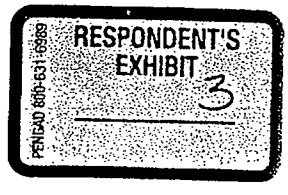
0442

PARCEL USE CODE DEFINITIONS/CHANGES

Revised 9/22/2000

Indicates Changes to Classes

CODE	CAMA DESCRIPTION	DEFINITION AND INTENDED USE	SPECIAL ASSIGNMENT
10R	RESIDENTIAL	Use for single family homes, duplexes and triplexes and for AGR properties that have a non-ag SFR. General Use Code should be SFR, DUP, CNU, TWH, VCR TRI, and ROW.	NO
95R	COMM_APPR_RES	See memo dated 7/29/99 by RLC titled HABU in Transitional Areas. This code is for properties that have a commercial highest and best use but legally must be appraised as residential due to 4% LR requirements. These will be SFR's and when/if they sell, the 95R should be a red flag to you that they didn't pay all that money for that old bungalow on Hwy 17. Such sales will probably need to be recoded to VCC to validate, and must get a notice after sale, or after loss of 4%. General Use Codes will be as for 10R, above.	NO
100	APT_BLDG	To be used only for apartment properties with four or more units. Do not code duplexes and triplexes as 100 APT_BLDG. The General Use Code will be APT or SMA. The apartment specialist will handle those coded APT, but not SMA..	YES #34
102	TWH-APTS	This parcel use class was prompted by an appeal known as Tamsberg. The court decision was very specific in it's reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code wil be TWH for these units.	YES #34 Appraisal on # Units may go to 3 units!
103	CONDO_APTS	See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU	See Above
104	DU/TRI_APTS	See TWH-APTS above.Rarely used, be careful when using.Gen Use=DUP or TRI	See Above
105	QUAD_APTS	See TWH-APTS above. Rarely used, be careful when using. Gen Use= SMA	See Above
106	COMB_APTS	See TWH-APTS above. Rarely used, be careful when using. Gen Use= APT	See Above
10M	MOBILE_RE	To be used for properties where a mobile home has been converted to RE. Not for use w/ PP mobile homes. General Use code should be 10M, there should be a mobile home record, not a residence record, unless there is a house and mobile.	NO



CHARLESTON COUNTY
BOARD OF ASSESSMENT APPEALS
DECISION

Re:	OWNER:	Keystone Legends I, LP
	PID#:	05/599-00-00-020
	BAA#:	05-0110
	Date of Decision:	May 22, 2007

The Charleston County Board of Assessment Appeals met on May 16, 2007, for the purpose of hearing the above-referenced taxpayer's appeal from the Charleston County Assessor's assessment of the above-referenced property for tax year 2005.

The subject property is a 200 unit apartment complex located at 1100 Legends Club Drive in Mount Pleasant completed by December 31, 2001. The Legends at Mount Pleasant Apartments sits on 22.92 acres in the Town of Mount Pleasant off Highway 17 North. The Assessor was represented by Steve Everman and Toy Glennon. The owner, Keystone Legends I, LP, was represented by Ronald Follmann.

Mr. Everman submitted the estimated value of the subject at $16,644,000 for tax year 2005 using the Income Approach tables developed for reassessment. Mr. Everman sited three sales of comparable properties to support the value of the subject. Mr. Everman used a Net Operating Income (NOI) of $1,259,711 and a capitalization rate of 7.5% in his valuation based on equity.

Mr. Follmann stated Mr. Everman was not using real numbers in determining the value of the subject and his value of $12,611,967 is derived from the audited income statement for tax year 2005. Mr. Follmann used an NOI of $1,150,559 and a capitalization rate of 9%. His valuation for tax purposes as of December 31, 2004 was $12,783,989. Mr. Follmann did not authorize the HUD audited financial statement to be released to the Assessor under a Freedom of Information Act request.

After carefully considering the information presented, the Charleston County Board of Assessment Appeals sets a compromised value of $14,656,000 for tax year 2005.

PENGAD-Bayonne, N.J. RESPONDENT'S EXHIBIT 4

599-00-00-020- 2005 (CONTINUED) 1100 LEGENDS CLUB DR

INCOME VALUATION

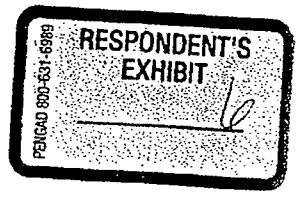
BLD/SEC	GRP	TYP/AGE/CL/QU/CN COMMERCL-USE	TN-AP /METH	UNITS RENTABLE	GROSS RENT	ADJ FCTR	VAC LOSS	MISC INCOME	EFF-GR INCOME	EXPENSE PCT/RATE	NET INCOME	CAP-RT /GRM	CAP-IN /GRM-IN
1/ 1		170/ 3/D /G /A				1.000							
	1	170-CLUB-HOUSE	GD/I										
1/ 1		TOTAL							0		0		0
2/ 1		800/ 3/D /G /A				1.000							
	1	100-APARTMENTS	EX/T	2-2	12,600.00		.080	.040	24,111	3,900.00	16,311	8.300	196,518
	2	100-APARTMENTS	EX/T	2-2	12,600.00		.080	.040	24,111	3,900.00	16,311	8.300	196,518
	3	100-APARTMENTS	EX/T	4-2	12,600.00		.080	.040	48,223	3,900.00	32,623	8.300	393,048
	4	100-APARTMENTS	EX/T	2-2	12,600.00		.080	.040	24,111	3,900.00	16,311	8.300	196,518
	5	100-APARTMENTS	PR/T	2-2	10,800.00		.100	.040	20,218	3,900.00	12,418	8.300	149,614
	6	100-APARTMENTS	AV/T	2-2	11,300.00		.080	.040	21,624	3,900.00	13,824	8.300	166,554
	8	217-STOR-MEZ-STG	GD/T	2-0	360.00		.100	.000	648	.100	583	8.300	7,024
2/ 1		TOTAL NUM-OCCUR: 4							163,046	4	108,381		1,305,794
3/ 1		800/ 3/D /G /A				1.000							
	1	100-APARTMENTS	VG/T	8-2	12,000.00		.080	.040	91,853	3,900.00	60,653	8.300	730,759
	2	100-APARTMENTS	AV/T	8-1	9,300.00		.080	.040	71,186	3,900.00	39,986	8.300	481,759
3/ 1		TOTAL NUM-OCCUR: 5							163,039	5	100,639		1,212,518
4/ 1		800/ 3/D /G /A				1.000							
	1	100-APARTMENTS	PR/T	4-1	8,700.00		.100	.040	32,573	3,900.00	16,973	8.300	204,494
	2	100-APARTMENTS	PR/T	4-1	8,700.00		.100	.040	32,573	3,900.00	16,973	8.300	204,494
	4	100-APARTMENTS	EX/T	2-1	10,800.00		.080	.040	20,667	3,900.00	12,867	8.300	155,024
	5	100-APARTMENTS	AV/T	4-3	15,000.00		.080	.040	57,408	3,900.00	41,808	8.300	503,711
	6	100-APARTMENTS	AV/T	2-3	15,000.00		.080	.040	28,704	3,900.00	20,904	8.300	251,855
4/ 1		TOTAL NUM-OCCUR: 4							171,925	4	109,525		1,319,578

** DETACHED STRUCTURES **

DET#	STRUCTURE	AGE	QU	CN	AP	TN MTH	UNITS RENTABLE	GROSS RENT	ADJ FCTR	VAC LOSS	MISC INCOME	EFF-GR INCOME	EXPENSE PCT/RATE	NET INCOME	CAP-RT /GRM	CAP-IN /GRM-IN
4	GG-FRAME-GARAGE	3	VG	A	VG	T	8-0	1,020.00	1.000	.100	.000	7,344	1 .100	6,610	8.300	79,639

TOTAL CAPITALIZED NET INCOME	16,643,717
ADDITIONAL BUILDING VALUE	0
ADDITIONAL IMPROVEMENT VALUE	0
ADDITIONAL LAND VALUE	0
GROSS RENT MULTIPLIER INCOME	0
TOTAL INCOME VALUATION ESTIMATE	16,643,717

Copy made for Mr Follmann
9/26/05



DOCUMENT V

RECEIVED
2001 AUG -3 PM 2:54
CHARLESTON COUNTY
ASSESSOR'S OFFICE

FHA FORM NO. 4175-D
(CORPORATE)
Revised May 1970

MORTGAGE NOTE

$15,891,900.00

Mount Pleasant, South Carolina.
May 27, 1999

FOR VALUE RECEIVED, the undersigned promise(s) to pay to MALONE MORTGAGE COMPANY AMERICA, LTD., *, or order, the principal sum of FIFTEEN MILLION EIGHT HUNDRED NINETY-ONE THOUSAND NINE HUNDRED Dollars ($15,891,900.00) ~~with interest from date at the rate of per centum (%) per annum on the unpaid balance until paid.~~ The said principal and interest shall be payable at the office of MALONE MORTGAGE COMPANY AMERICA, LTD. in Dallas, Texas or at such other place as the holder may designate in writing, as follows:

with interest on the unpaid balance from the date hereof at the rate of seven and thirty-five hundredths per centum (7.350%) per annum up to and including the earlier of the date of final endorsement or the last day of January, 2001, and thereafter at the rate of seven and one tenth per centum (7.100%) per annum on the unpaid balance until paid. The principal and interest shall be payable in monthly installments as follows:

Interest only shall be payable on the first day of June, 1999, and on the first day of each month thereafter, up to and including the first day of February, 2001. Commencing on the first day of March, 2001, installments of interest and principal shall be paid in the sum of NINETY-NINE THOUSAND NINE HUNDRED THIRTEEN & 65/100 DOLLARS ($99,913.65) each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on the first day of February, 2041. The installments of interest and principal shall be applied first to interest at the applicable rate aforesaid upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

*a Texas limited partnership authorized to do business in such name or as MALONE MORTGAGE COMPANY

~~Privilege is reserved to pay the debt in whole or in an amount equal to one or more monthly payments on principal next due, on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder.~~ If this debt is paid in full while insured under the provisions of the National Housing Act, as amended, all parties liable for payment thereof agree to be jointly and severally bound to pay to the holder hereof such adjusted mortgage insurance premium as may be required by the applicable Regulations.

~~Notwithstanding any provision herein for a prepayment charge, such charge shall be applicable only to the amount of prepayment in any one calendar year which is in excess of fifteen per centum (15%) of the original principal sum of this Note.~~

If default be made in the payment of any installment under this Note, and if such default is not made good prior to the due date of the next such installment, the entire principal sum and accrued interest shall at once become due and payable without notice, at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default in the payment of this Note, and if the same is collected by an attorney at law, the undersigned hereby agree(s) to pay all costs of collection, including a reasonable attorney's fee.

~~No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of optional additional prepayments of principal already made pursuant to the privilege of prepayment set forth in this Note equals or exceeds the amount of such required installment of principal.~~

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

The maker assumes no personal liability hereof except as set out in the Mortgage of even date given to secure this indebtedness.

The provisions set out in the Rider of this Mortgage Note that is attached hereto and marked as Exhibit "A" are incorporated herein for all purposes by this reference and made a part hereof as fully as if set out above.

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RESPONDENT'S EXHIBIT 7

PENGAD 800-631-6989

IN WITNESS WHEREOF, the undersigned has caused its name to be signed hereto by its duly authorized officer and its corporate seal to be hereto affixed the day and year first above written.

[SEAL]

KEYSTONE LEGENDS I, L. P.,
By: KEYSTONE LEGENDS, INC.,
General Partner

ATTEST

Secretary

By: Ronald W. Follmann
Ronald W. Follmann, President

THIS IS TO CERTIFY that this is the Note described in and secured by Mortgage of even date herewith and in the same principal amount as herein stated and secured by real estate situated in Mount Pleasant, Charleston County, State of South Carolina, to Jonnie Pardue, Trustee.

Dated the 26th day of May, 1999.

Alice F. Cassell
(Notary Public)

STATE OF SOUTH CAROLINA

LOAN No. 054-35605

Mortgage Note

KEYSTONE LEGENDS I, L. P...

TO

MALONE MORTGAGE COMPANY AMERICA, LTD.

No. 054-35605

Insured under 221(d)(4) of the National Housing Act and Regulations published thereunder

In effect on April 16, 1999

To the extent of advances approved by the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner

By _____
(Authorized Agent)

Date May 27, 1999

A total sum of $ 75,871,200.00 has been approved for insurance hereunder by the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner

Robert A. Eisenbeis
Director, Coinsurance
Multifamily Program Center

By _____

Date 7/21/01

Reference is made to the Act and to the Regulations thereunder covering assignments of the insurance protection on this note.

7447-P Rev. 5/70 HUD-Wash., D.C.

PAY TO THE ORDER OF:

_____

without recourse.

MALONE MORTGAGE COMPANY AMERICA, LTD.,
By: MALONE MORTGAGE COMPANY, General Partner

By: Bernard P. Malone
Bernard P. Malone, President

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EXHIBIT "A"

RIDER TO MORTGAGE NOTE

Project No. 054-35605
Project Name: LEGENDS AT MOUNT PLEASANT
MOUNT PLEASANT, SOUTH CAROLINA

In the event any item, terms or provisions contained in this instrument are in conflict with the laws of the State of South Carolina, this instrument shall be affected only as to its application to such item, items, terms or provisions, and shall in all other respects remain in full force and effect. It is understood and agreed that in no event and upon no contingency shall the maker or makers of this Note, or any party liable thereon or therefor, be required to pay interest in excess of the rate allowed by the laws of the State of South Carolina. The intention of the parties is to conform strictly to the Usury Laws as now or hereafter construed by the courts having jurisdiction, and reference is here made to the Mortgage securing the payment of this Note which relates to the reduction of interest if from any circumstances whatsoever fulfillment of this note or any instrument securing its payment shall involve transcending the limits of validity prescribed by the usury statutes or any other law.

The indebtedness evidenced by this Note may not in any event, be prepaid in whole or in part prior to March 1, 2006. On or after March 1, 2006, Maker shall have the right to prepay in whole or in part, which prepayment may be made on the last day of any month upon 30 days prior written notice to the holder of this Note; provided, however, that for prepayments made within indicated times the following penalties shall be paid on the amounts prepaid:

(i) prepayment, in whole or in part, between 03/01/2006-02/28/2007 - 5%

(ii) prepayment, in whole or in part, between 03/01/2007-02/29/2008 - 4%

(iii) prepayment, in whole or in part, between 03/01/2008-02/28/2009 - 3%

(iv) prepayment, in whole or in part, between 03/01/2009-02/28/2010 - 2%

(v) prepayment, in whole or in part, between 03/01/2010-02/28/2011 - 1%

thereafter, no penalty will be charged for prepayment, in whole or in part.

Notwithstanding any prepayment prohibition imposed and/or penalty required by this Note with respect to prepayments made prior to March 1, 2010, the indebtedness may be prepaid in part or in full without the consent of the mortgagee and without prepayment penalty if HUD determines that prepayment will avoid a mortgage insurance claim and is therefore in the best interest of the Federal Government.

The Maker will pay a late charge applicable to any payment due hereunder that is more than 15 days in arrears in an amount equal to 2 cents for each dollar of the payment to interest and to principal that are in arrears, to cover the expense in handling delinquent payments.

Notwithstanding any other provision contained in this Note, it is agreed that the execution of this Note shall impose no personal liability on the Mortgagor hereof for payment of the indebtedness evidenced hereby and in the event of a default, the Mortgagee under this Note shall look solely to the property described in the Mortgage and to the rents, issues and profits thereof in satisfaction of the indebtedness evidenced hereby and will not seek or obtain any deficiency or personal judgment against the Mortgagor except such judgment or decree as may be necessary to foreclose and bar its interest in the property and all other property mortgaged, pledged, conveyed or assigned to secure payment of this Note except as set out in the Mortgage of even date given to secure this indebtedness.

KEYSTONE LEGENDS I, L. P.,
By: KEYSTONE LEGENDS, INC., General Partner

By: _____
Ronald W. Follmann, President

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MORTGAGE

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FHA FORM NO. 2175.1
CORPORATE
(Revised January 1977)

BK J 327PG015

MORTGAGE

STATE OF SOUTH CAROLINA, }
COUNTY OF CHARLESTON } ss:

TO ALL WHOM THESE PRESENTS MAY CONCERN:
KEYSTONE LEGENDS I, L. P., a limited partnership ~~a corporation~~

organized and existing under the laws of South Carolina
having its principal place of business at Mount Pleasant, South Carolina
(hereinafter with its successors and assigns called the Mortgagor) sends Greetings:

WHEREAS, the Mortgagor is well and truly indebted unto MALONE MORTGAGE COMPANY AMERICA, LTD., a

limited partnership ~~a corporation~~ organized and existing under the laws of Texas, having its principal place of business at Dallas, Texas (hereinafter with its successors and assigns called the Mortgagee), in the sum of FIFTEEN MILLION EIGHT HUNDRED NINETY-ONE THOUSAND NINE HUNDRED ($15,891,900.00) as evidenced by Mortgagor's Note of even date herewith bearing interest from date on outstanding balances at seven and one tenth per cent (7.10%) per annum, said principal and interest being payable in monthly installments as provided in said Note with a final maturity of 2/2041, which Note is identified as being secured hereby by a certificate thereon. Said Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions thereof, however evidenced. seven and thirty-five hundredths (7.35%) during construction (6/99 - 2/2001)

Mortgagor desires to secure payment of the sums and also to secure the performance of all covenants and agreements herein contained, and in a building loan agreement between the Mortgagor and the Mortgagee hereinafter mentioned;

NOW, KNOW ALL MEN, that the Mortgagor, in consideration of the aforesaid debt and for better securing the payment thereof to the Mortgagee, and also in consideration of the further sum of Ten Dollars ($10) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the Mortgagee, its successors and assigns, the following-described real estate situated in the Town of Mount Pleasant, County of Charleston, State of South Carolina:

SEE ATTACHED EXHIBIT "A"
(INCORPORATED HEREIN BY REFERENCE)

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TOGETHER WITH all buildings and improvements thereon and all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and including all after-acquired title, franchises, licenses, or easements; and together with all right, title and interest of the Mortgagor from time to time in and to all heating, lighting, plumbing, cooking, incinerating, ventilating, air-conditioning, laundry and refrigerating equipment; all elevators and motors, cabinets, engines and machinery, sprinkler systems; and storm and screen doors, screens, awnings, window shades, and floor coverings; and all other property now or hereafter owned by Mortgagor, or any successor in title, and attached to or used in connection with the real estate hereinabove described; and together with all building materials and equipment located on the premises and intended to be incorporated in the buildings or other improvements; AND ALSO all furnishings and articles of personal property now or hereafter attached to or in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be, attached to said building or buildings in any manner.

It is hereby mutually agreed between the parties hereto that all the foregoing property shall to the extent permitted by law be deemed to be affixed to the real property.

TO HAVE AND TO HOLD, all and singular the said premises unto the Mortgagee, its successors and assigns forever.

THE MORTGAGOR HEREBY COVENANTS AND AGREES WITH THE MORTGAGEE:

1. That it is lawfully seized of the premises hereinabove described in fee simple absolute, that it has good right and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever. The Mortgagor further covenients to warrant and forever defend all and singular the premises unto the Mortgagee, from and against the Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof;

2. That Mortgagor will pay the Note at the times and in the manner provided therein;

3. That Mortgagor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed;

4. That the Regulatory Agreement, if any, executed by the Mortgagor and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of this mortgage. Upon default under the Regulatory Agreement and upon the request of the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, the Mortgagee, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

5. That all rents, profits and income from the property covered by this mortgage are hereby assigned to the Mortgagee for the purpose of discharging the debt hereby secured. Permission is hereby given to Mortgagor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;

6. That upon default hereunder Mortgagee shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

7. That at the option of the Mortgagor the principal balance secured hereby may be reamortized on terms acceptable to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 9 herein, or from an insurance payment made in accordance with provisions of Paragraph 8 herein, where there is a resulting loss project income;

8. That the Mortgagor will keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner upon the insurance of the mortgage and other hazards as may be required from time to time by the Mortgagee, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured mortgage, whichever is the lesser, and in default thereof the Mortgagee shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the Mortgagee and the Secretary of Housing and Urban Development as interest may appear, and shall be deposited with the Mortgagee;

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the Mortgagee, and, at its option, may be applied to the debt or released for repairing or rebuilding of the premises;

9. That all awards of damages in connection with any condemnation for public use of or injury to any of said property, shall be paid to the mortgagee to be applied to the amount due under the Note secured hereby in (1) amounts equal to the next maturing installment or installments of principal and (2) with any balance to be credited to the next payment due under the Note. No amount applied to the reduction of the principal amount due in accordance with (1) shall be considered an option prepayment as the term is used in this Mortgage and the Note secured hereby, nor relieve the mortgagor from making regular monthly payments commencing on the first month following the date of receipt of the awards. The holder of the Note is hereby authorized in the name of the mortgagor to execute and deliver valid acquittances for such awards and to appeal from such awards.

10. That in order more fully to protect the security of this Mortgage, the Mortgagor will pay to the Mortgagee in addition to the monthly payments of interest or of principal and interest under the terms of the Note secured hereby and concurrently therewith monthly on the first day of each month after the date hereof and continuing until the said Note is fully paid the following sums:

(a) An amount sufficient to provide the Mortgagee with funds to pay the next mortgage insurance premium if this instrument and the Note secured hereby are insured, or a monthly service charge, if they are held by the Secretary of Housing and Urban Development, as follows:

(I) If and so long as said Note of even date and this Instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the Mortgagee one month prior to the date the annual mortgage insurance premium, in order to provide such Mortgagee with funds to pay such premium to the Secretary of Housing and Urban Development pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or

(II) If and so long as said Note of even date and this Instrument are held by the Secretary of Housing and Urban Development, a monthly service charge in an amount equal to 1/12 of 1/2 % of the average outstanding principal balance due on the Note computed for each successive year beginning with the first day of the month following the date of this Instrument, if the Secretary of Housing and Urban Development is the mortgagee (beneficiary) named herein, or the first day of the month following assignment, if the Note and this Instrument are assigned to the Secretary of Housing and Urban Development, without taking into account delinquencies or prepayment;

(b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Mortgagee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Mortgagee in trust to pay said ground rents, premiums, water rates, taxes, and special assessments;

(c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Mortgagee to the following items in the order set forth:

(I) premium charges under the Contract of Insurance with the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner or service charge;

(II) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;

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(III) interest on the Note secured hereby;

(IV) amortization of the principal of said Note;

11. In the event the Mortgagor fails to pay sums provided for in this Mortgage, the Mortgagee, at its option, may pay the same. Any excess funds accumulated under *(b)* of the preceding paragraph remaining after payment of the item therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Mortgagor shall fail to pay any other governmental or municipal charge, the Mortgagor shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof the Mortgagee may pay the same.

All sums paid by the Mortgagee and any sums which the Mortgagee may be required to advance to pay mortgage insurance premiums shall be added to the principal of the debt secured hereby and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Mortgage Insurance by prepayment of the Mortgage in full, or otherwise (except as hereinafter provided), accumulations under *(a)* of the preceding paragraph hereof not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Mortgagor. If the property is sold under foreclosure or is otherwise acquired by the Mortgagee after default, any remaining balance of the accumulations under *(b)* of the preceding paragraph shall be credited to the principal of the Mortgage as of the date of the commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under *(a)* thereof shall be likewise credited unless required to pay sums due the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner under the Contract of Mortgage Insurance;

12. That the Mortgagor will pay all ground rents, if any, taxes, assessments, water rates, and other governmental or municipal charges or impositions to the extent provision therefor has not been made by monthly payments as hereinbefore provided before the same become delinquent or subject to interest or penalties, and in default thereof the Mortgagee may pay the same. All such sums so paid by the Mortgagee plus any sums which the Mortgagee has advanced to pay mortgage insurance premiums or fire and other hazard insurance premiums not provided for by monthly payments hereunder shall be added to the principal of this Mortgage, shall bear interest at the rate specified in the Note from the date of the advance and shall be due and payable to the Mortgagee upon demand;

13. That if the Mortgagee is made or becomes a party to any suit or action, by reason of this Mortgage or the indebtedness hereby secured, the Mortgagor will pay all expenses incured by the Mortgagee therein, including a reasonable attorney's fee;

14. That if the Mortgagor shall assign or attempt to assign the rents, issues, or profits or any part thereof of the premises mortgaged hereby without the written consent of the Mortgagee, or in case of the actual or threatened demolition or removal of any building on or to be erected upon said premises, then, at the option of the Mortgagee, the debt hereby secured shall immediately become due;

15. That if it default in any of the covenants or agreements contained herein, or in said Note, then the Mortgagee may perform the same, and all expenditures made by the Mortgagee in so doing shall draw interest at the rate specified in the Note, and shall be repayable by the Mortgagor to the Mortgagee, and, together with interest and costs accruing thereon, shall be secured by this Mortgage;

16. That the Mortgagor will not voluntarily create or permit to be created against the property subject to this Mortgage any lien or liens inferior or superior to the lien of this Mortgage and further that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises, and on the failure of the Mortgagor to perform these covenants, or any part thereof, thereupon the principal and all arrears of interest shall, at the option of the Mortgagee, or any holder of the Note secured by this Mortgage, become due and payable, anything contained herein to the contrary notwithstanding;

17. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the fire rating or inspection organizations, bureau, association or office which are now or may hereafter become applicable to the premises above described;

18. That Mortgagor will not commit, permit, or suffer waste, impairment, or deterioration of said property or any part thereof, and in the event of the failure of the Mortgagor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Mortgagee may make such repair as in its discretion it may deem necessary for the proper preservation thereof; and any sums paid for such repair shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand and shall be fully secured by this Mortgage;

19. That so long as this Mortgage and the said Note secured hereby are insured or held under the provisions of the National Housing Act, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed, sex, age, familial status or handicap.

20. That the funds to be advanced herein are to be used in the construction of certain improvements on the lands herein described, in accordance with a building loan agreement between the Mortgagor and Mortgagee, dated May 27, 1999, which building loan agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth and made a part of this Mortgage; and if the construction of the improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for reason other than strikes or lock-outs, the Mortgagee, after due notice to the Mortgagor or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Mortgagor, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Mortgagee (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Mortgage and shall be due and payable on demand with interest at the rate specified in the Note, but no such advances shall be insured unless same are specifically approved by the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner prior to the making thereof. The principal sum and all other charges provided for herein shall, at the option of the Mortgagee or holder of this mortgage and the Note secured hereby, become due and payable on the failure of the Mortgagor to keep and perform any of the covenants, conditions, and agreements of said building loan agreement. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the Mortgagee and the making of the final advance as provided in said building loan agreement;

21. That in the event of default in making any monthly payment provided for herein or in the Note secured hereby, and if such default is not made good prior to the due date of the next such installment or in the event of a breach of any other stipulation, agreement, condition and covenant to the Mortgagor, then in any such event, the whole principal sum of said Note shall, at the option of the Mortgagee, be deemed to have become immediately due, and the same with interest thereon and with all other costs and charges, shall thereupon be collectible by foreclosure of this Mortgage, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time;

22. That the rights and remedies provided for herein shall be held to be in addition to and not in limitation of those provided by law;

23. It is agreed that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions, covenants of this Mortgage, and of the Note secured hereby, that then this Mortgage shall be utterly null and void; otherwise to remain in full force and virtue. If there is a default in any of the terms, conditions, or covenants of this Mortgage, or of the Note secured hereby, this Mortgage may be foreclosed. The Mortgagor waives the benefit of any appraisement laws of the State of South Carolina. Should any legal proceedings be instituted for the foreclosure of this Mortgage, or should the Mortgagee become a party to any suit involving this Mortgage or the title to the premises described herein, or should the debt secured hereby or any part thereof be placed in the hands of any attorney at law for collection by suit or otherwise, all costs and expenses (including continuation of abstract) incurred by the Mortgagee, and a reasonable attorney's fee, shall thereupon become due and payable immediately or on demand, at the option of the Mortgagee, as a part of the debt secured hereby, and may be recovered and collected hereunder;

24. In case of the foreclosure and sale of the mortgaged premises, said premises may be sold in one parcel. If the proceeds of the sale should be insufficient to pay all costs and expenses of the sale, attorney's fees and all charges, and the principal and interest on the debt secured hereby, including any and all advances made hereunder by or for the account of the Mortgagee, the Mortgagee shall be entitled to a judgement for the deficiency.

SPD 514-932

A-12

25. This Mortgage has been executed by authority of the Board of Directors of the Mortgagor and with the consent of the holder of not less than two-thirds of the outstanding shares of its capital stock entitled to vote thereon;

26. That no waiver of any covenant herein or of the Note secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note secured hereby;

27. This Mortgage and every covenant and agreement therein contained shall be binding upon and inure to the benefit of the Mortgagor and the Mortgagee and their respective successors and assigns, and to the extent permitted by law shall bind every subsequent owner of the mortgaged premises.

28 & 29. See attached Rider to Mortgage attached hereto as Exhibit "B" incorporated herein by reference

Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be duly executed in its behalf by its President, attested by its Secretary, and its corporate seal to be affixed hereto the day of May 27, 19 99.

KEYSTONE LEGENDS I, L. P.,
By: KEYSTONE LEGENDS, INC., General Partner

By: Ronald W. Follmann, President.

Signed, sealed, and delivered in the presence of—

Mary M. Hill
Dorothy A. Lyman
Witness.

ATTEST: [CORPORATE SEAL]
Marilyn J. Follmann Secretary.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me who, being duly sworn, says that he saw the corporate seal of the KEYSTONE LEGENDS I., L. P., a South Carolina limited partnership affixed to the foregoing instrument and that he also saw Ronald W. Follmann, President, and Marilyn J. Follmann, Secretary of said limited partnership, sign and attest the same and that he, with witnessed the execution and delivery thereof as the act and deed of the said limited partnership.

Mary M. Hill

Sworn to before me this 27th day of May, 1999.

Dorothy A. Lyman
Notary Public for the State of South Carolina.

My Commission Expires July 13, 2008

STATE OF SOUTH CAROLINA
Loan No. 054-35605
Mortgage

KEYSTONE LEGENDS I, L. P.
TO
JONNIE PARDUE, TRUSTEE
FOR THE BENEFIT OF
MALONE MORTGAGE COMPANY AMERICA, LTD.

Received and properly indexed in Book , and recorded in Book , Page , this day of , 19 , County, S. C.

Clerk.

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Exhibit "A"

Tract B

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South Carolina, and being designated as Tract B on a survey by Thomas & Hutton Engineering Co., dated May 5, 1998, as revised May 26, 1999, recorded in Plat Book EO, page 197 Charleston County RMC as follows:

Beginning at the intersection of the northerly right of way of National Drive and the easterly right of way of U.S. Highway 17 North, said intersection being the True Point of Beginning, thence running along the easterly right of way of U.S. Highway 17 North N55-43-28 E for 338.58 feet to a concrete monument old:

Thence continuing along the easterly right of way of U.S. Highway 17 North, along a line with a course of N 55-55-31 E for 1320.80 feet to an iron old;

Thence along a line with a course of S 33-22-45 E for 221.20 feet to an iron old;

Thence along a line with a course of N 55-52-12 E for 345.97 feet to an iron old;

Thence along a line with a course of S 26-42-40 E for 328.01 feet to an iron new;

Thence along a line with a course of S 55-26-59 W for 1,856.01 feet to an iron new;

Thence along a line with a course of N 34-33-02 W for 180.00 feet to an iron new;

Thence along a line having a course of S 54-53-23 W for 141.95 feet to an iron new set in the northerly right of way of National Drive;

Thence continuing along the northerly right of way of National Drive, along a line with a course of N 21-16-14 W for 114.55 feet to an iron new;

Thence continuing along the northerly right of way of National Drive, along a curve to the left, having a length of 132.26 feet, a radius of 575.00 feet, and a chord of N 27-51-42 W for 131.97 feet to an iron new;

Thence continuing along the northerly right of way of National Drive N 34-27-04 W a distance of 140.05 feet to the True Point of Beginning.

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Together With:

Access Parcel (Fee Simple)

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South Carolina, and being designated as Access Parcel on a survey by Thomas & Hutton Engineering Co., dated May 5, 1998, as revised May 26, 1999, recorded in Plat Book EO, page 197 Charleston County RMC as follows:

Commencing at the intersection of the southerly right of way of Old Course Lane and the easterly right of way of U.S. Highway 17 North, thence running along the southerly right of way of Old Course Lane along a line having a course of S 33-23-15 E for 213.49 feet to an iron new being the True Point of Beginning for the Access Parcel;

Thence continuing along the right of way of Old Course Lane S 33-23-15 E a distance of 24.89 feet to an old iron pin;

Thence along a curve to the left having a radius of 350.00 feet, a length of 30.23 feet and a chord of S 35-51-44 E for 30.22 feet to an iron new;

Thence along a curve to the right having a radius of 73.63 feet, a length of 7.15 feet and a chord of S 19-45-52 W for 7.14 feet to an iron new;

Thence along a curve to the right having a radius of 125.00 feet, a length of 34.90 feet, and a chord of S 25-11-00 W for 34.79 feet to an iron new;

Thence along a line with a course of N 26-42-55 W for 64.33 feet to an iron new;

Thence along a curve to the right having a radius of 123.63 feet, a length of 29.97 feet, and a chord of N 29-32-12 E for 29.89 feet to the True Point of Beginning.

Said parcel containing 0.04 acres based on the survey.

Together With:

Easement Areas

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South Carolina, and being designated as Access Easement on a survey by Thomas & Hutton Engineering Co., dated May 5, 1998, as revised May 26, 1999, recorded in Plat Book EO, page 197 Charleston County RMC as follows:

Commencing at the intersection of the southerly right of way of Old Course Lane and the easterly right of way of U.S. Highway 17 North, thence running along the southerly right of way of Old Course Lane along a line having a course of S 33-23-15 E for 213.49 feet to an iron new;

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Thence along a curve to the left having a radius of 123.63 feet, a length of 29.97 feet, and a chord of S 29-32-12 W for 29.89 feet to the True Point of Beginning.

Thence southerly along a line with a course S 26 degrees 42 minutes 55 seconds East a distance of 64.33 feet to an iron new;

Thence along a curve to the right with a radius of 125.00 feet, a length of 32.69 feet, and a chord of S 40-40-27 W for 32.60 feet to an iron new;

Thence northerly along a line with a course N 26 degrees 42 minutes 40 seconds W a distance of 53.13 feet to an iron new;

Thence easterly along a curve to the left with a radius of 75.00 feet, a length of 26.58 feet, and a chord of N 27-21-41 E for 26.45 feet to an iron new;

Thence along a curve to the right with a radius of 123.63 feet, a length of 12.04 feet, and a chord of N 19-48-09 E for 12.03 feet to the Point of Beginning. Said easement containing 0.04 acres.

This being the same property as purchased by the Mortgagor by Deed recorded at Book E-306, Page 43 dated May 7, 1998 from Stackpole Limited Partnership in the RMC Office for Charleston County, South Carolina.

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EXHIBIT "B"

RIDER TO MORTGAGE

Project No. 054-35605
Project Name: LEGENDS AT MOUNT PLEASANT
Mount Pleasant, South Carolina

28. The Regulatory Agreement of even date herewith entered into between the Mortgagors (Grantors) herein and the Secretary of Housing & Urban Development which is being recorded simultaneously herewith, is incorporated in and made a part of this Mortgage. Upon default under the Regulatory Agreement and upon request by the Secretary, the Mortgagee, at its option, may declare this Mortgage in default and may declare the whole of the indebtedness secured hereby to be due and payable.

29. The covenant of the Maker to pay principal and interest is included in the note secured hereby for the purpose of establishing and continuing the existence of the indebtedness. However, it is a condition of said covenant and those contained herein that in the event of a default under the terms hereof, the holder shall take no action against the Maker except such as may be necessary to subject to the satisfaction of the indebtedness the property described herein and any chattels appurtenant to the use thereof; provided, that nothing in this condition and no action so taken shall operate to impair any obligation of the Maker under the Building Loan Agreement or the Regulatory Agreement.

KEYSTONE LEGENDS I, L. P., By: KEYSTONE LEGENDS, INC., General Partner

By: _____
Ronald W. Follmann, President

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Regulatory Agreement for Multifamily Housing Projects

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

BK J 327PG023

Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

Number		Mortgagee	
-35605		MALONE MORTGAGE COMPANY AMERICA, LTD.	
Amount of Mortgage Note		Date	
$15,891,900.00		May 27, 1999	
Mortgage Recorded State of South Carolina Book	County of Charleston Page	Date May 27, 1999	Originally endorsed for insurance under Section

This Agreement entered into this 27th day of May, 1999
between KEYSTONE LEGENDS I, L. P., a South Carolina limited partnership
whose address is 1251 National Drive, Suite 100, Mount Pleasant, SC 29464

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to $ 4,403.17 per month unless a different date or amount is approved in writing by the Secretary.

   Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

   (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.

   (This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.

   (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.

   (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

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(i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;

(ii) Deny the increase stating the reasons therefor.

5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.

(b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:

(1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;

(2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and

(3) Through such further provisions agreed to in writing by the parties.

(c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.

(d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.

6. Owners shall not without the prior written approval of the Secretary:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:

(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;

(2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;

(3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and

(4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.

(f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.

(g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.

(h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.

7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.

8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.

9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his

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duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.

(e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

(f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property ad the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds i'the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.

(h) If the mortgage is insured under Section 232:

(1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.

(2) The Owners shall suitably equip the project for nursing home operations.

(3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.

(i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.

10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).

11. Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:

(a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the

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mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;

(d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;

(e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;

(f) "Surplus Cash" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and

(2) the segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project; and

(ii) All tenant security deposits held.

(g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(c) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

(h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;

(i) "Section" refers to a Section of the National Housing Act, as amended.

(j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.

(k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

17. The following Owners: KEYSTONE LEGENDS I, L. P.; KEYSTONE LEGENDS, INC. Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

(To be executed with formalities for recording a deed to real estate.)

SEE ATTACHED SIGNATURE PAGE
(INCORPORATED HEREIN BY REFERENCE)

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SIGNATURE PAGE TO BE ATTACHED
TO
REGULATORY AGREEMENT

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first hereinabove written.

Mary M. Bull (Witness)
Dorothy L. Lyons (Witness)

KEYSTONE LEGENDS I, L. P.
By: KEYSTONE LEGENDS, INC., General Partner

By: _____
Ronald W. Follmann, President

Elisa Large (Witness)
Laura A Evatt (Witness)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
By: FEDERAL HOUSING COMMISSIONER

By: Elizabeth W. Hiller
Authorized Agent

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who, on oath says s/he saw the within named KEYSTONE LEGENDS I, L. P., By KEYSTONE LEGENDS, INC., its General Partner, by its appropriate officer, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Mary M. Bull
Witness

Dorothy L. Lyons
Notary Public in and for the State of South Carolina

My Commission Expires July 19, 2008

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness, who, on oath says s/he saw the within named SECRETARY OF HOUSING AND URBAN DEVELOPMENT, By FEDERAL HOUSING COMMISSIONER, by its appropriate officer, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Elisa Large
Witness

Laura A Evatt
Notary Public in and for the State of South Carolina
My Commission expires 11-09-08

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BK J 327PG028

Nexsen Pruet Jacobs Pollard & Robinson
POST OFFICE BOX 486
CHARLESTON, SOUTH CAROLINA 29402

MHZ
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FILED
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99 MAY 27 PM 3:09
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

19.00
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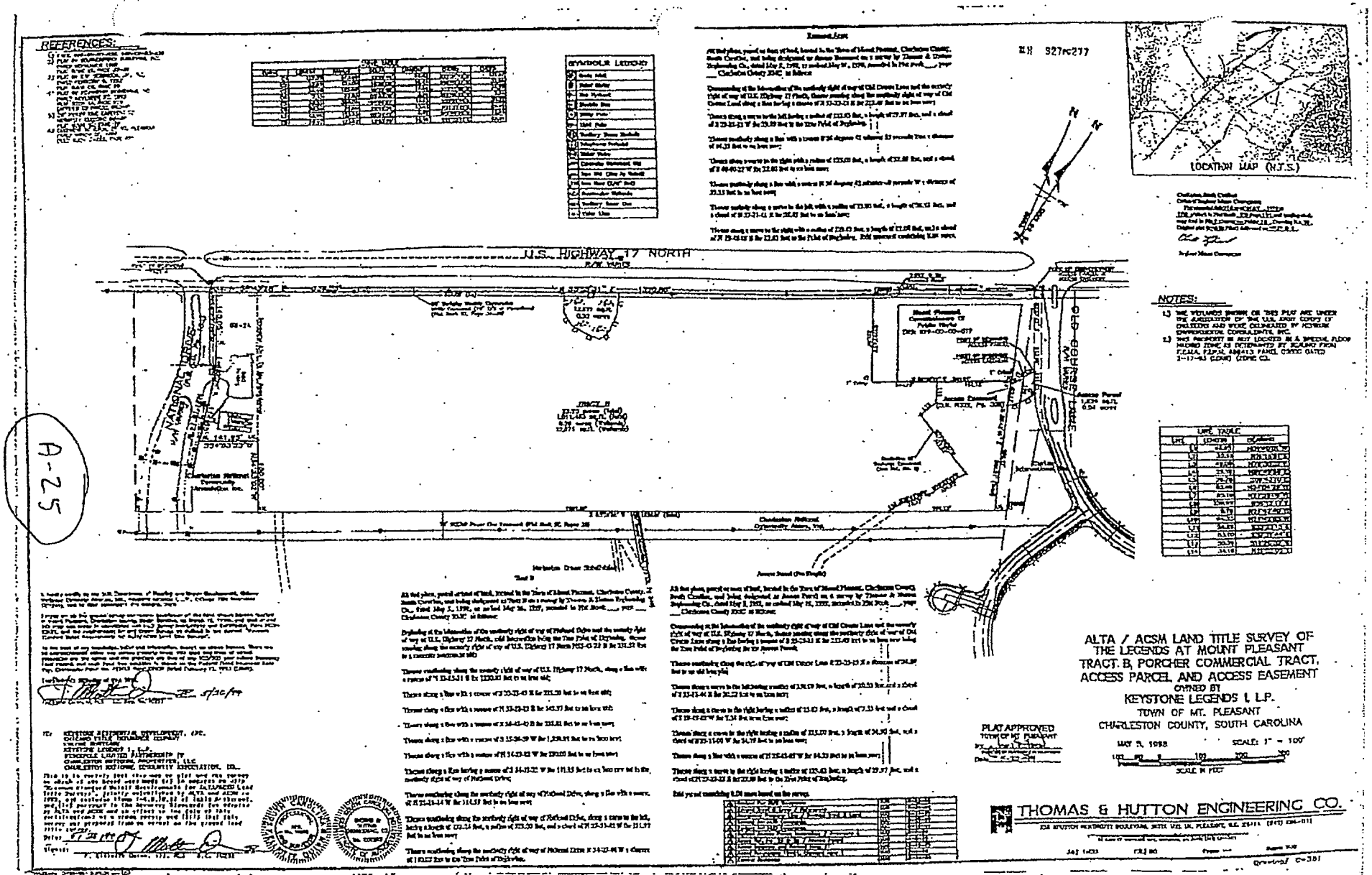
PLAT

A-24


REFERENCES:
SYMBOLS LEGEND
U.S. HIGHWAY 17 NORTH
R/W VARIES
NATIONAL DRIVE
LOCATION MAP (N.T.S.)
NOTES:
ALTA / ACSM LAND TITLE SURVEY OF
THE LEGENDS AT MOUNT PLEASANT
TRACT B, PORCHER COMMERCIAL TRACT,
ACCESS PARCEL AND ACCESS EASEMENT
OWNED BY
KEYSTONE LEGENDS I, L.P.
TOWN OF MT. PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
MAY 5, 1998
SCALE: 1" = 100'
SCALE IN FEET
PLAT APPROVED
TOWN OF MT. PLEASANT
THOMAS & HUTTON ENGINEERING CO.
A-25

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MASTER DEED FOR THE LEGENDS

HORIZONTAL PROPERTY REGIME

THIS MASTER DEED is made on the date set forth below by LMP PROPERTIES, INC, a South Carolina Corporation (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 (the "Property"),

WHEREAS, Declarant desires to subject the Property, including the improvements thereof, to the provisions of this Master Deed and to the South Carolina Horizontal Property Regime Act (the "Act"), and

NOW, THEREFORE, Declarant hereby declares that the Property, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the Act, and is hereby subjected to the provision of this Master Deed By virtue of the recording of this Master Deed, the Property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the 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 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

1 NAME

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

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 the provisions of §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

RESPONDENT'S EXHIBIT 8
PEYCAD 800-631-6989

Charleston County
Register Mesne Conveyance
Charlie Lybrand, RMC

2 Courthouse Square
Rm. 201
P.O. Box 726
Charleston, SC 29402

Telephone Number
(843) 958-4800
Fax Number
(843) 958-4803

Certificate Of Misnumbered Page

This is to certify that page BK D 581 PG 122 of this volume was misnumbered at the time of Microfilming.

Date June 22, 2006

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 The Legends Property Owners Association, Inc , which have been filed with the Secretary of State of the State of South Carolina

(e) Association shall mean The Legends 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 The Legends 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 for maintaining, repairing, replacing, and operating the Common Elements, and as required under the Master Deed

(j) Declarant shall mean LMP Properties, Inc , a South Carolina corporation, 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) 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

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

(u) 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

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

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

(x) 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 The Legends Horizontal Property Regime, attached hereto as Exhibit "D"

(y) 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

(z) 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

(aa) 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

(bb) Survey shall mean the survey for The Legends 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

(cc) 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

(dd) 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 thirteen (13) existing two-story buildings containing a total of two hundred (200) separate residential Units and one (1) commercial Unit located in the Club House, and Common Elements, some of which will be assigned as Limited Common Elements Each Unit consists of an apartment 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, fitness facility, business center, laundry room, and Club House (excluding the commercial Unit contained therein), 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

(ix) The Commercial Unit located in the Clubhouse may be assigned one (1) or more parking spaces and signage rights on four (4) separate locations as shown on Exhibit D

(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 the exclusive use 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 The Legends 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 benefitting less than all of the Units or significantly disproportionately benefitting all Units may be specially assessed equitably among all of the Units that are benefitted 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), licensees or invitees 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 It is anticipated that the Commercial Unit located in the Clubhouse will be submetered

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 the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account as set forth in (t) 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

(i) 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 nonrefundable 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 child 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 herein 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) Expense In addition to the insurance required hereinabove, the Board shall obtain as a Common

(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 Mortgagees as to distribution of insurance proceeds Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee 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 ill 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 requires 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 ACe 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 on 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

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 residential Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a residential 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) Regime, the business activity is legal and conforms to all zoning requirements for the

(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

Notwithstanding, the above, the Commercial Unit located within the Clubhouse, may be used as a real estate office and it may be used for other commercial purposes provided

(i) the business activity does not create undue noise or traffic in the Regime,

(ii) the business activity is legal and conforms to all zoning requirements applicable to the Regime

(iii) the business activity does not substantially increase the insurance premium paid by the Association or otherwise negatively affected the Association's ability to obtain insurance coverage

(iv) the business activity does not constitute a nuisance or a hazardous or offensive use or threatens the security or safety of the Residents in the Regime as determined in the Boards discretion

(b) Number of Occupants. The maximum number of Occupants in a residential 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

(e) 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

(l) 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 No aggressive breeds are allowed (for example, pit bulls, dobermans, rotweilers, etc) No pet over thirty-five (35) pounds is allowed on the second floor Current pet records must be provided on each pet to the Home Owners Association 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 Feces 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 Parking adjacent to Club House is restricted to those having business in the Club House

For so long as Declarant owns a Unit primarily for the purpose of sale, Declarant may assign, with or without an assignment fee, 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 assigned) 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, motor cycles, 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 and cooling 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 Notwithstanding the above, the Owner of the Commercial Unit shall have the right to maintain signs on the four (4) locations set forth on Exhibit D as Limited Common Elements The size and appearance of the signs is subject to the approval of the ACC

(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) Unsightly or Unkept 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 and drive up area in front of garage assigned

to it as Limited Common Elements, exclusively serving a particular Unit Such assigned garages and drive up areas 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 Assigned garage openers must be regularly serviced and lubricated by the Owner to whom they have been assigned

(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 must conform with all applicable laws and ordinances and must not have any adverse effect on the Association's ability to obtain insurance coverage or the cost for such coverage The use of outdoor grills on balconies is prohibited

(s) Abandoned Personal Property Personal property, other than vehicles as provided for in subparagraph (i) 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 fifty percent (50%) 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 fifty percent (50%) 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 fifty percent (50%) 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 fifty percent (50%) 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 No short term vacation rentals are permitted Minimum lease terms will be determined by the Board 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

(e) 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 leas e a Unit without first obtaining a permit in accordance with this Paragraph, and such Units shall not 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(i) 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 and/or garage (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, including but not limited to, garages,

(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)(i)

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)(i)

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 ill 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

(e) 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 or Occupant further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Unit Each other also agrees to operate the air conditioning system in a manner so as to lower the risk of mold and mildew developing in a 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(e), 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 th t 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 HIMSELF 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 Declarants 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 o 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

(xviii) Air planes regularly fly over the property from time to time and may create noise

(xix) Second floor balcony floors are made of wood and may allow dirt and water to penetrate to the first floor balconies

(xx) certain areas of the Regime property are not irrigated

(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

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 Surveyor 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 benefitted 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 ill such circumstance, the benefitted 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 applique, and any other sumilar types of finishes, will not be the responsibility of the benefitted 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 ill 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, nonexclusive 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 Mesne Conveyances 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 Mesne Conveyances 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 of 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 scriveners 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 ("RUD") 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 anyone 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 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 lease 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

25 DISCLAIMER

THE DECLARANT SPECIFICALLY DISCLAIMS ANY INTENTION TO HAVE MADE ANY WARRANTY(IES) OR REPRESENTATION(S) IN CONNECTION WITH THE SUBMITTED PROPERTY (INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE) OR TO THE CONDITION OF THE PROPERTY WHICH IS BEING SOLD "AS-IS" OR "WHERE-IS" OR THE DOCUMENTS ESTABLISHING OR GOVERNING THE CONDOMINIUM, EXCEPT THOSE WARRANTIES AND REPRESENTATIONS (IF ANY) EXPLICITLY SET FORTH HEREIN NO PERSON SHALL BE ENTITLED TO RELY UPON ANY WARRANTY OR REPRESENTATIONS NOT EXPLICITLY SET FORTH HERE IN STATEMENTS (IF ANY) AS TO COMMON EXPENSES, TAXES, ASSESSMENTS OR OTHER CHARGES MADE BY THE DECLARANT OR ANY REPRESENTATIVE THEREOF ARE ESTIMATES ONLY AND NO WARRANTY, GUARANTEE OR REPRESENTATION IS MADE THAT THE ACTUAL AMOUNT OF SUCH COMMON EXPENSES, ASSESSMENTS OR OTHER CHARGES WILL CONFORM WITH SUCH ESTIMATES NOTWITHSTANDING, THE DECLARANT MAY PROVIDE INITIAL OWNERS WITH A HOME OWNER'S WARRANTY POLICY BUT THAT IN NO WAY MAKES THE DECLARANT RESPONSIBLE FOR THE CONDITION OF THE PROPERTY

(Remainder of paid intentionally left blank)

IN WITNESS WHEREOF, Declarant has executed this Master Deed under seal this 26th day of April, 2006

DECLARANT LMP Properties, Inc
A South Carolina Corporation

By _____
Ron Follman
Its Sole Shareholder, Director and Officer

Signed, sealed, and delivered
this 26th day of April, 2006
in the presence of

_____
Witness #1

_____
Witness #2

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public in and for the County and State aforesaid, certify that Ron Fullman as sole Shareholder, Director and Officer personally appeared before me this day and acknowledged the execution of the foregoing Master Deed on behalf of LMP Properties, Inc

WITNESS my hand and official stamp or seal this 26th day of April, 2006

_____
Notary Public for SC
My commission Expires 4/24/13

EXHIBIT "A" BK D 581PG171

Tract B

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South carolina, and being designated as Tract B on a survey by Thomas & Hutton Engineering Co , dated May 5, 1998, as revised May 26, 1999, recorded in Plat Book ED, Page 197, Charleston County RMC Office as follows

Beginning at the intersection of the northerly right of way of National Drive and the easterly right of way of U S Highway 17 North, said intersection being the True Point of Beginning, thence running along the easterly right of way of U S Highway 17 North N55-43-28 E for 338 58 feet to a concrete monument old

Thence continuing along the easterly right of way of U S Highway 17 North, along a line with a course of N 55-55-31 E for 1320 80 feet to an iron old,

Thence along a line with a course of S 33-22-45 E for 221 20 feet to an iron old,

Thence along a line with a course of N 55-52-12 E for 345 97 feet to an iron old,

Thence along a line with a course of S 26-42-40 E for 328 01 feet to an iron new,

Thence along a line with a course of S-55-26-59 W for 1,856 01 feet to an iron new,

Thence along a line with a course of N 34-33-02 W for 180 00 feet to an iron new,

Thence along a line having a course of S 54-53-23 W for 141 95 feet to an iron new set in the northerly right of way of National Drive,

Thence continuing along the northerly right of way of National Drive, along a line with a course of N 21-16-14 W for 114 55 feet to an iron new,

Thence continuing along the northerly right of way of National Drive, along a curve to the left, having a length of 132 26 feet, a radius of 575 feet, and a chord of N 27-51-42 W for 131 97 feet to an iron new,

Thence continuing along the northerly right of way of National Drive N 34-27-04 W a distance of 140 05 feet to the True Point of Beginning

Access Parcel (Fee Simple)

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South Carolina, and being designated as Access Parcel on a survey by Thomas & Hutton Engineering Co , dated May 5, 1998, as revised May 26, 1999, recorded in Plat Book ED, Page 197, Charleston County RMC Office as follows

Commencing at the intersection of the southerly right of way of Old Course Lane and the easterly right of way of U S Highway 17 North, thence running along the southerly right of way of Old Course Lane along a line having a course of SW 33-23-15 E for 213 49 feet to an iron new being the True Point of Beginning for the Access Parcel,

Thence continuing along the right of way of Old Course Lane S 33-23-15 E a distance of 24 89 feet to an old iron pin,

Thence along a curve to the left having a radius of 350 00 feet, a length of 30 23 feet and a chord of S 35-51-44 E for 30 22 feet to an iron new,

Thence along a curve to the right having a radius of 73 63 feet, a length of 7 15 feet and a chord of S 19-45-52 W for 7 14 feet to an iron new,

Thence along a curve to the right having a radius of 125 00 feet, a length of 34 90 feet, and a chord of S 25-11-00 W for 34 79 feet to an iron new,

Thence along a line with a course of N26-42-55 W for 64 33 feet to an iron new,

Thence along a curve to the right having a radius of 123 63 feet, a length of 29 97 feet, and a chord of N 29-32-12 E for 29 89 feet to the True Point of Beginning

Said Parcel containing 0 04 acres based on the survey

TOGETHER WITH

EASEMENT AREAS

All that piece, parcel or tract of land, located in the Town of Mount Pleasant, Charleston County, South Carolina, and being designated as Access Easement on Survey by Thomas & Hutton Engineering Co , dated May 5, 1998 and recorded in Plat Book ED, Page 197, Charleston County RMC Office as follows

Commencing at the intersection of the southerly right of way of Old Course Lane and the easterly right of way of U S Highway 17 North, thence running along the southerly right of way of Old Course Lane along a line having a course of S 33-23-15 E for 213 49 feet to an iron new,

Thence along a curve to the left having a radius of 123 63 feet, a length of 29 97 feet, and a chord of S 29-32-12 W for 29 89 feet to the True Point of Beginning

Thence southerly along a line with a course S 26 degrees 42 minutes 55 seconds East a distance of 64 33 feet to an iron new,

Thence along a curve to the right with a radius of 125 00 feet, a length of 32 69, and a chord of S 40-40-27 W for 32 60 feet to an iron new,

Thence northerly along a line with a course N 26 degrees 42 minutes 40 second W a distance of 53 13 feet to an iron new,

Thence easterly along a curve to the left with a radius of 75 00 feet, a length of 26 58 feet, and a chord of N 27-21-41 E for 26 45 feet to an iron new,

Thence along a curve to the right with a radius of 123 63 feet, a length of 12 04 feet, and a chord of N 19-48-09 E for 12 03 feet to the Point of Beginning Said easement containing 0 04 acres

T.M.S. 599-00-00-020

The Legends Ownership Schedule
Units

Unit	Unit Type	Unit Value	Ownership Percentage	
111	B-2gspfv	$1,282	0 574%	Attached Garage
112	B-2spcv	$1,323	0 592%	
114	B-1gsppv	$1,159	0 519%	Attached Garage
116	B-1gsppv	$1,159	0 519%	Attached Garage
117	B-2gspfv	$1,282	0 574%	Attached Garage
118	B-2sppv	$1,323	0 592%	
121	B-2ufpfv	$1,323	0 592%	
122	B-2ufpcv	$1,323	0 592%	
123	B-1uelfv	$1,154	0 517%	
124	B-1upv	$1,134	0 508%	
125	B-1uelfv	$1,154	0 517%	
126	B-1ucv	$1,134	0 508%	
127	B-2ufpfv	$1,323	0 592%	
128	B-2ufpcv	$1,323	0 592%	
211	B-2spfv	$1,323	0 592%	
212	B-2spcv	$1,323	0 592%	
213	A-2spfv	$819	0 367%	
214	A-2spcv	$819	0 367%	
215	A-2spfv	$819	0 367%	Handicap unit
216	A-2spcv	$819	0 367%	
217	B-2spfv	$1,323	0 592%	
218	B-2spcv	$1,323	0 592%	
221	B-2uspfv	$1,323	0 592%	
222	B-2ufpcv	$1,323	0 592%	
223	A-2ufv	$819	0 367%	
224	A-2ucv	$819	0 367%	
225	A-2ufv	$819	0 367%	
226	A-2ucv	$819	0 367%	
227	B-2ufv	$1,323	0 592%	
228	B-2ufpcv	$1,323	0 592%	
311	B-2gspfv	$1,282	0 574%	Attached Garage
312	B-2spcv	$1,323	0 592%	
314	B-1gspcv	$1,159	0 519%	Attached Garage
316	B-1gspcv	$1,159	0 519%	Attached Garage
317	B-2gspfv	$1,282	0 574%	Attached Garage
318	B-2spcv	$1,323	0 592%	
321	B-2ufv	$1,323	0 592%	
322	B-2ucv	$1,323	0 592%	
323	B-1uelfv	$1,154	0 517%	
324	B-1ucv	$1,134	0 508%	
325	B-1uelfv	$1,154	0 517%	
326	B-1ucv	$1,134	0 508%	
327	B-2ufv	$1,323	0 592%	
328	B-2ucv	$1,323	0 592%	
411	B-2spfv	$1,323	0 592%	
412	B-2sptv	$1,323	0 592%	
413	A-2spfv	$819	0 367%	

Exhibit B (1)

414	A-2sptv	$819	0 367%	
415	A-2spfv	$819	0 367%	Handicap unit
416	A-2sptv	$819	0 367%	
417	B-2spfv	$1,323	0 592%	
418	B-2sptv	$1,323	0 592%	
421	B-2ufv	$1,323	0 592%	
422	B-2utv	$1,323	0 592%	
423	A-2ufv	$819	0 367%	
424	A-2utv	$819	0 367%	
425	A-2ufv	$819	0 367%	
426	A-2utv	$819	0 367%	
427	B-2ufv	$1,323	0 592%	
428	B-2utv	$1,323	0 592%	
511	B-2gspfv	$1,282	0 574%	Attached Garage
512	B-2spcv	$1,323	0 592%	
514	B-1gspcv	$1,159	0 519%	Attached Garage
516	B-1gspcv	$1,159	0 519%	Attached Garage
517	B-2gspfv	$1,282	0 574%	Attached Garage
518	B-2spcv	$1,323	0 592%	
521	B-2ufpfv	$1,323	0 592%	
522	B-2ufpcv	$1,323	0 592%	
523	B-1uelfv	$1,154	0 517%	
524	B-1ucv	$1,134	0 508%	
525	B-1uelfv	$1,154	0 517%	
526	B-1ucv	$1,134	0 508%	
527	B-2ufvfp	$1,323	0 592%	
528	B-2uspfpcv	$1,323	0 592%	
611	A-3spgfv	$939	0 420%	Attached Garage
612	C-1gspcv	$1,480	0 663%	Attached Garage
613	A-1spfv	$736	0 330%	
614	A-1spcv	$736	0 330%	
615	A-1spfv	$736	0 330%	
616	A-1spcv	$736	0 330%	
617	A-3spgfv	$939	0 420%	Attached Garage
618	C-1gspcv	$1,480	0 663%	Attached Garage
621	C-1ufpfv	$1,456	0 652%	
622	C-1ufpcv	$1,456	0 652%	
623	A-1uelfv	$743	0 333%	
624	A-1uelcv	$743	0 333%	
625	A-1uelfv	$743	0 333%	
626	A-1uelcv	$743	0 333%	
627	C-1ufpfv	$1,456	0 652%	
628	C-1ufpcv	$1,456	0 652%	
711	A-3spgfv	$939	0 420%	Attached Garage
712	C-1gspcv	$1,480	0 663%	Attached Garage
713	A-1spfv	$736	0 330%	
714	A-1spcv	$736	0 330%	
715	A-1spfv	$736	0 330%	
716	A-1spcv	$736	0 330%	
717	A-3spgfv	$939	0 420%	Attached Garage
718	C-1gspcv	$1,480	0 663%	Attached Garage

BK0 581PG175

Exhibit B(2)

BKD 581PG176

721	C-1ufpfv	$1,456	0 652%	
722	C-1ufpcv	$1,456	0 652%	
723	A-1uelfv	$743	0 333%	
724	A-1ucv	$736	0 330%	
725	A-1uelfv	$743	0 333%	
726	A-1ucv	$736	0 330%	
727	C-1ufpfv	$1,456	0 652%	
728	C-1ufpcv	$1,456	0 652%	
811	A-3spgfv	$939	0 420%	Attached Garage
812	C-1gspcv	$1,480	0 663%	Attached Garage
813	A-1spfv	$736	0 330%	
814	A-1spcv	$736	0 330%	
815	A-1spfv	$736	0 330%	
816	A-1spcv	$736	0 330%	
817	A-3spgfv	$939	0 420%	Attached Garage
818	C-1gspcv	$1,480	0 663%	Attached Garage
821	C-1ufpspfv	$1,456	0 652%	
822	C-1ufpcv	$1,456	0 652%	
823	A-1uelfv	$743	0 333%	
824	A-1ucv	$736	0 330%	
825	A-1uelfv	$743	0 333%	
826	A-1ucv	$736	0 330%	
827	C-1ufpfv	$1,456	0 652%	
828	C-1ufpcv	$1,456	0 652%	
911	B-2spfv	$1,323	0 592%	
912	B-2spcv	$1,323	0 592%	
913	A-2spfv	$819	0 367%	
914	A-2spcv	$819	0 367%	
915	A-2spfv	$819	0 367%	Handicap unit
916	A-2spcv	$819	0 367%	
917	B-2spfv	$1,323	0 592%	
918	B-2spcv	$1,323	0 592%	
921	B-2ufv	$1,323	0 592%	
922	B-2uspcv	$1,323	0 592%	
923	A-2ufv	$819	0 367%	
924	A-2ucv	$819	0 367%	
925	A-2ufv	$819	0 367%	
926	A-2ucv	$819	0 367%	
927	B-2ufv	$1,323	0 592%	
928	B-2ucv	$1,323	0 592%	
1011	A-3spgfv	$939	0 420%	Attached Garage
1012	C-1gspcv	$1,480	0 663%	Attached Garage
1013	A-1spfv	$736	0 330%	
1014	A-1spcv	$736	0 330%	
1015	A-1spfv	$736	0 330%	
1016	A-1spcv	$736	0 330%	
1017	A-3spgfv	$939	0 420%	Attached Garage
1018	C-1gspcv	$1,480	0 663%	Attached Garage
1021	C-1ufpfv	$1,456	0 652%	
1022	C-1ufpspcv	$1,456	0 652%	
1023	A-1uelfv	$743	0 333%	

Exhibit B(3)

1024	A-1uelcv	$743	0 333%	
1025	A-1uelfv	$743	0 333%	
1026	A-1uelcv	$743	0 333%	
1027	C-1ufpfv	$1,456	0 652%	
1028	C-1ufpspcv	$1,456	0 652%	
1111	B-2spfv	$1,323	0 592%	
1112	B-2spcv	$1,323	0 592%	
1113	A-2spfv	$819	0 367%	
1114	A-2spcv	$819	0 367%	
1115	A-2spfv	$819	0 367%	Handicap unit
1116	A-2spcv	$819	0 367%	
1117	B-2spfv	$1,323	0 592%	
1118	B-2spcv	$1,323	0 592%	
1121	B-2ufv	$1,323	0 592%	
1122	B-2ufpspcv	$1,323	0 592%	
1123	A-2ufv	$819	0 367%	
1124	A-2ucv	$819	0 367%	
1125	A-2ufv	$819	0 367%	
1126	A-2ucv	$819	0 367%	
1127	B-2ufv	$1,323	0 592%	
1128	B-2ufpcv	$1,323	0 592%	
1211	B-2gsp	$1,282	0 574%	Attached Garage
1212	B-2spcv	$1,323	0 592%	
1214	B-1gspcv	$1,159	0 519%	Attached Garage
1216	B-1gspcv	$1,159	0 519%	Attached Garage
1217	B-2gspfv	$1,282	0 574%	Attached Garage
1218	B-2spcv	$1,323	0 592%	
1221	B-2ufpfv	$1,323	0 592%	
1222	B-2ufpspcv	$1,323	0 592%	
1223	B-1uelfv	$1,154	0 517%	
1224	B-1ucv	$1,134	0 508%	
1225	B-1uelfv	$1,154	0 517%	
1226	B-1ucvsp	$1,134	0 508%	
1227	B-2ufpfv	$1,323	0 592%	
1228	B-2ufpspcv	$1,323	0 592%	
1311	B-2spfv	$1,323	0 592%	
1312	B-2spcv	$1,323	0 592%	
1313	A-2spfv	$819	0 367%	
1314	A-2spcv	$819	0 367%	
1315	A-2spfv	$819	0.367%	
1316	A-2spcv	$819	0 367%	
1317	B-2spfv	$1,323	0 592%	
1318	B-2spcv	$1,323	0 592%	
1321	B-2ufv	$1,323	0 592%	
1322	B-2ucv	$1,323	0 592%	
1323	A-2ufv	$819	0 367%	
1324	A-2ucv	$819	0 367%	
1325	A-2ufv	$819	0 367%	
1326	A-2ucv	$819	0 367%	
1327	B-2ufv	$1,323	0 592%	
1328	B-2ucvsp	$1,323	0 592%	

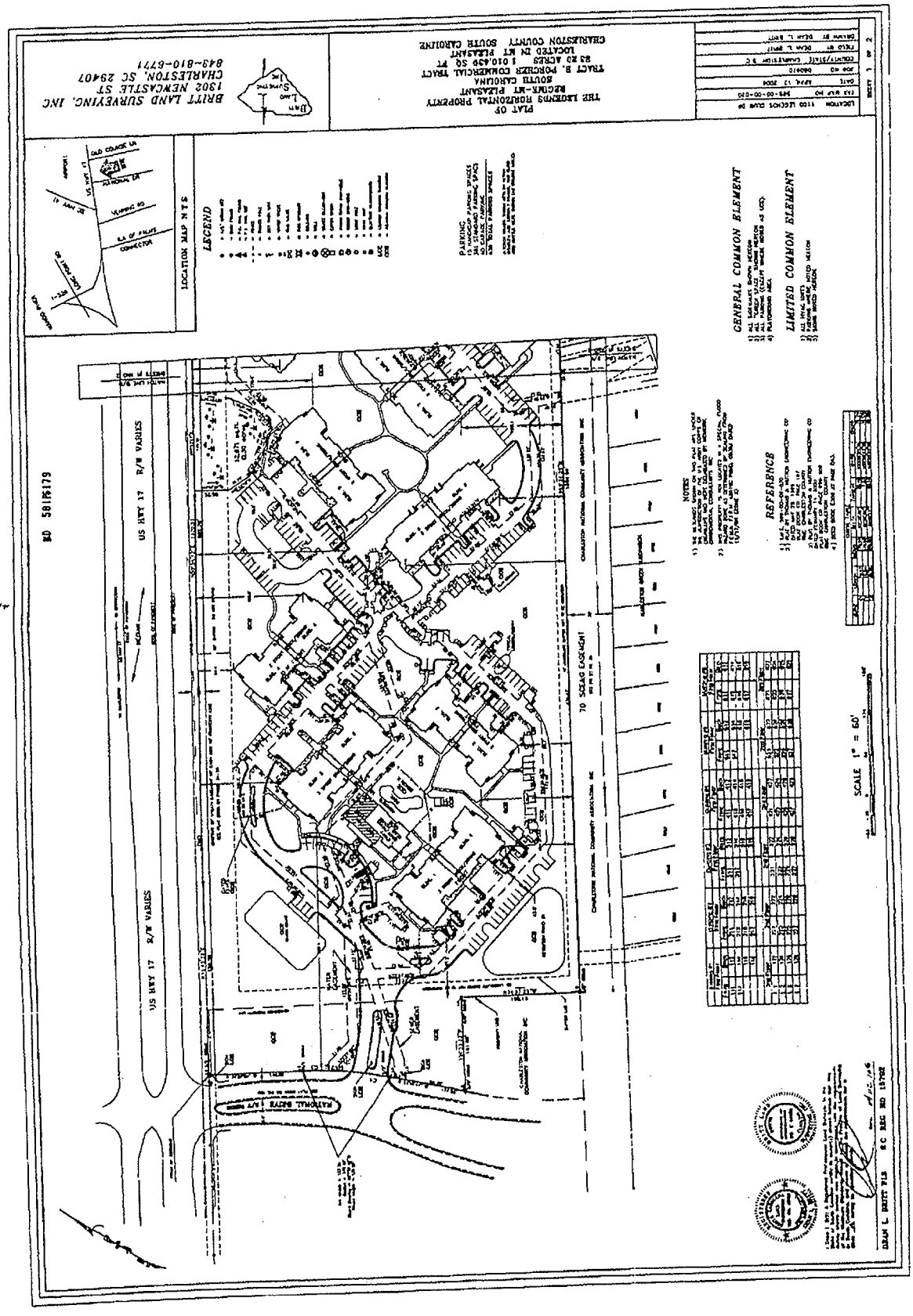
Exhibit B (4)

1100	Office Unit	$1,760	0 788%
	Total	$223,308	100 000%

Legend	
g	attached garage
fp	fireplace
u	2nd floor
cv	courtyard view
fv	front view
sp	screened porch
el	elongated living room
tv	tree view
A-1	1bdr Azalea
A-2	1 bdr Dogwood
A-3	1 bdr Magnolia
B-1	2 bdr Jasmine
B-2	2 bdr Oleander
C-1	3 bdr Camellia

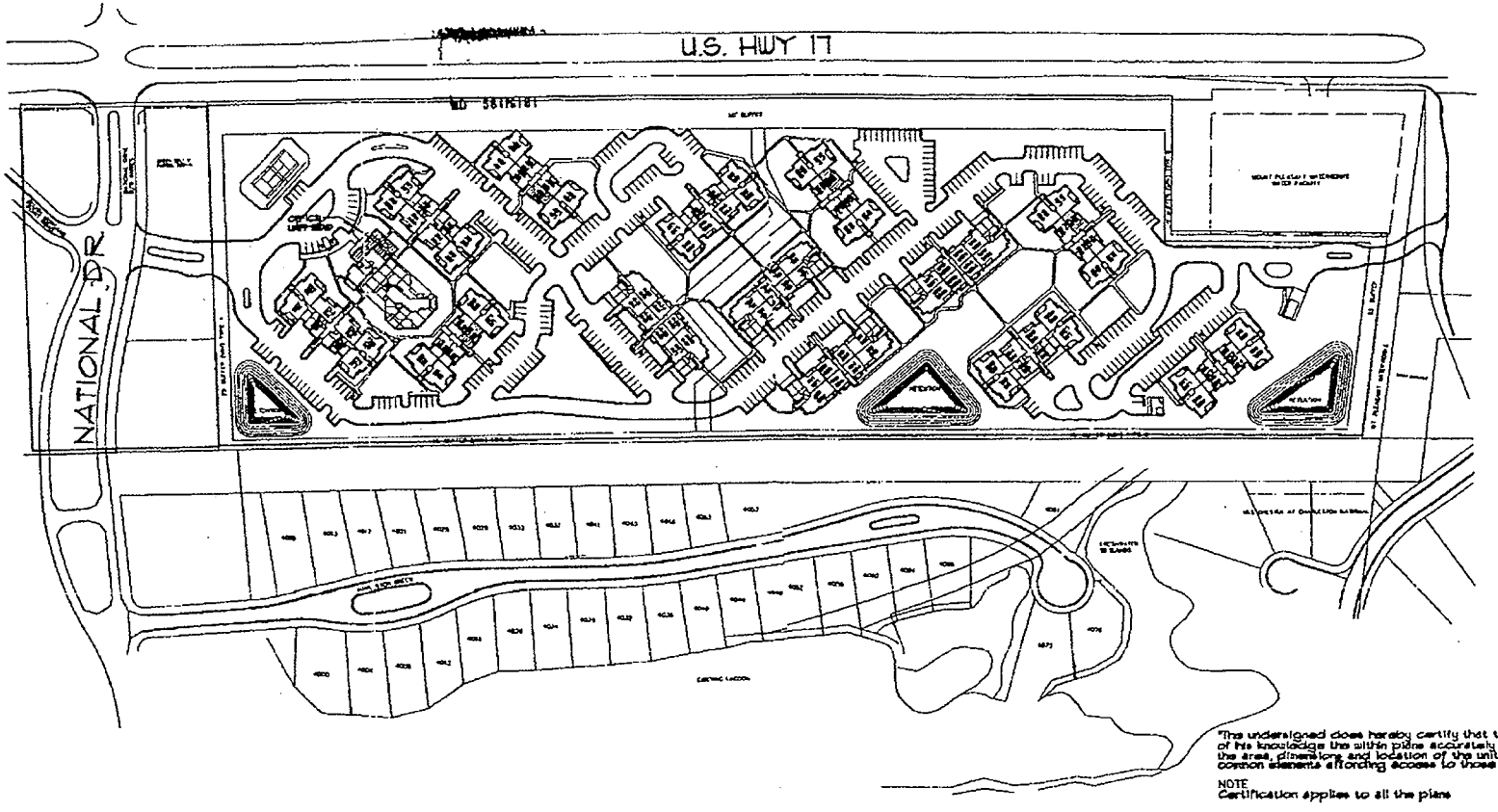
Exhibit B(5)

Exhibit C (1)


PLAT OF
THE LEGENDS HORIZONTAL PROPERTY
REGIME-MT PLEASANT
SOUTH CAROLINA
TRACT B, PORCHER COMMERCIAL TRACT
23.20 ACRES 1,010,459.20 FT
LOCATED IN MT PLEASANT
CHARLESTON COUNTY SOUTH CAROLINE
BRITT LAND SURVEYING, INC
1302 NEWCASTLE ST
CHARLESTON, SC 29407
843-810-6771
LOCATION MAP NTS
LEGEND
GENERAL COMMON ELEMENT
LIMITED COMMON ELEMENT
REFERENCE
NOTES
US HWY 17 R/W VARIES
SCALE 1" = 60'

US HWY 17 R/W VARIES
LOCATION MAP N T S
BRITT LAND SURVEYING, INC
1302 NEWCASTLE ST
CHARLESTON, SC 29407
843-810-6771
PLAT OF
THE LEGENDS BUILDING PORTFOLIO PROPERTY
RECORDED AT MT PLEASANT
SOUTH CAROLINA
TRACT B, PORCHER COMMERCIAL TRACT
23.20 ACRES 1,010,439 SQ FT
LOCATED IN MT PLEASANT
CHARLESTON COUNTY SOUTH CAROLINE
SCALE 1" = 60'
NOTES
GENERAL COMMON ELEMENT
LIMITED COMMON ELEMENT
REFERENCE
DEAN L. BRITT PLS S C REG NO 16708

Exhibit C (2)



"This undersigned does hereby certify that to the best of his knowledge the within plans accurately reflect the area, dimensions and location of the units and the common elements affording access to those units"

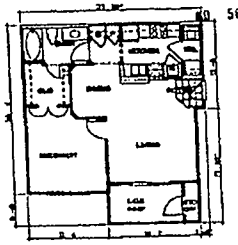
NOTE
Certification applies to all the plans

THE LEENDS
SITE PK
HORIZONTAL PRERTY REGIME
TOWN OF MOURPLEASANT
CHARLESTON COUNTSOUTH CAROLINA
3-21-0

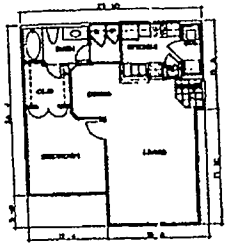
Exhibit D (1)

4/21/06

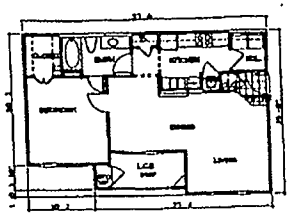
0526



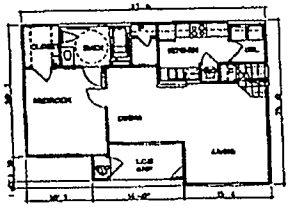
UNIT A1 - ONE BEDROOM ONE BATH



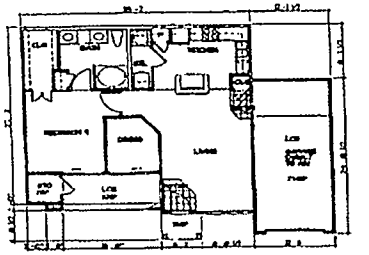
UNIT A1S - ONE BEDROOM ONE BATH



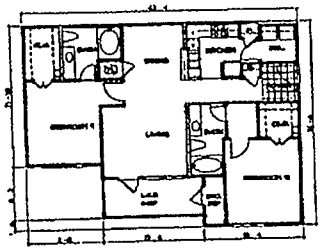
UNIT A2 - ONE BEDROOM ONE BATH



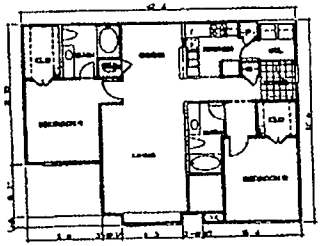
UNIT A2HC - ONE BEDROOM ONE BATH



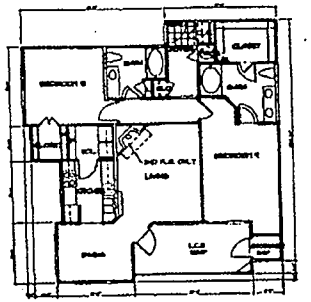
UNIT A3J - ONE BEDROOM ONE BATH



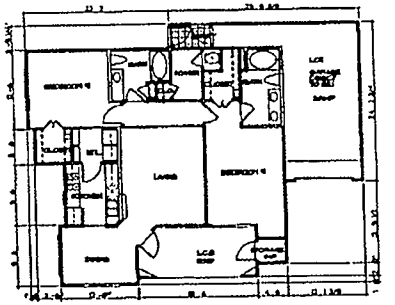
UNIT B1 - TWO BEDROOM TWO BATH



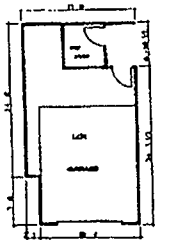
UNIT B1S - TWO BEDROOM TWO BATH



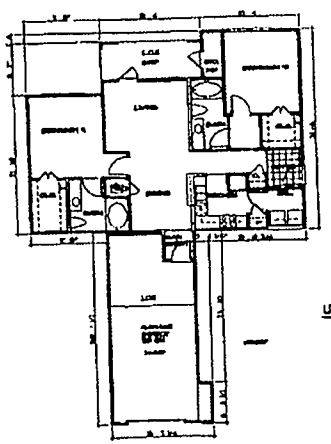
UNIT B2 - TWO BEDROOM TWO BATH



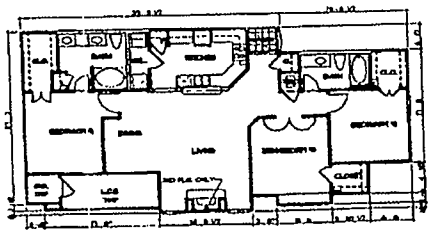
UNIT B2J - TWO BEDROOM TWO BATH



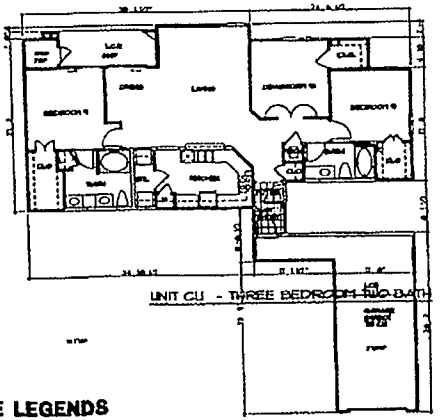
ONE CAR GARAGE



UNIT B1I - TWO BEDROOM TWO BATH, DIRECT ENTRY

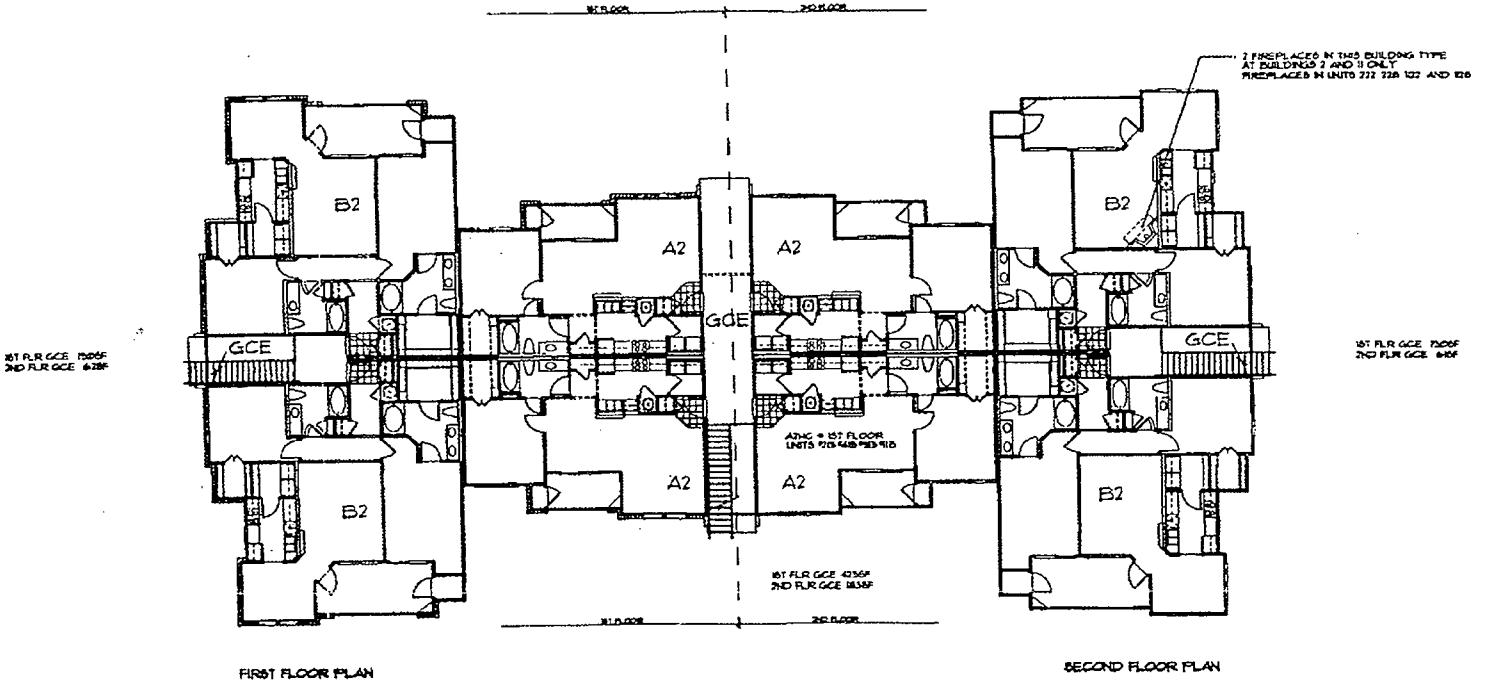


UNIT C1 - THREE BEDROOM TWO BATH



UNIT C1J - THREE BEDROOM TWO BATH

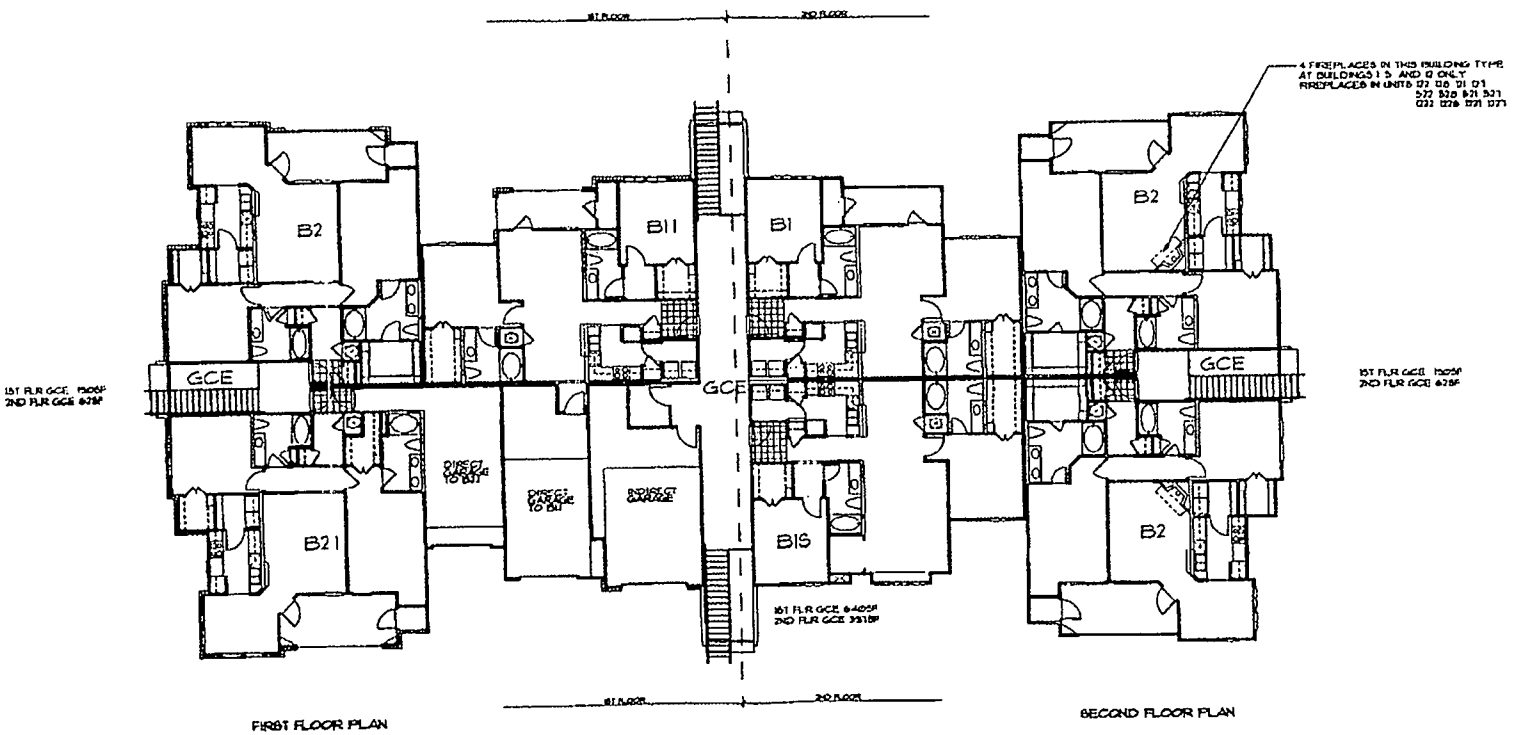
ADDRESSES PER UNIT TYPE	
UNIT	ADDRESS
A1	712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790,



TYPE I BUILDING PLAN

THE LEGENDS
BUILDING PLAN
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
2-21-08

Exhibit 2(c)



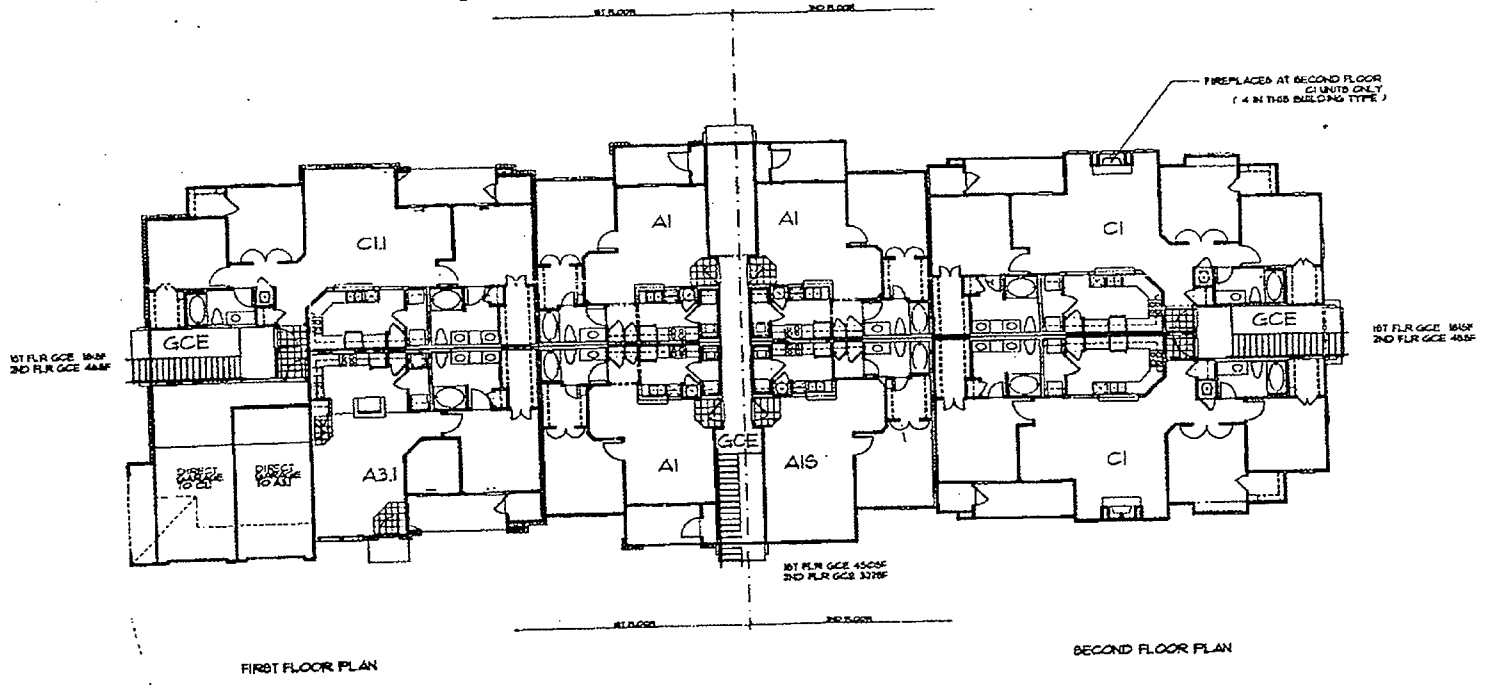
FIRST FLOOR PLAN

SECOND FLOOR PLAN

TYPE II BUILDING PLAN

THE LEGENDS
BUILDING PLAN
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-21-96

Exhibit D(4)



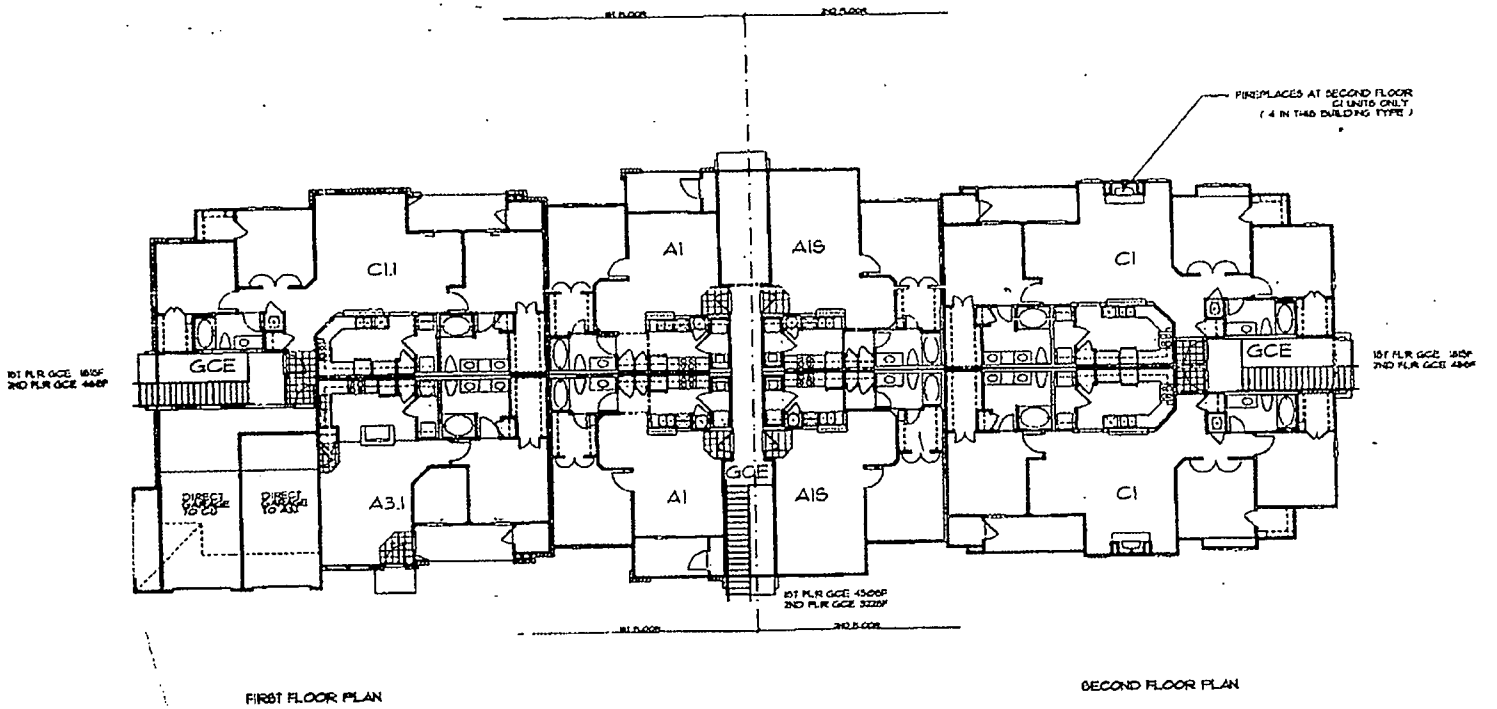
FIRST FLOOR PLAN

SECOND FLOOR PLAN

TYPE III BUILDING PLAN

THE LEGENDS
BUILDING PLAN
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
2-21-96

Exhibit D(5)



FIRST FLOOR PLAN

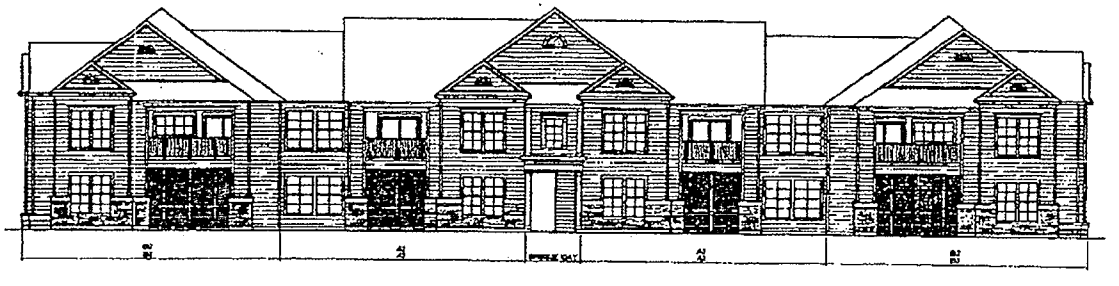
SECOND FLOOR PLAN

TYPE IV BUILDING PLAN

THE LEGENDS
BUILDING PLAN
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

Exhibit D (c)

BUILDING TYPE I - END ELEVATION

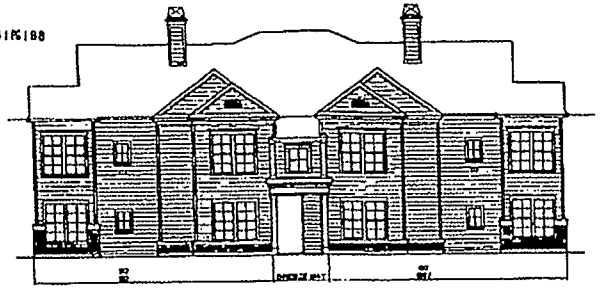


BUILDING TYPE I - FRONT AND BACK ELEVATION

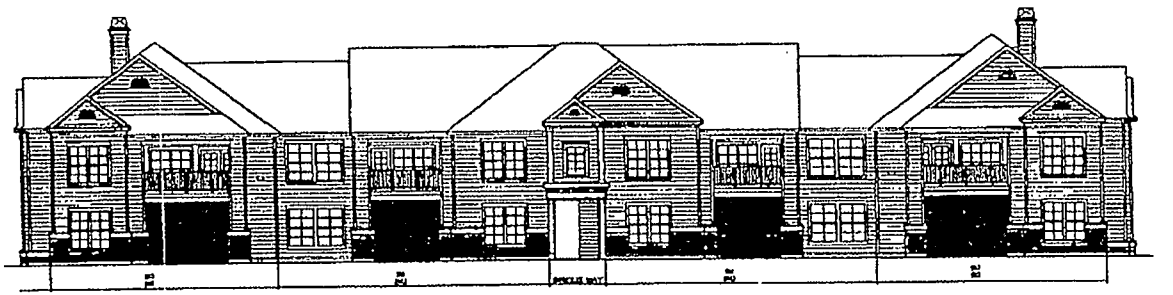
THE LEGENDS
ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

Exhibit D (7)

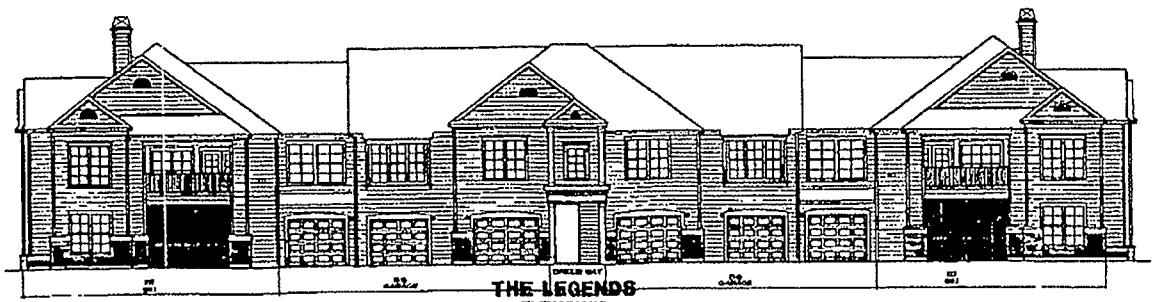
BK 5815188



BUILDING TYPE II - SIDE ELEVATION



BUILDING TYPE II - REAR ELEVATION

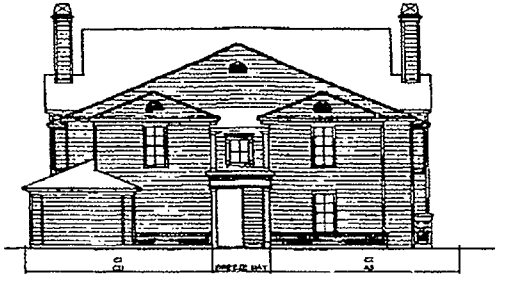


BUILDING TYPE II - FRONT ELEVATION

THE LEGENDS
ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

Exhibit D(6)

BK 5815189



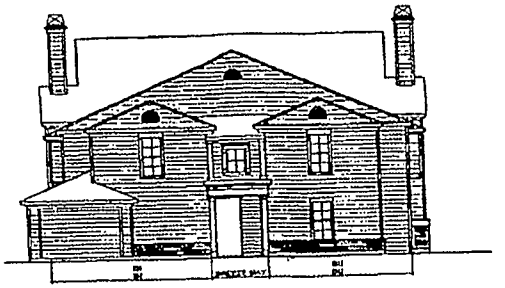
BUILDING TYPE III - END ELEVATION

BUILDING TYPE III - REAR ELEVATION

BUILDING TYPE III - FRONT ELEVATION

THE LEGENDS
ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

BK 5815190



BUILDING TYPE IV - END ELEVATION

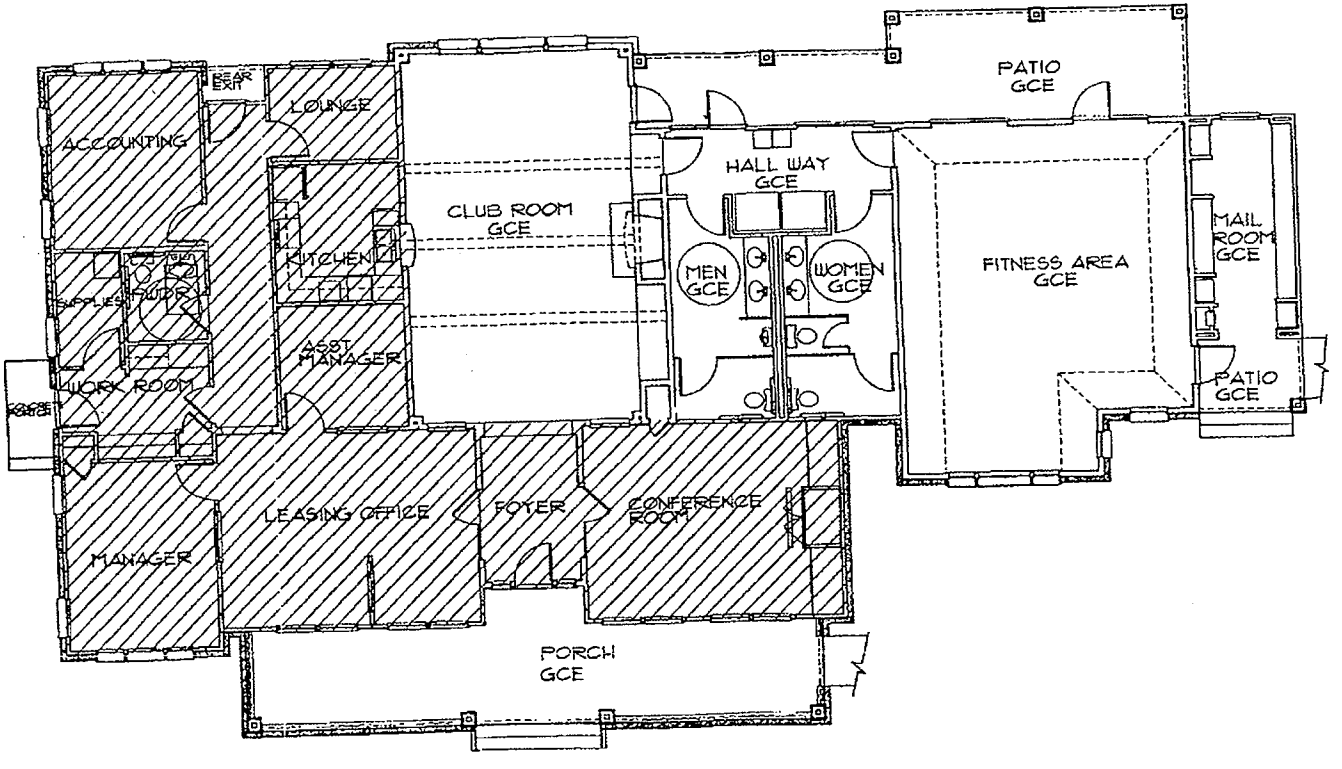
BUILDING TYPE IV - COURT ELEVATION

BUILDING TYPE IV - FRONT ELEVATION

THE LEGENDS
ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

Exhibit D (10)

BK 5818191

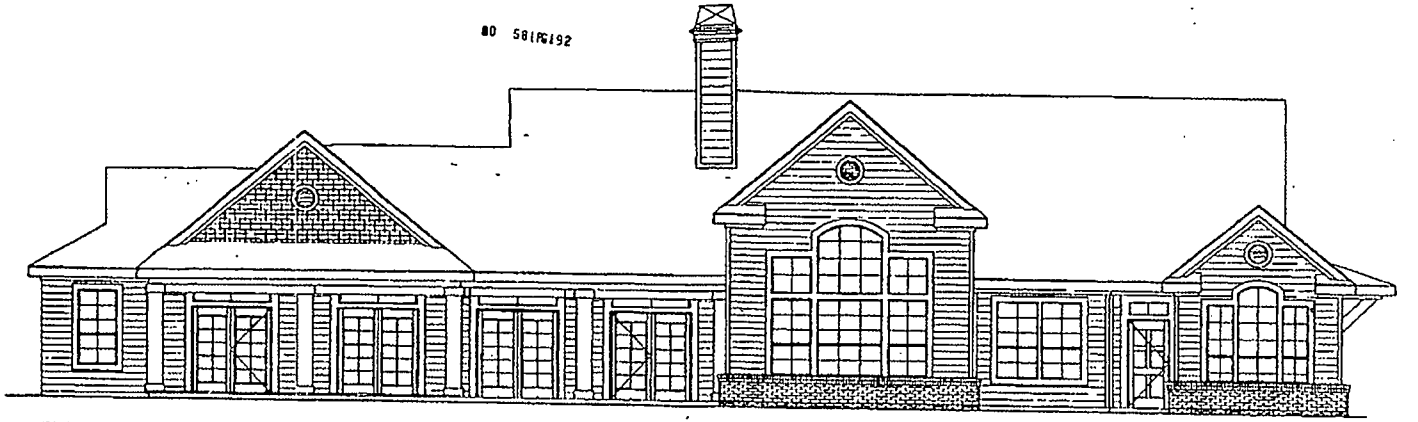


CLUB PLAN

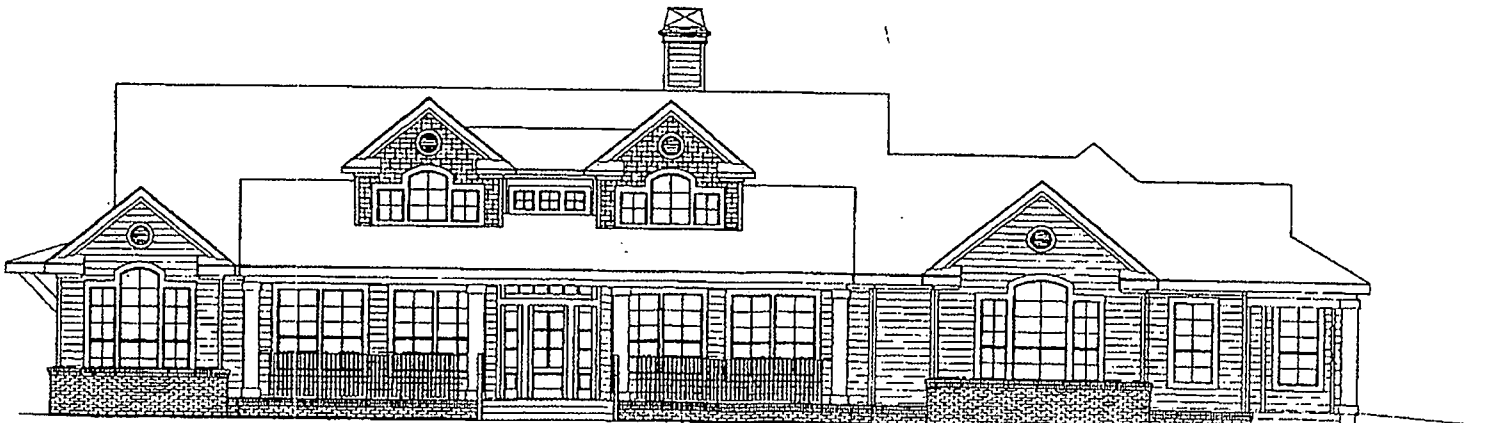
HATCHED AREA INDICATES OFFICE UNIT 1100

THE LEGENDS
CLUB PLAN
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA

0536



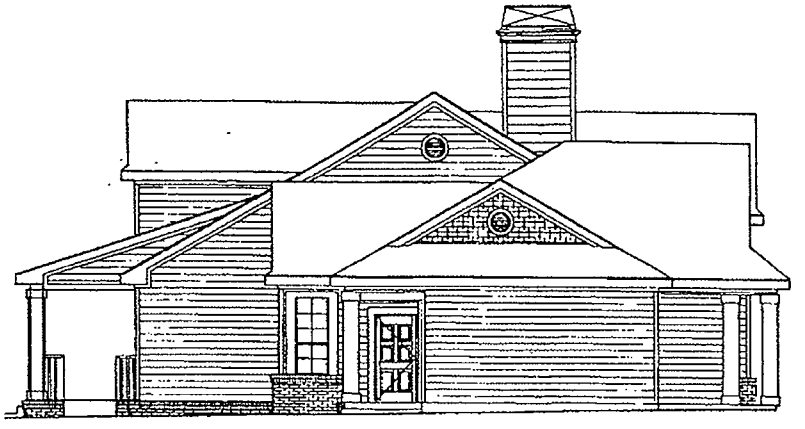
REAR ELEVATION



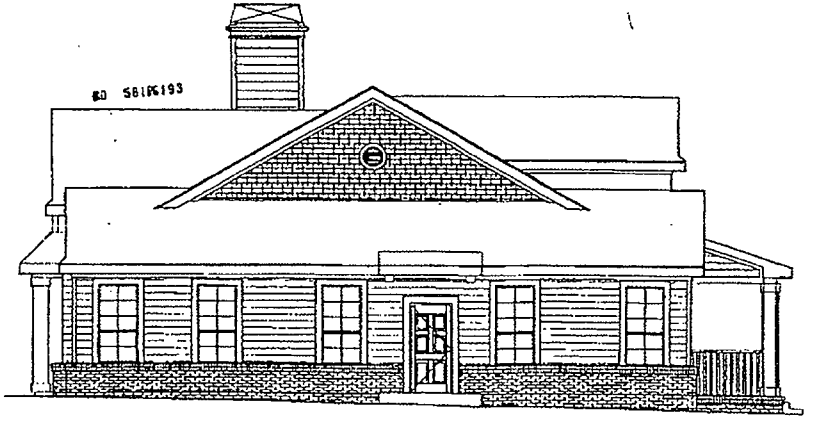
FRONT ELEVATION

THE LEGENDS
CLUB ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-27-08

Exhibit D (12)



RIGHT ELEVATION

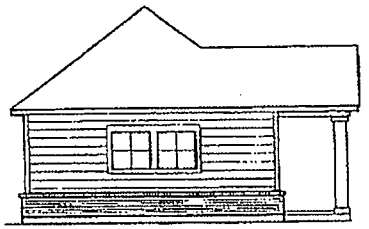


LEFT ELEVATION

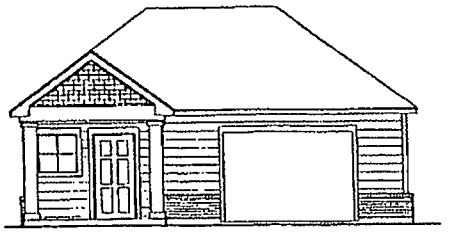
THE LEGENDS
CLUB ELEVATIONS
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
3-31-06

Exhibit D (13)

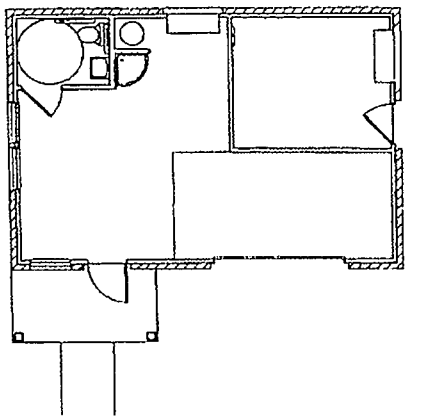
BK S81R193



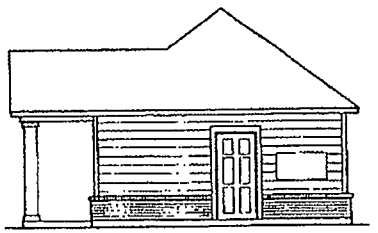
LEFT ELEVATION



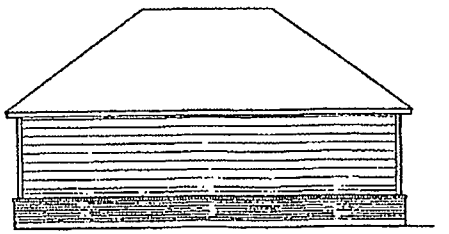
FRONT ELEVATION



FLOOR PLAN



RIGHT ELEVATION



REAR ELEVATION

THE LEGENDS
MAINTENANCE BUILDING
HORIZONTAL PROPERTY REGIME
TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
8-31-05
EXHIBIT D (3)

EXHIBIT "E"

BKD 581PG195

BYLAWS

OF

THE LEGENDS PROPERTY OWNERS ASSOCIATION, INC

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BYLAWS BK0 581PG198

OF

THE LEGENDS PROPERTY OWNERS ASSOCIATION, INC

Article I
General

Section 1 Applicability These Bylaws provide for the self-government of The Legends 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 The Legends Horizontal Property Regime, recorded in the RMC Office for Charleston County, South Carolina ("Master Deed")

Section 2 Name The name of the corporation is The Legends 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, than 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 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 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 given 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 whatever 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 one hundred percent (100%) 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 of a director of the Association duly called, anyone (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 00) 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(9) 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 nodirect 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,

(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 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 Committees

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 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 ofthe 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

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 Fining 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 (to) 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 scriveners 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 3331-1620 of the South Carolina Nonprofit Corporation Act of 1994,

(F) a list of the names and business or homes 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

(i) in effect, its Articles or restated Articles of Incorporation and all amendments to them currently in,

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect,

(iii) 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 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

IN WITNESS WHEREOF, the undersigned certifies the foregoing to be the By-Laws of The Legends Property Owners Association, Inc

Dated 4/26, 2006

Marilyn Tollmann
Secretary

RECORDER'S PAGE

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April 27, 2006

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BK D 581 PG 121

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Krawcheck & Davidson
Attorneys at Law
9 State Street
Charleston SC 29401

DESCRIPTION	AMOUNT Mas/Con
Recording Fee	$ 105.00
State Fee	$ -
County Fee	$ -
Postage	
TOTAL	$ 105.00

$ Amount (in thousands):

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MAY 18 2006

PID VERIFIED BY ASSESSOR
REP TRR
DATE 5-17-06

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STATE OF SOUTH CAROLINA) FIRST AMENDMENT TO MASTER DEED
) OF THE LEGENDS HORIZONTAL PROPERTY
COUNTY OF CHARLESTON) REGIME

WHEREAS, by its Master Deed dated April 19, 2006, and recorded April 27, 2006, in Book D581 Page 121, in the Charleston County RMC Office (the "Master Deed'), LMP Properties, Inc , a South Carolina corporation (the "Declarant") created and established on the property described therein The Legends Horizontal Property Regime (the "Regime"), and

WHEREAS, Declarant being the Owner of all Units and all interest in the Common Elements of the Regime has the right and authority to amend the master Deed in the following particulars

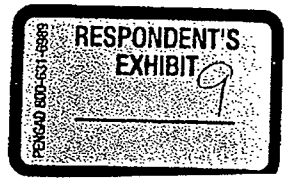
1 Any references to "Developer" in the Master Deed shall mean and refer to LMP Properties, Inc as Declarant

2 Section 16 of the Master Deed entitled Transfer or Sale of Units shall be amended by the addition of the following paragraphs

For a period of eighteen (18) months from the date of the Title to Real Estate whereby the Declarant conveys title to a Unit to a Purchaser ("Initial Closing"), neither the Purchaser, nor their heirs, assigns or any successor-in-title, may transfer or convey any interest in the Unit to any third party Notwithstanding the foregoing, for a period of eighteen (18) months from the Initial Closing, Purchaser may offer to convey the Unit to Declarant for the consideration stated in the Deed conveying the Unit to Purchaser (the "Initial Purchase Price") and the Purchaser shall pay all closing costs, provided, however, Declarant shall not be obligated to accept such offer (hereinafter referred to as "Declarant's Right to Repurchase")

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

Exercise If Declarant elects to exercise its 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 Declarant's notice of its exercise of its Right to Repurchase (the exact date, time, and location of closing of the repurchase to be selected by Declarant) Reconveyance of the Unit to Declarant 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 Declarant If the title proposed to be reconveyed to Declarant is subject to any defect not permitted in this Paragraph, Declarant, 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 Declarant (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, Declarant shall pay to the owner of the Unit, the 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 am on the date of such reconveyance

Failure to Exercise The failure of Declarant to exercise Declarant's Right to Repurchase provided in this Agreement against Purchaser, their heirs or assigns or any other party, shall not constitute a waiver of such Declarant's rights granted herein against Purchaser, their heirs and assigns

Termination of Declarant's Right to Repurchase Declarant's Rights to Repurchase and the resale restriction granted above shall automatically terminate eighteen (18) months after the Initial Closing, or upon the recordation of a written document terminating such rights signed by Declarant After termination has occurred as provided above and upon submission to Declarant of a written request by Purchaser, their heirs, assigns or successors-in-title and a release in form and content satisfactory to Declarant, Declarant shall provide to Purchaser an executed release of Declarant's Right to Repurchase in recordable form Neither issuance nor recording of such release shall be necessary to terminate such rights after the eighteen (18) month period has elapsed

Exclusions Declarant'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 Declarant 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

Declarant's Right to Repurchase is for a period of twelve (12) months (instead of eighteen (18) months) as to certain Units sold by the Declarant and as set forth in the Deeds from the Declarant to the Purchasers of these Units

Declarant's Right to Repurchase is subordinate to any record mortgage made in good faith for value securing a bona fide mortgage on the Unit

3 All other terms and provisions of the Master Deed not effected by this Amendment shall remain in full force and effect

IN WITNESS WHEREOF the undersigned has set his hand and seal this 2nd day of May, 2006

WITNESSES

DECLARANT
LMP Properties, Inc

by _____
Ronald W Follmann
Its

STATE OF South Carolina)
)
COUNTY OF Charleston)

The foregoing instrument was acknowledged before me this 2nd day of May, 2006, by LMP Properties, Inc , by Ronald W Follmann, its President

_____
Notary Public for South Carolina
My Commission Expires 4/24/13

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RECORDER'S PAGE

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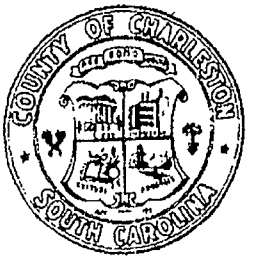

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May 9, 2006

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Charlie Lybrand, Register
Charleston County, SC

Filed By

Weeks, Manaker and Donaldson, LLC

DESCRIPTION	AMOUNT
Recording Fee	$ 10 00
State Fee	
County Fee	
Postage	
TOTAL	$ 10 00

$ Amount (in thousands)

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MAY 2 6 2006

PEGGY A. BOBLEY
ABLES IN COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP

DATE

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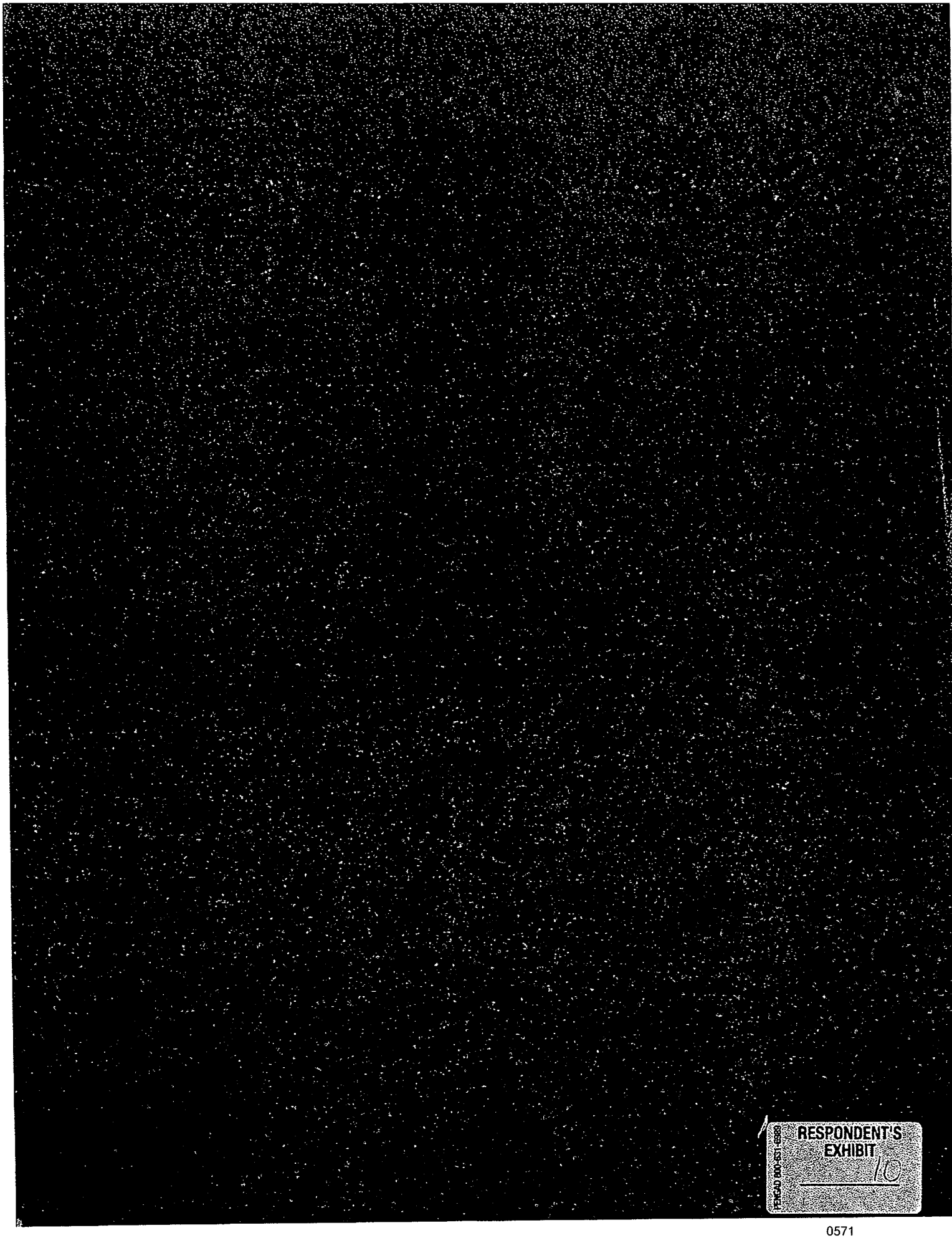

RESPONDENT'S
EXHIBIT
10
FTC-DOJ-0000-0571-0000

Summary Appraisal Report of 121 Units at:

The Legends at Mount Pleasant
1100 Legends Club Drive
Mount Pleasant, Charleston County, South Carolina 29464

Prepared By:

Frank A. Headley

Date of Appraisal:

Retrospective Value
December 31, 2003

MARSHALL DODDS COMPANY, INC.
Real Estate Appraisers and Consultants

June 6, 2010

Mr. Rob Follmann
LMP Properties Inc.
93 North Shellmore Drive
Mount Pleasant, South Carolina 29464

Re: **Summary Appraisal of:**
Fee Simple/ Leased Fee Estate of 121 Units
The Legends at Mount Pleasant
100 Legends Club Drive
Mount Pleasant, Charleston County, South Carolina 29464

Dear Mr. Follman,

I have inspected and appraised the above captioned property which contains 121 apartment units. The purpose of this appraisal was to determine the Market Value of the leased fee and fee simple estate of the subject property.

The appraisal report has been prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal related mandates within Title XI of the Federal Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA 12 C.F.R. 34) and the Appraisal Standards for Federally Related Transactions have been reviewed, and this appraisal is intended to comply with those standards. The Market Value, as estimated herein, is premised upon the Assumptions and Limiting Conditions which are attached. The definition of Market Value is also found in the body of this report.

In this report, three value indications have been developed and will be reported.

It is my opinion that the market value of the leased fee and fee simple estate of subject property with taxes based on the 2003 prorata tax value as of December 31, 2003 is:

EIGHT MILLION NINE HUNDRED TWENTY THOUSAND DOLLARS
($8,920,000)

It is my opinion that the market value of the leased fee and fee simple estate assuming taxes based on the current tax value of $18,766,000 as of December 31, 2003 is:

SEVEN MILLION SIX HUNDRED FORTY FIVE THOUSAND DOLLARS
($7,645,000)

2010 GADSDEN STREET • COLUMBIA, SOUTH CAROLINA 29201
POST OFFICE BOX 926 • COLUMBIA, SOUTH CAROLINA 29202
803.765.2840 • FAX 803 252.4780

It is my opinion that the market value of the 121 condominiums which comprise a condominium project in fee simple as of December 31, 2003 with consideration for the current condominium market is:

SEVEN MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS
($7,750,000)

This updated report remains part of the original assignment to assist the owner in a tax appeal of the subject property. The initial assignment was as of October 19, 2009.

If you have any questions or comments, please feel free to call. It has been a pleasure to serve you in this matter.

Respectfully submitted,

MARSHALL DODDS COMPANY, INC.

BY: _____

Frank A. Headley
State Certified General Real
Estate Appraiser (No. CG 571

SUMMARY APPRAISAL REPORT

Client: Mr. Ron Follmann
LMP Properties Inc.
93 North Shellmore Drive
Mount Pleasant, South Carolina 29464

Appraisers: Frank A. Headley
Marshall Dodds Company, Inc.
2010 Gadsden Street
Columbia, South Carolina 29201

Subject: Summary Appraisal:
Fee Simple/Leased Fee Estate of 121 units
The Legends at Mount Pleasant
1100 Legends Club Drive
Mount Pleasant, Charleston County, South Carolina 29464

This is a Summary Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

PURPOSE OF APPRAISAL

The purpose of this appraisal is to provide the appraisers' best estimate of the market value of the subject real property as of the effective date. *Market Value* is defined by the federal financial institutions regulatory agencies as follows:

Market Value means the most probable price, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) buyer and seller are typically motivated;
(2) both parties are well informed or well advised, and acting in what they consider their own best interests;
(3) a reasonable time is allowed for exposure in the open market;
(4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
(5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Office of Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f].)

INTENDED USE AND USER

The intended use of this appraisal report is for property tax value appeal by the owner to reduce the tax value set by the Charleston County Tax Assessor.

INTEREST VALUED:	Market Value of the fee simple estate and leased fee estate
EFFECTIVE DATE OF VALUE:	December 31, 2003
DATE OF INSPECTION:	October 19, 2009
DATE OF REPORT:	June 6, 2010

APPRAISAL DEVELOPMENT AND REPORTING PROCESS

In preparing this appraisal, the scope of the appraiser's work is as follows:

- inspected the subject site and the improvements
- gathered information for comparable rentals and improved sales through data available in 2000 through 2003.
- applied the Income Approach to estimate the market value as a rental complex as of the date of appraisal. In addition, applied the Income Approach and Sales Comparison Approach which is a Discounted Sellout Analysis to determine the market value of the 121 units owned by a single entity as condominium units.
- gathered data from public sources such as Tax Assessor's information, deeds filed, Chamber of Commerce, and SC Employment Security Commission among others

PROPERTY COMMENTS AND EXTRAORDINARY ASSUMPTIONS

There are no extraordinary assumptions.

This Summary Appraisal Report is a brief recapitulation of the appraisers' data, analyses and conclusions. Supporting documentation is retained in the appraisers' file.

PERSONAL PROPERTY

The value indications derived include certain items such as appliances, clubhouse fixtures, as well as office equipment, which are considered personal property. As is common practice in this market, these items are considered a part of the real property. The value of the items cannot be separated, and they would not, under normal circumstances be sold separately. The final value estimate recorded in the appraisal includes the value of the personal property.

AREA DATA

The information in the area data section reflects data which was available in 2002 through most of 2003.

The subject property is located in the town of Mount Pleasant in Charleston County. The city of Summerville is located in Dorchester, Berkeley, and Charleston Counties but is primarily in Dorchester County. The area is part of the Trident region, which is comprised of Charleston, Dorchester, and Berkeley Counties. Charleston and Charleston County have the highest population within the Trident area, and Charleston is the focal point of the area. This city is located on the peninsula bounded by the Cooper and Ashley Rivers, which converge to form the Charleston Harbor, and is one of America's most historical cities, having been incorporated in 1783. English colonists named the original settlement in 1670, under a grant by Charles II, King of England, and the city was named Charles Towne.

The city has long been an important seaport in the center of a rich agricultural region. It is also a nationally known resort and convention city. Progress has been made in recent years in industrial development due to the seaport facilities and the favorable business climate. Several examples of the increasing economic development of the Trident area are as follows:

1. Charleston is home to the largest containerized port on the Atlantic and Gulf coasts. It is fourth nationwide.

2. Seventeen foreign-owned firms operate in the Trident region, and produce more than 25 percent of the manufacturing jobs in the region.

3. DaimlerChrysler (Mercedes) has reopened an American La France plant in North Charleston to make fire trucks and ambulances. It is expected to employ 760 workers in its 283,500 square foot facility.

The Charleston Trident area stretches along the central and southern South Carolina Coast, and includes over ninety miles of Atlantic Ocean coastline. The area includes 25 incorporated communities ranging in population from 97 (Jamestown) to 96,650 (City of Charleston). It is located in the lower part of the state of South Carolina and is served by Interstate 26, U.S. Highways #17, #52, #78 and #701 and State Highways #61, #41, #7, #171, #642, #700 and #703. A new loop highway known as the Mark Clark Expressway and also designated as I-526 was constructed around Charleston. Currently, the expressway forms a loop throughout the region -- connecting from John's Island in the west to east of the Cooper River. It loops around the Charleston area and St. James Island, accessing Johns Island to the south and downtown Charleston. It extends to Mount Pleasant and the Isle of Palms.

The Trident Complex consists of three counties - Berkeley, Charleston, and Dorchester - which comprise the Charleston metropolitan market including the port city of Charleston and the city of North Charleston. The metropolitan area, with the old peninsula at the center, extends north to include North Charleston, Goose Creek and Summerville, west across the Ashley River to St. Andrews and James Island, and east across the Cooper River to Mt. Pleasant and the beaches. The County of Charleston has a coastline of 91 miles with an altitude from sea level to 25 feet.

A brief overview of the area is as follows:

Population

Population growth1 in the Trident area has been reasonably good. Between 1990 and 2000 growth in the entire Trident area was from 506,822 to 549,070 people or an 8.3 percent increase overall. The majority of the population is in Charleston County, which experienced a 5.1 percent growth with an increase from 295,103 to 309,969. The growth in Berkeley County during in the same period increased from 128,713 to 142,651 or 10.8 percent increase. Dorchester County experienced a growth in the same period from 83,061 to 96,413, for an 16.1 percent growth rate. The chart below presents population changes.

POPULATION TRENDS - HISTORICAL

Area	1970	% Change	1980	% Change	1990	% Change	2000
BERKELEY	56,199	68.6	94,727	35.9	128,713	10.8	142,651
CHARLESTON	247,650	11.8	276,974	6.5	295,103	5.1	309,969
DORCHESTER	32,276	82.1.	58,761	41.4	83,061	16.1	96,413
CHARLESTON MSA	336,125	28.1	430,462	17.8	506,822	8.3	549,070
SOUTH CAROLINA					3,486,708	15.1	4,012,012

STDB Online (CCIM website)

As can be seen, since 1970, growth has been strong in the entire metro area. Charleston County has had fairly steady growth, while the outlying Berkeley and Dorchester Counties have had extremely strong growth. Growth was not quite as strong in the 1990's, but judged in light of the fact that the U.S. Navy base began closing in the early 1990's, growth has been strong. There were over 14,807 civilian jobs, as well as 28,547 active duty military personnel at the Charleston Navy Base and this dwindled to 4,089 active duty personnel in 1996 and 3,792 civilian employees. The community leaders, however, after losing about 21,000 naval jobs, experienced a net gain in employment between 1989 and 1997 due to redevelopment of the base and attracting new business into the area. The population trends for major cities in the area reflect a reasonable growth.

1. US Census Bureau

POPULATION TRENDS BY TOWN			
City	1990	% Change	2000
Charleston	80,414	20.2	96,650
Isle of Palms	3,680	24.5	4,583
North Charleston	70,218	13.4	79,641
Mt. Pleasant	30,108	58.1	47,609
Summerville	22,116	22.7	27,144

The following chart reflects the population trends based on the latest data available. As can be seen, there has been some growth in each of the counties and consequently the MSA since the 2000 census. In addition, steady growth is projected through 2008. The MSA appears to be growing at a rate slightly above the state of South Carolina.

POPULATION TRENDS – ESTIMATED/FORECAST					
Area	**2000**	**% Change**	**2003 (Est)**	**% Change**	**2008 (Proj)**
BERKELEY	142,651	2.7	146,438	4.0	152,260
CHARLESTON	309,969	3.1	319,486	4.6	334,117
DORCHESTER	96,413	6.6	102,796	9.6	112,615
CHARLESTON MSA	549,070	3.6	568,758	5.3	599,032
SOUTH CAROLINA	4,012,012	3.4	4,149,481	5.1	4,360,964

STDB Online (CCIM website)

Government

The Peninsula area of Charleston has been the center of the financial-legal community and is expected to maintain this position. The federal and county office buildings in Charleston anchor a large satellite office area.

Management of local government varies between city and county governments in the Trident area.

The 25 incorporated areas within Berkeley, Charleston, and Dorchester Counties operate separately under the mayor/council form of government.

The cities of Charleston and North Charleston are governed by a mayor-council. Charleston County is governed by a council-manager form of government. Berkeley County is governed by a county council with an elected county supervisor serving as the administrative officer. Dorchester County is governed by a seven-member county council with a county administrator appointed by council. The general attitude of government within the area appears to be to promote growth. Public services and utilities are provided by various municipalities and utility systems within the area and are ever expanding to meet the needs of the growth.

Income

Income in all categories had grown since the 1990 census. The following chart suggests positive growth between 2000 and 2003 in median household income, average household income and per capita income in all areas. The Charleston MSA is generally above the state of South Carolina but below the national averages.

INCOME TRENDS									
Area	Median Household Income			Average Household Income			Per Capita Income		
	2000 Census	2003 Est.	2008 Proj.	2000 Census	2003 Est.	2008 Proj.	2000 Census	2003 Est.	2008 Proj.
BERKELEY	$39,916	$42,527	$47,775	$46,741	$51,345	$57,902	$16,374	$18,534	$21,925
CHARLESTON	$38,040	$40,623	$45,771	$52,957	$57,370	$64,973	$21,080	$23,408	$27,562
DORCHESTER	$43,608	$46,601	$52,198	$51,850	$55,808	$62,880	$18,677	$20,484	$23,774
CHARLESTON MSA	$39,549	$42,156	$47,414	$51,279	$55,662	$62,920	$19,640	$21,625	$25,200
SOUTH CAROLINA	$37,257	$39,829	$45,033	$48,364	$52,471	$59,271	$18,485	$20,467	$23,840
USA	$42,257	$45,128	$50,610	$56,675	$61,579	$69,104	$21,234	$23,201	$26,239

STDB Online (CCIM Website)

Employment

The total employment in the Charleston Metro area estimated by place of work increased from 212,100 in 1996 to 254,600 in 2000. It declined in 2001 which is the latest year available. The following chart shows this trend.

Employment By Place of Work						
	1996	1997	1998	1999	2000	2001
Berkeley	26,800	28,300	31,000	31,800	33,500	32,530
Charleston	162,900	170,000	177,300	185,400	194,300	190,050
Dorchester	22,500	23,500	25,200	23,230	26,800	26,210
MSA	212,100	221,800	233,600	243,100	254,600	248,790

Non-Agricultural Employment by Place of Work (Latest available)
S.C. Employment Security Commission

The following chart shows the breakdown by employment sector for the MSA using the year 1996 and 2000.

Breakdown Charleston MSA				
	1996	Percent	2000	Percent
Manufacturing	20,600	10.3	22,600	8.9
Construction and Mining	14,000	6.6	19,000	7.5
Transportation/Public Utilities	11,100	5.2	14,900	5.9
Trade	54,000	25.5	62,100	24.4
Finance/Insurance/Real Estate	8,500	4.0	9,300	3.7
Services	55,400	26.1	75,400	29.6
Government	48,500	22.9	51,400	20.2
Total	212,100	100.0	254,600	100.0

While manufacturing employment increased somewhat, the actual percentage declined. Construction increased and trade stayed about the same. Services increased, and government declined as a percentage, although in actual numbers it had increased. In fact, all sectors increased in terms of actual numbers, though the percentages were less in some cases.

The following chart shows the labor force and the unemployment rate for all three counties, the MSA, the state, and the United States.

Employment by Place of Residence

	1996	1997	1998	1999	2000	2001	2002
	Labor Force/Unemployment Rate						
Berkeley	59,070	60,150	62,828	64,858	66,736	66,686	67,811
	4.7%	4.1%	2.8%	3.7%	2.9%	3.9%	3.8%
Charleston	141,620	155,440	160,301	160,857	160,694	159,445	163,293
	6.0%	4.1%	2.9%	3.3%	3.1%	3.6%	4.1%
Dorchester	42,580	41,570	43,323	44,231	48,406	49,006	49,912
	5.1%	3.9%	3.1%	3.4%	2.8%	3.7%	3.7%
MSA	243,270	257,150	266,452	269,946	275,836	275,137	281,016
	5.5%	4.0%	2.9%	3.4%	3.0%	3.7%	4.0%
S.C.	1,753,200	1,931,300	1,962,900	1,963,300	1,975,900	1,952,000	1,968,500
	6.0%	4.5%	3.8%	4.5%	3.8%	5.3%	6.0%
U.S.	133,950,000	136,300,000	137,670,000	139,380,000	142,580,000	143,860,000	144,860,000
	5.4%	4.9%	4.5%	4.2%	4.0%	4.7%	5.8%

S.C. Employment Security Commission (Data contains updates from previously reported data)

As can be seen, employment within the MSA increased from 243,270 to 281,016. Actual unemployment for the area generally declined through 2000 but increased in 2001 and 2002. There were indicators of a strong overall increase in the labor force throughout the period. Charleston in September 2003 was 4.4 percent, Dorchester was 4.1 percent, and Berkeley was 4.5 percent.

The following chart shows the ten largest employers in the region:

No.	Company Name	Employees
1	U. S. Navy	10,000
2	Medical University of South Carolina	8,200
3	U.S. Air Force	5,292
4	Charleston County School District	5,000
5	Care Alliance Health Services (Roper Hospital, Roper Hospital North & St. Francis)	4,500
6	Berkeley County Schools	3,457
7	Charleston County	1,933
8	Westvaco Corporation	2,014
9	Columbia/ HCA Carolina's Dn. HQ. & Medical Centers	2,200
10	Robert Bosch Corporation	2,062

Center for Business Reasearch, Charleston Metro Chamber of Commerce 12/02

Military

The military remains a major industry in the Charleston area today, despite major downsizing. The US Navy currently has 10,000 active and civilian employees at several facilities and commands, including the Naval Weapons Station, SPAWAR Systems Center Charleston (formerly NISE East) and others.

The Charleston Air Force Base is home for the US Air Force's 437th Airlift Wing and employs 5,292 active and civilian employees. It is home base to 49 aircraft, including the new C-17.

In addition, other federal and defense-related jobs in the area include the US Department of Defense's Finance and Accounting Center employing a total of 650 people; the Army's Combat Equipment Group Base with 313; and the US Coast Guard with 588 active and civilian employees. Also, the Naval Nuclear Power Training Command (NNPTC) recently opened and is expected to add approximately 3,000 naval trainees to the military population in the Charleston region each year.

Port of Charleston

The Port of Charleston is the number one containerized port on the South Atlantic and Gulf Coasts, second on the entire East coast only to the combined ports of New York and New Jersey and sixth in the entire United States, handling approximately 14 million tons of cargo annually. The port has four intermodal facilities which handle container bulk and break bulk cargo. The port terminals have more than two million square feet of warehouse and storage space, and can accommodate over 17 vessels at one time.

ORION is the South Carolina State Ports Authority's computerized document processing system, which allows cargo to be cleared before ships enter the port. U.S. Customs and the U.S. Department of Agriculture, along with all types of port-related public and private entities are linked to ORION, allowing for one of the fastest cargo clearance systems in the nation.

A recent study conducted by the South Carolina State Ports Authority clearly indicates the importance of the Port to the region's economy. The Authority estimates there are 14,900 port related jobs in the region, generating more than $2 billion into the local economy. The Port operates four terminals in the region and has recently begun plans to build a fifth state-of-the-art facility. A site on the old Navy Base was recently sold. The new $113 million two-phase terminal construction program is underway, planned to be the most modern, most efficient terminal complex in the nation. The port's present and future facilities, its rail service via both Seaboard and Southern Lines, and its access to Interstate Highways 26 and 95, make the Trident area ideal for shipping and constitute a significant factor in the region's rapid growth. The number of new jobs expected has not been announced.

Health Care

A total of 17,000 people are employed in the region's ten major hospitals and medical facilities and over 25,000 are employed in the area's medical industry overall.

The center of the region's healthcare industry is the Medical University of South Carolina (MUSC), located on 55 acres in downtown Charleston. Its six colleges and patient care facilities provide both educational resources and healthcare facilities to the region. MUSC facilities and medical staff are nationally recognized in such areas as cardiology, cancer and pediatrics. In June 2003 it was calculated that the economic impact of MUSC was an additional 21,000 jobs (above its 8,200) and $1.65 billion.

In addition to MUSC, nine additional hospitals serve the medical needs of the region. They are Bon Secours/St. Francis Xavier, Charleston Memorial, Columbia Trident Medical Center, Columbia Summerville Medical Center, East Cooper Regional Medical Center, Roper and Roper North, the VA Medical Center and the U.S. Naval Hospital.

Tourism

The tourism industry is an important and vital aspect of the Charleston region's economy, with over 3.9 million visitors annually enjoying the hospitality of the Low country. Many come to visit the beautiful plantations, uncrowded beaches and the historical district, with its lovely old homes, quaint shops and wide variety of restaurants. Charleston again ranked among the 20 most popular destinations in the world in 1998 for the sixth consecutive year. The ranking by Conde Nast Traveler magazine places the area among world-renowned destinations including New York, San Francisco, Rome and Paris.

The 4.1 million visitors in 2001 spent $4.5 billion on accommodations, food and beverages, sightseeing and shopping, resulting in an over 47,000 direct and indirect visitor-related jobs for the local economy.

Retail Trade

Between 1996 and 2002, gross retail sales grew 30 percent, from $9.9 billion to $13.3 billion. These figures are reflected on the following charts.

TOTAL RETAIL SALES ($000)							
	1996	1997	1998	1999	2000	2001	2002
Metro Area	$9,900,000	$10,400,000	$11,200,000	$12,100,000	$13,000,000	$12,900,000	$13,300,000

S.C. Dept of Revenue

Education

Each county in the area operates a separate school district, which collectively serves approximately 90,000 students in 140 schools in the tri-county area. Nearly 100 parochial and private schools also serve the Trident area. In addition, seven schools are available for children with special educational needs.

The area has excellent educational facilities, public and private, including five colleges - The Citadel, College of Charleston, Medical University of South Carolina, Charleston Southern University, and Trident Technical College. The first three offer postgraduate degrees, with total enrollment in 2001 as follows:

1. Charleston Southern University	2,684
2. College of Charleston	11,617
3. The Citadel	4,001
4. Johnson & Wales Culinary University	1,300
5. Medical University of S.C.	2,316
6. Trident Technical College	10,461
7. Limestone College	200
8. Low Country Graduate Center	1,000
9. Webster University	500
10. Miller-Motte Technical College	236
Total	34,315

Taxes

In South Carolina, personal income taxes range from 2.5 percent up to 7 percent of net income.

South Carolina has no state property taxes and no intangibles tax. Real and personal property taxes are levied by local taxing authorities. The assessment rate for businesses, is set by the South Carolina Tax Commission. The Commission assesses manufacturers real and personal property at 10.5 percent, and real property at 6.0 percent.

There is no inventory tax in South Carolina. The state also offers a five-year exemption from all county property taxes (except school and special purpose taxes) for new and expanding manufacturers with a capital investment in excess of $50,000.

Sales taxes in Berkeley and Charleston Counties are 6 percent, with the sales tax in Dorchester County at 5 percent.

Utilities

The commissioners of Public Works of the city of Charleston operate the water system, which serves the city, a large section of Charleston County, and parts of Berkeley and Dorchester Counties. Sources of supply are primarily the Edisto River and Foster Creek. Plant capacity is 42 million gallons per day, with present average daily demand at 32 million gallons per day.

Charleston County has seven sewer systems, five operated by municipalities, and two by public service districts. All treatment facilities have been planned for expansion.

Berkeley County water is provided by several different systems, including the city of Charleston, Moncks Corner, St. Stephens, and Goose Creek.

Dorchester County is served by the Dorchester County Water Authority, The St. George Water Department, and the city of Summerville. Sources of supply are primarily from wells.

Electric service in the area is provided by the South Carolina Electric and Gas Company, South Carolina Public Service Authority (Santee Cooper), and two electric cooperatives - Berkeley Electric and Edisto Electric Cooperatives.

Telephone service in the area is provided by Southern Bell, Home Telephone Company, GTE South, McClellanville Telephone Company, United Telephone Company, and the St. Stephens Telephone Company. Long distance service is available from a number of independent carriers.

Summary

The Peninsula City of Charleston is a dense urban area with the sea port and the business community, older residential sections and educational-hospital complexes located close to the Ashley River. A number of manufacturing concerns are located north of Charleston in the Summerville and Moncks Corner area. The upper Trident region is basically a bedroom community for the Charleston area, with many residents commuting along the Interstate Highway system, which was recently improved with the expansion of I-526. The most significant factor affecting the area is the closure of the naval facilities. The announced defense closure of some of Charleston's military facilities will continue to impact the area in the future. It is thought that the economy of the area will remain in an uncertain position until a higher confidence level is obtained by consumers, and will depend on the area's ability to create new jobs. Steps are being taken to promote growth within the area, such as the BEST committee's relocation of the Defense Finance and Accounting Center into the Charleston area. Some positive economic factors, such as the new Army Distribution Depot, have absorbed some of the Navy losses. Economic development efforts have been very successful in recent years. Between 1995 and 2001, the three area chambers of commerce have announced more than 45,000 new jobs and over $4 billion in capital investments in the area. Employment growth in the future is projected to occur at a steady pace.

The economy appears to be stable at this time. The area's historical ability to absorb Naval job losses has been demonstrated between 1989 and 1994, with a positive net employment gain after losing approximately 21,000 Navy jobs during this period. Tourism remains an important component of the Charleston economy, and this sector has been growing steadily over the years. Growth is also being experienced in manufacturing, the Port of Charleston, and in the medical industry. It is thought that the area will remain stable.

NEIGHBORHOOD DATA

This section of the report reflects a brief description of the neighborhood composition in late 2003.

Subject neighborhood is located within the city limits of Mt. Pleasant, Northeast of the main business district in the downtown area of Mt. Pleasant off of US Highway #17. It is located within the Charleston National Golf Club development. It is across from the Park West Planned Unit Development which is a predominantly residential community with what are considered to be upscale amenities, lakes, as well as marsh and creek views for the developments. Developments are mostly upscale in Charleston National and Park West and are restricted by a master plan for the area, which has been approved by the town of Mt. Pleasant. The main entrance to the area is from US Highway #17. Thomas C. Cairo Middle School and Charles Pinkney Elementary School and the new Wando High School, which will be open in 2004, are in Park West. The town of Mt. Pleasant also is developing 59 acres with recreation facilities for baseball and other sports in Park West. Much of this infrastructure has been completed at this time. In addition, near the entrance is the Park West Business Center with medical and veterinary offices, early childhood development center and other offices. The Shops at Park West is under construction at this time and this will include a 45,000 square foot Publix Supermarket and 20,000 square feet of retail space. Continental Properties Company, Inc. is developing the property. It is located conveniently to subject.

Other developments in the area should be noted. The Gates is a duplex community with each individual unit sold to individual owner occupants. Other developments near the subject include Tennyson, which is an upscale single-family residential section, Fox Moor, Berkleigh, Summerlin and Wellelsey Place. There are attached townhouses nearby that are very upscale and in the high $100,000 price range, known as Keswick. This is adjacent to Arlington, which is another single-family section. There is room for future expansion and additional developments.

It should be mentioned that Carrington Place is a multi-family apartment complex built in 2000.

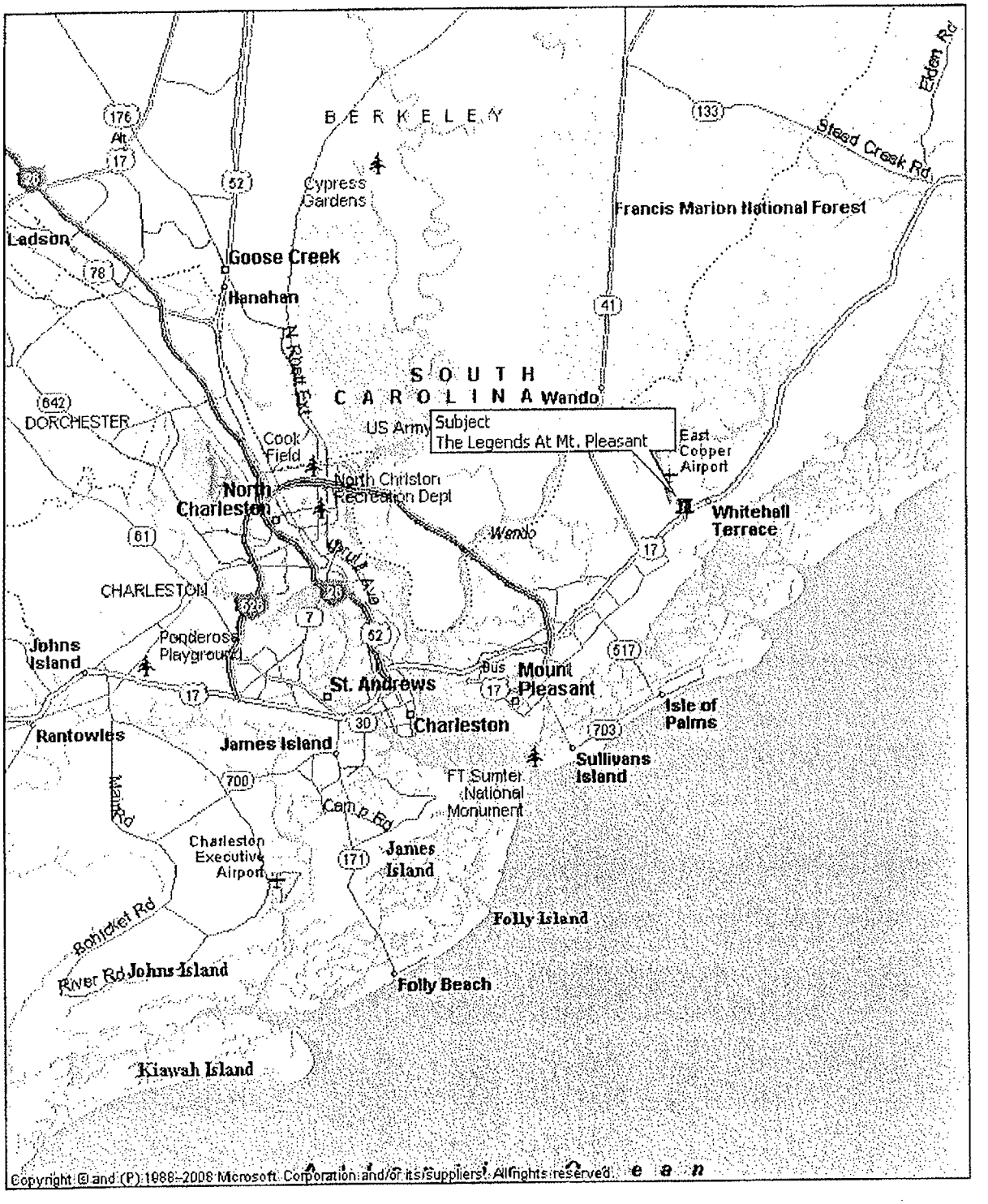
The subject is located within a short driving distance of major shopping facilities such as the two center located at the Isle of Palms Connector and US Highway #17. This is a major development with a Bi-Lo and small shops as well as the major development which includes Belk, Casual Corner, Barnes and Noble, Old Navy, Joseph A Banks, Rack Room Shoes, S&K Menswear, Talbot's, Hallmark Gold Crown store, Millennium Music, Athlete's Foot, Tweeter Audio and Video, GAP, Victoria's Secret, Yankee Candle, Banana Republic, American Eagle Outfitters, Atlanta Bread Company and other smaller retailers. This is located next to a relatively new Lowe's store.

Mt. Pleasant is one of the fast growing areas in Charleston County and is considered to be desirable. Master plan communities such as Park West, Dunes West, Brickyard Plantation among others are being developed along the corridor extending from Isle of Palms Connector. The Charleston National Golf Course is located with single-family residential as well as an upscale apartment complex known as The Legends.

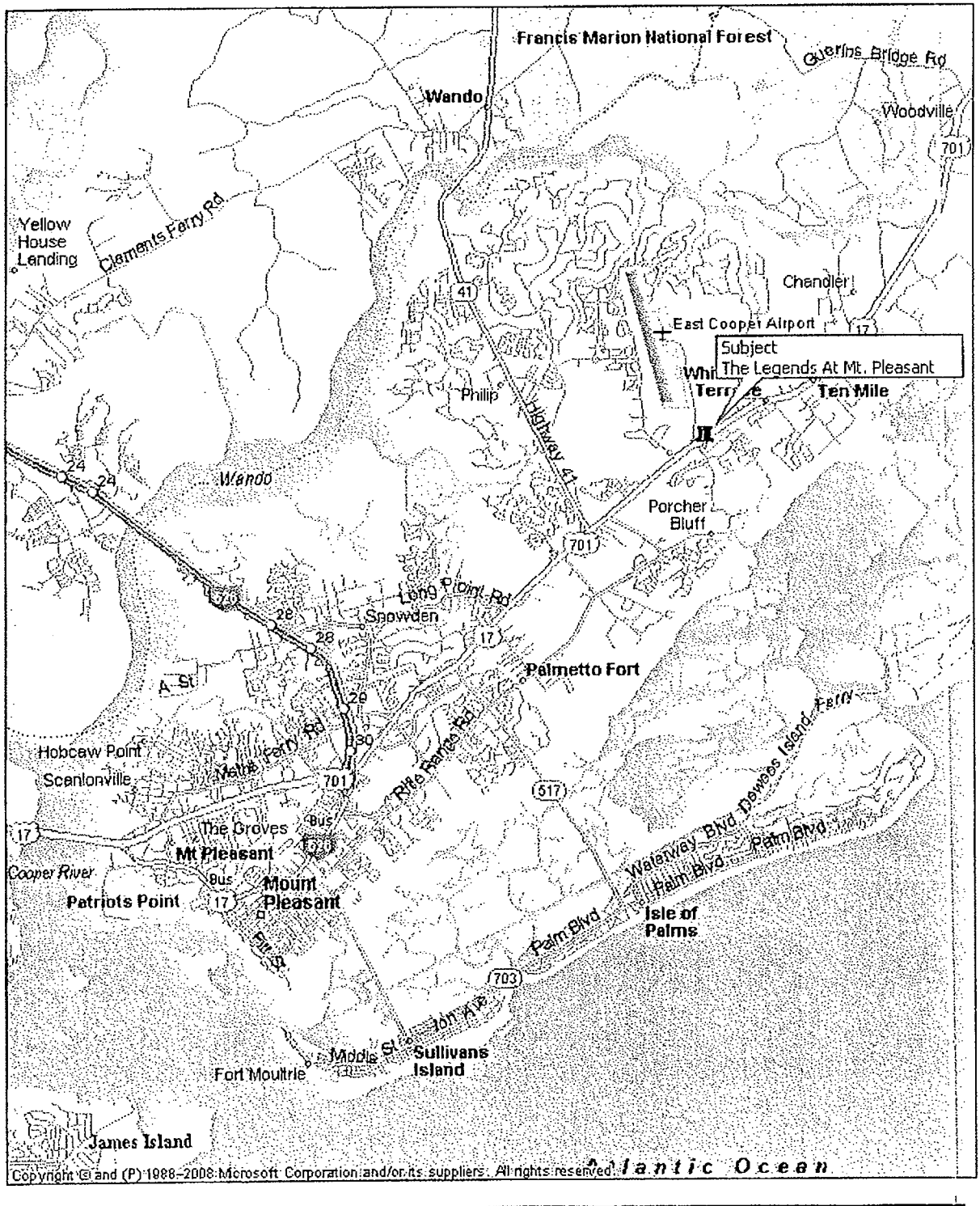
Demand and desirability of the neighborhood is considered to be good and it is anticipated that this will continue well into the future.

REGIONAL LOCATION

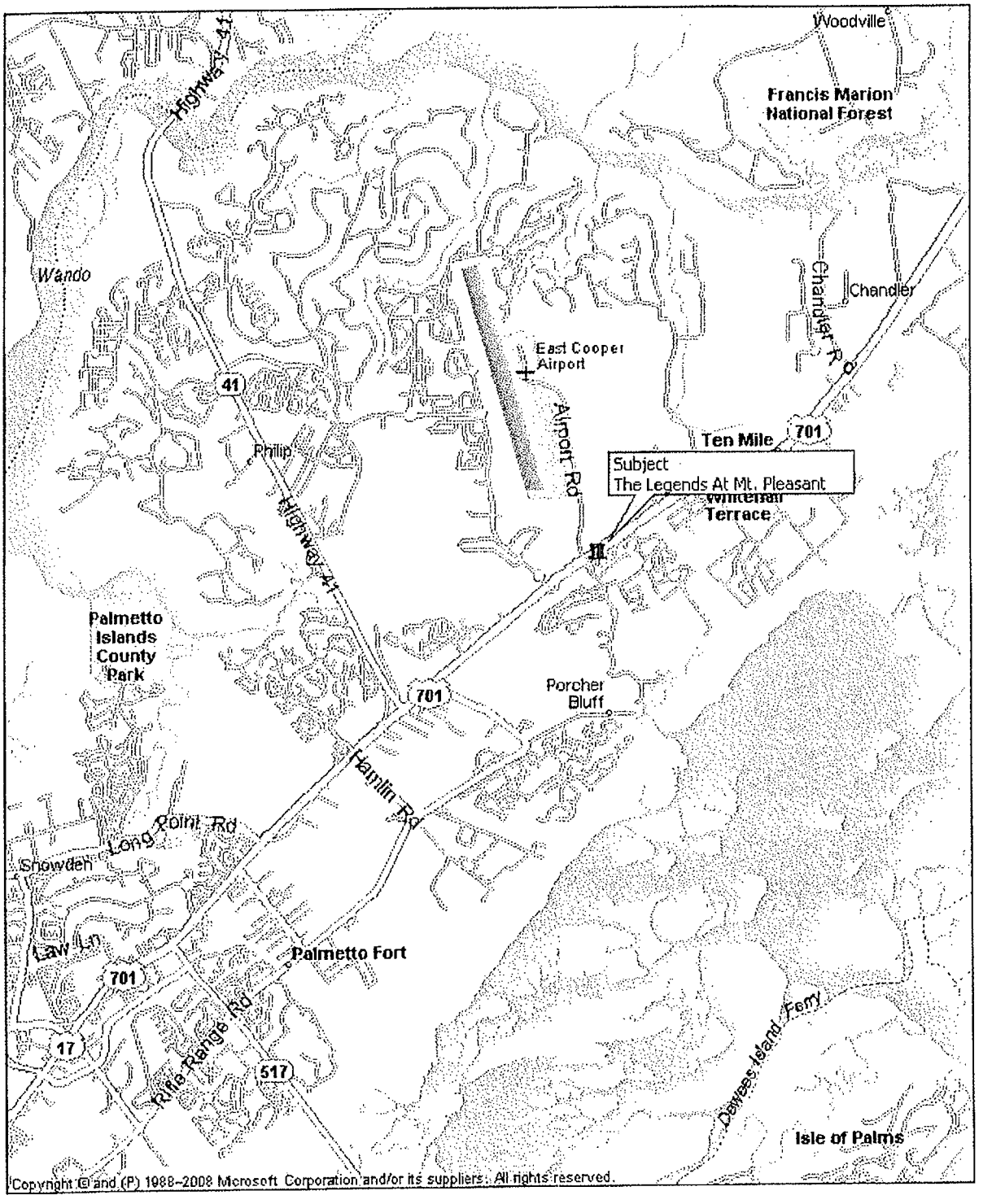
METROPOLITAN LOCATION



NEIGHBORHOOD LOCATION



IMMEDIATE NEIGHBORHOOD LOCATION



PROPERTY DESCRIPTION

The subject site supports a total of 200 units. The subject because of a conversion to condominiums is part of the overall site which contains 23.22 acres with .3 acres in wetlands and 12,671 square feet in wetlands. The site has over 1,600 feet of frontage along US Highway #17 but is not accessed from US Highway #17. It does have frontage on National Drive which is the access road off of US Highway 17 North. The 121 apartment units are shown on tax map #599-00-00 with various lot numbers. The site is in census tract 46.01. In the overall development there are 13 multifamily buildings and the subject units are scattered throughout the complex.

The units are attractive with 9 foot ceilings. Some of the units have direct garage access and there are only 8 rental garages on the property. Units have all appliances including microwave ovens. The parking areas are asphalt paved and there is adequate green space. The property has good amenities with a clubhouse, pool, garden tubs, alarms, 5 inch crown molding in living and dining areas, business center, car care center, fitness center, internet and cable, and fireplaces (some units).

The subject site is not located in a flood hazard area.

The unit mix for the subject 121 units and the overall property is as follows:

No. Units	Original Units	Type	BR/BA	Size (SF)	200 Unit (SF)	121 Unit (SF)
23	24	A-1	1BR/1BA	787	18,888	18,101
0	8	A-1 Solarium	1BR/1BA	787	6,296	0
33	40	A-2	1BR/1BA	875	35,000	28,875
5	8	A-3 Garage	1BR/1BA	997	7,976	4,985
2	8	B-1	2BR/2BA	1198	9,584	2,396
1	8	B-1 Solarium	2BR/2BA	1198	9,584	1,198
6	8	B-1 Garage	2BR/2BA	1222	9,776	7,332
38	64	B-2	2BR/2BA	1394	89,216	52,972
1	8	B-2 Garage	2BR/2BA	1369	10,952	1,369
9	16	C-1	3BR/2BA	1536	24,576	13,824
3	8	C-1 Garage	3BR/2BA	1596	12,768	4,788
121	200		Total		234,616	135,840
			Average		1173	1123

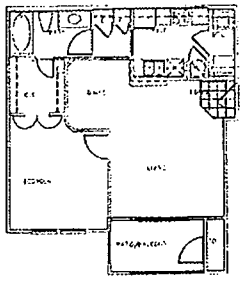
History

The subject property was developed as an apartment community in 2000. It was converted to condominium development in 2006. It is noted that a clause in the HUD mortgage prevented pre-payment until March 2006 so the property could not have been converted to condominiums during 2003 and 2004 which was a prime period for condominium conversion and sales. After conversion in July of 2006, 44 units were sold in 2006. In 2007, 13 units were sold. None were sold in 2008 although units were actively marketed. Only 1 unit was sold in 2009. A total of 121 units remained in the rental pool, while 22 units remained available and were advertised for sale with the result being the one unit which sold in 2009.

Taxes

The real estate taxes have been calculated based on the apartment tax value established for the 2005 reassessment of $8,866,880. This is a prorated value of $73,280 per unit for the subject units. Taxes have also been estimated based on the $18,766,000 which was placed on the 121 unit ($155,091 per unit) based on the Tax Assessor's 2003 value for the individual units as condominiums. To the taxes we have added $63 per unit for solid waste fee and $1,407 per unit (prorated to $851) for the 2003 storm water fee. Since tax values increased during reassessment and tax rates actually decreased, we will use the 2005 after reassessment millage rate which was 199.9 mills. The sales tax refund factor for that year was .00137 which includes both the city and the county. This is a reasonable assumption that rates would decline as values were increasing during reassessment. Computations are as follows:

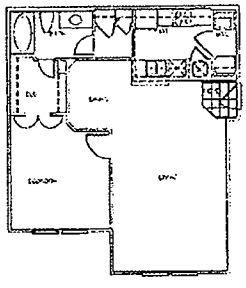
	121 Units Apartments	121 Units Condominium
Tax Value	$8,866,880	$18,766,000
Assessment Ratio	0.06	0.06
Assessed Value	$532,013	$1,125,960
Millage Rate	0.1999	0.1999
Gross Tax	$106,349	$225,079
LOST Rebate		
$8,866,880 x .00137	($12,146)	
$18,766,000 x .00137		($25,709)
Net Tax	$94,201	$199,370
Solid Waste		
121 x $63	$7,624	$7,624
Storm Water		
(Prorate)	$851	$851
	$102,676	$207,845
Total Tax	$102,700	$207,800



Azalea, A-1, 736sf

One bedroom
One bath
Living space 658 sq. ft.
Patio space 66 sq. ft.
Storage space 12 sq. ft.

Bedroom-12x14
Living Room-14x16
Dining Area-10x8
Kitchen-8x9
Utility-3x8
Bathroom-10x5
Closet-7x6



Azalea, A-1, 743sf
ELONGATED L/R

One bedroom
One bath
Living space 743 sq. ft.

Bedroom-12x14
Living Room-14x18
Dining Area-8x10
Kitchen-9x8
Utility-8x3
Bathroom-10x5
Closet-6x7

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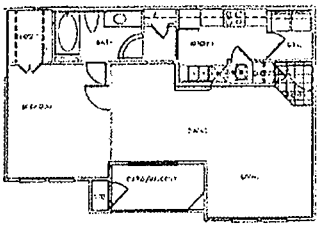
The Legends
AT MARSH OAKS

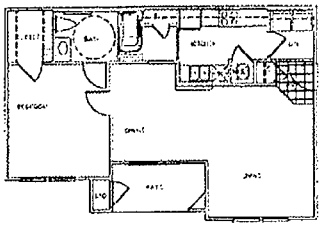
MARSHALL DODDS COMPANY, INC.



Dogwood, A-2, 819sf

One bedroom
One bath
Living space 753 sq. ft.
Patio space 60 sq. ft.
Storage space 7 sq. ft

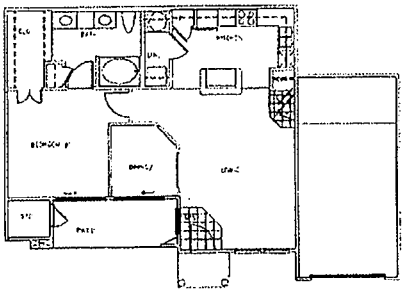
Bedroom-12x13
Living Room-13x15
Dining Area-12x11
Kitchen-11x6
Utility-5x6
Bathroom-11x6
Closet-6x6



Dogwood, A-2, 819sf

Handicap Accessible
One bedroom
One bath
Living space 753 sq. ft.
Patio space 60 sq. ft.
Storage space 7 sq. ft

Bedroom-12x13
Living Room-13x15
Dining Area-12x11
Kitchen-11x6
Utility-5x6
Bathroom-11x6
Closet-6x6



Magnolia, A-3, 939sf
GARAGE

One bedroom
One bath
Direct access garage
Living space 836 sq. ft.
Patio space 82 sq. ft.
Front porch 25 sq. ft.
Storage space 21 sq. ft.
Direct access garage 274 sq. ft.

Bedroom-13x12
Living Room-14x19
Study-8x9
Kitchen-10x15
Utility-3x9
Bathroom-10x9
Closet-9x5

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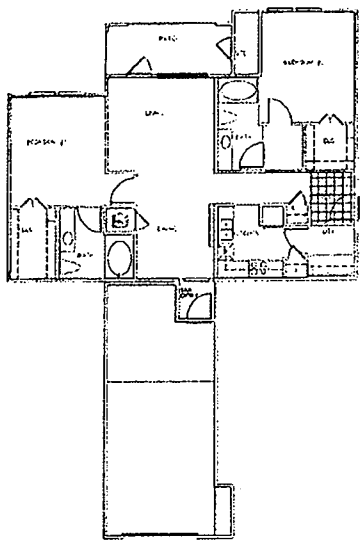
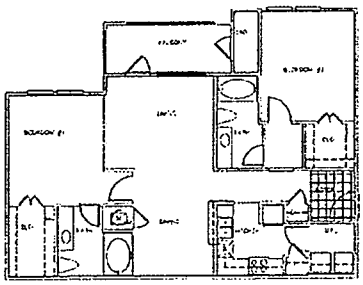


Jasmine, B-1, 1159sf
GARAGE

Two bedroom
Two bath
Living space 1050 sq. ft.
Patio space 88 sq. ft.
Storage space 21 sq. ft.
Direct access garage 368 sq. ft.

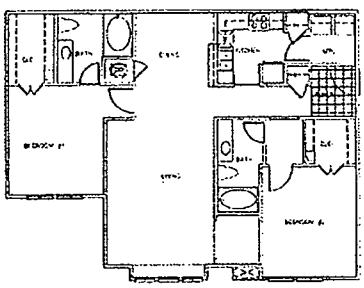
Bedroom #1-13x12
Bedroom #2-13x12
Living Room-12x13
Dining Area-9x9
Kitchen-11x9
Utility-6x6
Bathroom #1-9x9
Bathroom #2-11x5 ½
Closet #1-6x9
Closet #2-6x5 ½



Jasmine, B-1, 1134sf

Two bedroom
Two bath
Living space 1030 sq. ft.
Patio space 84 sq. ft.
Storage space 21 sq. ft.

Bedroom #1-13x12
Bedroom #2-13x12
Living Room-13x12
Dining Area-9x9
Kitchen-11x9
Utility-6x6
Bathroom #1-9x9
Bathroom #2-5 ½ x11
Closet #1-9x6
Closet #2-6x5 ½



Jasmine, B-1, 1154sf
ELONGATED L/R

Two bedroom
Two bath
Living space 1154 sq. ft.

Bedroom #1-13x12
Bedroom #2 13x12
Living Room-17x13
Dining Area- 9x9
Kitchen-11x9
Utility-6x6
Desk Nook/Study-5x6
Bathroom #1-9x9
Bathroom #2-5 ½ x11
Closet #1-9x6
Closet #2-6 ½x5 ½

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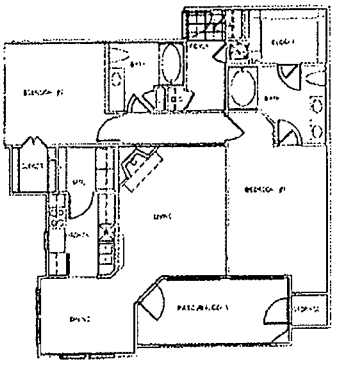
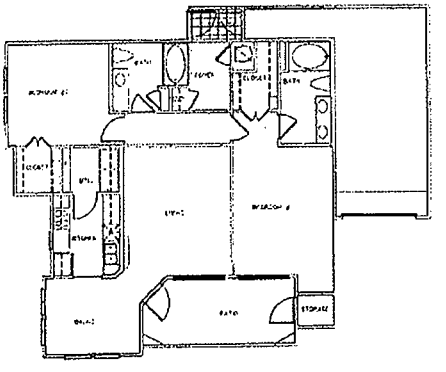


Oleander, B-2, 1323sf

FIREPLACE SELECT UNITS

Two bedroom
Two bath
Living space 1176 sq. ft.
Patio space 132 sq. ft.
Storage space 15 sq. ft.

Bedroom #1-12x17
Bedroom #2-13x12
Living Room-13x15
Dining Area-12x9
Kitchen-10x8
Utility-5x7
Bathroom #1-9x12
Bathroom #2-9x8
Closet #1-9x7
Closet #2-5x5



Oleander, B-2, 1282sf

GARAGE

Two bedroom
Two bath
Living space 1135 sq. ft.
Patio space 132sq. ft.
Storage space 15 sq. ft.
Direct access garage 306 sq. ft.

Bedroom #1-12x17
Bedroom #2-13x12
Living Room-13x15
Dining Area-12x9
Kitchen-10x8
Utility-5x7
Bathroom #1-6x12
Bathroom #2-9x8
Closet #1-6x8
Closet #2-5x5

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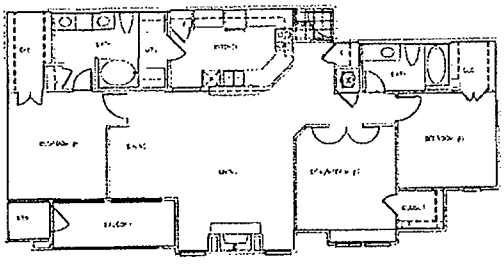
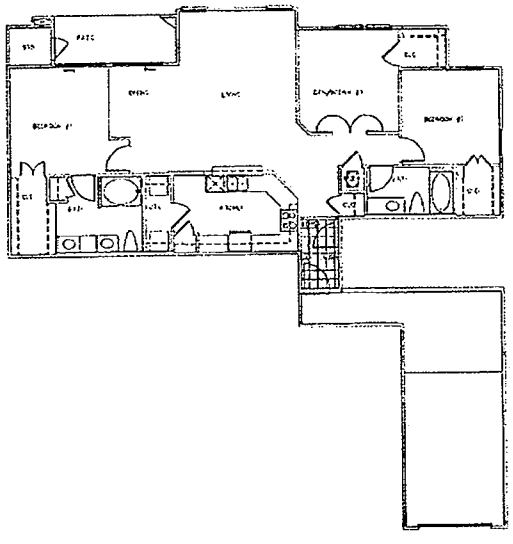


Camellia, C-1, 1456sf
FIREPLACE

Three bedroom
Two bath
Living space 1357 sq. ft.
Patio space 79 sq. ft.
Storage space 21 sq. ft.

Bedroom #1-12 x12½
Bedroom #2-12x 11
Bedroom #3 11½ x12
Living Room-18x14
Dining Area-12x8
Kitchen-15x9
Utility-3x9
Bathroom #1-10x9
Bathroom #2-11x6
Closet #1-9x5
Closet #2-5x6
Closet #3-5x5



Camellia, C-1, 1480sf
GARAGE

Three Bedroom
Two bath
Living space 1377 sq. ft.
Patio space 82 sq. ft.
Storage space 21 sq. ft.
Direct access garage 364 sq. ft.

Bedroom #1 12x12½
Bedroom #2 12x11
Bedroom #3 11½x12
Living room 18x14
Dining area-12x8
Kitchen-15x9
Utility-3x9
Bathroom #1-10x9
Bathroom #2-11x6
Closet #1-9x5
Closet #2-5x6
Closet #3-5x5

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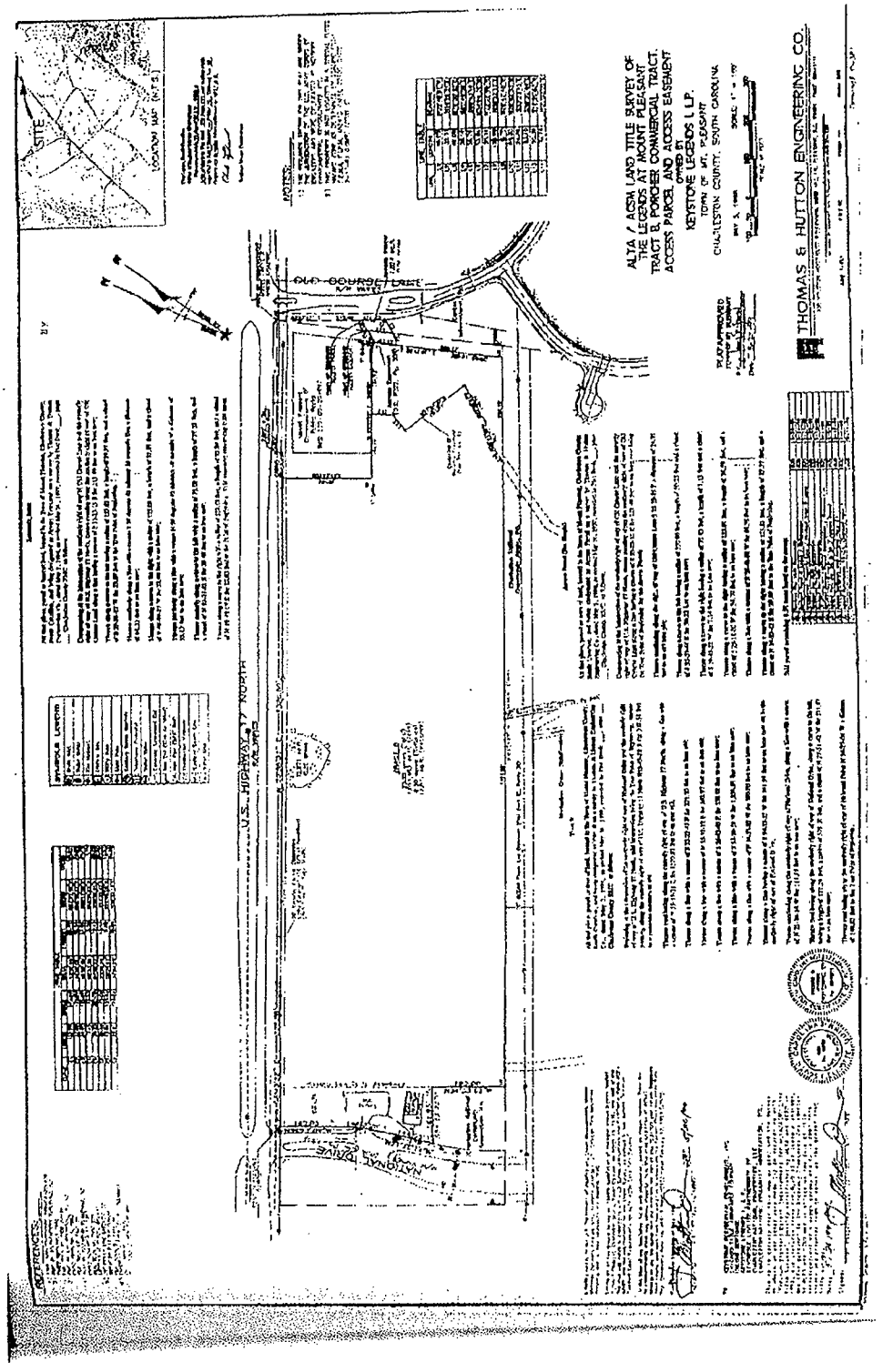
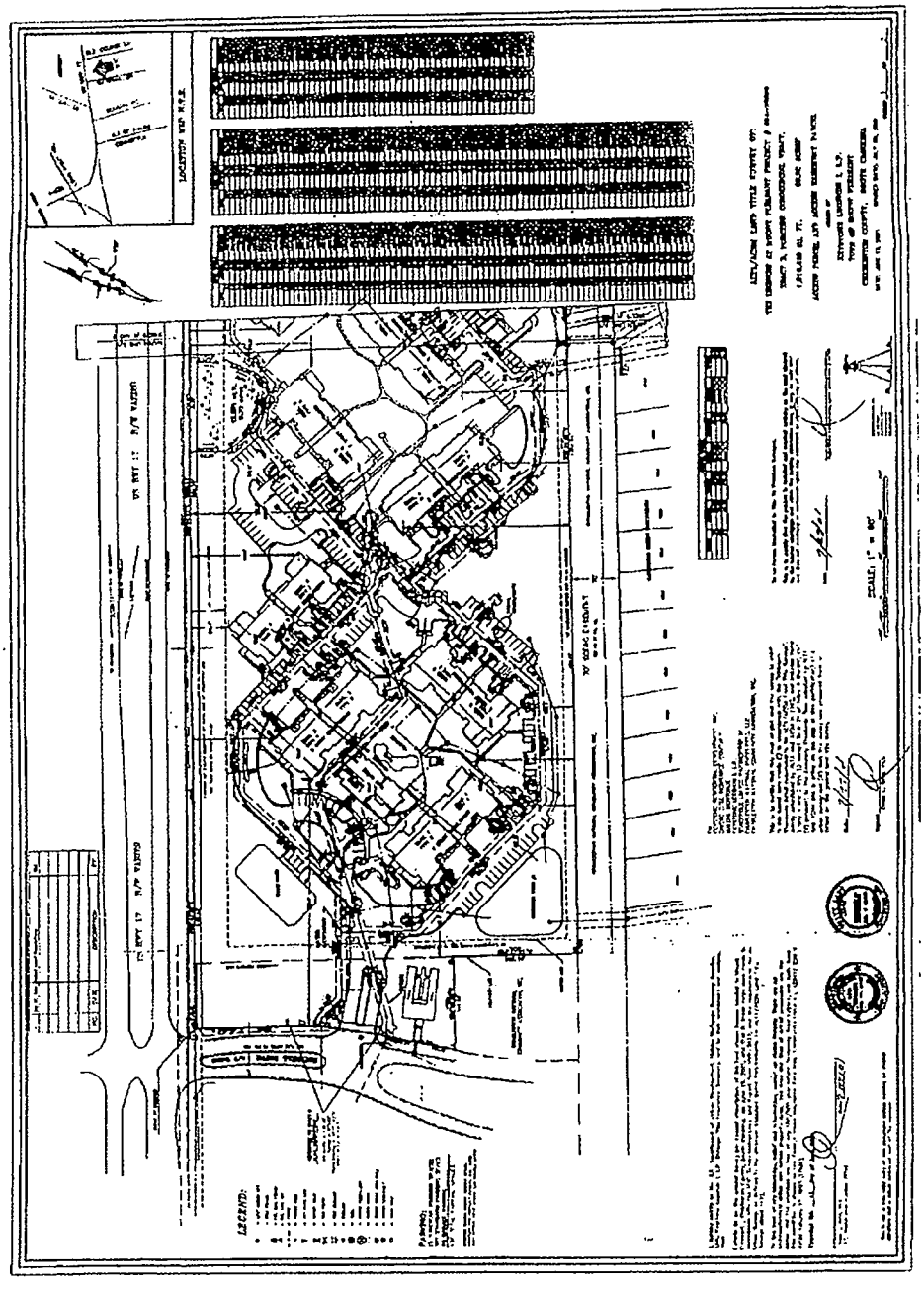
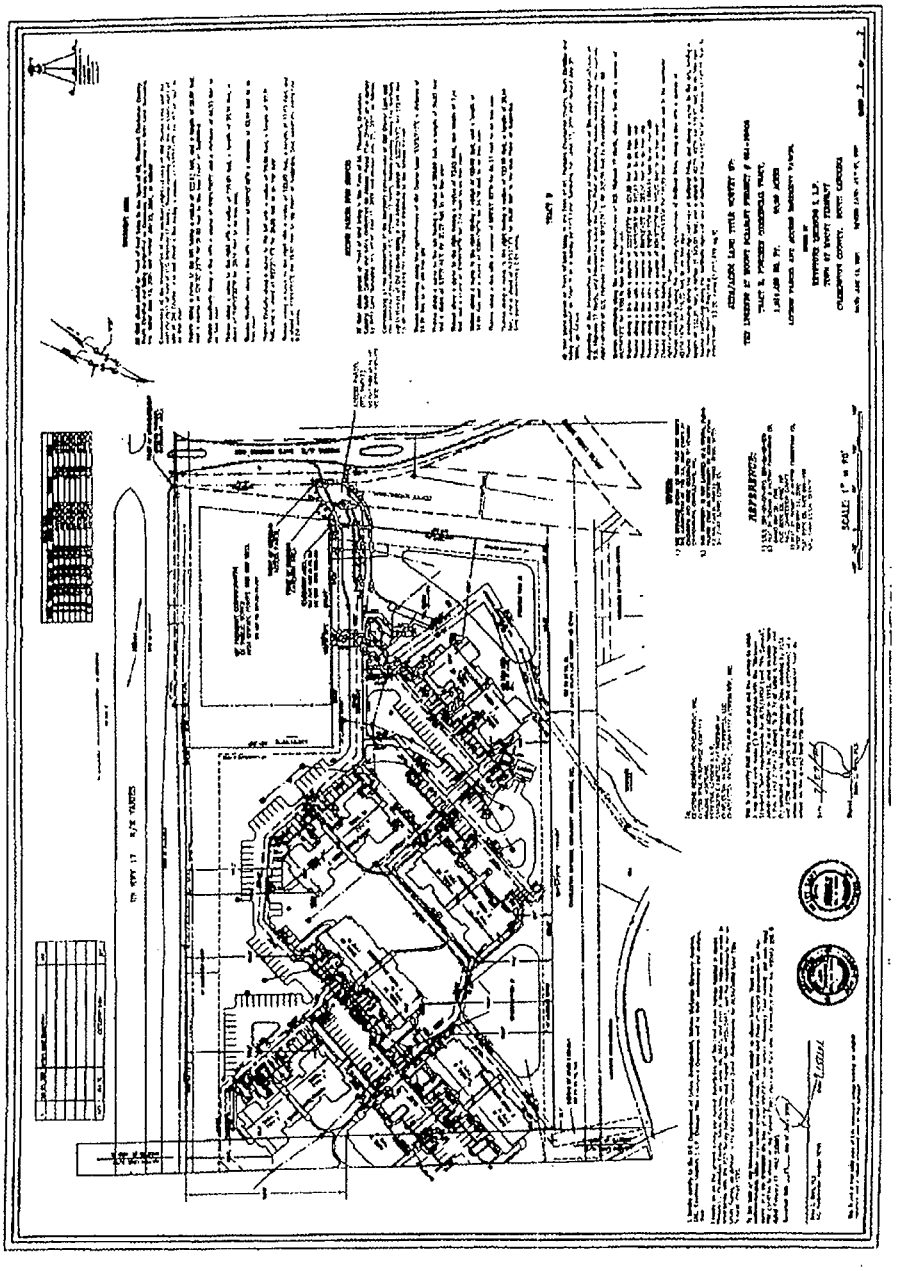

ALTA / ACSM LAND TITLE SURVEY OF
THE LEGENDS AT MOUNT PLEASANT
TRACT B, PORCHER COMMERCIAL TRACT,
ACCESS PARCEL AND ACCESS EASEMENT
KEYSTONE LEGENDS I, LP.
TOWN OF MT. PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA
THOMAS & HUTTON ENGINEERING CO.
SITE
OLD COURSE LANE
U.S. HIGHWAY 17 NORTH





FLOOD MAP

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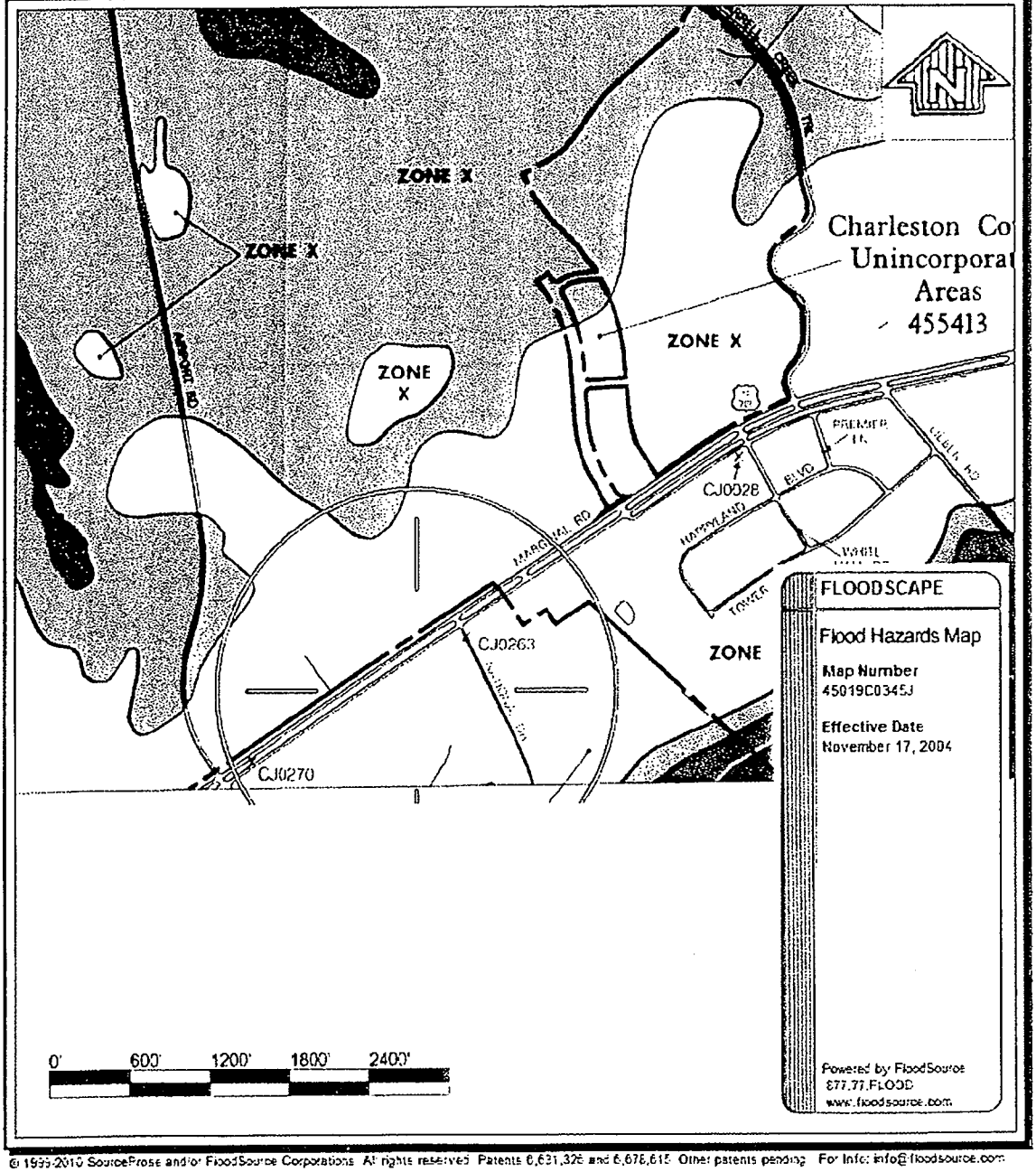
Prepared for:
Marshall Dodds Company, Inc.

1100 Legends Club Dr
Mount Pleasant, SC 29466-9018



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APARTMENT MARKET OVERVIEW
HIGHEST AND BEST/ MOST PROBABLE USE ANALYSIS

This section unless otherwise stated reflects 2003 market conditions.

The Highest and Best or Most Probable Use is "the reasonably probable and legal use of vacant land for an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value[1]. Underlying the theory of the Highest and Best or most Profitable Use is the theory of change.

All real estate, improved or unimproved can be described within the context of its place in a particular development cycle; however, change is ever present. In some cases, downtown urban land in a central core business district, can be regarded as having a significant demand and, for those sites still in the core which remain as parking lots, or other types of vacant ground, the future potential for development and transition from their present use to a markedly different one is readily foreseeable.

The Highest and Best Use of any property should be analyzed not only in terms of its existing use with improvements constructed thereon, but also in terms of other possible uses, with proper consideration given to any effects made by zoning and planning changes, social needs, and market demand.

It should also be noted that property in its transitional state may appear physically to the eye to have a suitable existing improvement constructed thereon, whereas in fact, the value of the underlying ground may have risen to such a degree that the existing improvements cannot contribute sufficient income stream to provide a fair return of capital on both the value of the ground and the improvements. This would create a situation where, although immediate development may not be warranted, the existing improvements may have effectively become obsolete.

Therefore, in estimating Highest and Best Use, the appraiser considers those uses which are physically possible for the site. Permissible uses are those uses which may be permitted under current zoning and deed restrictions for the site. Feasible uses are those possible uses which would produce the highest net return to the owners and the Highest and Best Use among all feasible uses, that use which produces the highest net return to ownership.

There are three recognized tests for highest and best use which are:

1. That the site be physically suited for the use.
2. That the use be legally permissible.
3. That the use be economically sound and feasible and maximally productive.

Legal Requirements

The legal requirements involve zoning, and the subject is zoned so as to allow for multifamily development.

1. *The Appraisal of Real Estate, 10th Edition, Appraisal Institute, 1992, p. 45*

Physical Characteristics

A visual inspection of the site indicates that the site is capable of supporting the improvements. All factors appear to be favorable.

Economic Feasibility/Maximally Productive

This is the primary feature in establishing the highest and best use of any property. This consideration analyzes the uses which are financially feasible and reasonably profitable. The use of subject is for multifamily conventional apartments with 200 units (now 121 units). This would suggest that the proposed use is a reasonable use. Because of this, it is thought that an analysis of the apartment market within the Greater Charleston area, as well as within the subject neighborhood, would be useful. It is noted that the subject could not be converted to condominiums in 2003 because of a mortgage clause which prohibited prepayment until March 2006.

The apartment market within the Greater Charleston area as well as the subject neighborhood will be analyzed. One survey, the Charleston Apartment Report, July 15, 2003, has been utilized. This multifamily survey has been produced by Carolinas Real Data of Charlotte, North Carolina in conjunction with the Charleston Apartment Association since December 1994. The current data analyze the period of June 15, 2003. The Council of Governments in the area had at one time produced a multifamily survey, but this was discontinued after Hurricane Hugo in 1989.

Market Overview - Charleston MSA

There are currently approximately 26,691 apartment units within the Charleston Metropolitan area. These are located in communities in Berkeley, Charleston, and Dorchester counties. The largest sub-markets are North Charleston and West Ashley, which are both in Charleston County. Historically, the building boom occurred in Charleston in the late 1970s through 1980. Between 1975 and 1979, 4,479 apartment units were developed. Between 1980 and 1984, 3,719 apartment units were developed. From 1985 through 1989, a total of 8,000 apartment units were developed. The early 1990s reflected very few apartment starts primarily due to the naval base closing, and in the early 1990s, the recession. A total of 484 multifamily permits were issued between 1990 and 1994 for major apartment complexes (Audubon Park, Hanahan (228 units) and Palmetto Plantation, Mount Pleasant (256 units). It is noted that some of these permits do not reflect some owner occupied condominium units in addition to rental complexes, duplexes, etc.

The following table shows the overall vacancy rate, average rent, absorption, units under construction, units started, and units completed since December 1994.

Historical Trend							
Survey Date	Total Units	Percent Vacant	Average Rent	Absorption	Units UC	Units Started	Units Complete
Dec 1994	21,780	11.9	$458	N/A	0	0	0
June 1995	21,899	10.4	$462	86	0	0	0
Dec 1995	21,899	12.3	$467	-374	0	0	0
June 1996	22,493	8.3	$469	983	0	0	0
Dec 1996	22,536	9.1	$479	-174	0	0	0
June 1997	22,560	8.2	$493	175	300	300	0
Dec 1997	22,325	7.2	$504	224	300	0	0
June 1988	22,760	5.5	$520	531	692	512	120
Dec 1998	23,048	5.4	$541	343	1,358	846	180
June 1999	23,459	5.4	$565	357	1,132	200	426
Dec 1999	23,809	6.2	$581	157	2,203	1,431	360
June 2000	24,282	6.2	$605	539	1,849	230	584
Dec 2000	25,218	8.5	$622	414	2,030	1,232	1,051
June 2001	25,429	8.9	$644	440	2,002	544	572
Dec 2001	25,718	10.2	$644	602	1,408	248	858
June 2002	25,495	8.9	$672	1,084	970	272	810
Dec 2003	26,449	8.9	$678	509	614	133	533
June 2003	26,691	7.6	$687	732	625	492	496

SOURCE: Carolinas Real Data, Charleston Apartment Report, July 2003.

As can be seen from the table, vacancies were relatively high from December 1994 through December 1995. The market began stabilizing in June 1996, reflecting an 8.3 percent vacancy rate overall. In December 1996, negative absorption caused the vacancy rate to increase to approximately 9.1 percent, but it decreased to 7.2 percent in December 1997, to 5.5 percent in July 1998, 5.4 percent in December 1998 and June 1999, with a slight increase to 6.2 percent in December 1999, which remained the same in June 2000 even though 473 units were added to the market. It increased in December 2000 as new units were completed and further increased by December 2001. It has declined in June 2002 and was the same in December 2003 with 533 units completed. It improved in June 2003 to 7.6 percent.

There has been substantial development in the Charleston market area over the past several years. Construction and development will be discussed in each area of Charleston.

The downtown area has had no new development of major complexes. One development is reported to be planned, and this is to be very upscale with $2,000 plus rents.

On James Island, there has been substantial development. The first major complex to be developed was the Enclave. This is an upscale property that was almost fully leased by the time it was completed in late 1998.

Riverland Woods was completed in late 2000/2001 and was stabilized by May 2001, with an overall leased rate of about 18 units per month. This property contained 288 units. As of our most recent survey, their occupancy was about 96 percent. There is currently a small special which is $300 off of the first months rent but occupancy, overall, based on the multi-family survey and on our periodic surveys has been in the 94 to 98 percent range for the past 18 months.

Merritt at James Island is a new upscale property with 230 units. It was completed November 2002. This property had construction delays, consequently lease-up has been relatively slow. This property has upper ranged rents from $854 base for one bedroom unit to $1,454 base for a three bedroom/two bath unit. As a general rule, this property basically leased up units as they became available.

The Islands Phase I is completed. This phase contains 186 units. Pre-leasing started in December 2001, and leasing has been steady at about 15 units per month. It was completed in August 2002 and is stabilized. The Islands Phase II was recently completed and leaseup appears to be going reasonably well. The management did not report individually but did report that 80 percent of the total number of units were leased as of our November survey.

On Johns Island, which is near James Island, carried in the James Island section of the survey, a very upscale property known as The Vintage at Fenwick Plantation was completed in December 2002. Of the 216 units, 150 units are leased. Rents range from a low of $790 to a high of $1,250 base rent for a very large two bedroom, two bath townhouse. The site is one of the most attractive sties in the Charleston area with numerous, very mature oak trees.

In the West Ashley section, Ashley Knoll Phase I had final completion by February of 2000 and lease-up completed by May of 2000 with a lease-up rate of 30 units per month. The second phase has recently come online, and it is leased up. Concessions are being offered. Both were at 91 percent.

Heron Reserve is another new property which was built in 1999, and the 272 units leased at the rate of about 18 units per month with some turnover during lease-up. This property was at 97 percent.

Cypress Cove is an upscale property with rents ranging from a low of $699 to a high of $1,225 for a three bedroom/two bath unit. It was built in 2000 and was relatively slow leasing up, finally stabilizing in early 2002. It was 97 percent occupied and offering some concessions in the fall of 2002 and was at 96 percent with no concessions at our most recent survey.

Another West Ashley property is the renovation of Ashley Hall Gardens to Woodbridge which has 84 units with another 114 units which were added on a site which was purchased. This is a major rehab, and was 80 percent leased.

In Goose Creek, Coventry Green was completed in February 2002 but was substantially completed in late 2001. They are offering a small special, and of the 256 units, there are 93 percent leased. This property is stabilized.

Atlantic Palm is considered to be in the Goose Creek area, although it is probably very competitive with North Charleston as well. This is a 312 unit property with 312 units completed at this time. Of the 312 units completed, it was 91 percent leased. Leaseup has been good but occupancy has fluctuated in the low 80 percent to 90 percent range.

In North Charleston, Jamison Park completed its final 96 units of 216 in late 2001. This property was 97 percent leased and is stabilized. It is moderately priced from $675 for a one bedroom to $950 for a three bedroom unit. Rents were recently increased.

Mt. Pleasant is the area which has had the heaviest construction in the past three years. Long Grove at Seaside Farm has a total of 272 units. Leasing began in 1999, and with turnover, this property has not exceeded about 86 percent until recently. It has reached 93 percent in November and 93 percent in January 2004, having been in the low 90 percent range in summer 2002. Much of this is due to the fact that most of the new inventory is in the Mt. Pleasant area. Palmetto Plantation is a 1993 property in Mt. Pleasant which has operated reasonably well over the years, but for the first time, is offering modest concessions. It maintains a 95 percent plus occupancy. Legends of Mt. Pleasant is 92 percent leased as of June 15, 2003. This is another very upscale property with base rent for one bedroom at $685, while the highest price rents for three bedroom units are $1,375. This property began leasing in 2000. They have been giving some concessions.

Southhampton is another new property in the Mt. Pleasant area. This property leased-up relatively quickly upon completion in 1999. However, it did have turnover but has finally stabilized again. In November 2003 it was 96 percent.

Carrington Place in Park West was another 2000 property which has been in lease-up and has had turnover. Its highest occupancy was 85 percent in June of 2001 but during the summer of 2002 finally attained above 90 percent occupancy. It was 96 percent in October 2002 and 91 percent in November 2002, in November 2003 it was 90 percent.

River Oaks has a total of 360 units. It has changed management companies. It began leasing in April of 2001 and was completed in September 2001. It has some of the highest rents in the area with one bedroom units ranging from $710 to $910. Some units have excellent river views. The highest priced unit is $1,385, and this is for a three bedroom/two bath unit. The property basically struggled during 2002. In June of 2003 it had a dramatic turnaround along with another management change. By the late summer it had reached the low 90 percent range and in November was 89 percent. During all of 2002 the property was in the 60 percent range.

Alexan Belle Hall is also in the Mt. Pleasant area. This is a very upscale property. This property has all 240 units complete at this time. Leasing began January 2002. This very upscale property began leasing-up as it offered three months free. It has stabilized.

Daniel Landing is counted as being in Mt. Pleasant, but in actuality, it is on Daniel Island. This property leased-up at a relatively steady pace and is now converting to condominiums. It is in an excellent location on Daniel Island.

Summerville has one new property that was leased-up, and this is Grove at Oakbrook. The first phase contains 160 units, and it was completed in February of 2002 with a November occupancy of 98 percent. It leased around 16 per month. It has generally stayed in the 95 percent to 100 percent range.

Also in the Summerville area but actually being in North Charleston is Cedar Grove with 248 units. It began leasing recently, and there are 248 units finished in December 2002 and 201 units leased with lease rates from beginning at close to 25 per month. This is in the Dorchester County School District. It stabilized and has remained close to 100 percent .

A 120 unit second phase for Grove at Oakbrook is currently under construction. Units will likely be ready in the winter of 2004. The Vinings at Wescot Phase I with 190 units is under construction. The first units will likely be ready for occupancy in January or February of 2004. Marymeade (Traditions at Summerville), which is located off of Highway 17, near I-26 in Summerville, has a first phase planned with 232 units and construction recently began in the fall of 2003.

Bridgepointe, which is adjacent to Westbury Mews in Summerville, has begun construction of a 130 unit, mostly townhouse community. This property is somewhat different from the majority of properties which are being built and is similar to The Islands on James Island. Indigo Colony was reported to be planned near Atlantic Palms, but this property has been planned for approximately two years and had not been started. Another project was joint ventured on the site and 240 units, known as Alta Shores is under construction at this time. Units should be available in the spring or early summer of 2004. This is in the Goose Creek area but the property is actually in North Charleston.

A small property in the Summerville area known as The Cedars with 50 units was completed and is at 96 percent. Another small property in North Charleston with 144 units (Willow Ridge) with lower end rents has leased-up quickly.

The current forecast by the Charleston Apartment Market Report suggests that vacancy will likely decrease, even with the new construction underway, over the next 18 months to the 5 percent to 7 percent range. Completed units should decline and concessions should also decline. Occupancy rates should increase and rents will likely also increase. Absorption should remain about the same.

In the Charleston MSA, absorption has been reasonably good as new inventory has come on line. In 1998, absorption was 874 units total. In 1999, this had dropped slightly to 514, but in 2000, absorption was 953 units, 2001 showed 1,042 units overall. In the Charleston MSA for the first six months of 2002, a total of 1,084 units were absorbed with another 509 added in the second six months. In June 2003 absorption was 732 units.

Average rents in Charleston MA have increased overall approximately $194 per month since June 1997. The following table shows the average rents in the areas delineated by the survey.

Area	June 1997	Dec. 1997	June 1998	Dec. 1998	June 1999	Dec. 1999	June 2000	Dec. 2000	June 2001	Dec. 2001	June 2002	Dec 2002	June 2003
Downtown	$590	$591	$637	$645	$628	$659	$670	$689	$674	$674	$686	$691	$700
Mt. Pleasant	$645	$658	$684	$706	$739	$748	$780	$797	$831	$821	$831	$833	$821
West Ashley	$502	$515	$526	$543	$572	$596	$619	$635	$643	$652	$662	$666	$671
Charleston MA	$493	$504	$520	$541	$565	$581	$605	$622	$644	$644	$672	$678	$687
James Island	$582	$591	$635	$690	$726	$731	$758	$806	$823	$831	$862	$882	$904
Summerville	$458	$458	$476	$502	$531	$543	$555	$556	$569	$580	$613	$640	$627
Goose Creek	$453	$474	$482	$496	$565	$573	$612	$624	$635	$679	$738	$724	$721
N. Charleston	$435	$443	$456	$472	$484	$497	$512	$528	$538	$548	$556	$558	$582
Hanahan	$441	$458	$475	$503	*								

*Hanahan now included with North Charleston

SOURCE: Carolinas Real Data, Charleston Apartment Report, July 2003.

The following table shows the overall vacancy by area from the Carolinas Real Data Survey.

Non-Subsidized Vacancy By Area - Carolinas Real Data Survey

	Total	Downtown	Goose Creek	James Island	Mount Pleasant	North Charleston	Summerville	West Ashley
Units Surveyed	26,691	422	1,520	2,100	4,324	7,810	3,271	7,244
Vacant	2,022	32	157	299	305	508	135	586
% Vacant	7.6	7.6	10.3	14.2	7.1	6.5	4.1	8.1

SOURCE: Charleston Apartment Report, Carolinas Real Data, July 2003.

Reference is made to the chart on the following two pages. This chart reflects the occupancy/absorption analysis for new conventional properties with the survey having been completed by Marshall Dodds Company, Inc. in November of 2003. At this time, West Ashley has absorbed inventory reasonably well and is continuing to do so based on our updated surveys. Summerville has also done extremely well in absorbing new inventory and it currently has the best vacancy rate of only 4.1 percent. North Charleston with 6.5 percent has improved and Mount Pleasant has substantially improved going from 12.6 percent to 7.1 percent. Part of this was due to the fact that Daniel Landing and Cambridge Lakes are converting to condominiums, which helped other complexes stabilize. James Island increased in overall vacancy but

Daniel Landing is counted as being in Mt. Pleasant, but in actuality, it is on Daniel Island. This property leased-up at a relatively steady pace and is now converting to condominiums. It is in an excellent location on Daniel Island.

Summerville has one new property that was leased-up, and this is Grove at Oakbrook. The first phase contains 160 units, and it was completed in February of 2002 with a November occupancy of 98 percent. It leased around 16 per month. It has generally stayed in the 95 percent to 100 percent range.

Also in the Summerville area but actually being in North Charleston is Cedar Grove with 248 units. It began leasing recently, and there are 248 units finished in December 2002 and 201 units leased with lease rates from beginning at close to 25 per month. This is in the Dorchester County School District. It stabilized and has remained close to 100 percent .

A 120 unit second phase for Grove at Oakbrook is currently under construction. Units will likely be ready in the winter of 2004. The Vinings at Wescot Phase I with 190 units is under construction. The first units will likely be ready for occupancy in January or February of 2004. Marymeade (Traditions at Summerville), which is located off of Highway 17, near I-26 in Summerville, has a first phase planned with 232 units and construction recently began in the fall of 2003.

Bridgepointe, which is adjacent to Westbury Mews in Summerville, has begun construction of a 130 unit, mostly townhouse community. This property is somewhat different from the majority of properties which are being built and is similar to The Islands on James Island. Indigo Colony was reported to be planned near Atlantic Palms, but this property has been planned for approximately two years and had not been started. Another project was joint ventured on the site and 240 units, known as Alta Shores is under construction at this time. Units should be available in the spring or early summer of 2004. This is in the Goose Creek area but the property is actually in North Charleston.

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Merritt has fully stabilized and the Islands Phase II has recently come online and also the Vintage at Fenwick is in lease-up. Leasing is going well on these two properties.

All areas appear to be absorbing inventory well, including Mount Pleasant.

Referring to the chart, there are several probable additions to the market. The first property is Bella Vista, which is proposed with 108 very upscale units in the downtown area with rents much higher than the typical Charleston rent. In West Ashley, Heron Reserve II is proposed with a total of 112 units, but the owners have stated that this will not be started in 2003 and may not start in 2004. For all practical purposes, this is off the list. Lockhaven Village is under construction in the West Ashley area with 300 units, and they are planning unit for 2004. The second phases of the Vinings at Wescot and Marymeade will likely not be started unless demand warrants and both of these are in the Summerville area. Summerville has been doing very well in absorbing inventory.

It is anticipated that the Charleston Market will continue to absorb inventory on a regular basis. Charleston has been absorbing about 900 to 1,100 units annually, based on job growth and population increases.

Occupancy/Absorption Analysis - Charleston Market - New Conventional Properties (November 2003)

Under Construction, Completed, Stabilized Or In Lease-up

Location/Property	Age	Fully Complete	Current Occupancy	No. Units	Units Ready	Units Rented	Units Vacant Or UC	Units Needed For 93.0%	Units Below 93.0%	Ever Stabilized
James Island										
The Enclave	1998	11/99	90.0%	300	300	270	30	279	9	Yes
Riverland Woods	2001-02	02/01	96.0%	288	288	276	12	268	-8	Yes
Merritt At James Island	2002	11/02	98.0%	230	230	225	5	214	-11	Yes
The Islands I *	2002	08/02	80.0%	186	186	149	37	173	24	Yes
The Islands II *	2003	09/03	80.0%	134	60	107	27	125	18	No
Vintage At Fenwick Plantantion	2002	12/02	70.0%	216	216	151	65	201	50	No
* Islands Reported Together			87.0%	1,364	1,280	1,178	176	1,260	82	
Mount Pleasant										
Southampton	1999	05/99	96.0%	240	240	230	10	223	-7	Yes
Long Grove	2000	05/00	93.0%	272	272	253	19	253	0	Yes
River Oaks	2000-01	09/01	89.0%	360	360	320	40	335	15	Yes
Legends **	2000-01	02/01	92.0%	200	200	184	16	186	2	Yes
Alexan Belle Hall	2002	Fall 02	93.0%	240	240	223	17	223	0	Yes
Carrington Place	2000	12/00	90.0%	244	244	220	24	227	7	Yes
			92.0%	1,556	1,556	1,430	126	1,447	17	
Daniel's Landing	2000	12/00	99.0%	295	295	Was Stabilized to 99 0%		Converting to condos 6/03		
Cambridge Lakes	2000	9/00	NA	104	104	Converting to condominiums Summer 2003				
West Ashley										
Heron Reserve	1999	10/99	97.0%	272	272	264	8	253	-11	Yes
Ashley Knoll	1999	02/00	91 0%	280	272	255	25	260	5	Yes
Ashley Knoll II	2001	09/01	91.0%	128	128	116	12	119	3	Yes
Woodbridge (Renov/Addition)*	1973-2003	09/03	80.0%	198	150	158	40	184	26	No
Cypress Cove	2000-01	Spring 01	96.0%	264	264	253	11	246	-7	Yes
Lockhaven Village	NA	NA	0.0%	300	0	0	300	279	279	No
			73.0%	1,442	1,086	1,046	396	1,341	295	
*Was Ashley Hall Gardens										
North Charleston										
Jamison Park	2001	09/01	96.0%	216	216	207	9	201	-6	Yes
Willow Ridge	2001-03	Winter 03	99 0%	144	144	143	1	134	-9	Yes
			97 0%	360	360	350	10	335	(15)	
Goose Creek										
Alta Shores	NA	NA	0.0%	240	0	0	240	223	223	No
Coventry Green	2001-02	02/02	93.0%	256	256	238	18	238	0	Yes
Atlantic Palms	2001	06/02	91.0%	312	312	284	28	290	6	No
			65 0%	808	568	522	286	751	229	
Summerville-Dochester, Berkeley, and Charleston Counties										
Midland Terrace	2000	09/02	92.0%	120	120	110	10	112	2	Yes
Grove @ Oakbrook	2001-02	02/02	96.0%	160	160	157	3	149	-8	Yes
Grove @ Oakbrook II	NA	NA	0.0%	120	0	0	120	112	112	No
Cedar Grove	2002	12/02	99 0%	248	248	246	2	231	-15	Yes
The Cedars**	1999	11/99	96.0%	50	50	48	2	47	-1	Yes
Reserve (Vinings) At Wescott I	NA	NA	0.0%	192	0	0	192	179	179	No
Marymeade I	NA	NA	0.0%	232	0	0	232	216	216	No
Bridgepointe	NA	NA	0.0%	130	0	0	130	121	121	No
			45.0%	1,252	578	561	691	1,167	606	
Total			75.0%	6772	5428	5087	1685	6301	1214	

Information from Charleston Apartment Market Report and interviews by Marshall Dodds Co., Inc with managers, owners and developers

** Based on Apartment Market Report

Occupancy/Absorption Analysis - Charleston Market - New Conventional Properties (November 2003)

Planned

Location/Property	Age	Fully Complete	Current Occupancy	No. Units	Units Ready	Units Rented	Units Vacant Or UC	Units Needed For 93.0%	Units Below 93.0%	Ever Stabilized
Downtown										
Belle Vista			0.0%	108	0	0	108	100	100	
To be very upscale with rents to $2500										
				108	0	0	108	100	100	
James Island										
None Known At This Time										
Mount Pleasant										
The Vinoy At Park West	NA	NA	0.0%	224	0	0	224	208	208	
				224	0	0	224	208	208	
West Ashley										
Heron Reserve II	NA	NA	0.0%	112	0	0	112	104	104	
Owner stated that this will not be started in 2003 and may not start in 2004										
				112	0	0	112	104	104	
North Charleston										
None Known At This Time										
Goose Creek										
None Known At This Time										
				0	0	0	0	0	0	
Summerville-Dorchester,Berkeley,and Charleston Counties										
Reserve (Vinings) At Wescott II	NA	NA	0.0%	168	0	0	168	156	156	
Applegate	NA	NA	0.0%	192	0	0	192	179	179	NA
Marymeade II	NA	NA	0.0%	88	0	0	88	82	82	
			0.0%	448	0	0	448	417	417	
Total			0.0%	892	0	0	892	829	829	

Note: Vinings and Marymeade have land for a second phase, demand permitting. This will not be a factor until completion and lease-up of Phase I

Information from Charleston Apartment Market Report and interviews by Marshall Dodds Co., Inc with managers, owners and developers

Market Overview - Subject Market Area

The performance within the subject market area is reflected on the following table.

Mt. Pleasant

	Total Surveyed	Units Vacant	% Vacant
June 2003	4,324	305	7.1
December 2002	4,619	581	12.6
June 2002	4,683	634	13.5
December 2001	4,545	753	16.6
June 2001	4,453	805	18.1
December 2000	4,097	731	17.8
June 2000	3,522	208	5.9
December 1999	3,170	174	5.5
June 1999	3,106	194	6.2
December 1998	2,866	84	2.9
June 1998	2,866	45	1.6
December 1997	2,866	73	2.5

SOURCE: Carolinas Real Data ,Charleston Apartment Report Various.

The subject market area includes Mt. Pleasant as well as Daniel Island. As can be seen from the chart, A building boom occurred starting in early 1999 and was most prevalent in the Mt. Pleasant area. Occupancies pre-1999 were very high in the 97 to 98 percent range. As units came online during the period of substantial construction, vacancies increased. In addition, concessions were very prevalent in the market and a number of properties were significantly impacted.

As the overall market improved the Mt. Pleasant market started to improve. In addition, Daniel Landing recently announced that it's 295 units are being converted to condominiums. This is a new very upscale property in an excellent location on Daniel Island. Cambridge Lakes was built as apartments but also decided to convert to condominiums and this contained 104 units. This has taken 399 units that were new off of the market. In addition, Montclair Apartments, which is a 1985 vintage property with 240 units located on US Highway #17 in Mt. Pleasant has also converted to condominiums. Basically, the condominium market has been relatively good in the Mt. Pleasant area. As can be seen, occupancies began to increase substantially and properties, such as River Oak, which has had a problem leasing up, and some of the other properties that have not been able to maintain stabilized occupancy began to stabilize.

In addition, there has been growth within the Mt. Pleasant area and this is expected to continue. The new bridge between Mt. Pleasant and Charleston is under construction at this time but this will enhance development as it is completed.

Conclusion – Highest and Best Use – As Is Vacant

The subject property based on its zoning could be developed with apartments or condominiums with its probable use being for the development of a multifamily apartment complex.

Conclusion – Highest and Best Use – As Improved

The subject property was in operation as an apartment complex in 2003. It could not be converted to condominiums in 2003 as it was under a prepayment penalty during that period of time. It is therefore my opinion the highest and best use of the subject property was for continued use as a multifamily apartment complex.

Overview of the Current Market

The subject Mount Pleasant market area has fluctuated in vacancy from 5.9 percent in February 2008 to 12.0 percent in February of 2010. In February of 2009 the vacancy was 23.3 percent and this was caused by new properties on the market. There are currently two projects proposed on Daniel Island with a total of 720 units. Absorption net was basically negative in Mount Pleasant with a minus 26 units absorbed and in the overall market a minus 264 units absorbed in February 2010.

In the Mount Pleasant market, the overall condominium market was reviewed between 2006 and 2008. River Oaks changed its name to Edgewater Plantation was purchased in June 2006 for a condominium conversion. It is noted that this is about the same time as the subject property could pay off its loan and converted to condominiums. The Edgewater Plantation conversion was unsuccessful and the property was converted back to multifamily apartments due to lack of presales. Sabal Palms in West Ashley with 300 units also unsuccessfully converted to condominiums and it converted back to multifamily apartments.

The following statistics show overall condominium sales in the Mount Pleasant market. These were taken from the Multiple Listing Service. In 2006, 679 units were sold. This dropped in 2007 to 448 and dropped again to 220 in 2008. Days on the market went from 36 in 2006 to an average of 125 in 2008. The median selling price declined in 2008 although the average selling price stayed about the same as 2007. The reason for this appears to be the fact that there were a number of condominiums sold in the $1,000,000 to $3,000,000 range with many of these being at The Tides which is on the river with excellent views. In any case the lower end condominium market appears to have declined significantly based on the data available.

Jan to Dec 2008 41 - 42

Status	Total	Avg Price	Avg $ Per Sqft	Median	Low	High	Avg DOM	Avg CDOM
ACT/CNT	0	$0	$0.00	$0	$0	$0	0	0
PND	0	$0	$0.00	$0	$0	$0	0	0
SLD/RNT/L								
SE	220	$328,036	$201.38	$190,000	$82,001	$2,200,000	125	128
WTH	0	$0	$0.00	$0	$0	$0	0	0
EXP	0	$0	$0.00	$0	$0	$0	0	0
Total	**220**	**$328,036**	**$201.38**	**$190,000**	**$82,001**	**$2,200,000**	**125**	**128**

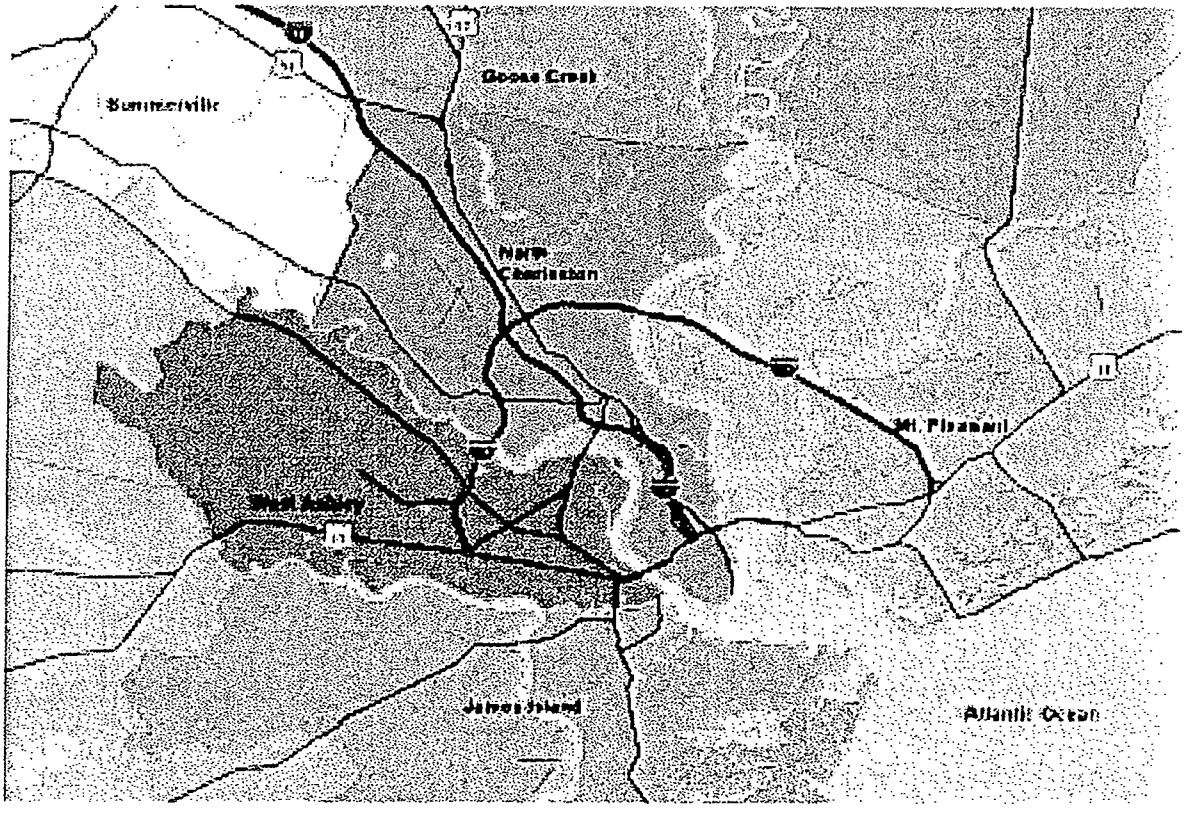
Jan to Dec 2007 32-61-62

Status	Total	Avg Price	Avg $ Per Sqft	Median	Low	High	Avg DOM	Avg CDOM
ACT/CNT	0	$0	$0.00	$0	$0	$0	0	0
PND	0	$0	$0.00	$0	$0	$0	0	0
SLD/RNT/L								
SE	448	$328,827	$212.81	$200,000	$78,000	$3,050,000	63	0
WTH	0	$0	$0.00	$0	$0	$0	0	0
EXP	0	$0	$0.00	$0	$0	$0	0	0
Total	**448**	**$328,827**	**$212.81**	**$200,000**	**$78,000**	**$3,050,000**	**63**	**0**

Jan to Dec 2006 32-61-62

Status	Total	Avg Price	Avg $ Per Sqft	Median	Low	High	Avg DOM
ACT/CNT	0	$0	$0.00	$0	$0	$0	0
PND	0	$0	$0.00	$0	$0	$0	0
SLD/RNT/L							
SE	679	$237,076	$191.16	N/A	$116,261	$1,285,000	**36**
WTH	0	$0	$0.00	$0	$0	$0	**0**
EXP	0	$0	$0.00	$0	$0	$0	**0**
Total	679	$237,076	$191.16	N/A	$116,261	$1,285,000	**36**

	# of Homes	Avg. D.O.M.	Avg. S.P.	Avg. SP/SF
Sold - 2006	679	36	$237,076	$191.16
Sold - 2007	448	63	$328,827	$212.81
Sold - 2008	220	125	$328,036	$201.38
Change (# from 2006 to 2007)	-231	27	$91,751	$21.65
Change (% from 2006 to 2007)	-34.02%	73.69%	38.70%	11.32%
Change (# from 2007 to 2008)	-228	62	($791)	($11.43)
Change (% from 2007 to 2008)	-50.89%	98.41%	-0.24%	-5.37%


Summerville
Goose Creek
North Charleston
Mt. Pleasant
Atlantic Ocean

METHODS OF VALUATION

In estimating the value of a property, appraisal procedures are utilized which reflect three distinct methods for analyzing data mathematically: the cost approach, the sales comparison approach, and the income approach. A brief description of each technique is as follows:

The Cost Approach - The cost approach is based on the premise that the value of the property can be derived by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the existing building and then subtracting the total depreciation. The cost approach is based on the principle of substitution, which is generally that a buyer will not pay more for one property than the cost to purchase a similar site and construct a building or equivalent utility.

The Income Approach - The income approach measures the present value of the future benefits of property ownership. This approach is based primarily on the principles of anticipation and change. In general, these principles are that value is created by the expectation of benefits to be derived in the future due to changes in the marketplace.

The Sales Comparison Approach - This procedure utilizes the sale prices of similar properties as a basis for estimating market value of the subject property. The basic principle of this approach is substitution, which is that an informed purchaser will pay no more for a property than would have to be paid for a similar property of comparable utility.

APPRAISAL PROCEDURES

This report will utilize the Income Approach to estimate the value of the subject property as an apartment complex based on current market conditions and the fact that the portions of the subject have been actually marketed as condominiums over the past 22 months with limited success. The property for all practical purposes is an apartment complex and the highest and best use remains as multifamily apartments. The Income Approach is the most appropriate approach when valuing an income producing property.

The Assessor has assigned values to each of the units based on the 2003 values of various condominium properties that have been sold within the area. These values appear to be reasonable for individual retail sales of condominium units and for single owners. However, the market value of the property should be determined by a sale of all units to a single purchaser which is in fact required by appraisal standards and standards set forth by all appraisal regulatory authorities. Simply adding the value of individual units together and claiming that to be market value is inappropriate and contrary to normal appraisal practice. For this reason, we will estimate the value of property appropriately by using the Sales Comparison Approach to determine the value of the individual condominium units and then the Income Approach with appropriate deductions and discounting to determine the overall market value of the 121 units owned by a single entity.

INCOME APPROACH TO VALUE

The Income Approach reflects the income producing capabilities of the subject and requires an analysis of the probable market rental of the subject on the date of appraisal.

In using the Income Approach, we are concerned with the present value of the future benefits of property ownership. This is generally indicated by the net income which a fully informed person is warranted in assuming the property will produce during its remaining useful life. In the Income Approach, value tends to be set by the effective investment necessary to acquire, without undue delay, a comparable substitute income property offering an equally desirable net income return.

The analysis is initiated by estimating the economic rent for the property, which is the rent that a tenant, using the premises for their Highest and Best use, is warranted in paying, and that the owner is warranted in accepting. This economic rent concept is the normal basis for a gross income projection in appraisal practice, and all such projections are based upon a reasonably foreseeable future, the extent of which varies with the circumstances of projection but conforms to the probable attitudes of experienced investors in the market. As most rental income buildings cannot expect to be fully and continuously occupied, we made a deduction from the projected gross income for anticipated vacancy based upon local experience of similar buildings. From the projected effective gross income, the estimated future expenses were deducted to arrive at a prospective net income estimate. After vacancy and fixed and operating expenses have been deducted, the remaining income is available for payment of debt service return on invested capital and income taxes, depending upon individual circumstances. This net income before debt service and income taxes is then converted by the capitalization process into an estimate of value.

Historical Performance

The subject 2003 operating statements and HUD audit have been analyzed and are shown on the following page. The operating statements and the audits have somewhat different categories in places but are relatively close in most categories.

Subject Reconstructed Income & Expense Analysis

Legends Mount Pleasant, SC	Based on 2003 Operating 2003	Per Unit	%	Based on 2003 HUD Audit 2003	Per Unit	%
Gross Potential Rental Income	NA	NA		$2,105,139	$10,516	
Less:						
Apartment Vacancies	NA	NA		($144,070)	($720)	-6.9%
Non-Revenue Units	NA	NA		$0	$0	0.0%
Bad Debts - Net	NA	NA		($1,351)	($7)	-0.1%
Concessions - Not shown	NA	NA		$0	$0	0.0%
Total Vacancy	NA	NA	0.0%	($145,421)	($727)	-7.0%
Net Rental Income	$1,959,065	$9,795		$1,957,714	$9,789	
Other Income						
Laundry	$7,279	$36		$0	$0	
Damage,Clean,Forf Dep	$80,375	$402		$0	$0	
Late/NSF	$6,100	$31		$0	$0	
Miscellaneous Income	$36,338	$182		$155,633	$778	
Garage/Storage	$10,715	$54		$0	$0	
Pet	$8,196	$41		$0	$0	
Total Other Income	$149,005	$745		$155,633	$778	
Effective Gross Income	$2,108,070	$10,540	100.0%	$2,113,347	$10,567	100.0%
Operating Expenses.						
Management Fee	($96,000)	($480)	-4.6%	($96,000)	($480)	-4.6%
Repairs & Maintenance	($22,038)	($160)		($2,229)	($11) HVAC	
Painting & Redecorating	($19,911)	($100)		$0	$0	
Grounds	($26,281)	($131)		$0	$0	
Supplies	$0	$0		($49,814)	($249)	
Contracts	$0	$0		($39,553)	($198)	
Water & Sewer	($3,478)	($17)		($3,478)	($17)	
Electricity	($23,549)	($118)		($25,466)	($127)	
Gas	$0	$0		$0	$0	
Security	($15,244)	($76)		($17,766)	($89)	
Trash	($6,166)	($31)		$0	$0	
Office & Miscellaneous	($20,276)	($101)		($20,576)	($103)	
Telephone	($5,881)	($30)		$0	$0	
Legal & Audit	($4,556)	($23)		($4,600)	($23)	
Advertising & Promotion	($29,400)	($147)		($24,976)	($125)	
Salaries & Benefits	($140,580)	($703)		($126,940)	($635)	
Other	$0	$0		$0	$0	
Total Operating	($423,460)	($2,117)	-20.1%	($411,398)	($2,057)	-19.5%
Fixed Expenses						
Real Estate Taxes	($138,946)	($695)		($137,530)	($688)	
Business Property Taxes	($368)	($2)		$0	$0	
Misc Unspecified Taxes	$0	$0		($1,775)	($9)	
Hazard Insurance	($88,942)	($445)		($86,676)	($433)	
Total Fixed Expenses	($228,256)	($1,141)	-10.8%	($225,989)	($1,130)	-10.7%
Reserves - HUD Actual	($52,838)	($264)		($52,838)	($264)	
Total Expenses	($704,554)	($3,523)	-33.4%	($690,225)	($3,451)	-32.7%
Net Operating Income	$1,403,516	$7,018	66.6%	$1,423,122	$7,116	67.3%
Capital/Non-Recurring/Atypical Expenses						
Appliances/HVAC	NA	$0		NA	$0	
Carpet/Blinds	($10,261)	($51)		NA	$0	
Interior	NA	$0		NA	$0	
Exterior	NA	$0		NA	$0	
Other Non-Recurring/Extraordinary	NA	$0		NA	$0	

* Percent Of Gross Potential Rental Income
**Source Statements provided management and owners
Number Units 200

Revenue Estimates

Rental Comparables

From the Carolinas Real Data Survey July 2003, rentals from Mount Pleasant are in the addenda.

Projected Rental Income

Rent will be estimated assuming that water and sewer, as well as electricity are paid by the tenant as is the case. The actual asking rents for subject will be used. These were before concessions. These are supported in the market.

Other Income

Other income from all sources was relatively high at $745 per unit. This included the detached rental garages and storage. This was relatively minor. Substantial other income was derived from lease break fees which apparently included forfeited deposits. This was above normal so other income will be projected at $500 per unit annually.

The projected rental schedule is on the following page.

Projected Rental Schedule

No. Units	Type	Original Units	BR/BA		2003 Base Rent	Size (SF)	Rent Per SF	Total Projected Monthly
23	A-1	24	1BR/1BA		$740	787	$0.94	$17,020
0	A-1 Solarium	8	1BR/1BA		$740	787	$0.94	$0
33	A-2	40	1BR/1BA		$795	875	$0.91	$26,235
5	A-3 Garage	8	1BR/1BA		$985	997	$0.99	$4,925
2	B-1	8	2BR/2BA		$940	1198	$0.78	$1,880
1	B-1 Solarium	8	2BR/2BA		$940	1198	$0.78	$940
6	B-1 Garage	8	2BR/2BA		$1,085	1222	$0.89	$6,510
38	B-2	64	2BR/2BA		$1,010	1394	$0.72	$38,380
1	B-2 Garage	8	2BR/2BA		$1,185	1368	$0.87	$1,185
9	C-1	16	3BR/2BA		$1,225	1536	$0.80	$11,025
3	C-1 Garage	8	3BR/2BA		$1,375	1596	$0.86	$4,125
121	Total	200		Averages	$927	1123	$0.83	
Base Monthly Rental Income								$112,225
Premium Monthly Rental Income								
0	View		@	$0				$0
Garage/Storage Income (In Other)								
0	Garages		@	$0				$0
0	Storage		@	$0				$0
Gross Monthly Potential Rental Income								$112,225
								x 12
Gross Annual Potential Rental Income								$1,346,700
Other Income (Annual)								
Miscellaneous Income			121 Units @	$500 Per Unit				$60,500
Total Gross Annual Potential Income								$1,407,200

Expense Estimates

Reference is made to the 2003 subject operating history. Five expense comparables which are properties in the Charleston, Summerville, Columbia, Myrtle Beach and Spartanburg areas have been shown. Other properties throughout the state have also been reviewed. Certain expenses within the property, such as utilities and trash removal were estimated based on costs for subject. Expenses such as repairs and maintenance as well as decorating expenses and grounds were based on typical expenses on a stabilized basis.

Vacancy

Vacancy in the area of subject property and in the Charleston area have been discussed at length in the Highest and Best Use/ Apartment Overview section.

In estimating vacancy and collection loss, an allowance for bad debt and also for units occupied by management will be made. On a stabilized basis, it is thought that the property should operate at 92 percent occupancy.

Rental Concessions

There are numerous advertised rental concessions in the market at this time. Concessions have been offered in the past. It is thought that an allowance of 5.0 percent for concessions or loss to lease would be appropriate. This is supported by the difference between Gross Potential rent based on asking rent and the Gross Potential Rent in the HUD Audit.

Management

Typical management fees in the market range from 3 percent to 6 percent. A management fee of 4.5 percent will be used in the Income Analysis as this is the actual fee charged.

Repairs and Maintenance

On a stabilized basis, this will be estimated at $200 per unit, exclusive of reserves, and this is within the range of the comparables.

Painting and Redecorating

This expense will be projected at $200 per unit, exclusive of reserves and this is within the range of the comparables.

Grounds

This is estimated at $150 per unit.

Water and Sewer

This has been estimated at $30 per unit based on actual.

Electricity/Gas:

This expense has been estimated at $170 per unit based on typical.

Trash Removal

This expense is estimated at $50 per unit based on typical.

Office and Miscellaneous

This expense will be estimated at $110 per unit as subject was approaching this.

Telephone

On a normal basis, telephone is estimated at $40 per unit including beepers and answering service. The actual was less per unit but reflected 200 units.

Legal and Audit

Legal and audit expense will be estimated at $4,600 based on actual.

Advertising and Promotion

This expense has been estimated at $125 per unit on a stabilized basis. Some years this could be higher and some years it could be lower .

Salaries and Benefits

Salaries and benefits will be projected at $850 per unit including group insurance based on typical. Actual is low as the owner and wife draw below normal salaries.

Property Taxes

Property taxes have been previously estimated in this report being $102,700 based on apartments and $207,800 based on the condominium tax value.

Business Property Taxes

This is for office furnishings only and is in office and miscellaneous expense.

Hazard Insurance

Insurance has been increasing somewhat, and the market is fluctuating. It is thought that a reasonable estimate on a stabilized basis prorata would be $52,635 or $435 per unit based on reported premiums.

Reserves for Replacement

This item has been estimated at $250 per unit, per year and would include provision for future replacements of major HVAC systems, roofing, carpeting and other similar items. These items are expected to last for long periods of time; however, allowance should be made for periodic replacements. During the normal investment period, it is likely that there will be appliance carpet replacements.

Support for including reserves for replacement in apartment properties can be found in the Korpacz Real Estate Investor Survey, First Quarter, 2003 Based on surveys of apartment investors, typical reserves allocated ranged from approximately $150 to $800 per unit with the average at $282.64.

Summary

It is noted that certain expenses will increase over time; however, rental increases will generally occur from year to year and should generally offset or exceed annual increases in operating expenses.

The operating expenses for the subject property were $2,568 per unit. These ranged from $2,072 to $2,512 based on the comparables. The fixed expenses were $2,152 per unit based on the tax estimate for condominiums. Based on the tax estimate for the subject property as apartments, the fixed expenses were $1,284. The reason is the higher taxes based on the condominium valuation. The comparables without reserves ranged from $3,168 to $3,656. Subject did have reserves included. Reserves were required under the HUD loan but reserves are considered by investors and are considered by appraisers as an allocation toward future replacements.

Expense Comparable Chart

Expense Item	Comparable # 1 Columbia, SC 2003 Per Unit Age	Units 1989/2000 526	Comparable # 2 Summerville, SC 2003 Per Unit Age	Units 2002 160	Comparable # 3 Charleston, SC 2003 Per Unit Age	Units 2000 288	Comparable # 4 Myrtle Beach, SC 2003 Per Unit Age	Units 1998/2000 264	Comparable # 5 Spartanburg,SC 2003 Per Unit Age	Units 1998 204
Operating Expenses:										
Management	3.0%	$214	3.2%	$332	3.6%	$335	5.0%	$419	5.1%	$380
Repairs & Maintenance		$192		$277		$104		$186		$266
Painting & Redecorating		$177		$107		$187		$240		$131
Grounds		$170		$212		$177		$211		$180
Water/Sewer		$368	Net	($21)	Net	$158		$279		$256
Electric/Gas		$161		$173		$138		$131		$97
Trash		$42		$29		$99		$67		$54
Office & Miscellaneous		$66		$100		$80		$90		$82
Telephone		$26		Above		$38		$25		$23
Elevator		$0		$0		$0		$0		$0
Legal & Audit		$15		$51		$4		$28		$3
Advertising & Promotion		$53		$213		$85		$86		$87
Salaries & Benefits		$721		$1,015		$667		$750		$646
Total Operating Expenses		$2,205		$2,488		$2,072		$2,512		$2,205
Fixed Expenses:										
Property Taxes		$840		$799		$1,014		$517		$725
Business Property Taxes		$7		$0		$7		$0		$0
Hazard Insurance		$117		$369		$266		$595		$238
Total Fixed Expenses		$964		$1,168		$1,287		$1,112		$963
Total Expenses		$3,169		$3,656		$3,359		$3,624		$3,168
Capital Expenses		$444		$174		$290		$405		$55

Source: Actual operating statements. Property names are confidential.

Capitalization of Net Income

Capitalization rates were selected from the market. The following chart shows capitalization rates between May 2001 and December 2003.

Overall Rate Chart

No.	Date	Name Location	Overall Rate
1	06/01	Carrington Place Mt. Pleasant, SC	8.25%
2	07/02	The Enclave Charleston, SC	8.49%
3	05/02	Cypress Cove Charleston, SC	7.88%
4	08/03	Paces Brook Columbia, SC	7.71%
5	05/01	Fairview Crossing Simpsonville, SC	9.03%
6	05/02	Oak Pointe Simpsonville, SC	8.75%
7	12/03	Greyeagle Greenville, SC	8.20%
8	10/03	Columbiana Lakes Columbia, SC	7.86%
9	04/02	Huntington Place Columbia, SC	8.58%
	Range	7.71% -	9.03%
	Average		8.31%
	Mid-Point		8.37%

Sales of properties located in the Charleston area, Columbia and Greenville were used to estimate the capitalization rate. Overall rates ranged from 7.71 percent to 9.03 percent with the average at 8.31 percent and the mid point range at 8.37 percent.

A capitalization rate of 8.25 percent has been selected.

The Income and Expense Analysis and Value Indication by Direct Capitalization Charts can be found on the following pages.

Income Analysis And Value By Direct Capitalization *

		Income/Expense	Per Unit
Gross Potential Rental Income		$1,346,700	$11,130
Less Concessions (Loss to Lease)	5.0%	($67,335)	($556)
Less Vacancy & Collection Loss	8.0%	($107,736)	($890)
Effective Gross Rental Income		$1,171,629	$9,684
Miscellaneous Annual Income		$60,500	$500
Effective Gross Income		$1,232,129	$10,184
Operating Expenses:			
Management	4.5%	$55,446	$458
Repairs & Maintenance		$24,200	$200
Painting & Redecorating		$24,200	$200
Grounds		$18,150	$150
Water & Sewer		$3,630	$30
Electric/Gas		$20,570	$170
Trash		$6,050	$50
Office & Miscellaneous		$13,310	$110
Telephone		$4,840	$40
Security		$17,766	$147
Legal & Audit		$4,600	$38
Advertising & Promotion		$15,125	$125
Salaries & Benefits		$102,850	$850
Total Operating Expenses		($310,737)	($2,568)
Fixed Expenses:			
Property Taxes		$102,700	$849
Business Property		$0	$0
Hazard Insurance		$52,635	$435
Total Fixed Expenses		($155,335)	($1,284)
Reserves For Replacement:			
121 Units @	$250	$30,250	$250
Total Reserves		($30,250)	($250)
Total Expenses And Reserves		($496,322)	($4,102)
Net Operating Income		$735,807	$6,082
$735,807 Capitalized @	8.25%		$8,919,000
Indicated Value By Direct Capitalization	(Rounded)		**$8,920,000**

***Based on 2003 Income. Taxes based on 2005 Apartment Tax Value pro rata ($8,866,880) and 2005 (after reassessment) millage rate of 199.9 and LOST factor of.00137. Add Storm Water and $63/Unit Solid Waste**

Income Analysis And Value By Direct Capitalization *

Condominium Tax Value

		Income/Expense	Per Unit
Gross Potential Rental Income		$1,346,700	$11,130
Less Concessions (Loss to Lease)	5.0%	($67,335)	($556)
Less Vacancy & Collection Loss	8.0%	($107,736)	($890)
Effective Gross Rental Income		$1,171,629	$9,684
Miscellaneous Annual Income		$60,500	$500
Effective Gross Income		$1,232,129	$10,184
Operating Expenses:			
Management	4.5%	$55,446	$458
Repairs & Maintenance		$24,200	$200
Painting & Redecorating		$24,200	$200
Grounds		$18,150	$150
Water & Sewer		$3,630	$30
Electric/Gas		$20,570	$170
Trash		$6,050	$50
Office & Miscellaneous		$13,310	$110
Telephone		$4,840	$40
Security		$17,766	$147
Legal & Audit		$4,600	$38
Advertising & Promotion		$15,125	$125
Salaries & Benefits		$102,850	$850
Total Operating Expenses		($310,737)	($2,568)
Fixed Expenses:			
Property Taxes		$207,800	$1,717
Business Property		$0	$0
Hazard Insurance		$52,635	$435
Total Fixed Expenses		($260,435)	($2,152)
Reserves For Replacement:			
121 Units @	$250	$30,250	$250
Total Reserves		($30,250)	($250)
Total Expenses And Reserves		($601,422)	($4,970)
Net Operating Income		$630,707	$5,214
$630,707 Capitalized @	8.25%		$7,645,000
Indicated Value By Direct Capitalization	**(Rounded)**		**$7,645,000**

***Based on 2003 Income. Taxes based on Condo Tax Value pro rata ($18,766,000) and 2005 (after reassessment) millage rate of 199.9 and LOST factor of.00137. Add Storm Water and $63/Unit Solid Waste**

Indicated Value by Income Approach

Based on Apartment Taxes

Direct Capitalization Analysis	$8,920,000

Based on Condominium Taxes

Direct Capitalization Analysis	$7,645,000

Discounted Sellout Analysis

Subject property is currently valued for tax purposes based on the retail value of 121 condominium units which when added together total $18,766,000 which is an average of $155,091 per unit. Previous discussions in this report indicate that the subject property currently has a Highest and Best Use of rental apartments rather than condominiums. It has been pointed out previously that condominium sales slowed and only one property was sold between January 2008 and August 2009. It has further been pointed out that two properties attempted to convert to condominiums at the same time and both of these reverted back to apartments. The reason was the fact that pre-sales could not be achieved. We have further noted that condominium sales have fallen off sharply.

Reference is made to the Appraisal Real Estate, 13th Edition, Page 639. This page is reproduced and included in the addenda to this report. "To value individual condominium units (residential, office, industrial or other property types), appraisers generally use the Sales Comparison Approach. Recent sales of comparable size, location and quality are the best indicators of value. The income capitalization approach may also be applicable if some condominium units are rented rather that occupied by the owners."

It further states, "to value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount of timing of all capital outlets, expected monetary receipts and returns are estimated. These amounts are discounted at a rate consistent with competitive investment yields. The estimates of future sellout prices and the timing of the sales are key elements in the valuation." "Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of a condominium project. The aggregate of individual unit values does not reflect the market value of the overall project as the aggregate sum does not reflect carrying or holding costs, marketing expense or timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations."

The subject 121 units is in a single ownership. Consequently, it should be treated as such and simply adding the value of the individual condominium units which in effect are rented apartments is inappropriate and does not reflect the true market value as it does not take into consideration selling costs and other costs associated with the sale of bulk of condominium units. For this analysis, we will use the average value at retail estimated by the Tax Assessor's Office which is $155,091. Based on the slow down in sales and the current financing market, we will estimate that no sales would occur within year 1 and that 15 sales per year would occur in the following 3 years with 20 sales per year thereafter with the final year having 16 sales.

- Sales Expense will be estimated at 6 percent.
- Advertising expense will be estimated at 0.5 percent.
- Closing expense will be estimated at 1.0 percent.
- Management, overhead will be estimated at 1.0 percent.

- Developer's Profit will be estimated at 10.0 percent, basically a Developer would not undertake this risk without an expectation of profit.
- Taxes per unit are estimated at $1,923 per unit based on the 2008 taxes with 3.0 percent annual adjustment. This will be applied to the number of units remaining.
- Upfit costs to refurbish the individual units for sale is estimated at $3,500 with a 3 percent annual adjustment.
- The net proceeds will be discounted based on 12 percent. In September 2009, the Baa corporate bonds are 6.26 percent if 500 to 600 basis points are applied this would range from 11.26 percent to 12.26 percent so 12 percent is reasonable considering the overall risk.

The final value estimate is $7,750,000 which is the present worth and indicated market value which an investor would likely pay for all 121 units to be able to earn a profit and pay all costs.

As has been stated, this is the appropriate methodology for appraising multiple condominium units. It is important to note that "Gross Sellout" does not equal market value.

Discounted Sellout Analysis
Legends At Mount Pleasant
121 Units

				Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Gross Sales Income														
Number Of Units Sold				0	15	15	15	20	20	20	16	0	0	121
Average Tax Value				$155,091	$155,091	$155,091	$155,091	$155,091	$155,091	$155,091	$155,091	$155,091	$155,091	$155,091 **
				$0	$2,326,365	$2,326,365	$2,326,365	$3,101,820	$3,101,820	$3,101,820	$2,481,456	$0	$0	$18,766,011
Other Sales				0	0	0	0	0	0	0	0	0	0	0
Average Price				$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
				$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Miscellaneous Income				$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Income				**$0**	**$2,326,365**	**$2,326,365**	**$2,326,365**	**$3,101,820**	**$3,101,820**	**$3,101,820**	**$2,481,456**	**$0**	**$0**	**$18,766,011**
Less Expenses:														
Sales Expense			6.0%	$0	($139,582)	($139,582)	($139,582)	($186,109)	($186,109)	($186,109)	($148,887)	$0	$0	($1,125,660)
Advertising Expense			0.5%	($10,000)	($11,632)	($11,632)	($11,632)	($15,509)	($15,509)	($15,509)	($12,407)	$0	$0	($103,830)
Closing Expense			1.0%	$0	($23,264)	($23,264)	($23,264)	($31,018)	($31,018)	($31,018)	($24,815)	$0	$0	($187,661)
Management, Overhead			1.0%	($10,000)	($23,264)	($23,264)	($23,264)	($31,018)	($31,018)	($31,018)	($24,815)	$0	$0	($197,661)
Developers Profit			10.0%	$0	($232,637)	($232,637)	($232,637)	($310,182)	($310,182)	($310,182)	($248,146)	$0	$0	($1,876,003)
Taxes/ Unit	$1,923	3.0%	Annual Adj	($232,683)	($209,986)	($185,640)	($159,676)	($121,184)	($80,244)	($36,736)	$0	$0	$0	($1,026,149)
Unit Costs Per Unit Base	$3,500	3.0%	Annual Adj.	$0	($54,075)	($55,597)	($57,366)	($59,089)	($60,862)	($62,688)	($64,569)	$0	$0	($414,348)
Total Expenses				**($252,683)**	**($694,440)**	**($671,716)**	**($647,423)**	**($754,109)**	**($714,942)**	**($673,260)**	**($523,639)**	**$0**	**$0**	**($4,932,212)**
Net Proceeds				($252,683)	$1,631,925	$1,654,649	$1,678,942	$2,347,711	$2,386,878	$2,428,560	$1,957,817	$0	$0	$13,833,799
Discounted at			12.0%	0.892857	0.797194	0.711780	0.635518	0.567427	0.506631	0.452349	0.403883	0.360610	0.321973	
Present Worth				**($225,610)**	**$1,300,961**	**$1,177,746**	**$1,066,998**	**$1,332,155**	**$1,209,266**	**$1,098,557**	**$790,729**	**$0**	**$0**	**$7,750,802**
									Present Worth & Indicated Market Value			(Rounded)		$7,750,000
									Estimated "Gross Sellout" Value			(Rounded)		$18,766,000

** Average Sales Price

MARSHALL DODDS COMPANY, INC.

RECONCILIATION OF VALUE

Income Approach	
Apartment Taxes	$8,920,000
Condominium Taxes	$7,645,000
Discounted Sellout (Condominiums)	$7,750,000

As can be seen by the indicators above, the value of the subject property ranges from $7,645,000 to $8,920,000. The units should properly be valued as a rental apartment complex rather than as individual condominium units. The methodology which has been used in this appraisal to value the subject property as condominium units is not only a recognized technique but a technique that would be required for use by fee appraisers. It is clear that the values of the subject property as shown above do not approach the value placed on the subject property by the Tax Assessor's Office. The original tax value (prorata) for the subject property as apartments of $8,866,880 appears to be in line with the value indications in this report.

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report is made subject to the following conditions and assumptions:

1. LIMIT OF LIABILITY: The liability of Marshall Dodds Company, Inc., its employees and independent contractors is limited to the client only and to the fee actually received by appraiser. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. Further, notwithstanding anything herein to the contrary, the client will forever indemnify and hold Marshall Dodds Company, Inc., and its officers and employees harmless from any claims by third parties related in any way to the appraisal or study which is the subject hereof. Third parties shall include limited partners of client if client is a partnership and stock holders of client, if client is a corporation, and all lenders, tenants, past owners, successors, assigns, transferees and spouses of client. The appraiser is in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property; physically, financially, and/or legally.

2. LIENS AND ENCUMBRANCES: All existing liens and encumbrances have been disregarded unless otherwise stated, and the property is appraised as though free and clear under responsible ownership and competent management.

3. EXHIBITS: The sketches, surveys, maps and/or other exhibits in this report are included to assist the reader in visualizing the property and are not necessarily to scale. Various photographs, if any, are included for the same purpose as of the date of the photographs. Site plans are not surveys unless so designated.

4. PROPOSED OR INCOMPLETE IMPROVEMENTS: On all appraisals subject to satisfactory completion, repairs, or alterations, the appraisal report and value conclusions are contingent upon completion of the improvements in a workmanlike manner.

5. INFORMATION USED: Information, estimates and opinions furnished to the appraiser and contained in the report were obtained from sources considered reliable and believed to be true and correct. However, no responsibility is assumed for accuracy of such items furnished. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction or from affidavit or other sources thought reasonable. All are considered appropriate for inclusion to the best of our factual judgment and knowledge. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information. It is suggested that the client consider independent verification as a prerequisite to any transaction involving sale, lease, or other significant commitment of funds of subject property.

6. COPIES, PUBLICATION, DISTRIBUTION, USE OF APPRAISAL REPORT: Disclosure of the contents of this appraisal report is governed by By-Laws and Regulations of the Appraisal Institute. These By-Laws and Regulations require each member and candidate to control the use and distribution of each appraisal report signed by such member or candidate; except as hereinafter provided, the client may distribute copies of this appraisal report in its entirety to

such third parties (such as rating agencies and for securitization purposes) as he may select; however, selected portions of this appraisal report shall not be given to third parties without prior written consent of the signatories of this appraisal report. Neither all nor any part of this appraisal report shall be disseminated to the general public (especially any conclusions as to value, the identity of the appraiser or the firm with which the appraiser is connected, or any reference to the Appraisal Institute or to the MAI or SRA designation) by the use of advertising media, public relations, news, sales or other media for public communication without the prior written consent of the appraiser. Additional copies of this appraisal report will be available to the client at an additional expense, to be determined before delivery of said copies.

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for purposes other than its intended use; the physical report(s) remain the property of the appraiser for the use of the client, the fee being for the analytical services only.

7. TESTIMONY, CONSULTATION, COMPLETION OF CONTRACT FOR APPRAISAL SERVICES: The contract for appraisal, consultation or analytical service is fulfilled and the total fee payable upon completion of the report or as otherwise agreed in writing. The appraiser(s) or those assisting in preparation of the report will not be asked or required to give testimony or appear in court because of having made this appraisal report, with reference to the property in question, unless arrangements thereof have previously been made. In addition, the appraiser(s) will not engage in post appraisal consultation with client or third parties except under separate and special arrangement and at an additional fee. If testimony or deposition is required because of an subpoena, the client shall be responsible for any additional time, fees and charges, regardless of the issuing party.

8. CONFIDENTIALITY: The appraisal is to be used only in its entirety. All conclusions and opinions concerning the analysis as set forth in the report were prepared by the appraiser(s) whose signature(s) appear on the appraisal report. No change of any item in the report shall be made by anyone other than the appraiser and/or officer of the firm. The appraiser and firm shall have no responsibility if any such unauthorized change is made.

The Appraiser may not divulge the material contents of the report, analytical findings or conclusions, or give a copy of the report to anyone other than the client or his designee as specified in writing except as may be required by the Appraisal Institute as they may request in confidence for ethics enforcement, or by a court of law or body with the power of subpoena.

9. TRADE SECRETS: This appraisal was obtained from Marshall Dodds Company, Inc. and consists of "trade secrets and commercial or financial information" which is privileged and confidential and exempted from disclosure under 5 U.S.C. 552 (b) (4). Notify the appraiser(s) signing the report of any request to reproduce this appraisal in whole or in part.

10. LEGALITY OF USE: The appraisal is based on the premise that there is full compliance with all applicable federal, state and local environmental regulations and laws unless otherwise stated in the report; further, that all applicable zoning, building and use regulations and restrictions of all types have been complied with unless otherwise stated in the report; and, it is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state,

federal and/or private entity or organization have been or can be obtained or renewed for any use considered in the value estimate.

11. LEGAL, ENGINEERING, FINANCIAL, STRUCTURAL OR MECHANICAL NATURE, HIDDEN COMPONENTS, HAZARDOUS MATERIAL: No responsibility is assumed for matters legal in character or nature, nor matters of survey, nor of any architectural, structural, mechanical, or engineering nature. No opinion is rendered as to the title, which is presumed to be good and marketable. The property is appraised as if free and clear, unless otherwise stated in the report. The legal description is assumed to be correct as used in this report as furnished by the client, his designee or as derived by the appraiser. The appraiser has inspected as far as possible, by observation, the land and the improvements; however, it was not possible to personally observe conditions beneath the soil, or hidden structural, mechanical or other components, and the appraiser(s) shall not be responsible for defects in the property related thereto.

The appraisal is based on there being no hidden, unapparent or apparent conditions of the property site, subsoil or structures or toxic materials which would render it more or less valuable. All mechanical components are assumed to be in operable condition and status standard for properties of the subject type. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.

The appraiser(s) assumes no responsibility for any costs of consequences arising due to the need or the lack of need for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.

Unless otherwise stated in this report, the existence of any hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property and is not qualified to detect such substances. The presence of substances such as asbestos, urea- formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required discovering them.

12. COMPONENT VALUES: The distribution of the total valuation in this report between land and improvements applies only under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

13. AUXILIARY AND RELATED STUDIES: No environmental or impact studies, special market study or analysis, highest and best use analysis study or feasibility study has been required or made unless otherwise specified in an agreement for services or in the report.

14. DOLLAR VALUES, PURCHASING POWER: The market values estimated, and the costs used, are as of the date of the estimate of value. All dollar amounts are based on the purchasing power and price of the dollar as of the date of the value estimate.

15. INCLUSIONS: Furnishings and equipment or personal property except as specifically indicated and typically considered as part of the real estate, have been disregarded with only the real estate being considered in the value estimate, unless otherwise stated. In some property types, business and real estate interests and values are combined.

16. VALUE CHANGE, DYNAMIC MARKET, INFLUENCES, ALTERATION OF ESTIMATE BY APPRAISER(S): The estimated market value, which is defined in the report, is subject to change with market changes over time; value is highly related to exposure, time, promotional effort, terms, motivation and conditions surrounding the offering. The value estimate considers the productivity and relative attractiveness of the property physically and economically in the marketplace.

In cases of appraisal involving the capitalization of income benefits, the estimate of market value or investment value or value in use is a reflection of such benefits and the appraiser's interpretation of income and yields and other factors derived from general and specific client and market information. Such estimates are as of the date of the estimate of value and are subject to change, as the market and value are naturally dynamic.

The estimate of market value in the appraisal report is not based in whole or in part upon the race, color or national origin of the present owners or occupants of the properties in the vicinity of the property appraised.

17. APPRAISAL REPORT AND VALUE ESTIMATE: The appraisal report and value estimate are subject to change if the physical or legal entity or financing is different than that reported.

18. MANAGEMENT OF THE PROPERTY: It is assumed that the property, which is the subject of this report, will be under prudent and competent ownership and management. Marshall Dodds Company, Inc. assumes no responsibility for any adverse effects on property values caused by incompetent management.

19. WETLANDS: The estimate of value in this report has been made assuming no impact on value because of "Section 404 Wetlands" as defined by the U.S. Army Corps of Engineers. We have found no evidence of "wetlands" but are not experts in this field and urge the client to seek the advice of an expert to determine any potential impact of "wetlands" on the property.

20. AMERICANS WITH DISABILITIES ACT: The Americans with Disabilities Act ("ADA") became effective January 26, 1992. The Marshall Dodds Company, Inc. has not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible non-compliance with the requirements of ADA in estimating the value of the property.

CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
8. I have made a personal inspection of the property that is the subject of this report.
9. Besides any other signers of this report, no one has provided significant professional assistance to the person signing this report.
10. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
11. As of the date of this report, Frank A. Headley, have completed the requirements of the continuing education program of the Appraisal Institute.
12. This appraisal assignment was not based on a requested minimum valuation, specific valuation, or the approval of a loan.
13. The appraiser has performed within the context of the Competency Provision of the Uniform Standards of Professional Appraisal Practice.
14. I have not appraised this property in the three years prior to accepting this assignment.

Frank A. Headley
State Certified General Real
Estate Appraiser (No. CG 571)

APPRAISER QUALIFICATIONS

Frank A. Headley
2010 Gadsden Street
Columbia, South Carolina 29201
803-765-2840

EXPERIENCE:

Entered the real estate field in 1965 as a sales representative for a builder/developer. During the period from 1965 to 1973 was primarily engaged in sales and management activities in conjunction with residential real estate. During the period 1973 through 1978, primarily engaged in management and in-house appraising of properties. During the period 1978 to present, primarily engaged in fee appraisal of real estate. Affiliated with Marshall Dodds Company, Inc. since 1983.

TYPES OF PROPERTIES

Appraisals have been made on the following types of real estate:

Residential:	Land, single family and multifamily dwellings.
Commercial:	Apartments (extensive experience with HUD, conventional, and Fannie Mae), commercial land, various commercial retail and office buildings, hotels and motels, resort residential subdivisions, residential subdivisions, condominium projects and shopping centers.
Industrial:	Vacant land, warehouses, industrial manufacturing and distribution facilities; and
Special Purpose:	Churches, service stations, and truck terminals.

EDUCATION

B.S. Degree in Economics, University of South Carolina
Real Estate Appraisal, University of South Carolina
Society of Real Estate Appraisers, Course 101

Appraisal Institute:

Course 1A-1/8-1, Real Estate Appraisal Principles
Course 1A-2, Basic Valuation Procedures
Course SPP, Standards of Professional Practice
Course 1B-A, Capitalization Theory and Techniques
Course 1B-B, Capitalization Theory and Techniques
Course 2-1, Case Studies in R. E. Valuation
Course 2-2, Report Writing

Appraisal Institute Seminars:

1) Standards of Professional Practice Part C
2) General Demonstration Appraisal Report Writing
3) Subdivision Analysis

Other Seminars:

1) Tax Free Exchange of Real Property
2) Change is Not a Spectator Sport

PROFESSIONAL AFFILIATIONS

Licensed:	South Carolina Certified General Real Estate Appraiser #CG571 South Carolina Real Estate Broker #587295415
Affiliation:	General Associate Member - Appraisal Institute
Member:	National Association of Real Estate Boards
Member:	South Carolina Association of Realtors
Member:	Greater Columbia Association of Realtors
Member:	Consolidated Multiple Listing Service

APPRAISAL LICENSES:

State of South Carolina
Real Estate Appraisers Board
"State Certified General Real Estate Appraiser"
(Number CG 571)

State of North Carolina
Real Estate Appraisers Board
"State Certified General Real Estate Appraiser"
(Number A3574)

State of Georgia
Real Estate Appraisers Board
"State Certified General Real Estate Appraiser"
(Number CG 4999)

CLIENTELE:

Life insurance companies, mortgage banking firms, real estate investment trusts, banks, real estate developers, oil companies, government agencies, attorneys and individuals.

ADDENDA

OPERATING and AUDITED STATEMENTS

	Month to Date	%	Year to Date	%
INCOME				
RENT INCOME				
Rent	174,341.55	0	1,959,065.10	0
NET RENT INCOME	174,341.55	0	1,959,065.10	0
OTHER INCOME				
Garage Income	935.00	0	8,950.56	0
Storage Room Rentals	162.00	0	1,763.92	0
Owned Washer/Dryer Income	754.26	0	7,252.91	0
Cable TV Income	-43.10	0	7,303.59	0
Move Out Charges	10,675.05	0	36,037.01	0
Lease Termination Fees	1,504.00	0	44,338.07	0
NSF Fees	0.00	0	180.00	0
Phone Commissions	213.30	0	1,083.15	0
Pet Rent	500.00	0	8,198.20	0
Miscellaneous Income	26.50	0	440.39	0
Vending Machine Income	0.00	0	26.41	0
Late Fee	503.30	0	5,919.80	0
Gate Cards/Remotes Fees	110.00	0	176.23	0
NonRefundable Fee (rent)	600.00	0	27,335.00	0
TOTAL OTHER INCOME	15,940.31	0	149,005.24	0
TOTAL INCOME	190,281.86	0	2,108,070.34	0
EXPENSES				
PROJECT MAINTENANCE EXPENSES				
Appliance Repairs	87.26	0	1,177.85	0
Lighting/Fan Repairs	0.00	0	470.11	0
Blinds	0.00	0	553.59	0
Sheetrock Repair	-110.00	0	-239.78	0
Cleaning Supplies	0.00	0	198.40	0
Carpet Cleaning & Repair	190.00	0	6,333.76	0
Carpet Replacement	0.00	0	10,261.30	0
Locks and Keys	0.00	0	105.60	0
Other Interior Maintenance	191.41	0	2,322.46	0
Carpet	1,726.19	0	5,621.38	0
Vinyl	0.00	0	419.72	0
Painting	750.00	0	3,383.74	0
Painting Exterior	0.00	0	63.70	0
Car Wash Repairs	0.00	0	128.90	0
Exterminating	345.00	0	4,232.23	0
HVAC (Heat, Ventilation, Air)	91.79	0	2,229.49	0
Electrical Repairs	261.33	0	1,723.89	0
Plumbing Repairs	284.77	0	5,618.36	0
Other Equipment Repairs	589.50	0	4,420.94	0
Fire Extinguisher Repair/Insp.	0.00	0	632.25	0
Annuals	0.00	0	549.67	0
Grounds Maintenance	600.00	0	21,680.53	0
Pine Straw	0.00	0	4,050.00	0
Pool Chemicals	0.00	0	593.17	0
Exterior Repairs	433.49	0	2,157.94	0
Contract Labor	390.00	0	13,640.25	0
TOTAL MAINTENANCE EXPENSE	5,830.74	0	92,329.45	0

The Legends at Mt. Pleasant - (Legends)
Dec 2003

	Month to Date	%	Year to Date	%
MANAGEMENT FEES	0.00	0	96,000.00	0
SECURITY EXPENSES				
Security Service	1,480.50	0	17,766.00	0
Controlled Access Gate	-2,796.83	0	-2,522.50	0
TOTAL SECURITY EXPENSES	-1,316.33	0	15,243.50	0
INSURANCE EXPENSES				
Property & Casualty	854.00	0	86,654.00	0
Liability	0.00	0	2,287.86	0
Workman's compensation	0.00	0	2,569.00	0
TOTAL INSURANCE EXPENSE	854.00	0	91,510.86	0
PROPERTY TAX EXPENSES				
Storm Water Tax	0.00	0	1,406.88	0
Property Tax	5,538.24	0	137,538.24	0
Personal Property Tax	367.61	0	367.61	0
TOTAL PROPERTY TAX	5,905.85	0	139,312.73	0
UTILITY EXPENSE				
Electric-Vacant Units	58.23	0	4,642.22	0
Electricity-House Meters	0.00	0	12,314.98	0
Electricity Club House	0.00	0	6,592.25	0
Water & Sewer	0.00	0	90.85	0
Water & Sewer Units	111.45	0	3,387.10	0
Trash Disposal	113.72	0	5,202.10	0
Compactor Lease	0.00	0	963.80	0
TOTAL UTILITY EXPENSE	283.40	0	33,193.30	0
GENERAL & ADMINISTRATIVE				
Office Supplies	261.27	0	1,547.22	0
Business License	0.00	0	4,918.53	0
Banking Costs	0.00	0	50.99	0
Telephone/Answering Service	482.49	0	5,981.11	0
Printing & Copying	122.96	0	1,002.83	0
Postage & Related	0.00	0	353.78	0
Courier/Overnight Delivery	116.84	0	770.50	0
Credit Verification	41.44	0	860.74	0
Collections Costs	155.93	0	840.91	0
Equipment Rental	74.20	0	890.40	0
Furniture Rental Expenses	-193.00	0	6,981.06	0
Computer Maintenance	0.00	0	110.24	0
Software & Supplies	11.71	0	254.32	0
Professional Dues	0.00	0	135.00	0
Training	100.00	0	326.13	0
Recruiting	92.18	0	1,091.16	0
Misc. Administrative	0.00	0	316.92	0
Legal & Accounting	106.50	0	4,556.15	0
Travel	34.21	0	716.08	0
TOTAL GENERAL & ADM. EXP.	1,406.73	0	31,704.07	0
MARKETING EXPENSES				
Newspaper/Radio Advertising	58.34	0	216.16	0

The Legends at Mt. Pleasant - (Legends)
Dec 2003

	Month to Date	%	Year to Date	%
Apartment Guides	835.00	0	20,844.00	0
Internet	202.90	0	2,887.29	0
Signs	400.00	0	5,216.00	0
Promotional Gifts	0.00	0	19.03	0
Other Marketing Supplies	0.00	0	217.34	0
TOTAL MARKETING EXPENSES	1,496.24	0	29,399.82	0
OPERATING SALARIES				
Assistant Manager	1,838.35	0	20,182.16	0
Leasing Agents	1,556.40	0	19,398.35	0
Maintenance Supervisor	0.00	0	21,083.88	0
Assistant Maintenance	0.00	0	2,337.38	0
Asset. Mgr.	1,602.03	0	20,746.70	0
TOTAL OPERATING SALARIES	4,996.78	0	83,748.47	0
SALARY RELATED				
SRE-Assistant Manager	913.71	0	8,399.75	0
SRE-Leasing Agents	424.36	0	6,090.21	0
SRE-Maintenance Supervisor	0.00	0	8,629.25	0
SRE-Assistant Maintenance	0.00	0	431.92	0
SRE-Asset Mgr.	443.32	0	15,694.86	0
TOTAL SALARY RELATED	1,781.39	0	39,245.99	0
Unemployment	0.00	0	1,377.32	0
TOTAL PAYROLL	6,778.17	0	124,371.78	0
TOTAL G & A EXPENSE	21,238.80	0	653,065.51	0
NET OPERATING INCOME	169,043.06	0	1,455,004.83	0
HUD INSURANCE EXPENSE	6,500.00	0	78,000.00	0
HUD AUDIT	0.00	0	4,000.00	0
DEBT EXPENSE				
1st Mortgage Interest	92,761.96	0	1,122,931.98	0
TOTAL DEBT SERVICE	92,761.96	0	1,122,931.98	0
TOTAL EXPENSES	99,261.96	0	1,204,931.98	0
NET INCOME	69,781.10	0	250,072.85	0

KEYSTONE LEGENDS I, L.P.
HUD PROJECT NO. 054-35605

PROFIT AND LOSS DATA
FOR THE YEAR ENDED DECEMBER 31, 2003

ACCT #			
	REVENUES:		
5120	Rent revenue - gross potential	$ 2,103,135	
5100T	Total rent revenue potential		$ 2,103,135
5220	Vacancies - apartments	144,070	
5200T	Total vacancies		144,070
5152N	Net rental revenue		1,959,065
5410	Financial revenue - project operations	2,497	
5440	Revenue from investments - replacement reserve	560	
5400T	Total financial revenue		3,057
5910	Laundry and vending	8,413	
5920	Tenant charges	147,220	
5900T	Total other revenue		155,633
5000T	Total revenue		2,117,755
	EXPENSES:		
6210	Advertising and marketing	24,976	
6250	Other renting expense	14,690	
6310	Office salaries	49,396	
6311	Office expenses	20,576	
6320	Management fee	96,000	
6330	Manager or superintendent salary	24,700	
6350	Audit fees	4,000	
6351	Bookkeeping/accounting services	600	
6370	Bad debt	1,351	
6263T	Total administrative expenses		236,289
6450	Electricity	25,466	
6451	Water and sewer	3,478	
6400T	Total utilities expense		28,944

KEYSTONE LEGENDS I, L.P.
HUD PROJECT NO. 054-35605

PROFIT AND LOSS DATA
FOR THE YEAR ENDED DECEMBER 31, 2003

EXPENSES (CONTINUED):

ACCT #				
6510	Payroll	28,336		
6515	Supplies	49,814		
6520	Contracts	39,553		
6525	Garbage and trash removal	6,166		
6530	Security payroll/contract	17,766		
6546	HVAC repair and maintenance	2,229		
6500T	Total operating and maintenance expenses			143,864
6710	Real estate taxes	137,538		
6711	Payroll taxes - project	7,712		
6720	Property and liability insurance	86,676		
6324	Workmen's compensation	2,569		
6723	Health insurance and other employee benefits	14,227		
6790	Miscellaneous taxes, licenses, permits & insurance	1,775		
6700T	Total taxes and insurance			250,497
6820	Interest on mortgage payable	1,115,374		
6850	Mortgage insurance premium/service charge	78,545		
6800T	Total financial expenses			1,193,919
6000T	Total cost of operations before depreciation			1,853,513
5060T	Profit (loss) before depreciation			264,242
6600	Depreciation expense			587,593
5060N	Operating profit or (loss)			(323,351)
7120	Legal expenses - entity	2,400		
7100T	Net entity expenses			2,400
3250	Net profit or (loss)		$	(325,751)

S1000-010	Total mortgage principal payments required during the period	$	83,097
S1000-020	Total of monthly deposits into the replacement reserve	$	52,838
S1000-030	Replacement reserve releases which are included as expense items	$	0

SALES CHART

Summary Of Improved Apartment Sales

No.	Date	Name Location	Year Built	Sales Price	No. Units	Size (SF)	Average Unit Size (SF)	Effective Gross Income	NOI	Price /Unit	NOI /Unit	Price /SF	NOI /SF	EGIM	Expense Percent*	Overall Rate
1	06/01	Carrington Place Mt. Pleasant, SC	2000	$16,197,370	244	236,128	968	$2,279,818	$1,337,070	$66,383	$5,480	$68.60	$5.66	7.10	41.4%	8.25%
2	07/02	The Enclave Charleston, SC	1998	$24,742,500	300	294,108	980	$3,454,147	$2,101,291	$82,475	$7,004	$84.13	$7.14	7.16	39.2%	8.49%
3	05/02	Cypress Cove Charleston, SC	2001	$19,325,000	264	274,104	1,038	$2,502,000	$1,523,300	$73,201	$5,770	$70.50	$5.56	7.72	39.1%	7.88%
4	08/03	Paces Brook Columbia, SC	1990	$14,000,000	260	220,868	849	$2,141,550	$1,079,150	$53,846	$4,151	$63.39	$4.89	6.54	49.6%	7.71%
5	05/01	Fairview Crossing Simpsonville, SC	1991	$11,700,000	240	215,296	897	$1,801,426	$1,056,226	$48,750	$4,401	$54.34	$4.91	6.49	41.4%	9.03%
6	05/02	Oak Pointe Simpsonville, SC	1997	$6,163,576	116	114,104	984	$944,300	$539,600	$53,134	$4,652	$54.02	$4.73	6.53	42.9%	8.75%
7	12/03	Greyeagle Greenville, SC	1991	$5,852,000	156	154,624	991	$986,700	$479,865	$37,513	$3,076	$37.85	$3.10	5.93	51.4%	8.20%
8	10/03	Columbiana Lakes Columbia, SC	1996	$10,500,000	204	209,096	1,025	$1,590,000	$825,000	$51,471	$4,044	$50.22	$3.95	6.60	48.1%	7.86%
9	04/02	Huntington Place Columbia, SC	1998	$11,657,000	192	242,496	1,263	$1,745,000	$1,000,000	$60,714	$5,208	$48.07	$4.12	6.68	42.7%	8.58%

RENTAL COMPARABLES

The Legends at Mt. Pleasant Rental Community
Unit Mix and Market Rents as of 12/31/03

Type	# of Units	Market Rents	Description	Size SF
A-1	23	740	1 Bdr	787
A-1S	0		1 Bdr Solarium	787
A-2	33	795	1 Bdr	875
A-3G	5	985	1 Bdr w/garage	997
B-1	2	940	2 Bdr 2 B	1198
B-1S	1	940	2 Bdr 2 B Solarium	1198
B-1G	6	1085	2 Bdr 2 B w/garage	1222
B-2	38	1010	2 Bdr 2 B	1394
B-2G	1	1185	2 Bdr 2 B w/garage	1369
C-1	9	1225	3 Bdr 2 B	1536
C-1G	3	1375	3 Bdr 2 B w/garage	1596
Total	121			

ALEXAN BELLE HALL

1600 BELLE POINTE DRIVE
MT. PLEASANT, SC 29464
Tel: (866) 882-6273 Fax: (843) 856-9620
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 214 Photo file:

Management

TRAMMELL CROW RESIDENTIAL SERV
3801 LAKE BOONE TRAIL SUITE 320
RALEIGH, NC 27607
Tel:
Fax:

Community Features

- [x] Clubhouse
- [x] Business Center
- [ ] Tennis Courts
- [x] Swimming Pool
- [x] Rec./Exer. Room
- [ ] Playground/Court
- [x] Laundry Facility
- [ ] Courtesy Officer
- [ ] Security Guard
- [ ] Burglar Alarms
- [ ] Controlled Access

Floorplan features - fee

[x] Storage	$0
[x] Garage	$75
[ ] Carport	$0
[x] Fireplace	$0
[ ] Microwave	$0
[x] Ceiling Fan	$0
[x] W/D Connect	$0
W/D Units	$0
[x] Patio/Balcony	$0
[x] 9' Ceilings	$0
View	$25
Upper Floor	$0

Construction Information

Bldg. Status: COMPLETED
Year Built: 2001
In Lease Up: No
Units Complete: 240
Units U/C: 0
Units Proposed: 0
Floors:
Acreage:
Units / Acre:
Tax Parcel:
Turnover Rate :

Ownership

TRAMMELL CROW RESIDENTIAL
2859 PACES FERRY ROAD SUITE 1100
ATLANTA GA 30339
Tel: (770) 801-3120 Fax: (770) 801-1256

RANDOLPH DEVELOPMENT
528 ISLAND WALK WEST
MT. PLEASANT SC 29464-
Tel: (843) 849-4944 Fax:
Purchase Date:
Purchase Price: $0
Price/Unit: $0

Current Occupancy / Rents as of 6/15/03

Bdrms	Bath	Type	Sq. Ft.	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	764	$805 - $805	$1.054	90	7	7.8%
1	1	GRDN	788	$835 - $835	$1.060	8	1	12.5%
1	1	GRDN	864	$955 - $955	$1.105	18	1	5.6%
2	2	GRDN	1,085	$1,015 - $1,015	$0.935	40	2	5.0%
2	2	GRDN	1,130	$1,035 - $1,060	$0.927	24	2	8.3%
2	2	GRDN	1,181	$1,060 - $1,060	$0.898	12	1	8.3%
2	2	GRDN	1,226	$1,105 - $1,105	$0.901	8	1	12.5%
2	2.5	TNHS	1,399	$1,355 - $1,355	$0.969	8	1	12.5%
2	2.5	TNHS	1,612	$1,480 - $1,480	$0.918	8	1	12.5%
2	2.5	TNHS	1,670	$1,630 - $1,630	$0.976	8	1	12.5%
3	2.5	GRDN	1,332	$1,340 - $1,340	$1.006	12	1	8.3%
3	2.5	GRDN	1,422	$1,365 - $1,365	$0.960	4	0	0.0%
Totals/Averages			1,018		$0.999	240	19	7.9%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms: One	Two	Three
12/15/02	240	55	22.9%	$850	$1,226	$1,318
6/15/02	200	173	86.5%	$806	$1,209	$1,313

Current Deposits / Fees / Concessions

Pets / Fees

Pets Allowed: No
Dep. Refundable: $0
Dep. NON-Refund: $0
Pet Rent / month: $0

Security Deposit / Fees

Application Fee: $0
Dep. Refundable: $300
Dep. NON-Refund $0

Utilities Included

- [ ] Water
- [ ] Heat
- [ ] Elec.
- [ ] CableTV.
- [ ] Recycling

Current Rent Concessions

Yes - UP TO 2 MOS FREE RENT W/14 MO LSE ON SELECT UNITS

Map

CARRINGTON PLACE/PARK W.

1300 PARK WEST BOULEVARD
CHARLESTON, SC 29464
Tel: (843) 856-4946 Fax: (843) 856-4914
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 206 Photo file: 0206CSP1.JPG

Management

SENTINEL REAL ESTATE
7905 WATERFORD LAKES DRIVE
CHARLOTTE, NC 28210
Tel: (704) 752-1628
Fax:

Community Features	Floorplan features	fee
☑ Clubhouse	☐ Storage	$0
☐ Business Center	☑ Garage	$0
☑ Tennis Courts	☐ Carport	$0
☑ Swimming Pool	☑ Fireplace	$0
☑ Rec./Exer. Room	☐ Microwave	$0
☐ Playground/Court	☑ Ceiling Fan	$0
☑ Laundry Facility	☑ W/D Connect	$0
☐ Courtesy Officer	☐ W/D Units	$0
☐ Security Guard	☑ Patio/Balcony	$0
☑ Burglar Alarms	☑ 9' Ceilings	$0
☐ Controlled Access	☐ View	$0
	☐ Upper Floor	$0

Construction Information

Bldg. Status:	COMPLETED
Year Built:	2000
In Lease Up:	No
Units Complete:	244
Units U/C:	0
Units Proposed:	0
# Floors:	2-3 FLOORS
Acreage:	19.22
Units / Acre:	13
Tax Parcel:	598-00-00-040
Turnover Rate :	

Ownership

SENTINEL REAL ESTATE TOWNPLACE A
1251 AVENUES OF THE AMERICAS 35TH
NEW YORK NY 10020
Tel: (212) 408-5064 Fax: (212) 603-4963

Tel: Fax:
Purchase Date: 6/15/01
Purchase Price: $16,187,000
Price/Unit: $66,381

Current Occupancy / Rents as of 6/15/03

Bdrm	Bath	Type	Sq. Ft.	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	812	$690 - $690	$0.850	56	3	5.4%
1	1	GRDN	872	$735 - $735	$0.843	40	2	5.0%
2	1	GRDN	1,138	$850 - $850	$0.747	48	3	6.3%
2	2	GRDN	1,165	$885 - $885	$0.760	32	2	6.3%
2	2	GRDN	1,289	$905 - $905	$0.702	48	3	6.3%
3	2	GRDN	1,387	$1,100 - $1,100	$0.793	20	1	5.0%
Totals/Averages			1,073		$0.783	244	14	5.7%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms One	Two	Three
12/15/02	244	27	11.1%	$713	$880	$1,100
6/15/02	244	21	8.6%	$688	$870	$1,100
12/15/01	244	61	25.0%	$688	$893	$1,040
6/15/01	244	44	18.0%	$688	$893	$1,040
12/15/00	244	79	32.4%	$688	$893	$1,040
6/15/00	92	30	32.6%	$688	$893	$1,040

Current Deposits / Fees / Concessions

Pets / Fees		Security Deposit / Fees		Utilities Included
Pets Allowed:	Yes	Application Fee:	$50	☐ Water
Dep. Refundable:	$250	Dep. Refundable:	$250	☐ Heat
Dep. NON-Refund:	$250	Dep. NON-Refund	$0	☐ Elec.
Pet Rent / month:	$0			☐ CableTV .
				☐ Recycling

Current Rent Concession

Yes . UP TO ONE MONTH FREE RENT W/12 MONTH LEASE

Map

© 2003 Real Data

LEGENDS AT MT. PLEASANT

1100 LEGENDS CLUB DRIVE
MT. PLEASANT, SC 29466
Tel: (843) 216-1000 Fax: (843) 216-1110
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 204 Photo file: 0204CSP1.JPG

Management

KEYSTONE LEGENDS INC
1100 LEGENDS CLUB DRIVE
MT. PLEASANT, SC 29466
Tel: (843) 216-1000
Fax: (843) 216-1110

Community Features

- [x] Clubhouse
- [x] Business Center
- [x] Tennis Courts
- [x] Swimming Pool
- [x] Rec./Exer. Room
- [x] Playground/Court
- [ ] Laundry Facility
- [ ] Courtesy Officer
- [ ] Security Guard
- [x] Burglar Alarms
- [x] Controlled Access

Floorplan features

	Fee
[x] Storage	$25
[x] Garage	$150
[ ] Carport	$0
[x] Fireplace	$15
[x] Microwave	$0
[x] Ceiling Fan	$0
[x] W/D Connect	$0
[x] W/D Units	$45
[x] Patio/Balcony	$15
[x] 9' Ceilings	$0
View	$0
Upper Floor	$10

Construction Information

Bldg. Status:	COMPLETED
Year Built	2000
In Lease Up:	No
Units Complete:	200
Units U/C:	0
Units Proposed:	0
# Floors:	2-3 FLOORS
Acreage:	
Units / Acre:	
Tax Parcel:	
Turnover Rate :	

Ownership

KEYSTONE DEVELOPMENT
1251 NATIONAL DRIVE SUITE 100
MT. PLEASANT SC 29464-
Tel: (843) 884-1588 Fax:

Tel: Fax:
Purchase Date:
Purchase Price: $0
Price/Unit: $0

Current Occupancy / Rents as of 6/15/03

Bdrms	Bath	Type	Sq. Ft.	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	787	$685 - $685	$0.870	8	0	0.0%
1	1	GRDN	787	$685 - $685	$0.870	24	2	8.3%
1	1	GRDN	875	$740 - $770	$0.863	40	4	10.0%
1	1	GRDN	997	$950 - $950	$0.953	8	0	0.0%
2	2	GRDN	1,198	$885 - $905	$0.747	8	0	0.0%
2	2	GRDN	1,198	$885 - $905	$0.747	8	1	12.5%
2	2	GRDN	1,222	$1,025 - $1,025	$0.839	8	1	12.5%
2	2	GRDN	1,369	$1,150 - $1,150	$0.840	8	1	12.5%
2	2	GRDN	1,394	$975 - $975	$0.699	64	5	7.8%
3	2	GRDN	1,536	$1,225 - $1,225	$0.798	16	2	12.5%
3	2	GRDN	1,596	$1,375 - $1,375	$0.862	8	0	0.0%
Totals/Averages			1,173		$0.799	200	16	8.0%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms One	Two	Three
12/15/02	200	14	7.0%	$769	$988	$1,300
6/15/02	200	22	11.0%	$769	$988	$1,300
12/15/01	200	49	24.5%	$769	$988	$1,300
6/15/01	200	81	40.5%	$768	$997	$1,285
12/15/00	148	68	45.9%	$811	$1,036	$1,313
6/15/00	44	11	25.0%	$814	$1,036	$1,313

Current Deposits / Fees / Concessions

Pets / Fees

Pets Allowed: Yes
Dep. Refundable: $250
Dep. NON-Refund: $100
Pet Rent / month: $0

Security Deposit / Fees

Application Fee: $40
Dep. Refundable: $150
Dep. NON-Refund $150

Utilities Included

- [ ] Water
- [ ] Heat
- [ ] Elec.
- [ ] CableTV.
- [ ] Recycling

Current Rent Concessions

Yes - ONE MONTH FREE RENT

Map

LONG GROVE@SEASIDE FARMS

1600 LONG GROVE DRIVE
MT. PLEASANT, SC 29464
Tel: (843) 971-3849 Fax: (843) 971-3359
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 198 Photo file: 0198CSP1.JPG

Management

BEACH COMPANY, THE
211 KING STREET SUITE 300
CHARLESTON, SC 29401
Tel: (843) 722-2615
Fax: (843) 722-6449

Community Features	Floorplan features	fee
✔ Clubhouse	☑ Storage	$0
✔ Business Center	☑ Garage	$95
Tennis Courts	☐ Carport	$0
☑ Swimming Pool	☑ Fireplace	$10
✔ Rec./Exer. Room	☐ Microwave	$0
Playground/Court	☑ Ceiling Fan	$0
✔ Laundry Facility	☑ W/D Connect	$0
✔ Courtesy Officer	✔ W/D Units	$50
Security Guard	✔ Patio/Balcony	$0
Burglar Alarms	✔ 9' Ceilings	$0
Controlled Access	View	$20
	Upper Floor	$10

Construction Information

Bldg. Status:	COMPLETED
Year Built:	1999
In Lease Up:	No
Units Complete:	272
Units U/C:	0
Units Proposed:	0
# Floors:	2-3 FLOORS
Acreage:	19.44
Units / Acre:	14
Tax Parcel:	561-00-00-147
Turnover Rate	43%

Ownership

BEACH COMPANY LONG GROVE SEASID
211 KING STREET SUITE 300
CHARLESTON SC 29401
Tel: (843) 722-2615 Fax: (843) 971-3849

Tel: Fax:
Purchase Date:
Purchase Price: $0
Price/Unit: $0

Current Occupancy / Rents as of 6/15/03

Bdrms	Bath	Type	Sq Ft	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	850	$805 - $855	$0.976	68	2	2.9%
2	1	GRDN	924	$890 - $940	$0.990	40	3	7.5%
2	2	GRDN	1,112	$940 - $990	$0.868	96	8	8.3%
3	2	GRDN	1,265	$1,090 - $1,120	$0.874	68	9	13.2%
Totals/Averages			1,057		$0.914	272	22	8.1%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms One	Two	Three
12/15/02	272	52	19.1%	$830	$940	$1,105
6/15/02	272	24	8.8%	$830	$940	$1,100
12/15/01	272	46	16.9%	$799	$915	$1,090
6/15/01	272	78	28.7%	$799	$900	$1,090
12/15/00	272	75	27.6%	$799	$900	$1,125
6/15/00	272	68	25.0%	$767	$899	$1,110
12/15/99	64	44	68.8%	$727	$869	$1,090

Current Deposits / Fees / Concessions

Pets / Fees		Security Deposit / Fees		Utilities Included
Pets Allowed:	Yes	Application Fee:	$50	☐ Water
Dep. Refundable:	$200	Dep. Refundable:	$100	☐ Heat
Dep NON-Refund:	$200	Dep. NON-Refund	$200	☐ Elec.
Pet Rent / month:	$0			☐ CableTV
				✔ Recycling

Current Rent Concessions:

Yes - UP TO ONE MONTH FREE ON SELECT UNIT TYPES

Map

RIVER OAKS

100 EIGHTY OAK AVENUE
MT. PLEASANT, SC 29464
Tel: (843) 856-1400 Fax: (843) 216-0050
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 202 Photo file: 0202CSP1.JPG

Management

BEACH COMPANY, THE
211 KING STREET SUITE 300
CHARLESTON, SC 29401
Tel: (843) 722-2615
Fax: (843) 722-6449

Community Features

- ✔ Clubhouse
- ✔ Business Center
- ✔ Tennis Courts
- ✔ Swimming Pool
- ✔ Rec./Exer. Room
- ✔ Playground/Court
- ✔ Laundry Facility
- ✔ Courtesy Officer
- Security Guard
- ✔ Burglar Alarms
- Controlled Access

Floorplan features- fee

☐	Storage	$0
☑	Garage	$95
☐	Carport	$0
☑	Fireplace	$0
☐	Microwave	$0
☑	Ceiling Fan	$0
☑	W/D Connect	$0
☑	W/D Units	$50
☑	Patio/Balcony	$0
☑	9' Ceilings	$0
	View	$20
	Upper Floor	$25

Construction Information

Bldg. Status: COMPLETED
Year Built: 2000
In Lease Up: No
Units Complete: 360
Units U/C: 0
Units Proposed: 0
Floors: 2-3 FLOORS
Acreage:
Units / Acre:
Tax Parcel:
Turnover Rate :

Ownership

REGENT PARTNERS
3348 PEACHTREE ROAD NE SUITE 1000
ATLANTA GA 30326
Tel: (404) 364-1400 Fax:

BROAD STREET PARTNERS

Tel: (843) 853-2171 Fax:
Purchase Date:
Purchase Price: $0
Price/Unit: $0

Current Occupancy / Rents as of 6/15/03

Bdrms	Bath	Type	Sq. Ft.	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	736	$710 - $910	$1.101	64	1	1.6%
1	1	GRDN	875	$760 - $860	$0.926	80	2	2.5%
2	1	GRDN	1,040	$835 - $1,035	$0.899	48	1	2.1%
2	2	GRDN	1,149	$910 - $1,110	$0.879	120	6	5.0%
3	2	GRDN	1,387	$1,210 - $1,335	$0.917	48	26	54.2%
Totals/Averages			1,032		$0.937	360	36	10.0%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms One	Two	Three
12/15/02	360	151	41.9%	$810	$973	$1,273
6/15/02	360	122	33.9%	$810	$973	$1,273
12/15/01	360	188	52.2%	$848	$991	$1,323
6/15/01	268	212	79.1%	$838	$981	$1,313

Current Deposits / Fees / Concessions

Pets / Fees

Pets Allowed: Yes
Dep. Refundable: $200
Dep. NON-Refund: $200
Pet Rent / month: $0

Security Deposit / Fees

Application Fee: $50
Dep. Refundable: $100
Dep. NON-Refund $200

Utilities Included

- ☐ Water
- ☐ Heat
- ☐ Elec.
- ☐ CableTV .
- Recycling

Current Rent Concessions

Yes - ONE MONTH FREE W/12 MONTH LEASE

Map

SOUTHAMPTON

2500 BEAUCASTEL ROAD
MT. PLEASANT, SC 29464
Tel: (843) 856-2766 Fax: (843) 856-2778
Area: MT. PLEASANT -
Type: CONVENTIONAL
Map #: 198 Photo file: 0199CSP1.JPG

Management

STEVEN D. BELL
P O BOX 3288
GREENSBORO, NC 27402
Tel: (336) 272-7196
Fax: (336) 378-9705

Community Features	Floorplan features	fee
✓ Clubhouse	✓ Storage	$40
✓ Business Center	✓ Garage	$80
✓ Tennis Courts	Carport	$0
✓ Swimming Pool	✓ Fireplace	$15
✓ Rec./Exer. Room	Microwave	$0
Playground/Court	Ceiling Fan	$0
✓ Laundry Facility	✓ W/D Connect	$0
✓ Courtesy Officer	W/D Units	$0
Security Guard	✓ Patio/Balcony	$0
Burglar Alarms	✓ 9' Ceilings	$0
✓ Controlled Access	View	$0
	Upper Floor	$0

Construction Information

Bldg. Status:	COMPLETED
Year Built:	1999
In Lease Up:	No
Units Complete:	240
Units U/C:	0
Units Proposed:	0
# Floors:	2-3 FLOORS
Acreage:	
Units / Acre:	
Tax Parcel:	
Turnover Rate :	

Ownership

STEVEN D. BELL
P.O. BOX 3288
GREENSBORO NC 27402-
Tel: (336) 272-7196 Fax (336) 378-9705

Tel: Fax:
Purchase Date: 8/19/00
Purchase Price: $18,750,000
Price/Unit: $82,292

Current Occupancy / Rents as of 6/15/03

Bdrms	Bath	Type	Sq. Ft.	Rent Range	Rent/sf	Units	Vac.	Vac.%
1	1	GRDN	928	$749 - $779	$0.823	108	3	2.8%
2	2	GRDN	1,139	$915 - $930	$0.810	70	2	2.9%
2	2	GRDN	1,182	$899 - $914	$0.767	30	1	3.3%
2	2	GRDN	1,204	$965 - $980	$0.808	8	0	0.0%
3	2.5	GRDN	1,412	$1,199 - $1,214	$0.854	24	1	4.2%
Totals/Averages			1,079		$0.815	240	7	2.9%

Historical Occupancy / Rents

Survey Date	Units	Vac #	Vac %	Rents by Bedrooms One	Two	Three
12/15/02	240	22	9.2%	$764	$934	$973
6/15/02	240	7	2.9%	$764	$935	$1,207
12/15/01	240	22	9.2%	$738	$929	$1,207
6/15/01	240	21	8.8%	$738	$929	$1,207
12/15/00	240	58	24.2%	$707	$928	$1,207
6/15/00	240	11	4.6%	$798	$995	$1,285
12/15/99	240	17	7.1%	$798	$995	$1,285
6/15/99	240	120	50.0%	$785	$988	$1,235

Current Deposits / Fees / Concessions

Pets / Fees

Pets Allowed: Yes
Dep. Refundable: $0
Dep. NON-Refund: $300
Pet Rent / month: $0

Security Deposit / Fees

Application Fee: $40
Dep. Refundable: $250
Dep. NON-Refund $150

Utilities Included

- Water
- Heat
- Elec.
- CableTV
- Recycling

Current Rent Concessions

No

Map

CONDOMINIUM VALUATION

APPRAISAL OF REAL ESTATE
THIRTEENTH EDITION

MARSHALL DODDS COMPANY, INC.

Readers of this text may be also be interested in the following publications from the Appraisal Institute:

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- *The Appraisal of Rural Property*, second edition
- *Appraising Industrial Properties*
- *Scope of Work*
- *Market Analysis for Real Estate: Concepts and Applications in Valuation and Highest and Best Use*
- *Real Estate Valuation in Litigation*, second edition
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The Appraisal of Real Estate

THIRTEENTH EDITION

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The Appraisal Institute advances global standards, methodologies, and practices through the professional development of property economics worldwide.

Valuation of Water Rights

Water rights separated from the fee simple interest may have a different market value than the water rights as part of the fee simple interest. Identifying the specific type of water rights being appraised—e.g., prescriptive water rights, appropriative water rights, groundwater rights, riparian rights, contractual entitlements—is essential because the limitations on use and access imposed by different types of ownership interests affect the comparability and transferability of those rights. The ownership of water rights can be complex and even contentious, and legal counsel may be needed to fully analyze the issues involved in identifying and appraising water rights separately.

In the western half of the United States, water rights are often bought and sold in an identifiable market, making direct comparisons possible. If ground leases for the use of water are available, that information may be applicable in the income capitalization approach. The rates charged by local utilities for water are not usually an indicator of the value of the water to a property owner because of the many additional costs (administration, overhead, etc.) built into the consumer price of water.

When valuing water rights attached to land, usually with the before-and-after valuation technique, an appraiser must consider the cost of bringing water to a property, which may be borne by the owner of the water rights or by the provider of the water (e.g., the local water district).

Valuation of Subsurface Rights

Appraising the right to obtain and market the minerals present underground requires the consideration of a wide variety of physical and business characteristics that affect the value and use of land subject to a subsurface mining easement. Analysis of the estimated mineral reserves, the quality of the resource, the capacity for extraction, market demand and pricing for the commodity, transportation costs, and many other factors may be outside a real property appraiser's field of expertise. Due to the complexity of identifying and analyzing relevant characteristics, assignments to value subsurface rights generally involve the collaboration of business appraisers, real property appraisers, geologists, and other experts.

A contractual royalty rate granting rights to extract a mineral from the land can provide an indication of the income-generating potential of the land. A capitalization or yield rate applied to the royalty rent would not reflect expenses of operation, capital costs, and other expenses related to the mining operation. Deriving appropriate discount rates for the mineral rights alone from sales of entire mines can be difficult because of the presence of other assets and liabilities such as other mine operations, pension fund liabilities, and employee benefit liabilities. Similarly, direct comparison of sales must factor in business value or other non-realty components present in comparable mining operations.

Valuation of Condominiums and Cooperatives

Real estate divided into condominium or cooperative units can be valued using most traditional appraisal methodologies.

To value individual condominium units (residential, office, industrial, or other property types), appraisers generally use the sales comparison approach. Recent sales of units of comparable size, location, and quality are the best indicators of value. The income capitalization approach may also be applicable if some condominium units are rented rather than occupied by the owners. For example, a leased office condominium unit could be valued by the income capitalization approach using traditional techniques. The cost approach is usually not applicable in the appraisal of any type of condominium unit because it is difficult to estimate site value and the contributory value of common elements.

To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimates of future sellout prices and the timing of sales are key elements in the valuation.

Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

If an active market for units in a cooperatively owned property exists, appraisers can value individual units with the sales comparison approach. However, appraisers must remember that prices are influenced by the amount and terms of the mortgage financing that the corporation has placed on the building. Often corporate bylaws impose limitations on the property's marketability, which can affect the validity of comparable sales data.

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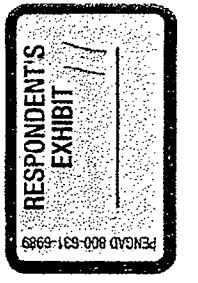
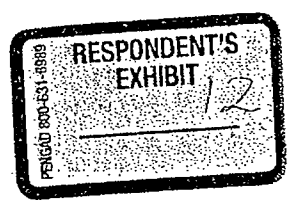


Floor Plan	Assessor 2003 Values	Subtotals	Alternative 2003 Values -- 29466	Subtotal
1 Bedroom Units				
Azalea Plan (13)	$ 105,000	$ 1,365,000	$ 60,676	$ 788,788
Azalea Elongated Plan (10)	$ 107,000	$ 1,070,000	$ 61,839	$ 618,390
Dogwood Plan (33) *	$ 110,000	$ 3,630,000	$ 63,568	$ 2,097,744
Magnolia Garage Plan (5)	$ 134,000	$ 670,000	$ 77,426	$ 387,130
2 Bedroom Units				
Jasmine Plan (2) *	$ 148,000	$ 296,000	$ 101,393	$ 202,786
Jasmine Elongated Plan (1)	$ 156,000	$ 156,000	$ 106,868	$ 106,868
Jasmine Garage Plan (6)	$ 170,000	$ 1,020,000	$ 116,460	$ 698,760
Oleander Plan (38)	$ 157,000	$ 5,966,000	$ 107,558	$ 4,087,204
Oleander Garage Plan (1)	$ 175,000	$ 175,000	$ 119,887	$ 119,887
3 Bedroom Units				
Camellia Plan (9) *	$ 170,000	$ 1,530,000	$ 141,454	$ 1,273,086
Camellia Garage Plan (3)	$ 192,000	$ 576,000	$ 159,758	$ 479,274
	Total:	$ 16,454,000		$ 10,859,917

* Base Unit

Unit Sales

2006:		44
2007:	January:	1
	February:	0
	March:	2
	April:	1
	May:	2
	June:	1
	July:	4
	August:	0
	September:	0
	October:	0
	November:	1
	December:	1
2008:		
	January:	0
	February:	0
	March:	0
	April:	0
	May:	0
	June:	0
	July:	0
	August:	0
	September:	0
	October:	0
	November:	0
	December:	0
2009:		1



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
Attorneys for Appellant

Charleston, South Carolina
March 6, 2012

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor, Petitioner, v. LMP Properties, Inc., Respondent.	)	Docket No. 09-ALJ-17-0533-A-CC **FINAL ORDER AND DECISION**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on remand from the South Carolina Court of Appeals pursuant to Charleston County Assessor v. LMP Properties, Inc., Opinion No. 5086 (Ct. App. 2013). The Court of Appeals reversed the ALC's order to the extent it determined LMP Properties, Inc.'s ("Taxpayer") 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

Following timely notice to the parties, oral arguments were held at the offices of the Court in Columbia, South Carolina, on July 30, 2013. Based upon the oral and written arguments of the parties, in conjunction with the Record created during the contested case hearing on August 24-25, 2010, I find and conclude that the highest and best use of the property, as of December 31, 2007, is an apartment complex. Accordingly, the Assessor shall value the 121 condominium units owned by the Taxpayer at $8,565,000 for the 2008 tax year.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are collectively known as The Legends of Mount Pleasant ("LMP" or "subject property"). The

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subject property was initially built in 2000 as part of a 200 unit apartment complex.[1]

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount $15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.[2] This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006."

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 et seq.[3] On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to the Taxpayer.[4]

4. Following the conversion of the property to a horizontal property regime, the Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, the Taxpayer sold 44 units. In 2007, the Taxpayer sold 13 units, and in 2008, the Taxpayer marketed 20 condominium units for sale, but zero units were sold. As of August 24, 2010, – the date of the initial contested case hearing – the Taxpayer had sold a total of 58 of the 200 condominium units. One Hundred Forty-Two units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at the August 24, 2010

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[1] The original apartment complex consisted of 13 buildings on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 ($11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

[2] The mortgage note was dated May 26, 1999, and recorded on May 27, 1999, in the Charleston County RMC's Office.

[3] A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006, in Charleston County RMC's Office.

[4] Ronald W. Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Following the conversion of the property from apartments to condominiums in 2006, the Charleston County Assessor ("Assessor") changed its records to reflect the property as 200 separate units, and each unit was assigned a separate tax identification number.[5] The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes and determined that the fair market value of the property for tax year 2008 was $16,454,000. The Taxpayer disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. The Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals ("Board"). Following a hearing on November 4, 2009, the Board set a compromised value of $10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

7. A hearing on the merits was held on August 24-25, 2010. On October 11, 2011, the Court issued its Final Order and Decision and ordered that the Assessor value the property at $8,565,000 as an apartment complex with a valuation date of December 31, 2003.

8. The Assessor appealed the Final Order and Decision to the South Carolina Court of Appeals. The Court of Appeals reversed the ALC's order to the extent it determined the Taxpayer's 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

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[5] S.C. Code Ann. § 27-31-270 states:

> Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on **each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole.** No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A), S.C. Code Ann. § 1-23-600, and S.C. Code Ann. §§ 1-23-310 et seq.

2. While this matter initially reached this Court somewhat in the posture of an appeal, the proceeding before the Court was a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

3. In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. S.C. Tax Comm'n. v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation § 410 (1954). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. The trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an

expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See S.C. Cable Television Ass'n. v. S. Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. South Carolina law proscribes the method to determine the fair market value of real property in this State:

> All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930. Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). Accordingly, real property in South Carolina is assessed in accordance with the property's highest and best use.

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation year. Moreover, the South Carolina Court of Appeals, on appeal from this Court's October 11, 2011 Order, has determined that the property's highest and best use is to be determined as of December 31, 2007.

8. The Appraisal Institute defines highest and best use as follows: "The reasonably

probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

9. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p. 105.

10. The Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.

2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.

3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.

4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

11. The parties agree, through their experts, that the single-family dwelling condominium units and apartment units are physically possible on the property. Therefore, the physically possible prong of the 4-part test is satisfied.

12. In its February 27, 2013 Opinion, the Court of Appeals determined that the legally permissible standard should be applied on December 31, 2007. All parties agree that there were no legal impediments to the units' use on December 31, 2007. Accordingly, the legally permissible prong of the test is equally satisfied.

13. There are only two parts of the test left to satisfy: financially feasible and maximally productive.

APPLICATION OF LAW TO FACTS

Highest and Best Use – Financially Feasible

14. Ron Follmann ("Follmann"), a principal in the Taxpayer, testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the Lender had a presale requirement of 40 units. Follmann testified he was only able to secure 23 presales, but the Lender ultimately agreed to modify the presale requirement. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

15. The Taxpayer presented Frank Headley ("Headley"), an appraiser with over thirty years of experience, as an expert witness. Headley was qualified as an expert by the Court. Headley testified that Follmann's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Headley also testified there were other failed condominium conversions during that timeframe.

16. Headley concluded that it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not

satisfy the highest and best use test as of December 31, 2007.

17. The Court finds the Taxpayer's actual experience in attempting to sell condominium units important in determining the highest and best use of the property as of December 31, 2007. While it may have been financially feasible for the Taxpayer to have converted to condominiums in 2003, it clearly was not so by the end of 2007. The Taxpayer's conversion of the property from apartments for rent to condominiums for sale was significantly hindered by the same weak economy that affected the real estate market in general. The Court concludes that it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Therefore, the 121 units should be valued as apartments, which is how they were actually being used at the time.

18. Based on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at $8,565,000. The Assessor's expert reached this value by dividing the net operating income of $729,182 by the capitalization rate of 7.50%, which yields a value of $9,725,000. To this value, a deduction rate of 11.94% or $1,161,165 is applied.[6] Subtracting the reduction in value of the apartment complex of $1,161,165 from $9,725,000 renders a value of $8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of $735,807 by a capitalization rate of 8.25% to value the subject property at $8,920,000. However, the Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that the Assessor's value yields the highest rate of return when the subject property is valued as apartments.

Valuing Condominiums as Apartments

19. Even if it had been financially feasible for the property to be used as condominiums as of December 31, 2007, and even if that use turned out to be maximally productive, the Taxpayer

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6 The 11.94% reduction of value is based on the Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at $16,900,000 as of December 31, 2003; however after the Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to $14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction.

contends the 121 units should still be valued according to their use as apartments rather than how they are titled – as condominiums. The Taxpayer relies on Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), in support of its position.

20. In Lindsey[7], the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. These units were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the 45 units by assessing each unit as a separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96. The Assessor appealed to the South Carolina Tax Commission, who ruled that the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id.

21. The taxpayers in Lindsey contended that the 45 units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The Supreme Court rejected the Assessor's argument:

> The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The Supreme Court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

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7 John R. Lindsey was the Charleston County Assessor at the time. Tamsburg was one of the parties challenging the assessment. The parties have referred to the case as the Tamsburg case.

22. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. In accordance with the policy, the Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation:

> This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]"

23. Toy Glennon ("Glennon"), the current Charleston County Assessor, testified at the hearing. The Charleston County Assessor's Office does not affirmatively tell taxpayers that fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. A taxpayer would have to file an appeal and request the Lindsey treatment before the Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Glennon testified that she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment.

24. Glennon testified that her office declined to give the Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it was significant that some of the original group of 200 units had been sold. Glennon also believed that the subject property – unlike the property at issue in Lindsey – was in a desirable location.

25. Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of

Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. In addition, Glennon testified that the subject property is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Glennon interpreted the master deed for the subject property as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to the Taxpayer and could not be passed from the Taxpayer to a third party buyer if the units were sold in bulk. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for the subject property contained any such limitation.

26. The Court concludes the 121 units at issue in this case are substantially similar to the 45 townhouse units at issue in Lindsey and should be assessed the same way. There is no dispute that these 121 units were being used as apartments as of the time of the contested case hearing. Their use has never changed. The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006. This change resulted in the assignment by the Assessor of an individual tax identification number to each unit. "Title, however, is not the determining factor in valuation." Id., 302 S.C. at 508, 397 S.E.2d at 97. Regardless of the specific individual characteristics of the subject properties, the Supreme Court made clear in Lindsey that **use** is the determining factor in valuation. Id. The property must be valued in accordance with its use as an apartment complex.

Analysis of the Assessor's Proposed Valuations as Individual Condominiums

27. The Taxpayer also challenges the underlying data and methodology employed by the Assessor in valuing the units individually as condominiums. As evidence of the units' values as condominiums, the Assessor presented the testimony of three of its employees, all of which are appraisers. All gave expert testimony and all were qualified to do so. Gary James ("James") testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. He based his valuation of the units as apartments on an analysis performed by Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the

use as condominiums to be higher than the value based on the use as apartments, James concluded that the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then incorporated Angela Sawadske's appraisals of the individual units as the values being put forth by Assessor as the final assessments.

28. Angela Sawadske ("Sawadske"), employed by the Assessor, testified that the sales comparison approach was the most reliable method for valuing the individual condominiums. The sales comparison approach arrives at a value for a particular property by analyzing sales prices of similar properties. The more similar the sales comparable is to the subject property, the better the basis that sales comparable provides for estimating the value of the subject property. Location is a key factor in selecting and analyzing a comparable.

29. The subject property is located in Mt. Pleasant just off Highway 17. Mt. Pleasant is connected to downtown Charleston by Highway 17 and is connected to North Charleston by Interstate 526. It is on the edge of northeastern Mt. Pleasant, and as such those living in the area must travel on Highway 17 for over twelve miles to get to downtown Charleston. Mt. Pleasant has grown rapidly in recent years.

30. Generally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is located in zip code 29466.

31. Sawadske based her valuation of the 121 units upon the sales comparables she chose. Her valuation opinion stands or falls on the sales comparables she chose and how she adjusted them to determine a value for the subject property. See Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986) ("The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated."). An evaluation of Sawadske's appraisals, therefore, requires a close examination of the sales comparables she chose.

32. In determining the value for the one bedroom units, Sawadske relied on three sales comparables. Comparable #1 is a condominium unit with 800 square feet that sold for $125,000, resulting in a per square foot sales price of $156.25. This comparable is 7.55 miles away from the subject property and a similar distance closer to downtown Charleston. Comparable #1 is also near the beaches of Sullivan's Island, which is connected to Mt. Pleasant by a causeway. In

addition, comparable #1 is located in zip code 29464 and is a significantly better location than the subject.

33. Comparable #2 is a condominium with a per square foot price of $111.78, and is located 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is across the street from The Towne Centre, a premier shopping complex in Mt. Pleasant. Comparable #2 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. Also, comparable #2 is located in zip code 29464 and is a better location than the subject property.

34. Comparable #3 is a condominium with a per square foot price of $84.42, and is located 2.46 miles away from the subject property and is a similar distance as the subject property from downtown Charleston. This comparable is located in zip code 29466 and is in a similar location as the subject property.

35. Based on these three comparables Sawadske appraised the one bedroom unit type, known as the Dogwood Plan, at $110,000. The Dogwood Plan has 753 square feet, and thus Sawadske's per square foot price is $146.10. Per square foot prices of Sawadske comparables are $84.42 (Comparable #3), $111.78 (Comparable #2), and $156.25 (Comparable #1). As can be seen by comparing the per square foot prices and locations of the comparables, the per square foot price increases as the distance to downtown Charleston (and the beaches) decreases. If the comparables that are farthest from the subject property are disregarded, the value of this one bedroom room unit type is determined based on the comparable that is closest to it: a value of $63,568 ($84.42 per square foot x 753 square feet).

36. After arriving at a value for the Dogwood Plan, Sawadske then adjusts that value to arrive at a value for each of the other one bedroom unit types. The same adjustment methodology can be applied to the alternative value of $63,568 for the Dogwood Plan to arrive at values for the other one bedroom unit types.

37. Sawadske uses the same approach in appraising the two bedroom units; however, she used four sales comparables. Comparables #1, #2, and #4 are clustered together about 2.5 miles from the subject property. They have per square foot prices of $95.63 (Comparable #1), $99.33 (Comparable #4), and $100.33 (Comparable #2). The average per square foot price of

these three comparables is $98.44. These three comparables are a similar distance from downtown Charleston as the subject property.

38. Comparable #3 has a per square foot price of $126.33, and is 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is also across the street from The Towne Centre. Comparable #3 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. In addition, comparable #3 is located in zip code 29464, and is a better location than the subject property.

39. Based on these four comparables Sawadske appraised the two bedroom unit type, known as the Jasmine Plan, at $148,000. The Jasmine Plan has 1,030 square feet, and thus, Sawadske's per square foot price is $143.60. If the comparable that is 4.81 miles away from the subject property and the same distance closer to downtown Charleston is disregarded, and the average of the per square foot prices of the three comparables that are 2.5 miles from the subject property (and in the same zip code) are used, the Jasmine Plan has a value of $101,393 ($98.44 x 1030 square feet).

40. After determining a value for the Jasmine Plan, Sawadske then adjusts that value to establish a value for each of the other two bedroom unit types. The same adjustment methodology can be applied to the alternative value of $101,393 for the Jasmine Plan to establish the values for the other two bedroom unit types.

41. Sawadske used three sales comparables in appraising the three bedroom units. Comparable #3 is 2.46 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $103.05. Comparable #2 is 2.59 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $105.42. Comparable #1 is 6.30 miles away from the subject property and the same distance closer to downtown Charleston, and has a per square foot price of $112.20.

42. Based on these three comparables Sawadske appraised the three bedroom unit type, known as the Camellia Plan, at $170,000. The Camellia Plan has 1,357 square feet, and thus, Sawadske's per square foot price for that unit is $125.28. If the comparables that are 6.30 miles away from the subject property and the same distance closer to downtown Charleston are disregarded, and the average of the per square foot prices of the other two comparables located in

the same zip code as the subject property are used, the Camellia Plan has a value of $141,454 ($104.24 x 1,357 square feet).

43. After determining a value for the Camellia Plan, Sawadske then adjusts that value to arrive at a value for each of the other three bedroom unit types. The same adjustment methodology can be applied to the alternative value of $141,454 for the Camellia Plan to establish the values for the other three bedroom unit types.

Single Ownership and Discounted Sellout Analysis

44. The Assessor contends the individual values as determined by Sawadske should be the final assessment values. As shown above, Sawadske's conclusions as to value are unsound because they rest on a faulty foundation -- some of the sales comparables selected are significantly different from the subject property. Moreover, Sawadske's valuations should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units. The Appraisal Institute provides the standard:

> To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimate of future sellout prices and the timing of sales are key elements in the valuation.
>
> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

45. The proper valuation technique for these 121 units, therefore, requires a second step. After the values are determined for the individual units, a discounted sellout analysis must be applied to arrive at final values. Headley testified to the standard's applicability, and his Summary Appraisal Report shows the application of the standard in this case. Applying this necessary

second step, Headley finds the value of the 121 units as condominiums to be $7,750,000.

46. The Assessor acknowledges the standard but fails to apply it in determining the final assessment values. James not only quotes the standard in his Appraisal Consulting Report, he also applies the standard in his highest and best use analysis to arrive at a hypothetical value ($13, 800,000) for the 121 units as condominiums. However, the Assessor establishes the value of the 121 units based upon the final values determined by Sawadske's.

47. Sawadske did not perform a discounted sellout analysis as a part of her valuation process. This omission provides an additional basis for rejecting her valuations. If Sawadske had performed this analysis using Headley's more realistic variables (discount rate of 11%, developer's profit of 10%, sales expense of 6%, closing costs of 1%, and upfit costs of $3,500), the discount applied to the alternative values would have been 32%[8] as follows: $10,859,917 x 32% = a discount of $3,475,173 for a Discounted Cash Flow Analysis (DCFA) value of $7,384,744 as condominiums. This is lower than the $8,565,000 value established by the Assessor for the units as an apartment complex. Thus, the highest and best use of the 121 units is as apartments. Additionally, if James had used the alternative values of $10,859,917 as the starting values in his highest and best use analysis, in conjunction with Headley's variables, he also would have a DCFA value as condominiums lower than the value as apartments. No further analysis by Sawadske would have been necessary.

SUMMARY

Based on the evidence presented during the trial, the Court concludes that the highest and best use of the property as of December 31, 2007 is as an apartment complex, and the 121 units must be valued consistent with their use as apartments. The real estate market turned in 2006 and continued to fall for the next several years – it simply was not financially feasible for the property to be sold as condominium units as of December 31, 2007. Futhermore, the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007.

In addition, the similarities between the facts of this case and those involved in the Lindsey case convince the Court that the principle stressed in Lindsey – "use and not title is the determining

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[8] Headley disagreed with the variables selected by James in applying the discount sellout analysis. When Headley performed a discount sellout analysis using James's starting numbers of $16,454,000 but with different variables, Headley arrived at a value of $11,200,000. This represents a discount of 32% ($16,454,000 x 32% = $5,254,000; $16,454,000 - $5,254,000 = $11,200,000).

factor" in valuing property – mandates the same result here. The 121 units at issue have always been used as apartments and should be valued consistent with how they have actually been used.

ORDER

IT IS HEREBY ORDERED that the Charleston County Assessor shall value the 121 units owned by LMP Properties, Inc. consistent with their use as apartments at $8,565,000 for the 2008 tax year.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

September 20th, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 20 day of September 2013

By: Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

NOTICE OF APPEAL

Appellant Charleston County Assessor appeals the Final Order and Decision of the Honorable Shirley C. Robinson dated September 20, 2013, a copy of which is attached hereto as Exhibit A. Appellant received written notice of entry of the Final Order and Decision on September 24, 2013.

October 21, 2013

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
Attorneys for Appellant

Other Counsel of Record:

Stanley C. Rodgers, Esquire
LAW OFFICE OF STANLEY C. RODGERS, L.L.C.
101 Queen Street, Suite 200
Charleston, South Carolina 29401

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Exhibit "A"

Final Order and Decision

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor, Petitioner, v. LMP Properties, Inc., Respondent.	Docket No. 09-ALJ-17-0533-A-CC **FINAL ORDER AND DECISION**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on remand from the South Carolina Court of Appeals pursuant to Charleston County Assessor v. LMP Properties, Inc., Opinion No. 5086 (Ct. App. 2013). The Court of Appeals reversed the ALC's order to the extent it determined LMP Properties, Inc.'s ("Taxpayer") 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

Following timely notice to the parties, oral arguments were held at the offices of the Court in Columbia, South Carolina, on July 30, 2013. Based upon the oral and written arguments of the parties, in conjunction with the Record created during the contested case hearing on August 24-25, 2010, I find and conclude that the highest and best use of the property, as of December 31, 2007, is an apartment complex. Accordingly, the Assessor shall value the 121 condominium units owned by the Taxpayer at $8,565,000 for the 2008 tax year.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are collectively known as The Legends of Mount Pleasant ("LMP" or "subject property"). The

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subject property was initially built in 2000 as part of a 200 unit apartment complex.[1]

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount $15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.[2] This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006."

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 et seq.[3] On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to the Taxpayer.[4]

4. Following the conversion of the property to a horizontal property regime, the Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, the Taxpayer sold 44 units. In 2007, the Taxpayer sold 13 units, and in 2008, the Taxpayer marketed 20 condominium units for sale, but zero units were sold. As of August 24, 2010, – the date of the initial contested case hearing – the Taxpayer had sold a total of 58 of the 200 condominium units. One Hundred Forty-Two units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at the August 24, 2010

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[1] The original apartment complex consisted of 13 buildings on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 ($11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

[2] The mortgage note was dated May 26, 1999, and recorded on May 27, 1999, in the Charleston County RMC's Office.

[3] A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006, in Charleston County RMC's Office.

[4] Ronald W. Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Following the conversion of the property from apartments to condominiums in 2006, the Charleston County Assessor ("Assessor") changed its records to reflect the property as 200 separate units, and each unit was assigned a separate tax identification number.[5] The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes and determined that the fair market value of the property for tax year 2008 was $16,454,000. The Taxpayer disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. The Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals ("Board"). Following a hearing on November 4, 2009, the Board set a compromised value of $10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

7. A hearing on the merits was held on August 24-25, 2010. On October 11, 2011, the Court issued its Final Order and Decision and ordered that the Assessor value the property at $8,565,000 as an apartment complex with a valuation date of December 31, 2003.

8. The Assessor appealed the Final Order and Decision to the South Carolina Court of Appeals. The Court of Appeals reversed the ALC's order to the extent it determined the Taxpayer's 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

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[5] S.C. Code Ann. § 27-31-270 states:

> Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A), S.C. Code Ann. § 1-23-600, and S.C. Code Ann. §§ 1-23-310 et seq.

2. While this matter initially reached this Court somewhat in the posture of an appeal, the proceeding before the Court was a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

3. In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. S.C. Tax Comm'n. v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation § 410 (1954). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. The trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an

expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See S.C. Cable Television Ass'n. v. S. Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. South Carolina law proscribes the method to determine the fair market value of real property in this State:

> All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930. Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). Accordingly, real property in South Carolina is assessed in accordance with the property's highest and best use.

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation year. Moreover, the South Carolina Court of Appeals, on appeal from this Court's October 11, 2011 Order, has determined that the property's highest and best use is to be determined as of December 31, 2007.

8. The Appraisal Institute defines highest and best use as follows: "The reasonably

probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

9. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p. 105.

10. The Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.

2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.

3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.

4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

11. The parties agree, through their experts, that the single-family dwelling condominium units and apartment units are physically possible on the property. Therefore, the physically possible prong of the 4-part test is satisfied.

12. In its February 27, 2013 Opinion, the Court of Appeals determined that the legally permissible standard should be applied on December 31, 2007. All parties agree that there were no legal impediments to the units' use on December 31, 2007. Accordingly, the legally permissible prong of the test is equally satisfied.

13. There are only two parts of the test left to satisfy: financially feasible and maximally productive.

APPLICATION OF LAW TO FACTS

Highest and Best Use – Financially Feasible

14. Ron Follmann ("Follmann"), a principal in the Taxpayer, testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the Lender had a presale requirement of 40 units. Follmann testified he was only able to secure 23 presales, but the Lender ultimately agreed to modify the presale requirement. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

15. The Taxpayer presented Frank Headley ("Headley"), an appraiser with over thirty years of experience, as an expert witness. Headley was qualified as an expert by the Court. Headley testified that Follmann's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Headley also testified there were other failed condominium conversions during that timeframe.

16. Headley concluded that it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not

satisfy the highest and best use test as of December 31, 2007.

17. The Court finds the Taxpayer's actual experience in attempting to sell condominium units important in determining the highest and best use of the property as of December 31, 2007. While it may have been financially feasible for the Taxpayer to have converted to condominiums in 2003, it clearly was not so by the end of 2007. The Taxpayer's conversion of the property from apartments for rent to condominiums for sale was significantly hindered by the same weak economy that affected the real estate market in general. The Court concludes that it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Therefore, the 121 units should be valued as apartments, which is how they were actually being used at the time.

18. Based on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at $8,565,000. The Assessor's expert reached this value by dividing the net operating income of $729,182 by the capitalization rate of 7.50%, which yields a value of $9,725,000. To this value, a deduction rate of 11.94% or $1,161,165 is applied.[6] Subtracting the reduction in value of the apartment complex of $1,161,165 from $9,725,000 renders a value of $8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of $735,807 by a capitalization rate of 8.25% to value the subject property at $8,920,000. However, the Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that the Assessor's value yields the highest rate of return when the subject property is valued as apartments.

Valuing Condominiums as Apartments

19. Even if it had been financially feasible for the property to be used as condominiums as of December 31, 2007, and even if that use turned out to be maximally productive, the Taxpayer

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6 The 11.94% reduction of value is based on the Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at $16,900,000 as of December 31, 2003; however after the Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to $14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction.

contends the 121 units should still be valued according to their use as apartments rather than how they are titled – as condominiums. The Taxpayer relies on Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), in support of its position.

20. In Lindsey[7], the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. These units were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the 45 units by assessing each unit as a separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96. The Assessor appealed to the South Carolina Tax Commission, who ruled that the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id.

21. The taxpayers in Lindsey contended that the 45 units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The Supreme Court rejected the Assessor's argument:

> The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The Supreme Court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

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[7] John R. Lindsey was the Charleston County Assessor at the time. Tamsburg was one of the parties challenging the assessment. The parties have referred to the case as the Tamsburg case.

22. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. In accordance with the policy, the Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation:

> This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]"

23. Toy Glennon ("Glennon"), the current Charleston County Assessor, testified at the hearing. The Charleston County Assessor's Office does not affirmatively tell taxpayers that fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. A taxpayer would have to file an appeal and request the Lindsey treatment before the Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Glennon testified that she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment.

24. Glennon testified that her office declined to give the Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it was significant that some of the original group of 200 units had been sold. Glennon also believed that the subject property – unlike the property at issue in Lindsey – was in a desirable location.

25. Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of

Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. In addition, Glennon testified that the subject property is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Glennon interpreted the master deed for the subject property as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to the Taxpayer and could not be passed from the Taxpayer to a third party buyer if the units were sold in bulk. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for the subject property contained any such limitation.

26. The Court concludes the 121 units at issue in this case are substantially similar to the 45 townhouse units at issue in Lindsey and should be assessed the same way. There is no dispute that these 121 units were being used as apartments as of the time of the contested case hearing. Their use has never changed. The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006. This change resulted in the assignment by the Assessor of an individual tax identification number to each unit. "Title, however, is not the determining factor in valuation." Id., 302 S.C. at 508, 397 S.E.2d at 97. Regardless of the specific individual characteristics of the subject properties, the Supreme Court made clear in Lindsey that use is the determining factor in valuation. Id. The property must be valued in accordance with its use as an apartment complex.

Analysis of the Assessor's Proposed Valuations as Individual Condominiums

27. The Taxpayer also challenges the underlying data and methodology employed by the Assessor in valuing the units individually as condominiums. As evidence of the units' values as condominiums, the Assessor presented the testimony of three of its employees, all of which are appraisers. All gave expert testimony and all were qualified to do so. Gary James ("James") testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. He based his valuation of the units as apartments on an analysis performed by Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the

use as condominiums to be higher than the value based on the use as apartments, James concluded that the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then incorporated Angela Sawadske's appraisals of the individual units as the values being put forth by Assessor as the final assessments.

28. Angela Sawadske ("Sawadske"), employed by the Assessor, testified that the sales comparison approach was the most reliable method for valuing the individual condominiums. The sales comparison approach arrives at a value for a particular property by analyzing sales prices of similar properties. The more similar the sales comparable is to the subject property, the better the basis that sales comparable provides for estimating the value of the subject property. Location is a key factor in selecting and analyzing a comparable.

29. The subject property is located in Mt. Pleasant just off Highway 17. Mt. Pleasant is connected to downtown Charleston by Highway 17 and is connected to North Charleston by Interstate 526. It is on the edge of northeastern Mt. Pleasant, and as such those living in the area must travel on Highway 17 for over twelve miles to get to downtown Charleston. Mt. Pleasant has grown rapidly in recent years.

30. Generally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is located in zip code 29466.

31. Sawadske based her valuation of the 121 units upon the sales comparables she chose. Her valuation opinion stands or falls on the sales comparables she chose and how she adjusted them to determine a value for the subject property. See Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986) ("The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated."). An evaluation of Sawadske's appraisals, therefore, requires a close examination of the sales comparables she chose.

32. In determining the value for the one bedroom units, Sawadske relied on three sales comparables. Comparable #1 is a condominium unit with 800 square feet that sold for $125,000, resulting in a per square foot sales price of $156.25. This comparable is 7.55 miles away from the subject property and a similar distance closer to downtown Charleston. Comparable #1 is also near the beaches of Sullivan's Island, which is connected to Mt. Pleasant by a causeway. In

addition, comparable #1 is located in zip code 29464 and is a significantly better location than the subject.

33. Comparable #2 is a condominium with a per square foot price of $111.78, and is located 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is across the street from The Towne Centre, a premier shopping complex in Mt. Pleasant. Comparable #2 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. Also, comparable #2 is located in zip code 29464 and is a better location than the subject property.

34. Comparable #3 is a condominium with a per square foot price of $84.42, and is located 2.46 miles away from the subject property and is a similar distance as the subject property from downtown Charleston. This comparable is located in zip code 29466 and is in a similar location as the subject property.

35. Based on these three comparables Sawadske appraised the one bedroom unit type, known as the Dogwood Plan, at $110,000. The Dogwood Plan has 753 square feet, and thus Sawadske's per square foot price is $146.10. Per square foot prices of Sawadske comparables are $84.42 (Comparable #3), $111.78 (Comparable #2), and $156.25 (Comparable #1). As can be seen by comparing the per square foot prices and locations of the comparables, the per square foot price increases as the distance to downtown Charleston (and the beaches) decreases. If the comparables that are farthest from the subject property are disregarded, the value of this one-bedroom room unit type is determined based on the comparable that is closest to it: a value of $63,568 ($84.42 per square foot x 753 square feet).

36. After arriving at a value for the Dogwood Plan, Sawadske then adjusts that value to arrive at a value for each of the other one bedroom unit types. The same adjustment methodology can be applied to the alternative value of $63,568 for the Dogwood Plan to arrive at values for the other one bedroom unit types.

37. Sawadske uses the same approach in appraising the two bedroom units; however, she used four sales comparables. Comparables #1, #2, and #4 are clustered together about 2.5 miles from the subject property. They have per square foot prices of $95.63 (Comparable #1), $99.33 (Comparable #4), and $100.33 (Comparable #2). The average per square foot price of

these three comparables is $98.44. These three comparables are a similar distance from downtown Charleston as the subject property.

38. Comparable #3 has a per square foot price of $126.33, and is 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is also across the street from The Towne Centre. Comparable #3 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. In addition, comparable #3 is located in zip code 29464, and is a better location than the subject property.

39. Based on these four comparables Sawadske appraised the two bedroom unit type, known as the Jasmine Plan, at $148,000. The Jasmine Plan has 1,030 square feet, and thus, Sawadske's per square foot price is $143.60. If the comparable that is 4.81 miles away from the subject property and the same distance closer to downtown Charleston is disregarded, and the average of the per square foot prices of the three comparables that are 2.5 miles from the subject property (and in the same zip code) are used, the Jasmine Plan has a value of $101,393 ($98.44 x 1030 square feet).

40. After determining a value for the Jasmine Plan, Sawadske then adjusts that value to establish a value for each of the other two bedroom unit types. The same adjustment methodology can be applied to the alternative value of $101,393 for the Jasmine Plan to establish the values for the other two bedroom unit types.

41. Sawadske used three sales comparables in appraising the three bedroom units. Comparable #3 is 2.46 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $103.05. Comparable #2 is 2.59 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $105.42. Comparable #1 is 6.30 miles away from the subject property and the same distance closer to downtown Charleston, and has a per square foot price of $112.20.

42. Based on these three comparables Sawadske appraised the three bedroom unit type, known as the Camellia Plan, at $170,000. The Camellia Plan has 1,357 square feet, and thus, Sawadske's per square foot price for that unit is $125.28. If the comparables that are 6.30 miles away from the subject property and the same distance closer to downtown Charleston are disregarded, and the average of the per square foot prices of the other two comparables located in

the same zip code as the subject property are used, the Camellia Plan has a value of $141,454 ($104.24 x 1,357 square feet).

43. After determining a value for the Camellia Plan, Sawadske then adjusts that value to arrive at a value for each of the other three bedroom unit types. The same adjustment methodology can be applied to the alternative value of $141,454 for the Camellia Plan to establish the values for the other three bedroom unit types.

Single Ownership and Discounted Sellout Analysis

44. The Assessor contends the individual values as determined by Sawadske should be the final assessment values. As shown above, Sawadske's conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property. Moreover, Sawadske's valuations should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units. The Appraisal Institute provides the standard:

> To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimate of future sellout prices and the timing of sales are key elements in the valuation.
>
> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

45. The proper valuation technique for these 121 units, therefore, requires a second step. After the values are determined for the individual units, a discounted sellout analysis must be applied to arrive at final values. Headley testified to the standard's applicability, and his Summary Appraisal Report shows the application of the standard in this case. Applying this necessary

second step, Headley finds the value of the 121 units as condominiums to be $7,750,000.

46. The Assessor acknowledges the standard but fails to apply it in determining the final assessment values. James not only quotes the standard in his Appraisal Consulting Report, he also applies the standard in his highest and best use analysis to arrive at a hypothetical value ($13, 800,000) for the 121 units as condominiums. However, the Assessor establishes the value of the 121 units based upon the final values determined by Sawadske's.

47. Sawadske did not perform a discounted sellout analysis as a part of her valuation process. This omission provides an additional basis for rejecting her valuations. If Sawadske had performed this analysis using Headley's more realistic variables (discount rate of 11%, developer's profit of 10%, sales expense of 6%, closing costs of 1%, and upfit costs of $3,500), the discount applied to the alternative values would have been 32%[8] as follows: $10,859,917 x 32% = a discount of $3,475,173 for a Discounted Cash Flow Analysis (DCFA) value of $7,384,744 as condominiums. This is lower than the $8,565,000 value established by the Assessor for the units as an apartment complex. Thus, the highest and best use of the 121 units is as apartments. Additionally, if James had used the alternative values of $10,859,917 as the starting values in his highest and best use analysis, in conjunction with Headley's variables, he also would have a DCFA value as condominiums lower than the value as apartments. No further analysis by Sawadske would have been necessary.

SUMMARY

Based on the evidence presented during the trial, the Court concludes that the highest and best use of the property as of December 31, 2007 is as an apartment complex, and the 121 units must be valued consistent with their use as apartments. The real estate market turned in 2006 and continued to fall for the next several years – it simply was not financially feasible for the property to be sold as condominium units as of December 31, 2007. Futhermore, the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007.

In addition, the similarities between the facts of this case and those involved in the Lindsey case convince the Court that the principle stressed in Lindsey – "use and not title is the determining

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[8] Headley disagreed with the variables selected by James in applying the discount sellout analysis. When Headley performed a discount sellout analysis using James's starting numbers of $16,454,000 but with different variables, Headley arrived at a value of $11,200,000. This represents a discount of 32% ($16,454,000 x 32% = $5,254,000; $16,454,000 - $5,254,000 = $11,200,000).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant Charleston County Assessor's **Notice of Appeal** on the all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on October 21, 2013, addressed as follows:

Stanley C. Rodgers, Esquire
LAW OFFICE OF STANLEY C. RODGERS, L.L.C.
101 Queen Street, Suite 200
Charleston, South Carolina 29401
Attorney for Respondent

Jana E. Cox Shealy, Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Jacinta M. DeJesus
CHARLESTON COUNTY ATTORNEY'S OFFICE

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 09-ALJ-17-0533-A-CC

Charleston County Assessor,	)
Petitioner,	)
v.	)
LMP Properties, Inc.,	)
Respondent.	)

(CC:Y)

ADMINISTRATIVE HEARING

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Tuesday, July 30, 2013
11:17 a.m. - 12:35 p.m.

The hearing before the Honorable Shirley Canty Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 30th day of July, 2013 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

Joseph Dawson, III, Esquire
Charleston County
4045 Bridge View Drive
North Charleston, South Carolina 29405
Attorney for Charleston County Assessor

Bernard E. Ferrara, Jr., Esquire
Charleston County
4045 Bridge View Drive
North Charleston, South Carolina 29405
Attorney for Charleston County Assessor

Stanley C. Rodgers, Esquire
Law Offices of Stanley C. Rodgers, LLC
101 Queen Street, Suite 200
Charleston, South Carolina 29401
Attorney for Respondent

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EXHIBITS

(No Exhibits were marked for this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: Please remain seated. Good morning. Okay. If everyone is ready we'll get started. The docket number on this case has not changed. It's 09-ALJ-17-0533, Charleston County Assessor versus LPM --LMP Properties, Incorporated. And this case was initially before the Court for a contested case hearing back in 2010 -- was that -- yes, in 2010. It was appealed to the Court of Appeals and the Court of Appeals sent the case back to us -- remanded the case back to us for us to address the issues after determining -- after reversing actually the initial order. And we took a lot of evidence at the contested hearing so we will not be taking any new evidence but I will hear arguments from the parties on how we should proceed with the case. The issue in dispute is the value of a 121 condominium units owned by LMP Properties ---

MR. RODGERS: Correct.

THE COURT: --- for tax purposes for the 2008 tax year. And if we're ready to get started we've got Joe Dawson.

MR. DAWSON: Yes, Your Honor.

THE COURT: Okay. And Bernie Ferrara.

MR. FERRARA: Thank you, Your Honor.

THE COURT: And for the County we've got Mr. Rodgers for the taxpayers.

MR. RODGERS: Yes, ma'am.

THE COURT: Okay. We'll hear from the County.

MR. DAWSON - OPENING STATEMENT:

MR. DAWSON: Thank you, Your Honor. I appreciate the opportunity to be here this morning and giving us the extra hour.

THE COURT: Yes. That's okay.

MR. DAWSON: I almost didn't meet it with in the extra hour so I appreciate that time. Sometimes you forget how far Columbia is from Charleston.

THE COURT: Yes.

MR. DAWSON: I also have to note that Mr. Rodgers, and I'm sure he will introduce his guests, usually the County outnumbers the opponents in most cases, but Mr. Rodgers has got a lot of extra help here today. So hopefully we'll be able to swing the tide back our way. Your Honor, as you know, both sides have submitted proposed orders to you and I thought that subject to you telling me otherwise I would take this opportunity starting out, subject to any questions you have, in essence telling you

my thoughts about the order proposed by the taxpayer and why I think there are problems with it and why you shouldn't consider it and obviously why I believe the Court should consider the proposed order that the County has provided. I'll start by saying I recognize the awkward position that I'm in now because earlier before you I argued how the Court should consider applying highest and best use to the property valuation of the 121 units and I argue that the Court should consider not looking at what could occur on the property in 2003 as the basis for determining its highest and best use. What I argued was you should base it on what was actually available on December 31st, 2007. I suspect if you have the painful experience of reading my proposed order, it may look like I've switched on you again because what I've now said is, to the Court, you should look at what actually was going on on the property as of December 31st, 2007, to identify the four factors in the highest and best use test; what is possible on the property, what is legally permissible, what is financially feasible, and what is maximally

productive. What I'm suggesting to the Court today is part of that test you are still applying the values as they existed as of the last countywide reassessment, once again another date I'm going to throw out which is December 31st, 2003. So what I'm asking the Court to consider kind of as a back drop to everything I'm going to talk about is although we have a change in the title of the property -- I understand the taxpayer to say the use hasn't changed, but we had a triggering event that allowed the assessor to come back and look at whether or not the property was being properly appraised at its highest and best use given the change that occurred. But you're still going to have to apply values that existed based on December 31st, 2003. So it's as if I'm asking you still to straddle the fence but I'm not, I'm telling you that unlike in the normal sense of real estate appraisal, I want to sell my house. I engage someone to help me determine its value. Unlike for property tax purposes I would dare not look at what market conditions and values were some five years earlier because I'm looking to sell

my house today and I don't care what values were five years ago for the purpose of selling my house today, I'm looking at what the value is today. Normal general real estate practice. Unfortunately, this isn't normal and this isn't general, this is property tax assessment and our laws, as I understand them, require an assessor not to look at market conditions that exist at the moment in time the challenge is being raised, but under the quadrennial of five year reassessment program our laws require us to fix or hold values at a point in time that's in the past and those values don't change until the next reassessment. So as I said earlier I know it can sound like Mr. Dawson you're doing it to me again, you're kind of in both worlds, the problem as to why I'm in both worlds is because of how property is taxed in South Carolina. I have to look at one date, which is the lien date, December 31st of the year preceding the tax year in question -- the tax year in question is 2008, I looked to December 31st, 2007. However, I am compelled by state law to only consider values as of the last reassessment. I point that out because to me

that's a fundamental issue that I suspect we will have a lot of discussions about this morning. And I draw your attention to page nine of the proposed order by the taxpayer because they are offering you a different way of looking at it I suspect again. Paragraph eight on page nine reads, the Court of Appeals has not established the procedure to be followed in this case. The highest and best use is to be determined as of December 31st, 2007. Okay, that's easy, the Court of Appeals says. However, the Court of Appeals doesn't go on to say the last part of the sentence, and then that use is to be valued as of December 31st, '03. The reason why that sentence to me, Your honor, is important to start our discussion today is that the order that's been proposed to you builds on that theme and that theme is Mr. Headley, their expert, testified that it was not financially feasible to have condominiums in 2007. His argument and basis for that was not some analysis that he did, it was simply there was no condominiums sold by this taxpayer in 2008, therefore, it couldn't have been financially feasible because in 2008

he didn't sell anything. Your Honor, that's a great conclusion but there's just no analysis to support it. The reason why it's problematic is his analysis is based on market conditions in 2008. His analysis, to the extent it exists, is not based on market conditions as of the valuation date which is December 31st, 2003. Here's where it really gets difficult. Mr. Headley, their expert, when he does his income analysis as an apartment complex, which the Court did reject, it used the County's apartment valuation using the income approach, he uses 2003 rental income to arrive at his basis of value as an apartment. So did the County. Both of us looked at rental values based on 12/31/2003. However, when Mr. Headley decides to go look at condominium values to draw the conclusion that condominiums are not financially feasible, which is the third prong in that four-prong test, he simply says well, you know, the market conditions in 2008 weren't good, therefore, I don't think he could have sold any and he didn't, therefore, it's not financially feasible. The problem with that concept, Your Honor, is he's doing what I'm not

doing. I am basing values as of one year. I'm not basing values based on market conditions in 2007 and values of market conditions in 2003. For everything I want to talk to you about were all based on values December 31st, 2003. The taxpayers expert is not doing that. I believe the taxpayers expert is kind of living in two worlds. In one instance he's saying, yeah, we should look at the highest and best use as of December 31st, 2007, and when it's convenient and advantageous to me I will look at market conditions and values for 2003, but when it's not advantageous or convenient, I will base my values on the market conditions on the lien date which is the basis for this dispute. So Mr. Headley says it cannot be, it is not financially feasible for it to be a condominium in 2007. On page 11 of the proposed order I'll read about two thirds of the way down the page, Mr. Headley concludes it was not financially feasible, step three of the highest and best use test in parenthesis, for the property to be sold off as condominiums as of December 31st, 2007, therefore, a proposed use as condominiums does not satisfy the highest and best use test

as of December 31st, '07. That conclusion, no analysis, no homework, nothing supporting it, is solely based on his knowledge of the market condition in 2007. I take exception to the market condition in 2007 if that were the basis for it because there were 13 units sold by the taxpayer in 2007, however, Your Honor, I don't believe that is the way in which appraisers determine highest and best use in value. They don't determine it based on what you do with your property, and Mr. Headley even says in his report the appropriate methodology is first to use a sales comparison approach. He does acknowledge you can use an income approach but the preferred method is the sales comparison approach. That conclusion that I just read is not based on Mr. Headley doing a sales comparison approach of comparable properties in the area to determine the value of a condominium unit. That's not what he did. He simply said this particular taxpayer couldn't sell any. Well that's now you do an appraisal. You don't go look at the subject property and look at what was actually done on the subject property as the basis for determining the value

of the property. You look at comparable properties to determine what they sold for to arrive at a value. It is hypothetical, it is not actual. If it had to be actual, you could never do an appraisal because you'd have to wait for something to sell to identify it's value. That's why the Court should reject that concept of if it didn't sell, therefore, it could not be financially feasible. That is not the test to determine financial feasibility. The test is supposed to be to look at comparable sales. Mr. Headley did not look at comparable sales, the County did. The County's report is filled with comps that later in the proposed order the taxpayer takes exception to, but they are based on comparable sales. You will not find in the record or in Mr. Headley's report where he looked in comparable sales even for 2007 to come up with his basis for determining why it's not financially feasible. By comparison the County does an analysis on apartments and arrives at a number. I believe the number is around 8.5 million. Then it does an analysis on that same financial feasibility test and arrives at a second number of 13.8

million dollars. The County then compares those two numbers to arrive at what it believes is financially feasible. In both data sets both numbers are based on values that existed as of the last reassessment, 12/31/03. The County is not looking at market conditions in 2007 because we don't believe the appropriate methodology to arrive at the value for the property is to look at market conditions in 2007. So to draw you specifically to one of the points I just made Mr. Headley states in his appraisal report that the assessors assigned values to each of the units based on the 2003 values of various condominium properties that have been sold within the area. And, Your Honor, I don't know if you have a copy of the entire record that we provided to the Court of Appeals, I do have a copy of it for you if you like. It may be a little easier to follow along if you'd like to see what I'm reading. And I think Mr. Rodgers indicated that he has the same thing. I made a copy, unfortunately, volumes one, two, and three, so I will hand those to you.

MR. RODGERS: Yeah, I got it. Tell me what exhibit

it is, I can read it from it.

MR. DAWSON: Oh boy, let me see. I know it's in volume number three of three and it's page 620 that I'm reading from. I don't know if you have the actual volume.

MR. RODGERS: Yeah, what's the document you're reading from?

MR. DAWSON: I'm sorry. It's Mr. Headley's report, it's that Marshall Dodds report.

MR. RODGERS: Okay.

MR. DAWSON: May I approach, Your Honor.

THE COURT: Yes.

MR. FERRARA: I believe it's at Exhibit 10.

MR. RODGERS: Yeah, I got it. Tell me the page number again.

MR. DAWSON: In the record it's page 620.

MR. RODGERS: Okay.

MR. DAWSON: I don't believe Mr. Headley's report is page numbered in and of itself. But it's under the paragraph titled appraisal procedure. And, Your Honor, I just read from Record on Appeal volume three of three. It's number page 620. And on page 620 under the title appraisal procedures I read the second full paragraph under that particular subheading where Mr.

Headley acknowledges that the County is using its values based on 2003 numbers. Mr. Headley goes on to say towards the end of that paragraph, for this reason we estimate the value of property appropriately by using the sales comparison approach to determine the value of the individual condominium units and then the income approach with appropriate deductions and discounting to determine the overall market value of 121 units owned by a single entity. So Mr. Headley is acknowledging the appropriate methodology to arrive at valuing the property, however, Mr. Headley nowhere in this report does what I just indicated. There is no analysis of the properties based on the sales comparison approach based on 2003 values. He simply draws a conclusion based on market conditions in 2007. The reason why I make that point, Your Honor, and I will continue on in Mr. Headley's report, Mr. Headley attempts to arrive at values for each individual condominium unit. I want to show you how he does it because I suspect the taxpayer is going to say Mr. Dawson is not accurate. We do have actual values for

each individual condominium unit. However, it's not based on a sales comparison approach where someone has done research in the market to determine what comparable units have sold for. So I turn to page 633 of that same record where he begins to talk about his discounted sellout allowances. And on page 633 of his report he says at the top, subject property is currently valued for tax purposes based on the retail value of 121 units which when added together total $18,766,000, which is an average of $155,091 per unit. And, Your Honor, that number is significant because that's not a number based on an analysis of comparable sales in the community based on 2003 values. It is simply looking at the number that the County has assigned and in the aggregate he has added all the numbers up, and I will read to you a portion of his report where he says it's inappropriate to do that, but he's done that and then simply taken an average of the 121 units and he's come up with a value of $155,000. So then he uses that value that he's arrived at not based on a sales comparison approach to plug into his formula, which is

found on page 635 which is his discounted sellout analysis, to arrive at his value for condominiums. And so as you look on page 635 he has a table and at the top of that table he has the average tax value under number of units sold and he plugs in that $155,000 per unit number which is the basis for his arriving at the sales comparison approach value for each individual unit and applies at that across the board for his entire ten year period. Your Honor, that's an error. That's not how you arrive at a sales comparison approach to identify the value of the three different major types of units, one's a one bedroom unit, the second one's a two bedroom unit, and the third's a three bedroom unit; it's not an average. Each individual unit has a value based on comps in the community. The other flaw in Mr. Headley's report where he arrives at his condominium value is -- and I'll have you draw your attention two pages before that back to page 630 and 631, because once again, Your Honor, I challenge the taxpayer to show you the analysis that he used to arrive at the condominium value which is the basis for him

telling the Court condominiums are not financially feasible. Not condominiums are not financially feasible because in comparison to apartments one yields a maximally productive value than the other. Your Honor, these two tables, if you study them closely, you'll find that they look very similar. The first table on the left is really an attempt at identifying the value of the property using the income approach as apartments. As I read to you earlier on the earlier page, I told you according to Mr. Headley there's two ways to approach the valuation of this property. One is using the sales comparison approach and the other one, which is the least preferred but it's an acceptable method, is income approach. So in this table on the left he uses this table to validate its value based on if it were an apartment so, therefore, he has expenses as rental income -- if you look in the second block in the far left column, he says effective gross income, rental income. So he comes up with an income based on rents. Well you don't necessarily rent condos. You can but you rent apartments. Then he comes up with the expenses

for the apartments and the only change you're going to see, Your Honor, for the first time in these two tables as you drop about a little more than halfway down you will see a column or a row titled total operating expenses and they exist on both tables. And then the next line says fixed expenses and the following line says property taxes. This is the first place a change occurs between these two tables. They are identical until you get to that point. The left hand column is dealing with rental income, the right hand table is supposed to be dealing with condominiums. Now, note that it uses the same language as it is applying income to this instead of looking at sales. The only difference, Your Honor, in these two tables is the value assigned for property taxes. Well, that's pretty strange because what he has done is he's assumed that one is an apartment complex, one is a condo, and then made the assumption that the condo tax is higher and that's what's driving the change in the number. This is not based on an analysis of condominium sales. It's not based on an analysis of condominium rentals because a condominium

rental and an apartment rental is the same number. There's no analysis to do there. The only change is plugging in the tax value which drives the numbers beneath that mathematically to change. Your Honor, the reason why I make this point is there is absolutely no analysis being performed by their expert to arrive at which one is financially feasible. Now, in contrast Mr. Headley does say he agrees with the County's expert, Gary James, in the methodology he uses to arrive at a financially feasible number which is different than this methodology. However, he disagrees with some of the numbers that Mr. Gary James uses and when asked if he used his number what value would he come up with for condominium use under the financial feasible analysis, he arrives at 11.2 million dollars. So using Mr. James' methodology which truly looks at condominium sales, not looking at rental income titled condominium and rental income titled apartment complex, and that's only plugging in the different number being the taxes, he said I agree with Mr. James' methodology where he actually goes and looks at comparable sales

based on the valuation date in question and arrives at a value, he comes up with a number of 11.2 million. Well, Your Honor, if you accept Mr. Headley's report which comes up with a number of 8.9 million dollars as an apartment complex and then you accept Mr. Headley's analysis of what the financial feasibility used in Gary James' methodology of 11.2 million, you would have to draw the conclusion that 11.2 is greater than 8.9 million and, therefore, condominiums are more financially feasible as a use than apartments, using Headley's mathematics and numbers plugging into Gary James' methodology. Using Mr. Headley's methodology, which I still don't understand what it is because he simply plugs in two different tax numbers into the same matrix. Of course it generates a different number. It's all the same numbers. I say all that to you, Your Honor, because I don't know how you can rely on the taxpayers expert and its testimony to form the basis for highest and best use if the taxpayer's expert is using a flawed methodology, if the taxpayer's expert is using values from 2003, which the same report on page

630 says he's basing -- at the very bottom there's a note -- an asterisk, that says based on 2003 income, so the data of that being provided to you is not based on 2007 markets. For income purposes as apartments he's basing it on 2003 income yet when I turn the page when he starts into his discount sellout analysis and you see the notes, for purposes of the table to identify condominium values -- I'm looking on page 634, he's using information based on 2008 taxes, he's using a discount rate based on September 2009 bond rates, and so the information that he's plugging into his table are not based on 2003 values, they're based on current market values and he is mixing, he is matching and he is blending information to arrive at a result. So what happens is -- and I'm looking on page 634, the second bullet down refers to taxes per unit, 2008 taxes. If you go down to the last bullet, net proceeds will be discounted based on 12 percent. The County uses a 9.5 percent discount factor, but assuming that he's right, which I don't believe he is, that is based on 2009 data, not based on 2003 data. So my argument, Your Honor, as to

why you should not consider the information which forms the basis for their position is they are using market information for 2007, 2008, 2009; whereas the County is using market data based on the valuation date, 2003. And it is not using market data based on 2007, 2008, 2009. When it's convenient they're using it, 2003. When it's convenient they're using numbers from 2007, '08, and '09. Your Honor, I want to transition -- to the extent you have questions on this or anything else please feel free to stop me. Obviously both sides have a tend to address the Lindsey case or the Tamsberg case as to why it either should or shouldn't apply. I will quickly transition to the proposed order that we sent because we tried to do an analysis, Your Honor, as to why the Lindsey case should not and does not apply in this instance. And the first thing we attempted to articulate to the Court is if, in fact, you agree with our position that the taxpayers have not provided credible evidence for the Court to consider to support their position of valuation on the financial feasibility prong or the maximally productive

prong and, therefore, they rely on and they call it Tamsberg as the basis for saying, Your Honor, forget about the highest and best use test that we just went through. Even if my expert did not necessarily follow the rubric that the assessors and/or appraisers should follow, I kind of have a safety net and that is this Supreme Court decision. Well, Your Honor, our position is that the Lindsey case doesn't create an exception to the highest and best use analysis and that's what it's being used for today as an exception to the established rule in South Carolina and that is property is taxed based on the highest and best use. I don't think the Lindsey case stands for the proposition that property is taxed based on its actual use, which is the proposition that I think that's being advanced. The Lindsey case stands for the proposition that that particular court on that particular date found sufficient evidence to support the use of the property as its highest and best use. And because there was sufficient evidence in the record to support that use, the Supreme Court said we're not going to overturn it. They didn't say well

usually we consider the highest and best use but in light of these additional factors we will suspend the application of highest and best use and we're going to look at a different kind of analysis in this instance. And so what we attempted to do was to articulate for the Court what the Lindsey or the Tamsberg case was actually about and what did the Supreme Court actually say. The Supreme Court did not say -- and I agree at the end of the opinion it drew a distinction between title and use. The County's position in this case is we're not saying its highest and best use is condominiums because its titled condominiums. The titling them as condominiums drove the question of what is its highest and best use, it did not drive the conclusion. What drove the question to be asked and therefore the analysis that went with it, was the titling. After you got beyond the titling the analysis is what dictates what its highest and best use is, notwithstanding the title. The County did an analysis to support why what it was actually being used as was not its highest and best use. And, Your Honor, it's no different than a property owner owning

a vacant piece of land in a highly urbanized and/or industrial area. And that property owner having a large piece of land and he chooses, undeveloped, to farm it. Everything else around it is urban, suburban, industrialized uses. The entire corridor is commercial. However, the property owner chooses to use it actually to plant corn. The taxpayer's argument is Tamsberg says since I am actually using it to plant corn it must be used to plant corn. Let's throw away every concept that we've ever studied, every principle of law that guides how property is determined to arrive at its highest and best use, I'm only going to look at what I'm actually doing there. Well, that's not the way property is assessed and/or appraised in South Carolina. If it's highest and best use is commercial because all of the other uses around it are commercial, just because I choose for tax purposes to avoid paying higher taxes on it, I'm going to go plant a garden and call it agricultural. Everybody must recognize its actual use and you must tax me based on what I'm actually doing here. Your Honor, I don't believe there's

nothing in the Lindsey case that stands for the proposition that I just articulated, however, that's the argument that's being advanced to the Court today. Because I am actually using them as an apartment complex, it must be an apartment complex. I'm not debating what it's being actually used as, the issue is whether or not its highest and best use is something else. It's no different, Your Honor, than a taxpayer putting his house on the market and being unable to sell it. That doesn't make it less of a house. It doesn't make it less of a single family dwelling. There may be a variety of factors as to why that house didn't sell. However, an appraiser looks at comparable sales in the community to determine what those values are, not the fact that there's an absence of a sale at your house. Once again, Your Honor, by analogy those are the arguments being presented to you and what's being asked of you is somehow the Lindsey decision on page 15 of our proposed order somehow stands for proposition that there is now an exception to the highest and best use test and that test has been articulated by this Court. Your Honor, I just don't believe that's

what the Supreme Court said in that opinion. Your Honor, in an attempt, in case we were unable to persuade you that Lindsey stands for some proposition that there's an exception to the highest and best use test, we've attempted to go through the factors that the Court looked at to form its basis for why it found there was substantial covenants in the record to support the lower courts position that its use was apartments and not townhouses. By going through each on of those factors to see if in fact this particular taxpayer could line up with those factors as if those factors created the new test in South Carolina. Your Honor, I will not bore you with each element and/or each detail of them. I think we've done a good job of articulating how and why this particular taxpayer is not plugged into the exact criteria if, in fact, that's what they are -- I don't believe that's what they are, that the Supreme Court found for the Tamsberg property owner, but, Your Honor, the factors that the Court considered and the taxpayer's positions don't marry up. They just don't line up. And so, Your Honor, its our position that the Court

should not rely on the proposed order as articulated by the taxpayer. We believe that there is no analysis because of the litigation strategy that they took on at the beginning of this case and that was they made the assumption that because condominiums were not legally permissible in 2003 there was nothing else to consider. And so, therefore, they did not do an analysis on the third and fourth prong of the test because it was unnecessary. Because of that they did not do an analysis to support once you got beyond that second prong of legally permissible whether it was financially feasible and whether it was maximally productive. The absence of that evidence in essence controls their position because now they can't go and create new evidence to support that position. The attempt in the proposed order by the taxpayer to attack the County's expert or the County's witness as it relates to the comps that were used -- it's commendable that you would attempt to eliminate the highest comps in order to create a lower value, but that was not done as a product of the taxpayer's expert, that was simply a lawyer

cross-examining a witness and disagreeing with the witness' comps and eliminating those comps as if they don't apply. The comps do apply and the number that Angela produced by way of her report is supported by the markets that were in place as of 2003. And so, Your Honor, the position of the Assessor today is that the proposed order has flaws that warrant the Court not considering it as the basis for arriving at a value. The County's position is that the Assessor has not done what Mr. Headley has suggested and that's simply lumped all the values in the aggregate to come up with a number of 18 million dollars. As you've seen, Your Honor, in our proposed order on the first page, we've done what we've done consistently and that is identify each unit as a separate and distinct unit and identified a value based on comps to arrive at a value for each style of unit. The County acknowledges and recognizes -- it even shows that if you add all those numbers up, it will arrive at a number, however, the County believes and it's recognized if someone were attempting to buy all 121 units, they would not simply add up the

value of each individual unit and write a check. There would be a discount associated with buying them all as one. However, they're not all one. They're each individual and distinct units that all have a value based on comparable units in the community. And, therefore, the County's position has never been that it is an aggregate value. It is a value as articulated in the first page of our proposed order. Your Honor, that is what I wanted to at least offer you by way of presentation. I'm obviously available to answer any specific questions you have and/or obviously be able to respond or address any of the arguments that Mr. Rodgers makes based on behalf of his client.

THE COURT: And I may have some questions for you but I'm going to wait until Mr. Rodgers ---

MR. DAWSON: Thank you, Your Honor.

THE COURT: --- makes his presentation.

MR. RODGERS - OPENING STATEMENT:

MR. RODGERS: Good morning, Your Honor.

THE COURT: Good morning.

MR. RODGERS: The question to be answered in this case is what is the value of this property for

the 2008 tax year. To answer that question we have to answer this one first; what is the highest and best use of the property as of December 31, 2007. And what I heard Mr. Dawson just tell you and in his proposed order they say flat out the taxpayer, LMP, didn't present any evidence on what's the highest and best use as of December 31, 2007. So I want to start by showing you the evidence that we presented during the trial about what was the highest and best use of the property as of December 31, 2007. You'll recall our first two witnesses, Ron Fullman, he was one of the owners of LMP Properties, and our expert witness was Frank Headley, an appraiser who's been doing it for I think around 30 years. So our testimony on that issue -- our evidence on that issue came from those two sources and the documents we introduced through them. The first piece of evidence was Mr. Fullman's testimony about the sales history at The Legends. And what he told you and what we introduced into evidence as Respondent's Exhibit Twelve was the history of the sales of the units of that property. It began -- remember the property converted, sales

began in 2006, they sold 44 units and then into 2007 they sold a total of 13 but only two after July, and then as the new year comes nothing. So Mr. Fullman testified about the actual sales history of the units in that complex and then what Mr. Headley said as the expert, he was asked -- these are excerpts from the trial transcript.

THE COURT: Yes.

MR. RODGERS: What I did -- the pages I put up here, Your Honor, I put in this book and highlighted them.

THE COURT: Okay.

MR. RODGERS: So we can all look at them together. But Mr. Headley was asked in his trial -- second page in your book, I believe, Your Honor, page 329, the question to Mr. Headley was would you agree with me then that it is possible that the highest and best use of that property in 2007 is as a condo or condo units, correct. His answer, not in 2007. All right. So we've got Mr. Fullman's testimony about the sales history in 2006 and 2007 and then we have Mr. Headley's opinion that the highest and best use of the property in 2007 is not as condos.

Why? Well the key is what's the basis of the -- that's his opinion but what's the basis for it. Well he gave you the basis during his testimony. Partly they're correct. Part of the basis was the analysis of this particular property; what units sold and did not sell and what was the sales history for this particular property. Well he said something equally important and that was, the experience that this taxpayer had with trying to convert this property to condominiums in 2006-2007 mirrored the experience of other people in the real estate community. And he cited examples. He said -- on page 330 he gave examples of River Oaks and Sable Palms. Your Honor, those were two other apartment complexes that attempted to convert, did convert, attempted to sell, failed. All right? So his testimony was not just did it happen to LMP Properties, The Legends, there were other attempted condo conversions during this same period of time and those failed as well and those were indicative of the market conditions at the time. So the question became what he said is -- remember we're focusing on 2007. They're right, this is

critically important. The focus initially is what's the highest and best use as of 2007 and Mr. Headley said it over and over in his testimony, talking about 2007, the highest and best use of this property in 2007 was not as condos. Because you couldn't sell condos. They weren't being sold; there was others who attempted to do it. What he said was -- 331, the market went south. It started going down in 2006, it slowed to a trickle in 2007, by the end of 2007 -- remember our valuation dates right here, December 31, 2007, it stopped, it died. That didn't just happen to LMP Property, that happened to other complexes that tried to do the same thing as well. So he was asked and he said if you can't sell them -- meaning condominiums, they're condominiums in name only, but they are rental apartments. As to financial feasibility, on page 335 of the transcript, he was asked and his answer -- this is his testimony, in 2007 when reality was settling in -- setting in, I couldn't say it was feasible. He couldn't say it was financially feasible to sell these as condominiums not just because of LMP's

experience -- although that's important, we have to look at what was going on in this complex, but because of the market in general. There was others who were trying to do it and couldn't do it. So our testimony -- our evidence as to the highest and best use of the property as of 2007 came from Mr. Fullman, his actual experience, and it came from our expert, Mr. Headley, who testified not just based on our actual experience but the actual experience of others. He testified about the market data from 2007 that he had reviewed and he said they recognized in 2007 that the condominium market had crashed. Our valuation date is December 31, 2007, and we already recognized that in 2007 the condominium market was gone. So if the assertion is that the taxpayer presented no evidence about the highest and best use of the property in 2007, if we did not eliminate condominium use as a potential highest and best use, that's just not right. It's just an incorrect assertion. But here's what's ironic. It is crystal clear from the Court of Appeals' opinion now -- I got it wrong when I was before you before. I argued to you that to determine

the highest and best use for tax year 2008 -- that's our ultimate question; our second question is to determine the highest and best use what year do you have to look at. What I argued to you before was 2003 and we have to apply each of the four steps of the highest and best use test as of 2003 and the reason condominiums failed as of 2003, Your Honor, you remember, is because it wasn't legally permissible. There was a provision in the note that said you can't convert them in 2003 and that kicked them out. That's the only issue that went up to the Court of Appeals. The opinion I got -- it is crystal clear to me. What the Court of Appeals said is no, what you have to do is you have to determine the highest and best use as of 12/31/07. You have to go through that analysis and the highest and best use test has four steps that you've got to go through. You've got to apply that entire test as of that date and when you come up with your answer, whatever it is; condos, apartments, you take that use, whatever you determined the highest and best use to be, and then you value it as of 12/31/03. We have a fundamental

disagreement on that. Now, the way they do it, and they do it in their proposed order, if you look at it carefully they run the highest and best use test as step one as of '07, step two as of '07, and then they switch for financially feasible back to 2003. And all you have to do is look at their data. All of their data, Gary James' report, all of it is based on 2003. So they run -- even now after the Court of Appeals has told us how to do it, they do it wrong. You don't go one, two on this side and then three, four on that side; that's not how you do it. You come down every factor, every step has to be applied as of '07. You get a highest and best use and then you value that use, which is exactly what we say needs to be done. When you go through that test as of '07 the reason condos don't make it down here is because of step three, they do not pass the financially feasible test. What was our evidence? I just told you. Ron Fullman said we couldn't sell them, our expert says it wasn't unique to him, his inability to sell them, that was the market in general. You couldn't sell condos during that period of time. He didn't go through a

detailed analysis of picking out individual units and valuing them, he didn't need to. They wouldn't sell. If I'm at a law firm, I've got a job, I go out on my own and I can't get clients to pay me, I'm not working as a lawyer. I've got to go back to the law firm or I've got to do something else. I don't need to run a detailed analysis of my secretary's salary, my malpractice insurance, you don't have to do all that, I can't cut it. They couldn't cut it selling condominiums; they weren't financially feasible. They would not sell so they had to do something else. What did they do? The continued to use it as apartments. Apartments were the highest and best use of this property in 2007. Once you determine that then you value it as of '03. We don't disagree on the value. We note in the original order 8.6 million. Everybody agrees that if you value this property as apartments, that's what the value is. Now, that's the first argument. The second argument is Tamsberg -- is based on the South Carolina Supreme Court's decision in Lindsey v. South Carolina Tax Commission, a 1990 case, and it's not -- let's be clear, it's

not that the Tamsberg case somehow trumps the highest and best use analysis or it's a safety net, they're separate arguments but they dovetail together. The Tamsberg case came out of Charleston. Forty-five units and it was an apartment building, 45 units complicity owned by a single entity. What did that entity do? Well they separated it out and filed it in the courthouse as 45 different units. Same thing happened in our case. They turned an apartment complex into townhouses; multiple buildings spread out over a piece of property. When that happened the assessor came in and said, okay, we've got individual pieces of property now, we're going to give you individual assessments which led to a higher value than if you value the complex as an apartment. That went to the Tax Commission who said that's now how you're supposed to do it. Ultimately it went to the South Carolina Supreme Court who said that's now how you do it. The fundamental principle out of Tamsberg is use, not title, is the determinative factor in valuing a piece of property. It only makes sense. Our case -- I wouldn't say our case is not identical to

Tamsberg. You're never going to have a case that's identical to another case. That's not the way it works. The question is is the principle announced in that case broad enough to cover our case; does it tell you what ought to happen in our case. Well what happened? We have a single taxpayer who owned an apartment complex, who converted it to condominiums which meant separate tax identification numbers, which triggered them to assess us individually. And what we said was wait a minute, they're titled as condominiums but as to these 121 units, the units that are before you today, they have always been used as apartments, always. We have never sold one of them and bought it back, we have never even marketed one of them for sale. These 121 units in 2003, 2007, every year in between, before, and after, they've always been apartments. We simply ask that they be valued as apartments, not because we want to do some crazy corn field analogy and use our property in a way that's not financially feasible or the most productive, that would be nuts. If I've got -- I mean if LMP Properties could have sold these units as

condos, would we be here? Do you think we voluntarily decided we didn't want to sell these as condos? We couldn't sell them as condos. We were forced to continue operating this property as an apartment complex. And so what the Tamsberg case says is recognize that. Recognize that the determining factor for you in deciding the value of the case is not titled, which they rely heavily on. The fact that they were converted to condominiums is not the critical factor. The factor is use and how these units have been used consistently from the beginning is as apartments. It's been used as an apartment complex. Your Honor, you may be familiar with the phrase an albatross around your neck, that image is something weighing you down. That comes from a poem, the Rhyme of the Ancient Mariner and it's a story of a ship that sets off on a journey and initially everything is going good; the winds are blowing, they're traveling, everything is beautiful. And slowly the winds slow down and then the winds stop and these people are stuck in the middle of the ocean and gradually one by one the sailors start to die and the only person left to tell

the tale is the ancient mariner. We set off on a voyage. When we converted this property and tried to sell condominiums the wind was blowing pretty good. It took us out, we sold 44 units. 2007 -- at the beginning of 2007 the winds started to die. By the end of 2007 the wind not just for us but the condo conversion market in general was dead. There was nothing we could do about that. We wanted to sell condos but we couldn't fight the wind. There was no wind, we weren't going anywhere. We had a choice. Our choice was continue to try to sell condos and push forward and die and go bankrupt or get in the life boat and paddle back to shore and keep operating this thing as an apartment complex. That was our choice. We didn't choose -- it was a choice but a choice in name only. We chose the only thing reasonable. The reasonable thing was go back and continue to use these as apartments. We're not trying to cheat anybody, we're not trying to manipulate the valuation process, we want to pay, we want to be valued fairly, we want to pay the taxes that are due but we want it to recognize the economic reality that we faced

and that we have dealt with. Thank you.

THE COURT: Mr. Dawson?

MR. DAWSON: Your Honor, I'll be brief on just a couple of quick replies. The first thing is the taxpayer has said that you apply the four factors from top to bottom based on 2007. The problem with that argument in this case is they didn't do that. As I said earlier, anticipating that would be the position, the values that were used to arrive at apartment complex, the income data, is not based on 2007. And so when you do the analysis on prong number three of the financial feasibility test -- first of all you have to do a test. You have to actually do an analysis. The analysis here was testimony, hey, I looked and I heard that Sable Palms was having some difficulty selling too. That was the analysis -- that's the evidence. But if, in fact, all four prongs were applied in 2007, then the taxpayer didn't even do what he claims it now knows what it's supposed to do. Because as I showed you in the record the income data is not based on 2007 for apartments. They did not go and look at market conditions in 2007 to arrive at the income and

expenses and a CAP rate to arrive at a number. So if, in fact, they're claiming that is the law as it's now recognized in South Carolina, they didn't do it. So it can't be the law that you didn't do that I need you now to rule in my favor even though I didn't do the very thing I'm arguing to you. The record is clear on that point. The data for income is based on income and expenses in 2003. The County has applied the same factors, the same analysis, based on the same data set; 2003. If it's wrong, it's been wrong throughout the County's entire analysis because it's not picking and choosing which data sets to use to arrive at value. So I wanted to be real clear because if, in fact, the position is exactly what they say, then they haven't done what they said. The County has not used market information for value in 2007, '08, or '09. It has not, whether it's looking at condominiums or apartments. It has all been based on 12/31/2003. And that's what Headley did. He did 2003 and then his testimony was about what was going on in 2007 without an analysis. His appraisal report is filled with information

about apartment income data for 2003 and at the end of his report he arrives at a condominium value based on those two tables I showed you by simply plugging in a tax value for condominiums. That is not an analysis of condos. Your Honor, I think both parties agree that this case is difficult because we started out this case with trying to figure out what's the right year to apply the highest and best use test. And I think the Court of Appeals clearly answered that question but they went a little further in giving explanation. And I think we're about to run into the issue that they even anticipated. I'll read some language out of the LMP decision. The Court first starts off with a recognition of what 12-43-215 stands for and it says 12-43-215 states merely that any adjustment to a property's value must be based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted. We're all clear on that. It says the statute at that time when we were discussing the case was silent on the date to be used for determining the highest and best

use of property. Well we now have that answer. It says accordingly it cannot be read to mandate a diversion from the general rule that the use of property to be determined as of December 31st of the year -- of the preceding year. Such a finding would result in potentially unreasonable and illogical valuation in instances when the use of property changes potentially dramatically from the last time of the county wide assessment. What the Court is saying is -- the whole point in this next sentence goes to this, is in South Carolina we're looking for stabilization of values. We recognize you cannot mandate stabilization uses. So the Court goes on to say further we find that the purpose of the statute which provides some stabilization to the property taxes owed on a piece of property is less viable in circumstances in which the property owner intentionally or willingly changes the use of the property. So if the point here is to stabilize values with the recognition that you cannot mandate to a property taxpayer, you can't change your use. The Court is saying what is constant and

consistent is the values and the valuation date. It doesn't change. Once that equalization program is put in place, it's what it is. In future years most definitely property owners can change the use. We apply that highest and best use test and the Court is saying but we rely on that same data set that doesn't change because it could change to the taxpayer's detriment too. It just so happens in this case there was a recession. If we had applied under all things being equal in 2007, there would have continued to have been the same number of sales that were in previous years. Those values might have been higher. The assessor could not come into court today and say, hey, I think the property values have increased since the last reassessment and I also believe the highest and best use has changed so I'm going to now assess your property at a higher rate. You can't do that. That's why we cannot go and rely upon existing market conditions because that could be to a taxpayers detriment when there's not a recession. In this instance there's no question in 2008 property values dipped.

Everybody understand that universally. There was no question about that. The problem is you cannot rely on market data in 2007 and that's what the taxpayer did. The County in each instance, whether it's apartment or condo, relied only on market data for 2003, nothing else. The taxpayer is asking you to believe their position even though they're using apartment income expenses for 2003 but using condominium market data based on the testimony that things weren't selling. Once again, Your Honor, go back to my analogy, just because your house can't sell because you've got it on the market for a number doesn't mean that it stops being a house, it stops being its highest and best use, and it doesn't even necessarily mean that's not what it's worth because you don't look to what actually occurred at your residence, you look at houses that are similarly situated to arrive at the values based on those sales. There is no testimony there were no sales in Charleston County of apartment complexes that were similarly situated in 2008, the reference is that the taxpayer didn't sell one his units in 2008 and

that is the basis for their position that it is not financially feasible. You can't do it that way. Their own expert acknowledges if you use Mr. James' methodology he would arrive at the number of 11.2 million dollars under the financial feasibility analysis. That's the number he would have arrived at. Yet he used some other method that I still don't understand the mechanics behind it where he plugs in a tax value and he calls it the condominium tax value. I don't even know what that is. But that is the basis for him arriving at his 7.7 million dollar number to support why he thinks it's not financially feasible. Thank you.

THE COURT: Anything from you Mr. Rodgers?

MR. RODGERS: Well if the highest and best use of this property as of December 31, 2007, was as condominiums, then my client's an idiot because why wouldn't he choose the most financially feasible option? Why wouldn't he choose the one that's maximally productive? He's a business man; he wanted to make money. And this is critical, remember that valuation date right there; 12/31/07. Right -- what's going on; what's the market doing right now? Well that

sales chart shows you what the market was doing. Our expert testified as to what the market was doing. If they could have sold these 121 units as condos, they would have been stupid not to do that. They would have done it. Had they decided to keep going and try to sell these 121 units, we wouldn't be here because they'd be bankrupt, they'd be dead. The only thing they could do was to continue using these units as apartments and that's exactly what they did.

THE COURT: Mr. Dawson, let me ask you, is it the County's position that the taxpayer's experience in selling these units as condominiums during I think the slow down started in 2000- -- well the valuation date is January -- I'm sorry the highest and best use date is December 31st of 2007, and it looks like during that year they sold substantially less than they sold in the prior year.

MR. DAWSON: That's correct. Yes, ma'am.

THE COURT: So were you -- is the County's position that the Court should give little weight to the -- I mean, because there's a great variance ---

MR. DAWSON: Yes.

THE COURT: --- in the difference between what was sold in '06 and what was sold in '07. So are you saying that this Court should give little weight to that?

MR. DAWSON: I think the Court should acknowledge that there was a slow down in his actual sales. But the problem is there's not much in the record to explain why other than the economy. The County's position is that the appraisal practice doesn't specifically look to what the person is doing because then we have to get into the motivations of the individual. That's why the practice of appraisal looks to hypotheticals and to other conditions that exist. Because if we solely based it on an individual and that individual's motivations as the sole basis for determining value, then there could be no uniformity to it. I acknowledge that it doesn't make much sense for a property owner to not be motivated to sell his property. That's not my argument. My argument is the lack of information by the taxpayer's expert and the taxpayer himself looking at comparable sales to determine the value of the individual units. The fact that

you didn't sell very many units does not make the units not valuable.

THE COURT: Well it's not -- but that's the date that you're determining the highest and best use ---

MR. DAWSON: Yes.

THE COURT: --- not the value?

MR. DAWSON: Yes. My argument -- and that's why I've tried to make it clear that the County has consistently applied or identified values from 12/31/2003. For every step of this analysis it has used the values. Anything that had a dollar sign in front of it, we went to 2003. And so they are correct. When we started talking about what was possible on the property and legally permissible, we didn't go back to 2003. There's no dollar sign associated with that. But for anything that had to do with value, the County went back to 2003. And so, Your Honor, back to your question. I acknowledge that sales slowed down for this particular property owner right before the lien date, 12/31/2007. And, yes, I think the Court has to acknowledge that his sales slowed down. I don't think the Court should give great

weight to the fact that he was unable to sell as many units as his proforma suggested he should be able to sell in a given year as the basis for determining what the property's highest and best use is because the methodology that an appraiser uses is not simply looking at how many units did you sell in a particular year. It's something that an appraiser would consider but an appraiser doesn't stop with were you able to sell your property this year for me to determine what the highest and best use is of it. An appraiser looks at other factors to include the value based on sales of other units. This is trying to identify what is the value of the unit. And when you apply all four factors under that four-prong test it's how you arrive at highest and best use. The argument that's being advance to you today is highest and best use is solely predicated on financial feasibility. One prong of the four-prong test. If I cannot get you the best answer on that one prong, then we stop. No, Your Honor, this is a part of a continuum. It's a part of a test and in that test you must plug in a number. You don't just simply say

well we weren't able to sell a lot that year so we don't plug a number in. So what is the number? And if you can plug in a number, how do you arrive at a number when you don't have a lot of sales? The problem with the argument -- that's why I would not say to the Court you should not consider the fact that the sales declined, I acknowledge that, but that part of the test is not based on how many sales occurred. That part of the test looks to compare two numbers; in this instance as an apartment and as a condo. Not how many apartments were leased that year to determine whether that was financially feasible. The formula for determining apartment sales in that income and expense line item has a vacancy rate tied to it. One doesn't argue well we had a higher vacancy rate than normal. Maybe it's really not an apartment because we didn't have very many rentals that year. You didn't hear any discussion about that because that's not how an appraiser appraises property. Mr. Rodgers is right; it's a four-part test and you can't insert in the four-part test how many units sold as the basis for financial

feasibility because that's not the basis for it solely. So, yes, Your Honor, I think you should consider that. I don't think you can give the weight that they're asking you to apply to that one factor when the factor is not based on how many sales. That factor is based on the value of the unit. Nowhere in any treatise will you find the basis for that prong is did the unit sell and that's what you're being asked to do. You're being asked to apply did the unit sell. How many actually sold, that's the product of financial feasibility. If that were the test, I assure you Mr. Headley would have come in and said or one of the County's experts, all we do is look to see if a house sold, if it didn't sell, it's not financially feasible. That's not the test. The test was to arrive at a value to plug into the analysis for financial feasibility. So I have two numbers, I look at those two numbers and hypothetically I look at one value, second value, which one is higher, and then I drop down to maximally productive. It's not based on how many units sold. So, Your Honor, yes, you should consider it. The County has

considered it. The County did not give great weight to it because on the financial feasibility prong of the test it's not based on how many units sold actually.

THE COURT: So your saying if no units sold, it wouldn't have made a difference?

MR. DAWSON: It wouldn't have made a -- well, I know it would have been something for the Court to consider that no units sold, but my hope is that the Court would have then said, all right, but let me look at what the test is supposed to be applying. It's supposed to be applying a hypothetical value. Your Honor, I'll take a step back. There are three different ways to value property; income approach, the sales comparison approach, and the cost approach. Under the income approach and the cost approach there are no sales. When a unit is first built we don't say it has no value because it didn't sell, we look to other methods to arrive at what the value is. If it was solely based on if something actually was sold, then, Your Honor, you'd be absolutely right, you'd have to give great weight to how many sold. But that's not the method. That's why appraisers in that

industry -- the industry practice is to look at a variety of factors. If you lock into one, it could eliminate the analysis for all others. So if the units had just been built, one could come into court and say, well, you know what, they may be condos but I never sold any and the Court should rely on that to show why it's not financially feasible to call them condos. Forget about what the markets are. Forget about my neighbor, forget about the fact that he's selling them continuously, I just built mine and because I don't want it to be taxed right now because I just built them and since I never sold one, it shouldn't be condos. Once again, I realize that the flip side of my argument and that is that's assuming you don't have someone motivated to sell. It's not about the motivation to sell at the financial feasibility prong. It's not getting into the motivations just yet. This is just simply looking at what is the value of the unit and the value of the unit is not predicated on whether or not I was able to sell it. That's why we look at other sales. And there's no testimony that says there were no other sales

in 2008. There can't be any testimony there were no sales in 2007 because there were 13 of them. Nowhere in that chart does it show the value of the sales in 2007 for the 13 units which indicates there was a value to it. And if you were to add those values for those representative units, you would come up with a number and that number should be applied to the value for apartment complexes to determine which one is financially feasible. That's what missing from the taxpayer. The County has done that analysis and has given you two numbers. They haven't given you two numbers. So once again, a long-winded answer as to the balance I'm trying to suggest net is, yes, Your Honor, you cannot avoid looking at the numbers but the numbers don't completely tell the story for that prong of the test.

MR. RODGERS: Can I answer that as well, Your Honor?

THE COURT: Yes.

CLOSING STATEMENT BY MR. RODGERS:

MR. RODGERS: We gave you two numbers. Highest and best use. It's not a blending of factors. You don't answer one, two, three, and four and kind of decide ,how you feel about it. It's a

hurdle, you either get through one or you don't. You either get through two or you don't. You either get through three or you don't. A condominium use -- our expert testified, did not get through three because it was not financially feasible. The number is it doesn't work. Our guy is going bankrupt with condos. His only option is apartments and that's what we valued and that's what we did. Do we think the only question that needs to be answered is what was our experience in sales? No, but that's a good place to start. That's a critical piece of information. Most guys, most men, most women selling a house or selling one house, they don't have a track record of other houses around them, exactly what did they sell, we had multiple units were trying to sell that wasn't working. We slowed in 2007 -- it slows here, it's dead by the end of 2008. And we didn't just say that it's us, and you lived through 2007 and the aftermath and I did too, and you know the housing market and my expert testified as to the housing market as an appraiser. He said in 2007 it was dead and it wasn't just us, it was other complexes in

Charleston who tried to do the same thing. That's no earth shattering news. We lived it, we know that. Had we been able to sell them, we would have. We couldn't so we didn't. We did the only thing that was financially feasible and that was continue to use them as an apartment complex.

THE COURT: Mr. Dawson, I wanted to give everybody an opportunity to fully make their arguments. Is there anything further that you need before we adjourn the hearing?

CLOSING STATEMENT BY MR. DAWSON:

MR. DAWSON: No, Your Honor. I attempted to try to either anticipate and/or answer any questions that you have. I don't have additional information beyond what we provided in our proposed order to you. We attempted, obviously, to address the highest and best use. We attempted to address the Lindsey court decision, from our perspective being not applicable to this case based on how its being proposed to be used and to the extent that it is applicable, we've attempted to show the Court how the factors that the Court looked at are not applicable in this case. And so, Your

Honor, I think we've provided everything that I intended to provide to the Court.

THE COURT: Okay. You all are not making it easy for me. But I think you all for coming and for the information that you've provided. Now, I will allow the parties to make any additional written arguments they want before I issue a final order. And if you can do that within the next 30 days because the record is rather large in this case and I do want to review the record from the contested hearing that was held in 2010 ---

MR. DAWSON: Yes, Your Honor.

MR. RODGERS: Yes, Your Honor.

THE COURT: --- and also review the information that you all have provided today before issuing the order. But like I said, if you all want to provide any additions or supplement your briefs or proposed orders in any way, please do so within the next 30 days so that we can go ahead and get this matter disposed of. And then also in the meantime I'm not opposed to you all settling it.

MR. DAWSON: Thank you, Your Honor.

MR. RODGERS: Your Honor, I meant to introduce the

folks I brought with me. May I do that?

THE COURT: Yes, you can.

MR. RODGERS: Mickell Robinson. Ann Rodgers, Ann is my daughter. They are classmates, just finished ninth grade at James Island High School.

THE COURT: Oh, very good.

MR. RODGERS: Mickell -- they had a career day during the year and she had shadowed with me but I thought summer time they're not in school so they could come and watch what's going on.

THE COURT: Have they stayed -- their eyes were open the entire time.

MR. DAWSON: Congratulations.

THE COURT: Well good having you here, ladies. And I don't know if you all -- I don't know if she introduced herself but that's my staff attorney that's sitting in the back.

MR. DAWSON: Thank you, Your Honor.

THE COURT: Okay. Thank you all for coming and the hearing is adjourned.

(There being nothing further, the hearing concluded at 12:35 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of sixty-three (63) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 16, 2013.

Amy G. Byrd

Amy G. Byrd
Court Reporter

Notary Public for South Carolina
My Commission Expires: 4/10/2023

Cited
As of: May 19, 2014 12:34 PM EDT

Charleston County Assessor v. LMP Props.

Court of Appeals of South Carolina
November 1, 2012, Heard; February 27, 2013, Filed
Opinion No. 5086

Reporter: 403 S.C. 194; 743 S.E.2d 88; 2013 S.C. App. LEXIS 51; 2013 WL 749505

Charleston County Assessor, Appellant, v. LMP Properties, Inc., Respondent.

Prior History: [***1] Appeal From The Administrative Law Court. Appellate Case No. 2011-203547. Shirley C. Robinson, Administrative Law Judge.

Disposition: REVERSED AND REMANDED.

Core Terms

highest and best use, reassessment, valued, property's, parties, valuation, condominiums, apartments, purposes, law of the case, fair market value, property value, tax year, countywide, owner-occupied, residential, preceding, taxation, appeals, applies, property owner, valuation date, statute's, mortgage, provides

Case Summary

Overview

The county assessor, the taxpayer, and the South Carolina Administrative Law Court (ALC) agreed that to calculate the fair market value of the taxpayer's condominium and rental property units, the property's highest and best use was to be determined, under S.C. Code Ann. § 12-37-930 (Supp. 2012), but disagreed as to the date for the determination. On appeal, the court found that, under S.C. Code Ann. § 12-43-215 (Supp. 2012), the ALC erred in determining the date was on the operative date for the last county wide reassessment, instead of on the December 31st preceding the tax year.

Outcome

Reversed and remanded.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Legislation > Interpretation

Tax Law > State & Local Taxes > Administration & Procedure > Judicial Review

HN1 Tax appeals to the South Carolina Administrative Law Court (ALC) are subject to the South Carolina Administrative Procedures Act. Accordingly, an appellate court will review the decision of the ALC for errors of law. Questions of statutory interpretation are questions of law, which an appellate court is free to decide without any deference to the court below.

Governments > Legislation > Interpretation

HN2 The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the South Carolina Legislature. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand a statute's operation. Further, a statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. Accordingly, a court should read a statute as a whole and should not concentrate on isolated phrases within a statute.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN3 See S.C. Code Ann. § 12-37-930 (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN4 Fair market value is the measure of value for taxation purposes under S.C. Code Ann. § 12-37-930 (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN5 Ordinarily, the pertinent date to determine the value of property for a given tax year is December 31st of the preceding year. S.C. Code Ann. § 12-37-900 (Supp. 2012).

Civil Procedure > Judgments > Preclusion of Judgments > Law of the Case

Criminal Law & Procedure > Commencement of Criminal Proceedings > Double Jeopardy > Law of the Case

HN7 An unchallenged ruling, right or wrong, becomes the law of the case.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN6 See *S.C. Code Ann. § 12-43-215* (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN8 *S.C. Code Ann. § 12-43-215* (Supp. 2012) states merely that any adjustments to a property's value must be based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN9 The general rule is that the use of a property is to be determined as of December 31st of the preceding year.

Counsel: County Attorney Joseph Dawson, III, Deputy County Attorney Bernard E. Ferrara, Jr., Assistant County Attorney Austin A. Bruner, and Assistant County Attorney Bradley A. Mitchell, all of North Charleston, for Appellant.

Stanley C. Rodgers, of Charleston, for Respondent.

Judges: WILLIAMS, J. FEW, C.J., concurs in a separate opinion. PIEPER, J., dissents in a separate opinion.

Opinion by: WILLIAMS

Opinion

[*196] [**89] **WILLIAMS, J.:** The Charleston County Assessor (Assessor) appeals the administrative law court's (ALC) order valuing a piece of property containing one hundred twenty-one individual units and owned by LMP Properties, Inc. (LMP) at $8,565,000. The Assessor argues the ALC erred in determining the units' highest and best use on the valuation date of December 31, 2003, the operative date for the last countywide reassessment in Charleston County, instead of December 31, 2007, for the tax year 2008. We reverse and remand.

FACTS

The subject property, named The Legends, is located in Mount Pleasant and consists of thirteen two-story buildings. LMP's predecessor in title to the property is [***2] Keystone Legends I, L.P. ("Keystone"). Keystone mortgaged the property in 1999 for $15,891,900 to build the complex, which was originally composed of two hundred apartment units. In April 2006, LMP purchased The Legends for $5.00 and assumed the mortgage. Just prior to conveying the property to LMP, Keystone legally converted the units to condominiums by establishing a horizontal property regime pursuant to *section 27-31-10 et seq. of the South Carolina Code* (2007 & Supp. 2012). At the time of the hearing before the ALC, LMP had sold fifty-eight of the two hundred units and placed twenty-one units aside for further marketing and sale. The remaining one hundred twenty-one units, which are the subject of this appeal, have continued to be owned and leased to third parties by LMP although they are titled as condominiums.

Following the title conversion of the apartments into condominiums, the Assessor changed its records to reflect the property as two hundred separate units and assigned each unit a separate tax identification number. The Assessor also reviewed the units' valuation for ad valorem taxation purposes, [*197] and, by assessing each unit individually as a condominium, determined that [***3] the fair market value of the units for the tax year 2008 was $16,454,000. LMP disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor declined to alter its original valuation, and LMP sought review of the valuation with the Charleston County Board of Assessment Appeals (Board). Following a hearing on November 4, 2009, the Board set a value of $10,090,500 for the tax year 2008.

The Assessor filed a request for a contested case hearing with the ALC, seeking review of the Board's decision, and the ALC held a hearing on the matter on August 24, 2010. At the hearing, the parties agreed that the date for valuing the properties was December 31, 2003, because 2004 was the year of the countywide reassessment. However, the parties disagreed as to when the highest and best use of the units was to be determined for purposes of valuing the property. The Assessor argued that the highest and best use of the units was to be determined as of December 31, 2007. Accordingly, the Assessor contended the highest and best use of the units was as condominiums because the units were titled as condominiums on December 31, 2007. In contrast, LMP countered [***4] that the proper date for determining the highest and best use was December 31, 2003. Based on this date, LMP contended that the highest and best use of the units was as apartments because the mortgage on the property in 2003 required that the units be used as apartments. Specifically, the loan used to finance

the construction of the units was procured from the United States Department of Housing and Urban Development and prohibited 1) the prepayment of the indebtedness until March 1, 2006, and 2) the use of the units for any [**90] other purpose other than that intended at the time the mortgage was executed. In the alternative, LMP argued that the units should be valued as apartments because 1) due to the decline in the economy, apartments were the highest and best use of the property in 2007 and 2) pursuant to the supreme court's holding in *Lindsey v. South Carolina Tax Commission, 302 S.C. 504, 397 S.E.2d 95 (1990)*, the units should be valued based on their use, as apartments, rather than how they are titled, as condominiums.

In its order, the ALC agreed with LMP and found that *section 12-43-215 of the South Carolina Code* (Supp. 2012) [*198] required that the highest and best use of the units be [***5] determined on the valuation date, which the parties agreed was December 31, 2003. Specifically, the ALC found that because "the assessment process is so intertwined with the valuation process . . . the legislative intent is clear [and t]he property's fair market value must be based on the property's highest and best use on the valuation date . . . ." Accordingly, the ALC found that the highest and best use of the units was as apartments because the mortgage on the units in 2003 prohibited them from being used as condominiums. In making this determination, the ALC relied upon the methodology endorsed by the Appraisal Institute, which provides that a property's highest and best use must be "physically possible, legally permissible, financially feasible, and maximally profitable . . . ."[1] Because the ALC agreed with LMP's argument that the highest and best use of the units should be determined as of December 31, 2003, the ALC declined to address LMP's remaining arguments. Based on its valuation of the units as apartments, the ALC adopted the valuation of the Assessor's witness Gary James, who valued the property at $8,565,000. This appeal followed.

STANDARD OF REVIEW

HN1 "Tax appeals to the ALC are subject to the Administrative Procedures Act (APA)." *CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011)*. "Accordingly, we review the decision of the ALC for errors of law." *Id.* at 74, 716 S.E.2d at 881. "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *Id.*

LAW/ANALYSIS

I. Highest and Best Use

The Assessor argues that the ALC erred in determining the highest and best use of the units as of December 31, 2003, the date of valuation used for the last countywide reassessment in 2004. We agree.

HN2 "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee, [*199] 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)*. "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced [***7] construction to limit or expand the statute's operation." *Id. at 499, 640 S.E.2d at 459*. Further, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)*. Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute." *CFRE, LLC, 395 S.C. at 74, 716 S.E.2d at 881*.

Section 12-37-930 of the South Carolina Code (Supp. 2012) provides that

> [a]ll *HN3* property must be for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is [**91] adapted and for which it is capable of being used.

HN4 "Fair market value is the measure of value for taxation purposes under this statute." *Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990)*.

HN5 Ordinarily, "[t]he pertinent date to determine the value of property for a given tax year is December [***8] 31st of the preceding year." *Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990)*; *see also S.C. Code Ann. § 12-37-900* (Supp. 2012). However, *section 12-43-215*, which the parties and the

[1] The parties do not appeal the ALC's [***6] reliance on this method of determining the highest and best use of the units.

ALC agreed controls in the instant case,[2] provides as follows:

> *HN6* When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad [*200] valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, *based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.* (emphasis added).

The parties and the ALC agreed that in order to calculate the property's fair market value, the property's highest and best use must first be determined, but disagree as to the date on which the highest and best use must be determined. LMP contends that section 12-43-215 requires that the highest and best use be determined as of December 31, 2003, the date used for the last countywide reassessment program in Charleston County. However, we agree with the Assessor that the appropriate date for determining the units' highest and best use is December 31, 2007.

HN8 Section 12-43-215 states merely that any adjustments to a property's value must be "based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted . . . ." The statute is silent on the date to be used for determining the highest and best use of the property. Accordingly, it cannot be read to mandate a diversion from *HN9* the general rule that the use of the property is to be determined as of [***10] December 31st of the preceding year. Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from the time of the last countywide reassessment. Further, we find that the purpose of the statute, which provides some stabilization to the property taxes owed on a piece of property, is less viable in circumstances in which the property owner intentionally and willingly changes the use of a property. Therefore, we reverse the ALC's order to the extent it determined the highest and best use of the units based on a date of December 31, 2003.

[*201] II. *Lindsey* Case

The Assessor also argues that because LMP failed to appeal the ALC's ruling that *Lindsey v. South Carolina Tax Commission, 302 S.C. 504, 397 S.E.2d 95 (1990)*, does not apply to the facts of the instant case, that ruling is the law of the case. This argument is without merit.

First, the ALC did not rule that the holding in *Lindsey* does not apply to the facts of this case, but rather declined to address the issue because it agreed with LMP's argument that the highest and best use was to be determined as of December 31, 2003, and was, therefore, [***11] as apartments. Accordingly, the law of the case doctrine does not apply because there was no ruling on the issue of whether *Lindsey* applied for LMP to appeal. *See Carolina Chloride, Inc., 394 S.C. at 172, 714 S.E.2d at 878* (noting "an unchallenged ruling, right or wrong, becomes [**92] the law of the case"). Therefore, this argument is both factually and legally without merit.

CONCLUSION

Based on the foregoing, we reverse the ALC's order to the extent it determined the highest and best use of the units based on a date of December 31, 2003, and we remand so that the ALC may address the parties' remaining arguments regarding valuation of the units.

Accordingly, the ALC's order is

REVERSED AND REMANDED.

FEW, C.J., concurs in a separate opinion.

PIEPER, J., dissents in a separate opinion.

Concur by: FEW

Concur

FEW, C.J., concurring: I agree with Judge Williams that December 31, 2007, is the correct date for determining the highest and best use of the property. I disagree, however, that we must consider *section 12-43-215 of the South Carolina Code* (Supp. 2012) under the law of the case doctrine. *See* note 2, *supra*. The ALC's reliance on the section is part of its analysis; it is not the court's ruling. The law of the case [***12] doctrine applies to unappealed "rulings." *Carolina Chloride, Inc., supra; Charleston Lumber Co., Inc. v. Miller Hous. Corp., 338*

[2] Because section 12-43-215 applies to "owner-occupied residential property" and the units at issue in the instant case are not owner-occupied, we question whether it applies in the instant case; nevertheless, because no party appealed the ALC's ruling that section 12-43-215 applies, this ruling is the law of the [***9] case. *See Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 172, 714 S.E.2d 869, 878 (2011)* (noting *HN7* "an unchallenged ruling, right or wrong, becomes the law of the case").

S.C. 171, 175, 525 [*202] S.E.2d 869, 871 (2000) ("unappealed ruling is law of the case" (citing ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997))). The ALC's ruling is that the proper date is December 31, 2003. The assessor appealed that ruling.

The parties appear to agree with the ALC that section 12-43-215 applies. However, the plain language of the section restricts its application to "owner-occupied residential property." Because the units whose values are in dispute here are not owner-occupied, the section does not apply. The fact that all parties and even the lower court mistakenly believe a statute applies does not require this court to interpret the statute when we find it to be inapplicable. The law of the case doctrine does not preclude this court from disagreeing with the basis of the lower court's analysis even when that basis is not challenged on appeal.

Dissent by: PIEPER

Dissent

PIEPER, J., dissenting: I respectfully dissent and would affirm the ALC's determination that the property's fair market value must be based on the [***13] property's highest and best use on the valuation date, which is December 31, 2003.

Initially, the parties agreed to apply section 12-43-215 of the South Carolina Code (Supp. 2012). Additionally, neither party appealed the ALC's application of section 12-43-215. Therefore, the ALC's application of section 12-43-215, while incorrect, is the law of the case because South Carolina does not utilize a plain error rule of appellate procedure. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("South Carolina appellate courts do not recognize the 'plain error rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party."); Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

Construing the statute in favor of the taxpayer, I would find a plain reading of section 12-43-215 provides that December 31, 2003, is the correct date to determine the highest and best use of the property. *See* Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (holding an ambiguity [***14] in a tax statute must be construed in the [*203] taxpayer's favor); S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) ("In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt."). According to section 12-43-215, the highest and best use of the property determines the value of the land and the market value of the land is to be determined by the last countywide reassessment year. *See* S.C. Code Ann. § 12-43-215 (Supp. 2012) ("When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the *value of the land must be determined on the basis that its highest and best use* is for [**93] residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the *market values of real property as they existed in the year that the equalization and reassessment program was conducted* and on which the assessment is based." (emphases added)). Because the highest and best use determines the value of the property, and the last countywide reassessment [***15] was in 2004, the proper date to utilize in determining the property's highest and best use pursuant to the statute is December 31, 2003. For the foregoing reasons, I would affirm the order of the ALC.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

FINAL BRIEF OF APPELLANT CHARLESTON COUNTY ASSESSOR

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW COURT'S ORDER FINDING THAT LMP PROPERTIES, INC.'S 121 CONDOMINIUM UNITS WERE NOT FINANCIALLY FEASIBLE AS CONDOMUNIUMS AS OF DECEMBER 31, 2007, BASED ON MARKET VALUES AS OF DECEMBER 31, 2003, IS IN VIOLATION OF STATUTORY PROVISIONS; AFFECTED BY AN ERROR OF LAW; CLEARLY ERRONEOUS; AND ARBITRARY OR CAPRICIOUS.

II. WHETHER THE ADMINISTRATIVE LAW COURT ERRED WHEN IT APPLIED LINDSEY V. S.C. TAX COMM'N, 302 S.C. 504, 397 S.E.2d 95 (1990), TO CREATE AN EXCEPTION TO THE HIGHEST AND BEST USE TEST FOR DETERMINING FAIR MARKET VALUE FOR *AD VALOREM* PROPERTY TAX PURPOSES.

STATEMENT OF THE CASE

The Charleston County Assessor ("Assessor") filed a contested case hearing on December 11, 2009, before the Administrative Law Court ("ALC") challenging the decision of the Charleston County Board of Assessment Appeals ("Board") on the grounds that the Board erred in construing and applying an improper methodology to value real property owned by LMP Properties, Inc. ("LMP"). The Board stated in its decision that the Assessor estimated the value of 121 condominium units owned by LMP (the "Property" or "The Legends") at $16,493,000 for tax year 2008,[1] and LMP estimated the value at $7,602,367. The Board set a compromised value of $10,090,500, and did not assign values to the separate types of condominium units owned by LMP. (R. pp. 0439-40). Instead, the Board valued The Legends as a group of rental units, an apartment complex, instead of individual condominium single family dwellings.

The ALC held a contested case hearing on August 24 and 25, 2010, to determine the valuation of the 121 condominium units owned by LMP. The Assessor presented values of the various one bedroom, two bedroom, and three bedroom units comprising the 121 condominium units as set forth in Appellant's (Petitioner's) Exhibit 5, Appraisal Consulting Report, page 4 (unnumbered) and Exhibit 9, page 85, Summary of Floor Pan Values. (R. p. 0343; R. p. 0424).

The ALC filed its first Final Order and Decision on October 11, 2011, ordering that

[1] The Assessor never valued the 121 condominium units as a total value, but instead, valued the units as reflected in the Summary of Floor Plan Values. (R. p. 0208; R. p. 0343; R. p. 0423).

the Assessor value the property at $8,565,000 as an apartment complex. The County filed its Notice of Appeal on November 17, 2011, challenging the ALC's Final Order and Decision. The Court of Appeals heard oral arguments on November 1, 2012, and issued its decision filed February 27, 2013, (the "LMP I Court"). The LMP I Court remanded so that the ALC may address the parties' arguments regarding valuation of the units. See Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). It sent its Remittitur to the ALC and parties on March 15, 2013.

The ALC heard oral arguments on July 30, 2013, and issued its second Final Order and Decision filed September 20, 2013. (R. pp. 0668-84). The County filed its Notice of Appeal on October 22, 2003, challenging the ALC's second Final Order and Decision. (R. pp. 0685-0703).

STATEMENT OF THE FACTS

This is a tax year 2008 *ad valorem* property tax assessment case of 121 condominium units in which the parties dispute the highest and best use and the market value of the units with a date of value of December 31, 2007, based on market values as of December 31, 2003. December 31, 2003 is the date of value for the County's quadrennial reassessment for that period.

The LMP I Court reversed the ALC's order to the extent the ALC determined the highest and best use of the units based on a date of December 31, 2003. The LMP I Court reversed the ALC because it incorrectly determined The Legends' highest and best use of the units was an apartment complex based on the finding it was not legally permissible for The Legends to be converted to condominiums on December 31, 2003, instead of just using the market values as of December 31, 2003. The LMP I Court did not rule on the ALC's valuation of The Legends as an apartment with a value of $8,565,000 for tax year 2008. Nevertheless, the LMP I Court remanded so that the ALC may address the parties' remaining arguments regarding valuation of the units. The LMP I Court remanded the issue of whether The Legends' highest and best use was an apartment complex or individual condominium units as of December 31, 2007.

The Legends consists of 121 separately recorded and titled condominium units owned by LMP. The Legends is located on 23 acres in Mount Pleasant, South Carolina. The site hosts several amenities including a swimming pool, playground area, fountain, clubhouse, fitness center, tennis court, resident business center, controlled access gates, and car care center. The Legends is directly adjacent to the Charleston National Country Club and Golf Course. It is located within the Cairo Middle School and Wando

High School Districts. It is also located two miles from the Oakland Shopping Center and five miles from the Town Center shopping areas. The Property is situated ten miles from the beaches of the Isle of Palms and Sullivan's Island. In tax year 2007, the Assessor reappraised a portion of The Legends.

The Assessor reappraised The Legends because its predecessor in title, Keystone Legends I, L.P. ("Keystone"), submitted the property[2] and all improvements to the Horizontal Property Act, S.C. Code Ann. § 27-31-10 et seq., as "The Legends Horizontal Property Regime"[3] ("The "Legends HPR"). The master deed for The Legends Horizontal Property Regime is dated April 26, 2006, and recorded April 27, 2006, in Book D581, Page 121, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

After converting the apartment complex to The Legends HPR, Keystone sold the 200 condominium units to LMP for $5.00 on that same day.[4] Thereafter, LMP entered a mortgage with The National Bank of South Carolina in the principal amount of Eighteen Million and 00/100 ($18,000,000.00) Dollars. The mortgage is dated April 26, 2006, and

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[2] The Legends property initially contained a 200-unit apartment complex built in 2000. The apartment complex consisted of 13 buildings located on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building and the units were rented as multifamily units. The Assessor placed The Legends on the tax rolls in tax year 2002 by placing a fair market value on the 200-unit apartment complex of Eleven Million and 00/100 ($11,000,000.00) Dollars using the income approach with a capitalization rate of 8.4%. (R. p. 0003; R. pp. 0028-29).

[3] By converting the former apartment complex known as The Legends of Mount Pleasant into the horizontal property regime known as The Legends Horizontal Property Regime, Respondent created 200 separate parcels, each as one residential unit. (R. p. 0029).

[4] Ronald W. Follmann, of 93 N. Shelmore Drive, Mount Pleasant, South Carolina is the registered agent and President of LMP Properties, Inc. Mr. Follman is also the President and registered agent of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends Inc. is also the General Partner of Keystone Legends I, L.P., LMP's predecessor in title to The Legends. (R. p. 0003).

recorded May 8, 2006, in Book M582, Page 538, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina. LMP secured the mortgage with the inventory of 200 condominium units known as The Legends HPR.

In the 2007 tax year, the Assessor responded to LMP's filing of the horizontal property regime by creating 200 individual parcels, each with one separate unit and a separate tax parcel identification number. The 200 units are identified as tax map parcels numbers 599-00-00-068 through 599-00-00-267, respectively. The Legends property now contains 200 Class-A condominium units known as The Legends at Mount Pleasant.

From 2000 to 2006, the property was an apartment complex and valued as an apartment complex. After creation of The Legends HPR, LMP began placing groupings of individual condominium units on the market for sale. In 2006, LMP sold 44 units. In 2007, LMP sold 13 units. During 2008, LMP offered and marketed 20 of the condominiums for sale. Since 2008, LMP has sold 1 additional unit. At trial, LMP had sold 58 of the 200 condominiums, leaving 142 unsold. Of those 142 unsold condominium units, 121 condominiums are the subject of this case with the remaining 21 units set aside and marketed for sale. From the trial of the case in August 2010 to October 2011, 1 of the 121 units has been sold. (R. p. 0003; R. p. 0029; R. p. 0104, Trial Tr. 255, lines 2-23).

During the initial trial of this case, the Assessor along with three members of her staff, Angela H. Sawadske, Stephen J. Everman and Gary N. James, offered testimony supporting her opinion of value and The Legends' highest and best use. The Assessor also introduced into evidence the following documents in support of her valuation: an

Appraisal of Real Property Report (showing market value for each typical 1, 2, and 3 bedroom condominium unit) prepared by Angela H. Sawadske, an Appraisal/Valuation Analysis of The Legends prepared by Stephen J. Everman, and an Appraisal Consulting Report prepared by Gary N. James. The Assessor opined that The Legends' highest and best use (of the units in question) as of December 31, 2007, based on real estate values as of December 31, 2003, was as condominiums. The Assessor based this opinion on the fact that she conducted a Financial Feasibility of Apartment Use analysis and arrived at an apartment value of $8,565,000 and a Hypothetical Financial Feasibility Analysis "As If A Condominium Complex" value of $13,800,000 for condominiums. (R. pp. 0403-07; 0408-22). The Assessor determined it was maximally productive for The Legends to be condominiums and therefore valued the property at its highest and best use.

The Assessor appealed the Board's compromised value for The Legends to the Administrative Law Court. After a contested case hearing, the ALC ruled that LMP's 121 units highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0002-12)(Order, Oct. 11, 2011). After the LMP I Court remanded the valuation, based on oral arguments and submission of proposed orders from the parties, the ALC again ruled that The Legends' 121 units' highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0668-84) (the "2013 Order").

This Court should find that the ALC erred and LMP's 121 units' highest and best use is as condominiums, and should be valued based on valuation of individual units. See, R. p. 0423, Valuation of Subject: 121 Individual Condominium Units.

LAW / ARGUMENT

I. THE ADMINISTRATIVE LAW COURT'S ORDER FINDING THAT LMP'S 121 UNITS WERE NOT FINANCIALLY FEASIBLE AS CONDOMUNIUMS AS OF DECEMBER 31, 2007, BASED ON MARKET VALUES AS OF DECEMBER 31, 2003, IS IN VIOLATION OF STATUTORY PROVISIONS; AFFECTED BY AN ERROR OF LAW; CLEARLY ERRONEOUS; AND ARBITRARY AND CAPRICIOUS.

This appeal is governed by the South Carolina Administrative Procedures Act. See S.C. Code Ann. § 1-23-380.

> Appeals from the ALC are governed by the Administrative Procedures Act (APA). Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control & Coastal Carolina Med. Ctr., 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct.App.2011).

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). Accordingly, appellate courts review the decision of the ALC for errors of law. Id. at 74, 716 S.E.2d at 881. Questions of statutory interpretation are questions of law, which appellate courts are free to decide without any deference to the court below." Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App.2013).

A. THE ALC ERRED WHEN IT DETERMINED THAT CONDOMINIUMS WERE NOT FINANCIALLY FEASIBLE AS OF DECEMBER 31, 2007, BECAUSE IT SUBSTITUTED LMP'S "ACTUAL EXPERIENCE IN ATTEMPTING TO SELL CONDOMINUIM UNITS" IN 2007 FOR THE MARKET VALUES OF REAL PROPERTY AS THEY EXISTED IN 2003.

When a taxpayer challenges his residential property tax assessment, South Carolina law requires county assessors to ". . . consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based." S.C. Code Ann. § 12-43-215. The ALC misapplied South Carolina law when it relied on LMP's actual experience trying to market its units in 2007, rather than considering the market values of condominiums as they existed in 2003.

South Carolina law prescribes the method to determine the fair market value of real property in this State. "All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used." S.C. Code Ann. § 12-37-930.

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Id. In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629

S.E.2d 624, 629 (2006). Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute."

Charleston Cnty. Assessor v. LMP Props., Inc., supra, at 199, 743 S.E.2d at 90.

The ALC's 2013 Order misapplies the plain meaning of S.C. Code Ann. § 12-43-215 and S.C. Code Ann. § 12-37-930 in the following ways. First, S.C. Code Ann. § 12-43-215 requires in residential *ad valorem* property tax assessment appeals that the taxpayer's property be valued based on market values as of the last equalization and reassessment program. In Charleston County, that was in 2004 with a date of value as of December 31, 2003. Therefore, under State law the market values, trends, and conditions for this property tax assessment appeal cannot be based on 2007 market conditions. The Assessor's expert testified that LMP was attempting to blend market conditions in 2007 with 2003. The Assessor's expert testified stating the following:

> Q: . . . how does our report in some areas significantly differ from the Respondent's?
>
> A: . . . We looked at the conditions as they existed in 2003 for the market, assuming there were condos as of 12/31/2003. So we looked at market conditions in '03, we looked at the subject as if it existed in '03. . . . He [Respondent] looked at the market as of 12 of 2007, 2008, after the HPR was actually enacted. . . . [I]t appears that the market conditions were not of the effective date. And it's like looking at what things are doing today and comparing them to what the subject was like four or five years ago. You can't look at values as of 12/31/03 based on market conditions in '07 or '08. . . . Things were rosy, looked good, everything looked up and up in '03. We were coming out of a recession in the late '90s, not like today's recession, but things looked very positive. We had a good outlook on the real estate market. . . . So you can't look at the market in '07 and compare it to value in '03. And it appears that that's what the Respondent did.

(R. p. 0086, Trial Tr. 183, lines 1-3, lines 7-25, Tr. 184, lines 1-4, lines 12-15).

Next, S.C. Code Ann. § 12-37-930 mandates that values be based on what a parcel would bring following reasonable exposure to the market, not what it did bring. The fact that a parcel has not sold or has never sold in 2003 or 2007 is irrelevant in determining the market value of the property pursuant to S.C. Code Ann. § 12-37-930. If the actual sale of a parcel in question were the deciding factor on value, then real property could escape taxation under the guise of having never been sold. Using this logic, if a taxpayer could show that his property has remained in his ownership for an extended period of time, he could assert that his property has no value on the real estate market. This line of reasoning would lead to an absurd result; therefore, it cannot be the correct application of S.C. Code Ann. § 12-43-215 or S.C. Code Ann. § 12-37-930.

B. THE ALC'S ORDER FINDING THAT CONDOMINIUMS WERE NOT FINANCIALLY FEASIBLE IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

The ALC's Order is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record because the ALC found that ". . . the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007." (R. pp. 0668-84). LMP did not complete a highest and best use analysis for The Legends; therefore, the ALC's finding is not based on evidence in the record.

"Substantial evidence is such relevant evidence which, considering the record as a whole, will allow reasonable minds to reach the conclusion reached by the fact-finder." Reliance Ins. Co. v. Smith, 327 S.C. 528, 529, 489 S.E.2d 674, 675 (Ct.App.1997).

"Substantial evidence is not a mere scintilla of evidence or evidence totally viewed from one side of the case, but evidence that would allow reasonable minds to reach the conclusion the administrative agency reached." Pee Dee Nursing Home, Inc. v. S.C. Employment Sec. Comm'n., 303 S.C. 232, 235, 399 S.E.2d 777, 778 (1990). "Substantial evidence 'is something less than the preponderance of the weight of the evidence; it is evidence which would allow a reasonable mind to reach the conclusion the administrative agency reached.'" Grayson v. Gulf Oil Co., 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct.App.1987).

Real property in South Carolina is assessed in accordance with the property's highest and best use. The Appraisal Institute describes the methodology for highest and best use as follows:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Appraisal Institute, Real Estate Valuation in Litigation 105 (2d ed. 1995).

"The Appraisal Institute defines highest and best use as: [t]he reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). The definition above applies specifically to the use of the land. South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

It is undisputed that single-family dwelling units, whether as condominiums or apartments, are physically possible for The Legends; therefore, the physically possible prong of the 4-part test is satisfied. In addition, the LMP I Court rejected LMP's claim that it cannot satisfy the legally permissible prong of the test by reversing the ALC 2011 Order finding that The Legends failed that prong of the test. See Charleston Cnty. Assessor v. LMP Props. Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). Therefore, there are no legal impediments to LMP's use of its property as condominiums as of December 31, 2007, thus there are only two parts of the test left to satisfy: financially feasible and maximally productive.

The ALC admitted Frank A. Headley, a real estate appraiser, as an expert in this case for LMP. Headley offered a Summary Appraisal Report indicating his opinion regarding The Legends' highest and best use and its fair market value. Headley summarily opined that The Legends' highest and best use was as an apartment complex (because the Property could not be converted to condominiums in 2003), with a value of $8,920,000.[5] Because Headley determined that the Property could not be

[5] The ALC rejected LMP's valuation of The Legends as an apartment complex valued at $8,920,000. The ALC held that LMP failed to apply a discount factor based on an earlier un-appealed decision of the Charleston County Board of Assessment Appeals to support that decision. On the other hand, the ALC agreed with the Assessor's valuation of $8,565,000 for the Property as an apartment complex based on the following methodology. The Assessor identified the unit models, the number of units within the subject portion, rents utilized for each model, and the extended rents apportioned based on each unit model within the subject portion of the complex to demonstrate an actual income of $1,297,200. The income is calculated as a $108,100 total rent from the various 1BR, 2BR and 3BR units multiplied by 12 months. (R. p. 0405).

Although the subject Property is only 121 units, the Assessor utilized the similar market derived factors for vacancy and collection losses, other income, and expenses. The Assessor made assumptions regarding the expenses based on a percentage of the income, which are valid assumptions for the subject 121 units, as they were for the entire complex.

A summary of the reconstructed operating income and expense statement based on 121 units

condominiums in 2003, he did not complete steps 3 and 4 of the highest and best use test for The Legends based on its use as of December 31, 2007, with market values as of December 31, 2003. See Summary Appraisal Report of Frank A. Headley (R. p. 0111, Trial Tr. 283, lines 19-22; Trial Tr. 284, lines 20-25; R. p. 0112, Trial Tr. 285, lines 1-5). Headley stated in his report that:

> The subject property was in operation as an apartment complex in 2003. It could not be converted to condominiums in 2003 as it was under a prepayment penalty during that period of time. It is therefore my opinion the highest and best use of the subject property was for continued use as a multifamily apartment complex.[6]

Summary Appraisal Report of Frank A. Headley (R. p. 0617).

Since Headley did not perform and evaluate steps 3 and 4 of the highest and best use analysis, LMP does not have any evidence in the record to refute the Assessor's financial feasibility analysis of condominium use value, based on market values as of December 31, 2003. Instead, Headley testified at trial that he agreed with the methodology used by the Assessor's expert Gary James, who conducted a "Hypothetical Financial Feasibility Analysis 'As If A Condominium Complex'" based on market values as they existed as of December 31, 2003, to determine the financial

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demonstrates a value of $9,725,000 using the income capitalization approach of a 121 unit apartment complex. That value is calculated dividing the net operating income of $729,182 by the capitalization rate of $7.50%. Finally, the Assessor applied an 11.94% deduction based on the deduction reached by the Board for the subject complex. Subtracting the reduction in value for the apartment complex of $1,161,165 from the $9,725,000 renders a value of $8,565,000. Therefore, the financial feasibility estimate as apartments using the income capitalization approach is $8,565,000. (R. pp. 0406-07). And that value is the ALC's finding of value and established as the law of the case.

[6] The LMP I Court rejected that position stating: The parties and the ALC agreed that in order to calculate the property's fair market value, the property's highest and best use must first be determined, but disagree as to the date on which the highest and best use must be determined. LMP contends that Section 12-43-215 requires that the highest and best use be determined as of December 31, 2003, the date used for the last countywide reassessment program in Charleston County. However, we agree with the Assessor that the appropriate date for determining the units' highest and best use is December 31, 2007. See Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013).

feasibility of condominium use value. (R. pp. 0408-20; R. p. 0116, Trial Tr. 302, lines 20-22; Trial Tr. 303, lines 19-24).

Headley testified that based on his application of James' methodology, he would have arrived at a financial feasibility of condominium use value of $11,200,000, rather than James' value of $13,800,000. (R. p. 0116, Trial Tr. 304, lines 2-25; R. p. 0117, Trial Tr. 308, lines 18-21). Although Headley's financial feasibility of condominium use value is less than James' value, it is greater than the ALC's value for apartments of $8,565,000. Therefore, it is unreasonable to reach the conclusion that The Legends' highest and best use is apartments without any substantial evidence on the whole record that market values as of December 31, 2003, support that conclusion.

In addition, the Assessor produced both an Appraisal Consulting Report and expert testimony at trial on the financial feasibility of both uses. Through expert testimony, the Assessor offered an opinion as to the highest and best use of The Legends as 121 condominium units based on market values as of December 31, 2003.[7] The financial feasibility test addresses which uses of all the allowed uses after the analysis provides a positive return. Since market value is the standard for taxation in South Carolina, the highest and best use of LMP's 121 units is the use that produces the highest value. See Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 397 S.E.2d 95 (1990). In this

[7] The Assessor arrived at a $13,800,000 financial feasibility of condominium use estimate for The Legends at trial under her highest and best use test. LMP did not review The Legends as condominium property in its highest and best use analysis; therefore, it does not have substantial evidence in the record based on 2003 values to compare with the ALC's apartment valuation. Conversely, the Assessor provided several comparable projects in the local market having similarities to The Legends' units that included Cambridge Lakes, Ellington Woods, Montclair, Planters Place, Snee Farm Lakes and Daniel Island Landing. The six complexes had sales during the period to determine a range of value for each type of bedroom unit: a per unit value and a per square foot value.

case, notwithstanding LMP's actual experience in the market, condominiums would produce the highest value based on the market values as they existed at the County's last reassessment which had a date of value of December 31, 2003.

C. THE ALC'S ORDER FINDING THAT THE ASSESSOR'S VALUATION OF THE 121 CONDOMINIUM UNITS SHOULD BE REJECTED BECAUSE THEY ARE UNSOUND COUPLED WITH THE ALC'S FAILURE TO FACTOR IN THE IMPACT OF SINGLE OWNERSHIP, IS BOTH CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD, AND ARBITRARY AND CAPRICIOUS.

Even if this Court finds that the ALC's highest and best use decision regarding financial feasibility is based on reliable, probative and substantial evidence on the whole record, this Court should find that the ALC's market value of the 121 units is not based on reliable, probative, and substantial evidence, and it is arbitrary and capricious.

The ALC found that the Assessor's "**conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property**." (R. p. 0682, ¶ 44)(emphasis added). The ALC made this finding because the Assessor used sales data from property in two zip codes in Mount Pleasant, South Carolina. This reasoning is unfounded and not based on any testimony in the record.

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Converse Power Corp. v. S.C. Dep't of Health & Env't Control, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct.App.2002).

The record shows that the Assessor's comparable sales data is the only

comparable sales offered at trial. LMP offered no comparable sales. Moreover, LMP's own expert Headley opined in his Summary Appraisal Report that "[t]he Assessor has assigned values to each of the units based on the 2003 values of various condominium properties that have been sold within the area. **These values appear to be reasonable for individual retail sales of condominium units and for single owners.**" (R. p. 0620)(emphasis added). In addition, Headley testified that he did not have a problem with the Assessor's comparable sales data and market values:

> Q: You're saying her individual valuations are okay as a starting point?
>
> A: As the starting point for 121 units. I don't have a problem with her methodology, there.

(R. p. 0118, Trial Tr. 312, lines 1-4).

> Q: Mr. Headley, I'm going to attempt to start our cross-examination on what we agree upon and then we'll try [sic] get to the things we don't agree on. So, if I understand your testimony correctly, you agree with the work that Angela did?
>
> A: More or less.

(R. p. 0120, Trial Tr. 317, lines 8-14).

The Assessor offered a total of ten comparable sales for the three different types of condominium units (1 Bed Room, 2 Bed Rooms, and 3 Bed Rooms) owned by LMP, all within seven miles of the subject property. In fact, only one comparable sale was seven miles away. The remaining comparable sales were within five miles of the subject property. The ALC points out that "[g]enerally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is

located in zip code 29466." (R. p. 0679, ¶ 30). Presumably, this distinction is made to support the finding that any comparable sale from zip code 29464 is "unsound" and "significantly different from the subject property", notwithstanding its actual proximity to the subject property or any other similarities or differences.

The Appraisal Institute describes the Sales Comparison Approach as follows:

> In the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract (i.e., for which purchase offers and a deposit have been recently submitted). A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties.
>
> * * *
>
> Ideally, if all comparable properties are identical to the subject property, no adjustments will be required. However, this is rarely the case, especially for nonresidential properties. After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any differences.

Appraisal Institute, The Appraisal of Real Estate 297 and 307 (13th ed. 2008).

The ALC relied on the Assessor's comparable sales but eliminated all comparable sales in zip code 29464 and only used the **unadjusted** sales price from the comparable sales data to arrive at a value for the units. There is no rational basis, fixed rules, or standards for eliminating a comparable sale solely because of its zip code where the comparable sales were adjusted for location.

For instance, the Assessor offered three comparable sales for its sales comparison approach of the one bed room units. The Assessor offered the following data:

Sales Comparable	Zip Code	Sales Price	Price Per/SF	Adjusted[8] Sales Pr.
Comp. # 1 Center St.	29464	$125,000	$156.25	$ 114,200
Comp. # 2 Montclair Dr.	29464	$112,900	$111.78	$ 112,600
Comp. # 3 Kingsford Ln.	29466	$137,100	$ 84.42	$ 103,700

(R. p. 0213).

The ALC eliminated sales comparable numbers 1 and 2 because they are in zip code 29464, even though the Assessor made location adjustments (not to mention other relevant adjustments) to the eliminated comparable sales. (R. p. 0213). See Footnote 8. Therefore, the ALC was left with only one comparable sale.

Compounding the problem, the ALC used the unadjusted price per square foot of $84.42 of the only remaining comparable sale to arrive at a value for the one bed room unit. It is inconceivable to think that Comparable #3 is identical to the subject property when Comparable #3 is twice the square foot size of the subject property. Therefore, it is unreasonable to arrive at a market value for the one bed room unit without adjustments. In arriving at the Assessor's value for LMP's one bedroom unit, the Assessor extracted an estimated value of $110,000 based on the adjusted sale prices of three comparables. (R. p. 0213). In arriving at the ALC's value for LMP's one bedroom unit, the ALC multiplied the sales price per square foot of $84.42 of the only remaining comparable sale by 753 square feet of the LMP's one bedroom unit to arrive at a value of $63,568. (R. 0680, ¶ 35). This methodology is not recognized in South Carolina, and

[8] The Assessor made positive and negative adjustments for the following factors: date of sale, **location**, quality of construction, condition, gross living area, porch, and fireplace. In particular, the Assessor made a -$12,500 location adjustment to Comp. #1 but made a +$13,700 location adjustment to Comp. #3. Moreover, the Assessor made a -$43,600 gross living area adjustment to Comp. #3 to account for this comparable being more than twice the size of the subject property. Despite these facts, the ALC disregarded these adjustments and used the unadjusted sales data to establish a value for the units.

not consistent with the Appraisal Institute's well established industry appraisal standards to establish values for real property using the sale comparison approach.

Further, the ALC utilized this same approach for LMP's 2 and 3 Bed Room Units to arrive at a value, albeit significantly and artificially deflated values, for each. There is no evidence or testimony in the record to support this approach to valuation; therefore, there are no adequate determining principles, fixed rules, or standards to support this practice.

D. THE ALC ERRED WHEN IT FOUND THAT THE ASSESSOR FAILED TO FACTOR IN THE IMPACT OF SINGLE OWNERSHIP ON THE VALUE OF THE 121 UNITS.

The ALC erred when it applied a discounted sellout analysis to arrive at a final value for the condominiums, rather than using the discount sellout analysis to determine the final two prongs highest and best use test (financial feasibility and maximally productive). The Assessor is required by law to value each condominium unit individually pursuant to a horizontal property regime for *ad valorem* tax purposes. South Carolina Code Ann. § 27-31-270 states:

> Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected **on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole**. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

S.C. Code Ann. § 27-31-270 (emphasis added).

In addition, the Appraisal Institute states that "[t]o value entire condominium projects,

whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project." Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

This is an *ad valorem* property taxation case where the highest and best use of the property is in dispute. This is not an entire condominium project; rather, it is 121 of 200 condominium units - 121 that are under single ownership; 21 that are under single ownership that are set aside for sale; and 58 that have been sold to multiple owners. The discounted cash flow method is used to determine financial feasibility and maximally productive, not to arrive at a value for the individual units. A discounted cash flow analysis should be used to determine the financial feasibility of condominium use to find what was maximally productive, not to find market value. The Assessor opined that:

> The results of our analysis and the resultant conclusions of values indicated that both uses are financially feasible:
>
> - Feasibility of Apartment Use: $ 8,565,000
> - Feasibility of Condominium Use: $13,800,000
>
> The Highest and Best Use for the subject property is then based on that use which is Maximally Productive. The results of the Financial Feasibility test indicated that condo sales provide the greatest return of value to the land as a condominium complex.

Appraisal Consulting Report (R. p. 421).

The ALC misconstrued the plain meaning of the Appraisal Institute's industry appraisal standards for valuing individual condominiums vis-à-vis entire condominium projects.

> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does

> not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.
>
> If an active market for units in a cooperatively owned property exists, appraisers can value individual units with the sales comparison approach.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

Even if this Court finds that LMP's use of the discounted cash flow analysis was proper, LMP's application is flawed and unreliable for two reasons. First, LMP's expert utilized all the Assessor's comparable sales to arrive at a value for the individual units. Headley stated, "[f]or this analysis, we will use the average value at retail estimated by the Tax Assessor's Office which is $155,091." Summary Appraisal Report of Frank A. Headley (R. p. 0633). As noted above, the ALC found that the Assessor's "conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property." (R. p. 0682, ¶ 44). Nevertheless, the ALC relied on Headley's use of all the values as the starting point for his discounted cash flow analysis. Headley's use of the Assessor's comparable sales data cannot be reconciled with the ALC's earlier finding that the Assessor's comparable sales are unsound.

Next, Headley did what he and the ALC claimed was improper. Headley simply took the aggregate value of the 121 units based on the Assessor's values for each unit which totals $18,766,000. He divided the $18,766,000 by 121 to get an average value of $155,091 for each unit. Headley utilized an average value of $155,091 for each of the three types of units (1 Bed Room, 2 Bed Rooms, and 3 Bed Rooms) and completed his

discounted cash flow analysis with a 32% discount factor.[9] Headley concluded that there is a discounted sellout value for condominiums of $7,750,000 for the 121 units.

However, the ALC does not use Headley's discounted cash flow analysis or any other analysis offered at trial. Instead, the ALC takes Headley's 32% discount factor and applies it to the aggregate value for the units ($10,859,917) based on the remaining (non 29464 zip code) unadjusted comparable sales from the Assessor's sales comparison approach appraisal. This premise was introduced by the LMP's Counsel during cross examination of an Assessor's witness and during his closing argument. (R. p. 0145, Trial Tr. 420, lines 1-22).

> Q: Okay. If we were to take the per square foot price from your comp that is in the same zip code, do you know what value we'd come up with?
>
> A: I do not.
>
> Q: All right. If my math is right, 753 square foot times their per square foot price, $84.42, would be $63,568. That's an analysis of the value based on the per square foot of the comp that is closest to the subject. It's one of your comps, all right. Is that a big difference between your value of $110,000?
>
> A: Yes, but it's 1600 square feet as opposed to 700 square feet.
>
> Q: So, if we're comparing the total price of the two units, that might not be fair. But if we take a per square foot price — that's what you do in your chart?

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[9] Headley's 32 percent discount factor is flawed because it is predicated on the assumption that all of the units were vacant in the initial year with no rental income which means there is no cash flow the first year. In addition, Headley's cap rate is based on 2007 – 2009 market conditions instead of market values as of December 31, 2003, which created a higher cap rate and correspondingly created a lower value.

Headley opined that apartments were the highest and best use for The Legends because his Apartment value of $8,920,000 was greater than his Discounted Sellout Condominium value of $7,750,000. Ostensibly, this reasoning appears cogent; however, Headley's apartment values are based on 2003 rental income and expenses, but his condominium sales per year, expenses, and costs are all based on 2007 values and market conditions.

A: Uh-huh (affirmative response).

Q: You take a per square foot price. So one way to compare the units is to compare per square feet prices, and not just the total price?

A: Right.

Q: Okay. And that's a fair way to do it, isn't it, compare per square feet prices?

A: I don't ever value anything per square foot like that. I don't say, well, this sold for 150 a square foot, so I'm going to multiply 150 times the square footage and have a value.

(R. p. 0053, Trial Tr. 52, lines 5-25, R. p. 0054, Trial Tr. 53, lines 1-7).

The Assessor's witness clearly rejected this proposed methodology on cross-examination, yet the ALC nonetheless applies the DCF to the unadjusted comparable sale in the 2013 Order. In addition, as noted above, "[i]n the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract (i.e., for which purchase offers and a deposit have been recently submitted). . . . Ideally, **if all comparable properties are identical to the subject property, no adjustments will be required**. However, this is rarely the case . . . ." Appraisal Institute, The Appraisal of Real Estate 297 and 307 (13th ed. 2008) (emphasis added). There is no evidence or testimony in the record to support the fact that the Assessor's comparable sales were identical to the subject property; and therefore, only in that case would no adjustments be necessary. The ALC's use of this improper methodology of valuation is erroneous, arbitrary and capricious.

II. THE SOUTH CAROLINA SUPREME COURT IN LINDSEY DID NOT CREATE AN EXCEPTION TO THE HIGHEST AND BEST USE TEST FOR DETERMINING FAIR MARKET VALUE.

A. LINDSEY WAS DECIDED BASED ON THE SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD TEST AND IT DID NOT CREATE A NEW TEST FOR DETERMINING HIGHEST AND BEST USE.

The ALC's Order is affected by an error of law because it construed Lindsey to stand for the proposition that **use** is the determining factor in property valuation. See R. 678, ¶ 26). In essence, the ALC found that even if The Legends' highest and best use is as condominiums and not apartments, the 121 units should still be valued as apartments because its use (apartments) controls, not how the property is tilted (condominiums). See Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 397 S.E.2d 95 (1990). This position misconstrues Lindsey and South Carolina's jurisprudence on how fair market value is determined in this State.

In Lindsey, the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. The Charleston County Board of Assessment Appeals affirmed the Charleston County Assessor's valuation as townhouses rather than as an apartment complex, but it reduced the Assessor's valuation for each unit. The Assessor appealed to the South Carolina Tax Commission, which reversed the Charleston County Board of Assessment Appeals and found that the units should be taxed as an apartment complex, not townhouses. The Charleston County Assessor appealed the Tax Commission's decision to the circuit court challenging whether the Tax Commission erred when it overruled the factual finding of the Charleston County Board of Assessment Appeals. The Assessor claimed that the Tax Commission's review was limited to a review of errors of law and the taxpayer failed

to appeal the Board's decision on use. The Assessor also claimed that the "circuit court erred in affirming the Tax Commission's valuation of the units as an apartment complex because it did not value the property at its highest and best use." Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 507, 397 S.E.2d 95, 97 (1990).

The Lindsey Court held that the Tax Commission's finding of fair market value was supported by substantial evidence in the record. The Lindsey Court found that 45 units in a multifamily dwelling should be assessed as an apartment building rather than separately as townhouse units. Id. at 505, 397 S.E.2d at 96. The Lindsey Court found "[t]he record here includes evidence the units were individually deeded only to obtain financing which was not otherwise available. The units were contiguous and were operated by an apartment manager on a short term rental basis. The operation was losing money, but Taxpayers never attempted to sell the unit individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses." Id. at 507-08, 397 S.E.2d at 97. The Supreme Court in Lindsey did not abrogate the highest and best use test (i.e., physically possible, legally permissible, financially feasible, and maximally profitable) in South Carolina. Instead, it found that "because there was substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error." Id. at 507, 397 S.E.2d at 97.

The Supreme Court simply affirmed that there was substantial evidence in the record to support the Tax Commission's decision finding that the taxpayer's property's highest and best use was as an apartment complex, not townhouses. Similarly, if this Court finds that The Legends' highest and best use is condominium units and not an

apartment complex, then Lindsey does not create an exception to The Appraisal Institute's method for determining highest and best use to establish the highest economic value.

B. EVEN IF LINDSEY CREATED NEW ELEMENTS TO DETERMINE HIGHEST AND BEST USE, LMP'S FACTS ARE DISTINGUISHABLE FROM LINDSEY.

In the alternative, if this Court finds that Lindsey creates a limited exception to the highest and best use test in South Carolina,[10] this Court should find that the ALC's 2013 Order is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record because the units owned by LMP are distinguishable from those in the Lindsey case. In Lindsey, the South Carolina Supreme Court held:

> The record here includes **evidence the units were individually deeded only to obtain financing which was not otherwise available**. The **units were contiguous** and were **operated by an apartment manager on a short-term rental basis**. The **operation was losing money** but Taxpayers **never attempted to sell the units individually** because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them **unmarketable as townhouses**. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 97 (emphasis added). The record in this case clearly shows that LMP's facts do not compare with the facts found in Lindsey; therefore, LMP cannot satisfy the elements in Lindsey for the following reasons.

---

[10] Even if Lindsey created an exception to the highest and best use analysis in South Carolina, the adoption of S.C. Code Ann. § 12-43-215 in 1994, as amended, would have altered its application in this case because the statute requires Assessors to use the market values of real property **as they existed** in the year that the equalization and reassessment program was conducted and on which the assessment is based. The Lindsey factors do not look to values or market conditions at the last reassessment. Therefore, the Lindsey test cannot be reconciled with the statute.

1. The units were not individually deeded to obtain financing which was otherwise not available.

LMP did not need financing to continue to operate its 121 units. The Lindsey Court found that ". . . the units were individually deeded only to obtain financing which was not otherwise available." Id. at 507-08, 397 S.E.2d at 97. It is undisputed in the record that financing was already available to LMP prior to the conversion to condominiums in 2006. In fact, LMP borrowed money to construct the units after it purchased the property in 1998. When asked on direct examination regarding the financing, Ronald Follman testified:

> Q: All right where did you come up with the money to fund the construction of the apartment building?
>
> A: I looked at financing options and through resources I had, I became aware of the HUD 221(d)(4) program. It's a housing improvement development program that has the purpose of facilitating the development of affordable housing for people who live in throughout the United States. After analyzing that source of financing, I determined that I could fulfill the requirements that were required to obtain that financing.
>
> Q: What's the difference between a HUD loan and a conventional construction and then a permanent?
>
> A: A HUD loan- well, a HUD loan is a combination loan. It's a combination of a construction loan and a permanent loan. And the –once you get through the construction phase, it converts automatically into a permanent loan. And the HUD loan is a 40 year amortizing loan. And it's at a fixed rate. And that type of financing is not available from a conventional bank.

(R. p. 0102, Trial Tr. 245, lines 12-25; 246, lines 1-10).

> Q: So you got a loan from HUD to fund the construction of these apartment buildings?
>
> A: That's correct.

(R. p. 0102, Trial Tr. 246, lines 24-25; 247, line 1).

Ms. Glennon testified:

> Q: Sure. Isn't it your understanding that LMP had already obtained financing prior to their conversion to under the HPR?
>
> A: Are you talking about the financing they got when they built the complex?
>
> Q: Yes, yes.
>
> A: They had very favorable financing. The HUD backed loans that they're talking about have a longer amortization period, which lowers your interest payments considerably, which puts you in a more competitive position compared to other apartment complexes, and they have a very good rate. So he had financing in hand. He had favorably [sic] financing in hand compared to other apartment complexes.

(R. p. 0136, Trial Tr. 381, lines 12-25; 382, line1).

Thereafter, when LMP submitted the 200 units to a horizontal property regime, LMP entered a mortgage with the National Bank in the principal amount of Eighteen Million and 00/100 ($18,000,000.00) Dollars dated April 26, 2006, and secured the mortgage with the inventory of 200 condominium units.

LMP obtained a new mortgage with the National Bank of South Carolina for the sole purpose of releasing its HUD loan because it required all units as collateral, which would have prevented LMP from selling units on conversion. It is incomprehensible to think that LMP converted its property to condominiums to obtain financing when it already had financing through a highly desirable HUD loan. This fact is apparent from Follman's own testimony when he said, "[w]ell we had to basically pay this loan off. So we had to, as part of our decision, we had to find new financing. And this loan did not accommodate releasing individual units. So this loan had to go away and we had to find new financing." (R. p. 0103, Trial Tr. 250, lines 20-25). Clearly, LMP cannot satisfy the

compulsory financing element of the Lindsey decision because LMP was under no pressure to obtain new financing other than for the business reason of being able to market individual condominium units to make a profit from its investment.

2. The units are not all contiguous.

Unlike in Lindsey where all 45 units were in one building, the subject 121 units are not contiguous. There are 200 condominium units in 13 two-story buildings. The units in each building are contiguous. However, the subject 121 units are disbursed throughout the 13 buildings, not in one building, but mixed among other condominiums under mixed ownership.

3. The units are not operated by an apartment manager on a short-term rental basis.

The record contains limited evidence regarding the operation of the units. It shows the Follmans and two others operated the units. On direct examination, Follman testified:

> Q: At the same time, as opposed to attempting to sell units individually, did you also attempt to sell them as a group?
>
> A: We did.
>
> Q: Tell the Court about that.
>
> A: Well, when we were – when we were pre-selling units, it seemed to me like they were not selling very fast in comparison to other properties that had sold before us. And it's basically Marilyn and myself [sic] and two other people that operate the property. And we felt like this could be too much for us to take on.

(R. p. 0103, Trial Tr. p. 252, lines 9-25).

The evidence in the record implies that the units are not operated by an apartment manager on a short-term rental basis, but instead, by the Follmans on a long

term basis. The evidence shows the Follmans have operated the property since they constructed them in 2000, while it was an apartment complex until 2006, and as condominiums from 2006-2007 to present.

4. The operation was not losing money.

The record lacks substantial evidence to support the claim that the operation was losing money. Instead, the record shows that the operation had sales of condominiums even in 2007. Without an income statement showing the revenues from sales of condominiums, lease payments, assessments, etc. versus the expenses, one cannot conclude the operation was losing money. On direct examination, Follman testified that sales satisfied the loan requirements:

> Q: All right. Did that lender have any requirements before they would fun this project?
>
> A: They did.
>
> Q: What?
>
> A: Those requirements are called pre-sale requirements. In other words, they want to see that there is a demand for those units and that you can put a certain number of units under contract to show that there is a reason to convert this property. And those provisions were in our loan documents.
>
> Q: All right. So you secured a certain number of pre-sales before you got the loan, correct?
>
> A: That's correct.
>
> Q: And before you would have filed the master deed?
>
> A: That's correct.

(R. p. 0103, Trial Tr. p. 251, lines 7-24).

> Q: Tell about the marketing efforts after the filing of the master deed. Do you remember how many?
>
> A: Well, originally, the loan required us to have 40 and we didn't achieve that. So we had about 22 or 23 ....
>
> Q: All right. The remainder of 2006, ultimately, how many units

did y'all sell total in 2006?

A: I think it was about 40.

Q: Forty-four?

A: Forty-four.

Q: So in 2006, y'all had a total of 44 sales.

A: That's correct.

(R. p. 0104, Trial Tr. p. 254, lines 10-25; 255, lines 1-9).

There is substantial evidence in the record to show that 44 units sold in 2006; 13 units in 2007; 0 in 2008; and 1 in 2009 for a total 58 units, or 29% of the total amount of units. However there is no evidence in the record to show that "the operation was losing money."

5. LMP attempted to sell the units individually not because of inferior locale, lack of amenities, and not because location of the 121 units in a large condominium complex made them unmarketable as condominiums.

a. The Legends does not have an inferior location.

As stated earlier, The Legends is located on 23 acres in Mount Pleasant, South Carolina. "Well, Mount Pleasant, it's located close to the beaches. It's located close to shopping centers. It's been a very stable market with good growth rates. It's a very desirable location." (R. p. 0048, Trial Tr. 30, lines 21-25). "The site has over 1600 feet of frontage along U.S. Highway #17 but is not accessed from U.S. Highway #17." (R. p. 0593). The Legends is directly adjacent to the Charleston National Country Club and Golf Course. "It does have frontage on National Drive which is the access road off U.S. Highway 17 North." (R. p. 0593). It is located within the Cairo Middle School and Wando High School Districts. It is also located two miles from the Oakland Shopping Center and five miles from the Town Center shopping areas. The property is situated ten miles

from the Isle of Palms. Clearly, these attributes exempt the property from having an inferior location.

b. The Legends has an abundance of amenities.

The Legends does not lack amenities. Instead, The Legends has just the opposite. The Legends consists of 13 two-story buildings containing condominium units. Not only is the site a gated community, but it also hosts several amenities, including a clubhouse with a swimming pool, a park for children, a fountain, fitness center, tennis court, resident business center, controlled access gates, and car care center. (R. p. 0048, Trial Tr. 30, lines 2-25).

> The units are attractive with 9 foot ceilings. Some of the units have direct car garage access and there are only 8 rental garages on the property. Units have all appliances including microwave ovens. The parking areas are asphalt and there is adequate green space. The property has good amenities with a clubhouse, pool, garden tubs, alarms, 5 inch crown molding in living and dining areas, business center, car care center, fitness center, internet and cable, and fireplaces (some units).

(R. p. 0593).

c. The location of the 121 units in a large condominium complex did not make them unmarketable as condominiums.

The location of the 121 units in the large condominium complex did not make them unmarketable as condominiums. Instead, the downturn in the real estate market had an effect on all real estate in South Carolina. The market changed and began to decline in 2007. Both Follman and his appraiser confirmed this fact in their testimony:

> A: Well, in 2007, it's very slow traffic, interest was dropping off and our sales reflected that.

(R. p. 0104, Trial Tr. 256, lines 3-4).

> A: Well, let me tell you what happened. The condo market went

> sort of like this (indicating) and then about 2006, nobody really – when they converted the condos, nobody really paid any attention and they thought the craze would go on forever.

(R. p. 0123, Trial Tr. 329, lines 18-23)

. . . .

> Now, the fact of the matter is, Mr. Follman quit selling in 2007 because he only had a few sales in 2007.

(R. p. 0123, Trial Tr. 330, lines 10-13)

. . . .

> I would say that would be a good indication that the market was going south in 2007.

(R. p. 0123, Trial Tr. 330, lines 21-23).

LMP attempted and did sell the condominium units individually regardless of location of the units among the thirteen buildings on the site. LMP never attempted to sell the 121 units not because they were unmarketable as condominiums but because the market conditions began changing in 2007-2008. However, LMP held 22 units for sale during 2007 and elected to stop marketing them for sale. The ALC asked Follman about marketing the remaining units for sale, and he stated:

> Q: Okay. The units that you're still marketing. I think it's what, 22 of them?
>
> A: Actually, we're not marketing them anymore.
>
> Q: You're not marketing those either?
>
> A: No. We can't get realtors to come to our property anymore because they can't sell any units. So we have ceased marketing.

(R. p. 0108, Trial Tr. 272, lines 8-14).

A further distinction is that LMP sold 57 condominiums located in several different buildings and continued to market units for sale even while stating in the appeal that 121

units were an apartment complex. In Lindsey, the real property in question consisted of 45 contiguous units in one multi–family dwelling. In LMP, the property consisted of 121 non-contiguous units spread out among thirteen buildings.

There is no evidence in the record to support why LMP falls within the facts in Lindsey. Furthermore, since the Assessor has clearly shown that The Legends' fair market value should be based on condominiums, this Court should reject the ALC's finding that Lindsey allows the ALC to ignore the highest and best use of a parcel because the property owner uses it for another use.

CONCLUSION

For the reasons stated herein, this Honorable Court should affirm the highest and best use of the 121 condominium units as individual condominium units subject to the horizontal property regime and affirm the Summary of Floor Plan Values of the Charleston County Assessor as set forth in the Assessor's Appraisal Consulting Report.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
June 17, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Appellant

Charleston, South Carolina
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BRIEF OF RESPONDENT

Stanley C. Rodgers, Esquire
Law Office of Stanley C. Rodgers, LLC
101 Queen Street, Suite 200
Charleston, SC 29401
843-958-9881
scr@stanleyrodgers.com
S.C. Bar No. 64984

Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. Did the ALC err in concluding the court of appeals's decision in the prior appeal required all four steps of the highest and best use test to be applied as of December 31, 2007?

2. Did substantial evidence in the record support the ALC's finding that it was not financially feasible to use the units as condominiums as of December 31, 2007?

3. Did the ALC err in ruling the Lindsey case supported the conclusion the 121 units at issue should be valued in accordance with their use rather than in accordance with how they were titled?

4. Did substantial evidence in the record support the ALC's finding as to the value of the 121 units as condominiums as of December 31, 2003.

STATEMENT OF THE CASE

This case concerns ad valorem real property tax valuation in Charleston County for the 2008 tax year. The property at issue is 121 condominium units owned by a single entity, LMP Properties, Inc. (Taxpayer). The Charleston County Assessor (Assessor) assessed each unit individually with a resulting total of $16,454,000. Record p. 423; Petitioner's Exhibit 9. Taxpayer sought review with the Charleston County Board of Assessment Appeals, which decided the individual assessments should be reduced such that the new total was $10,090,500. Record pp. 439-41; Respondent's Exhibit 1. Assessor requested a contested case hearing with the Administrative Law Court.

The trial took place in the Administrative Law Court on August 24-25, 2010. By Final Order and Decision dated October 11, 2011, the ALC ruled "[t]he property's fair market value must be based on the property's highest and best use on the valuation date, which in this case is December 31, 2003." Record p. 10. Because the property could not have been used as condominiums prior to March 2006 based on a restriction in the promissory note and mortgage secured by the property, the ALC concluded the hypothetical use as condominiums could not have been the highest and best use as of December 31, 2003. Therefore, the property had to be valued as apartments, and the parties agreed on the value ($8,565,000) of the property as apartments. Record p. 11.

The ALC acknowledged Taxpayer's other arguments:

> Furthermore, even if the Court accepted the Assessor's argument, which it does not, the Taxpayer asserts that the highest and best use for the property on the date proposed by the Assessor (December 31, 2007) is still as apartments. According to the Taxpayer's expert, the market for condominiums declined substantially in the time since the subject property

was converted in April 2006, and in his opinion, the property could only be used as rental apartments on December 31, 2007. Not because of the legal impediment, but because of market conditions. He cites the vast difference in the number of units sold in 2006 as compared to the number of units sold in 2007 as support for his conclusion. However, because this Court has already found that the date for determining the highest and best use is as of December 31, 2003, it will not delve further into this argument.

Relying on [Lindsey v. South Carolina Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990)] as support, the Taxpayer additionally argues that the subject property should be valued according to their *use* (as apartments) rather than how they are *titled* (as condominiums). However, having found that the highest and best use of the property is as apartments rather than condominiums as urged by the Assessor, the Court finds it unnecessary to address Taxpayer's argument or Assessor's opposing argument.

As a final argument, the Taxpayer disagrees with the Assessor's methodology for valuing the 121 units as individual condominiums. Specifically, the Taxpayer contends that the Assessor's conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property. And even if the valuations did not suffer from this fundamental flaw, Taxpayer argues that the valuations should be rejected because the Assessor failed to factor in the impact of single ownership on the value of the 121 units. Again, based upon the Court's earlier finding that the highest and best use of the subject property is as apartments rather than condominiums, the Court finds it unnecessary to address the Taxpayer's final arguments, or Assessor's arguments in opposition.

Record pp. 10-11.

Assessor appealed. In a split decision, the Court of Appeals reversed. Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct. App. 2013). The Court concluded "the appropriate date for determining the units' highest and best use is December 31, 2007." Id. at 200, 743 S.E.2d at 91. The Court "remand[ed] so that the ALC may address the parties' remaining arguments regarding valuation of the units." Id.

at 201, 743 S.E.2d at 92.

Following remand, the ALC held oral arguments on July 30, 2013. The parties agreed the ALC would decide the issues based on the evidence presented during the trial in 2010. Record p. 706, lines 3-23. By Final Order and Decision dated September 20, 2013, the ALC ruled the value of the 121 condominium units for the 2008 tax year was $8,565,000. Record p. 668, introductory ¶ two.

First, the ALC found it was not financially feasible for the property to be used as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not satisfy the Highest and Best Use Test for that date. That finding meant the use as apartments was the highest and best use as of December 31, 2007. The ALC noted the parties agreed on the valuation of the property as apartments: $8,565,000. Record p. 675, ¶¶ 17-18.

Second, the ALC concluded valuing the 121 units as apartments was also required by the South Carolina Supreme Court's decision in Lindsey v. South Carolina Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990). Record p. 678, ¶¶ 26.

Third, the ALC found the Assessor's proposed valuations of the individual condominiums should be rejected as not supported by the evidence. Record p. 678, ¶ 27 - p. 683, ¶ 47.

Assessor again appealed.

ARGUMENTS

1. THE ALC DID NOT ERR IN CONCLUDING THE COURT OF APPEALS'S DECISION IN THE PRIOR APPEAL REQUIRED ALL FOUR STEPS OF THE HIGHEST AND BEST USE TEST TO BE APPLIED AS OF DECEMBER 31, 2007.

I. Standard of Review

The Administrative Procedures Act provides the standard of review for an appellate court reviewing a decision of the ALC:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may afirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2013). "The decision of the ALC should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." Sierra Club v. South Carolina Dep't of Health & Envtl. Control, 387 S.C. 424, 431, 693 S.E.2d 13, 16 (Ct. App. 2010). "In determining whether the ALC's decision is

supported by substantial evidence, this court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached." ESA Services, LLC v. South Carolina Dep't of Revenue, 392 S.C. 11, 24, 707 S.E.2d 431, 438 (Ct. App. 2011). The appellate court "shall not substitute its judgment for that of the ALC as to findings of fact, [but] may reverse or modify decisions that are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole." Id. at 24, 707 S.E.2d at 438.

II. Highest and Best Use as of 12/31/07

A. Prior Appeal

The issue before this court in the prior appeal was whether the ALC erred in deciding that December 31, 2003 was the critical date for determining the units' highest and best use. Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 196, 743 S.E.2d 88, 89 (Ct. App. 2013). The court stated:

> The parties and the ALC agreed that in order to calculate the property's fair market value, the property's highest and best use must first be determined, but disagree as to the date on which the highest and best use must be determined. LMP contends that Section 12-43-215 requires that the highest and best use must be determined as of December 31, 2003, the date used for the last countywide reassessment program in Charleston County. However, we agree with the Assessor that the appropriate date for determining the units' highest and best use is December 31, 2007.

Id. at 200, 743 S.E.2d at 91.

The three judge panel splintered on whether Section 12-43-215[1] was applicable in this case. Judge Williams wrote the majority opinion and stated in a footnote that he "question[ed] whether it applies in the instant case; nevertheless, because no party appealed the ALC's ruling that Section 12-43-215 applies, this ruling is the law of the case." 403 S.C. at 199 n.2, 743 S.E.2d at 91 n.2. Judge Pieper dissented, but agreed "the ALC's application of Section 12-43-215, while incorrect, is the law of the case[.]" Id. at 202, 743 S.E.2d at 92. Chief Judge Few concurred with the decision to reverse the ALC, but disagreed that Section 12-43-215 was applicable. Id. at 201-02, 743 S.E.2d at 92. However, Chief Judge Few "agree[d] with Judge Williams that December 31, 2007, is the correct date for determining the highest and best use of the property." Id. at 201, 743 S.E.2d at 92.

The court explained that while Section 12-43-215 was "silent on the date to be used for determining the highest and best use of the property[,] it cannot be read to mandate a diversion from the general rule that the use of the property is to be determined as of December 31st of the preceding year." Id. at 200, 743 S.E.2d at 91. Because the tax

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[1] Section 12-43-15 provides:

> When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for the property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

S.C. Code Ann. § 12-43-215 (2014).

year at issue was 2008, the date for determining the highest and best use was December 31, 2007.

B. Present Appeal

In considering the first issue before the court in the present appeal, we need to briefly review the laws governing the assessment of real property in South Carolina. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. Section 12-37-930 provides in part:

> All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (2014). Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. South Carolina Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). The determination of fair market value is based on the determination of the highest and best use of the property. See id. at 507, 397 S.E.2d at 97.

The Appraisal Institute describes the methodology for determining a property's highest and best use:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Appraisal Institute, Real Estate Valuation in Litigation 105 (2d ed. 1995).[2]

Additionally, the Appraisal Institute defines highest and best use as follows: "The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

After stating "[r]eal property in South Carolina is assessed in accordance with the property's highest and best use," Assessor quotes these same provisions from the Appraisal Institute in Assessor's brief. Appellant's Brief p. 12. Where Assessor and Taxpayer part company is on whether each step of the highest and best use test must be applied as of December 31, 2007 (Taxpayer's position), or whether steps one and two are to be applied as of December 31, 2007 while steps three and four are to be applied as of December 31, 2003 (Assessor's position).

Assessor perhaps asserts this schizophrenic approach because Assessor introduced no evidence at trial regarding the financial feasibility or maximally profitable use of the units as of December 31, 2007. Rather, Assessor focused exclusively on determining and comparing the values of the units as condominiums for sale versus apartments for rent as of December 31, 2003. Assessor conceded as much in the hearing before the ALC

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[2] This court noted in the prior appeal that "[t]he parties do not appeal the ALC's reliance on this method of determining the highest and best use of the units." 403 S.C. at 198 n.1, 743 S.E.2d at 90 n.1.

following remand: "The County in each instance, whether it's apartment or condo, relied only on market data for 2003, nothing else." Record p. 752, lines 4-7; p. 713, lines 4-5; p. 716, lines 3-10; p. 725, lines 25- p. 726, line 7.

On remand, the ALC interpreted the court of appeals's decision to require each step of the Highest and Best Use Test to be applied as of December 31, 2007. For each type of use (as condominiums for sale or as apartments for rent), that particular use must pass each step of the test to make it to the next step and ultimately to be considered as a candidate for the highest and best use. The ALC noted the parties agreed condominium units and apartment units were both physically possible as of December 31, 2007 and, therefore, both uses passed step one. Record p. 674, ¶ 11. The ALC then noted the parties agreed condominium units and apartment units were both legally permissible as of December 31, 2007 and, therefore, both uses passed step two. Record p. 674, ¶ 12.

Addressing step three of the Highest and Best Use Test, the ALC found that it was not financially feasible for the units to be used as condominiums as of December 31, 2007. Record p. 675, ¶ 17. Because the condominium use failed step three, that use was no longer a candidate for the highest and best use as of that date. The parties agreed the apartment use was financially feasible on that date and, therefore, the highest and best use of the property as of December 31, 2007 was as apartments. The court noted the parties essentially agreed on the fair market value of the units as apartments. Record p. 675, ¶ 18.

The ALC's approach after remand finds explicit support in the judges' opinions in the prior appeal. Judge Williams's opinion for the court plainly states "that the appropriate date for determining the units' highest and best use is December 31, 2007."

403 S.C. at 200, 743 S.E.2d at 91. Chief Judge Few plainly states in the concurring opinion that he "agree[s] with Judge Williams that December 31, 2007, is the correct date for determining the highest and best use of the property." Id. at 201, 743 S.E.2d at 92. There is nothing in Judge Williams's opinion or in Chief Judge Few's concurring opinion (or in Judge Pieper's dissenting opinion) to support the argument that the first two steps (physically possible and legally permissible) of the highest and best use test are to be performed as of a different date than the last two steps (financially feasible and maximally profitable). Assessor's argument finds no support in this court's prior opinion and should be rejected.

C. Proper Valuation Procedure in This Case

The proper procedure for assessing the property for the 2008 Tax Year is as follows:

(i). Apply each step of the Highest and Best Use Test – as of December 31, 2007 – to both uses being put forward as candidates for the highest and best use as of December 31, 2007.

(ii). Take the result of that process, which will be by definition the highest and best use of the property as of December 31, 2007, and then "make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based." S.C. Code Ann. § 12-43-215 (2014). In Charleston County, "the year that the equalization and

reassessment program was conducted" was 2004, thus making December 31, 2003 the valuation date for comparison purposes.

(iii). Because the use as condominiums did not pass step three (financial feasibility) of the Highest and Best Use Test as of December 31, 2007, the condominium use could not be the highest and best use as of that date. Thus, the value of the units as condominiums as of December 31, 2003 did not need to be determined. The use as apartments passed each step as December 31, 2007, became the highest and best use, and was the winning candidate requiring valuation.

(iv). The parties agreed on the value of the property as apartments: $8,565,000.

2. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE ALC'S FINDING THAT IT WAS NOT FINANCIALLY FEASIBLE TO USE THE UNITS AS CONDOMINIUMS AS OF DECEMBER 31, 2007.

The determination of whether each step of the Highest and Best Use Test must be applied as of December 31, 2007 is a question of law. The determination of whether it was financially feasible to use the units as condominiums as of December 31, 2007 is a question of fact.

Ronald Follmann, a principal in Taxpayer,[3] testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the lender had a presale requirement of forty units. Follmann

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[3] Ronald Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title.

testified he was only able to secure twenty-three presales, but the lender ultimately agreed to modify the presale requirement. Record p. 104; Transcript pp. 254-255. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

Record p. 665.

Taxpayer presented Frank Headley, an appraiser with over thirty years of experience, as an expert witness. Record p. 109; Transcript p. 273, lines 2-20. Headley was qualified as an expert by the ALC. Record p. 110; Transcript p. 280, lines 14-15. Headley testified Taxpayer's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Record p. 123; Transcript p. 329, line 17 - p. 331, line 23. Headley testified:

> In 2006, we didn't recognize the fact that it was going downhill.
>
> ...
>
> [W]hen the gentleman went to convert it, the market was going downhill, only he didn't recognize it and he was not alone in not recognizing it.

Record p. 124; Transcript p. 334, line 25 - p. 335, line 1; p. 333, lines 5-8.

Headley testified there were other failed condominium conversions in Charleston County during that timeframe. Record p. 123; Transcript p. 329, line 17 - p. 330, line 25. By the end of 2007, the trend was clear:

> And I did a lot [of] work down there, so, when we started getting into 2007, appraisers, I would call on and we'd share data and so forth. They would say boy, the condominium market, really (indicating) gone.

Record p. 124; Transcript p. 335, lines 7-11.

Headley testified it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Record p. 123; Transcript p. 329, lines 10-14. Therefore, a proposed use as condominiums did not satisfy the highest and best use test as of December 31, 2007. Record p. 126; Transcript p. 342, line 19 - p. 347, line 3.

The ALC found Taxpayer's actual experience in attempting to sell condominium units was relevant for determining the financial feasibility of the condominium use as of December 31, 2007. Taxpayer's conversion of the property from apartments for rent to condominiums for sale was stymied by the same negative economic forces that swamped the real estate market in general. Unfortunately, Charleston County and South Carolina were not immune from the real estate crisis that engulfed the country. The ALC found it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Because substantial evidence in the record supports the ALC's finding, the ALC's decision that the property's highest and best use as of December 31, 2007 was as apartments should be affirmed.

3. THE ALC DID NOT ERR IN RULING THE LINDSEY CASE SUPPORTED THE CONCLUSION THE 121 UNITS AT ISSUE SHOULD BE VALUED IN ACCORDANCE WITH THEIR USE RATHER THAN IN ACCORDANCE WITH HOW THEY WERE TITLED.

In Lindsey v. South Carolina Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), the supreme court considered a dispute involving the valuation of real property for the 1987 Tax Year. Forty-five units in a multifamily dwelling in Mt. Pleasant were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the forty-five units by assessing each unit as a

separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96.

The Assessor appealed to the South Carolina Tax Commission, who ruled the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id. at 506, 397 S.E.2d at 96.

The taxpayers contended the forty-five units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The supreme court rejected the Assessor's argument:

> The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The supreme court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

The Lindsey[4] decision had a big impact in Charleston County. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. The Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation in the policy document:

> This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

Record p. 443; Respondent's Exhibit 3. More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]" Record p. 443.

Toy Glennon, the current Charleston County Assessor, testified that she participated in the creation of Respondent's Exhibit 3. Record p. 130; Transcript p. 360, lines 9-18. The Charleston County Assessor's Office does not affirmatively tell taxpayers who fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. Record p. 130; Transcript p. 359, lines 5-24. A taxpayer would have to file an appeal and demand the Lindsey treatment before the

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[4] John R. Lindsey was the Charleston County Assessor at the time. Joseph Tamsburg was one of the parties challenging the assessment. During the initial trial before the ALC in 2010 and during the hearing before the ALC in 2013, the parties usually referred to the case as the Tamsburg case.

Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Record p. 130; Transcript p. 359, line 25 - p. 360, line 4. Glennon testified she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment. Record p. 132; Transcript p. 365, lines 1-14.

Glennon defended the decision by her office not to give this Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Record pp. 135-136; Transcript p. 380, line 18 - p. 381, line 9. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it significant that some of the original group of 200 units had been sold. Record p. 132; Transcript p. 366, line 22 - p. 367, line 15. Glennon also believed The Legends – unlike the property at issue in Lindsey – was in a desirable location. Record p. 136; Transcript p. 382, lines 2-11.

Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Record p. 128; Transcript p. 349, lines 5-9. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. Record p. 128; Transcript p. 349, lines 10 - p. 350, line 13. In addition, Glennon testified The Legends is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Record pp. 136-37; Transcript p. 384, line 25 - p. 386, line 25. Glennon interpreted the

master deed for The Legends as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to Taxpayer and could not be passed from Taxpayer to a third party buyer if the units were sold in bulk. Record p. 137; Transcript p. 386, lines 1-20. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for The Legends contained any such limitation. Record pp. 140-41; Transcript p. 397, line 1 - p. 401, line 21.

On remand, the ALC concluded "the 121 units at issue in this case are substantially similar to the forty-five townhouses at issue in Lindsey and should be assessed the same way." Record p. 678, ¶ 26. The ALC noted the use of the 121 units had never changed – they had always been used as apartments. The ALC stated: "The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006." Record p. 678, ¶ 26. Consistent with the declaration in Lindsey that "[t]itle, however, is not the determining factor in valuation," 302 S.C. at 508, 397 S.E.2d at 97, the ALC found that the change in title did not trump the nonchange in use as the determining factor in valuation. The ALC concluded: "The property must be valued in accordance with its use as an apartment complex." Record p. 678, ¶ 26. The ALC correctly concluded Lindsey served as an independent basis for finding the 121 units should be valued in accordance with their use as apartments.[5]

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[5] Assessor implies in its brief that Lindsey is no longer good law because the Lindsey Court's reasoning cannot be reconciled with Section 12-43-215, which was enacted after Lindsey was decided. Assessor's Brief p. 27 n.10. Assessor did not present

4. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE ALC'S FINDING AS TO THE VALUE OF THE 121 UNITS AS CONDOMINIUMS AS OF DECEMBER 31, 2003.

Assessor called three of its employees to testify about their determination of the fair market value of the property as of December 31, 2003. All were appraisers. All gave expert testimony and were qualified by the ALC to do so. Gary James testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. Record p. 78; Transcript p. 150, line 23 - p. 152, line 14. He based his valuation of the units as apartments on an analysis performed by Assessor employee Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the use as condominiums ($13,800,000) to be higher than the value based on the use as apartments ($8,565,000), James concluded the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then relied on appraisals of the individual units by Assessor employee Angela Sawadske and incorporated Sawadske's values of the individual units as the final assessments being put forward by Assessor. Record pp. 85-86; Transcript p. 178, line 17 - p. 182, line 12. The cumulative amount of Sawadske's valuations of the 121 units totaled $16,454,000. Record p. 423; Petitioner's Exhibit 9; Record p. 96; Transcript p. 221, lines 7-17.

The ALC rejected Sawadske's valuations. A review of the law applicable to a

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this argument to the ALC and, therefore, the argument is not preserved for appellate review.

fact-finder's role in this type of case is helpful in determining whether the ALC erred in doing so.

In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Reliance Insurance Co. v. Smith, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). However, Assessor is aided by the presumption that an assessor's valuation is correct. South Carolina Tax Comm'n v. South Carolina Tax Board of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation § 410 (1954). Therefore, Taxpayer bears the burden of proving Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. *The taxpayer may, however, show by other evidence* that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988) (emphasis added).

Expert testimony by an appraiser is a typical way to prove a property's value. Of course, the trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County Dep't of Social Services v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many

over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Co-op. v. South Carolina Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

The trier of fact must weigh and pass upon the credibility of the evidence presented. See South Carolina Cable Television Ass'n v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). The trial judge who observes the witnesses is in the best position to judge the witnesses' demeanor and veracity and to evaluate their testimony. See, e.g., Church v. McGee, 391 S.C. 334, 343, 705 S.E.2d 481, 485-86 (Ct. App. 2011).

A careful analysis, therefore, of the data relied on by Sawadske was crucial in determining the reliability of her opinions. Rather than presenting evidence of the values of the individual units as condominiums as of December 31, 2003, Taxpayer chose to "show by other evidence that the assessing authority's valuation [was] incorrect." Taxpayer's chosen method was to subject Sawadske's testimony to thorough cross-examination. Assessor implies in its Brief this type of attack on the opinion testimony being offered by Assessor's employee was somehow illegitimate. Brief p. 23. But cross-examination is often the best way for a party to discredit the opponent's case and prove his own. See Simonds v. Simonds, 232 S.C. 185, 199, 101 S.E.2d 494, 501 (1957)

("'The power of cross-examination has been justly said to be one of the principal, as it is certainly one of the most efficacious, tests which the law has devised for the discovery of truth.'").

The ALC found Sawadske's opinions as to the value of the individual units did not stand up to cross-examination. The cumulative value of the valuations by Sawadske for the 121 units totaled $16,454,000. The ALC found the data on which Sawadske relied supported individual valuations totaling a significantly lower figure: $10,859,917.[6] Record p. 683, ¶ 47. The substantial evidence supporting the ALC's finding is set forth in the ALC's Order. Record p. 678, ¶ 27 - p. 683, ¶ 47; see Record pp. 51-57; Transcript p. 44, line 8 - p. 66, line 20.

The ALC also found "Sawadske's valuation should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units." Record p. 682, ¶ 44. Relying on the principles discussed in The Appraisal of Real Estate published by the Appraisal Institute, the ALC concluded the proper valuation technique for the 121 units at issue required the individual unit valuations to be subjected to a discount sellout analysis to arrive at final values. The ALC noted Taxpayer's expert had testified to the requirement (R. pp. 118-119) and his report illustrated the standard's application (R. pp. 633-34) in this case. Record pp. 682-83, ¶¶ 44-45. The ALC applied the discount sellout analysis to the cumulative amount of Sawadske's individual valuations and concluded after doing so the new cumulative value of the 121 units ($7,384,744) was

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[6] Recall that the cumulative value found by the Charleston County Board of Assessment Appeals was $10,090,500. Record pp. 439-441; Respondent's Exhibit 1.

lower than the value as apartments ($8,565,000). Record p. 683, ¶ 47. Thus, the analysis also supported the conclusion that the highest and best use of the 121 units as of December 31, 2003 was as apartments. Record p. 683, ¶ 47. Therefore, even if the condominium use survived the highest and best use test and was a viable candidate for valuation as of December 31, 2003, the highest and best use as of the earlier date remained as apartments valued at $8,565,000. This conclusion is supported by substantial evidence in the record and should be affirmed.

CONCLUSION

For the reasons stated, this Court should affirm the ALC's decision.

June 10, 2014

Respectfully submitted,

LAW OFFICE OF
STANLEY C. RODGERS, LLC

Stanley C. Rodgers, Esquire
101 Queen Street
Charleston, SC 29401
843-958-9881
scr@stanleyrodgers.com
S.C. Bar No. 64984

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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Charleston County Assessor, Appellant,

v.

LMP Properties, Inc., Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

June 10, 2014

Law Office of Stanley C. Rodgers, LLC

Stanley C. Rodgers, Esquire
101 Queen Street, Suite 200
Charleston, SC 29401
843-958-9881
scr@stanleyrodgers.com
S.C. Bar No. 64984

Attorney for Respondent

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FINAL REPLY BRIEF OF APPELLANT CHARLESTON COUNTY ASSESSOR

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Appellant

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STATUTE

S.C. Code Ann. § 12-43-215 1

OTHER AUTHORTIES

Appraisal Institute, The Appraisal of Real Estate (13th ed. 2008) 3, 4

LAW / ARGUMENT

I. DATE OF VALUE FOR THE HIGHEST AND BEST USE TEST.

LMP mistakenly believes that the Assessor applied the highest and best use test based on two different dates, December 31, 2007, for steps one and two and December 31, 2003 for steps three and four. (Resp't Br. p. 9). This is a misstatement of the facts and law of this case. Instead, the Assessor applied each element of the highest and best use test for The Legends as of December 31, 2007, based on market values as they existed on December 31, 2003.

There is only **one** date of value. However, the date of value is based on values as they existed at the last reassessment. Respondent continues to misapprehend this distinction and the trial court failed to property apply this principle to the case. It is interesting to note that LMP claims that "[r]ather than presenting evidence of the values of the individual units as condominiums **as of December 31, 2003,** Taxpayer chose to 'show by other evidence that the assessing authority's valuation was incorrect."" (Resp't Br. p. 21) (emphasis added). This shows that LMP knows that the **values** of the condominium units should be determined as of December 31, 2003, not December 31, 2007.

The law of this case requires the Assessor to ". . . consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based." S.C. Code Ann. § 12-43-215, see also, Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). The South Carolina Court of Appeals in LMP I questioned whether S.C. Code Ann. § 12-43-

215 applied to this appeal, because it did not involve owner-occupied property, but concluded that since the parties did not appeal this ruling, it is the law of the case. Therefore, LMP cannot avoid the market conditions of December 31, 2003, as applied to the date of value of December 31, 2007, whether they are favorable or not.

LMP concedes in its Brief that it based its market value analysis for The Legends as of December 31, 2007, and it applied a December 31, 2007, date of value for this appeal. (Resp't Br. p. 9). Therefore, LMP did not apply values to this appeal as they existed in the year that the equalization and reassessment program was conducted, which was as of December 31, 2003. If that is correct, the ALC's Order is affected by an error of law, and must be reversed.

II. THE 121 UNITS WERE NOT VALUED AS A WHOLE.

LMP incorrectly states that the County's appraiser Sawadske offered an opinion of value for the 121 units totaling $16,454,000. (Resp't Br. p. 22). To the contrary, the Assessor offered three experts, Angela H. Sawadske, Stephen J. Everman and Gary N. James, whose opinions when combined support Sawadske's opinion of value and The Legends' highest and best use.

The Assessor opined that The Legends' highest and best use (of the units in question) as of December 31, 2007, based on real estate values as of December 31, 2003, was as condominiums. The Assessor based this opinion on the fact that she conducted a Financial Feasibility of Apartment Use analysis and arrived at an apartment value of $8,565,000 and a Hypothetical Financial Feasibility Analysis "As If A Condominium Complex" value of $13,800,000 for condominiums. (R. pp. 0403-07; 0408-22). The Assessor determined it was maximally productive for The Legends to be

condominiums and therefore valued the property at its highest and best use.

Sawadske did not offer an opinion of value of the 121 units as a whole, and she never testified that the 121 units should be valued at $16,454,000. Rather, Sawadske used the sales comparison approach to determine the values of the 121 individual units, not the value of the 121 units as a whole. However, the Assessor did use Mr. James' Appraisal Consulting Report and Mr. Everman's Appraisal/Valuation Analysis of The Legends as Apartments to determine the financial feasibility of both uses. The Assessor opined that:

> The results of our analysis and the resultant conclusions of values indicated that both uses are financially feasible:
>
> - Feasibility of Apartment Use: $ 8,565,000
> - Feasibility of Condominium Use: $13,800,000
>
> The Highest and Best Use for the subject property is then based on that use which is Maximally Productive. The results of the Financial Feasibility test indicated that condo sales provide the greatest return of value to the land as a condominium complex.

Appraisal Consulting Report (R. p. 421).

Therefore, the ALC lacked substantial evidence in the record to support a finding that Sawadske valued the 121 unit condominium project at $16,454,000. Rather the record shows that the Assessor offered a value of $13,800,000 under her Feasibility of Condominium Use value for the financial feasibility prong of the highest and best use test. The Condominium Use value is <u>not</u> the value of the individual units in the aggregate; it is a test for financial feasibility.

> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does

not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

If an active market for units in a cooperatively owned property exists, appraisers can value individual units with the sales comparison approach.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and affirm the highest and best use of the 121 condominium units is as individual condominium units subject to The Legends horizontal property regime and affirm the values of the Charleston County Assessor as set forth in the Assessor's Appraisal Consulting Report.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
June 17, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Appellant

Charleston, South Carolina
June 17, 2014

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charleston County Assessor, Appellant,

v.

LMP Properties, Inc., Respondent.

Appellate Case No. 2013-002264

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Unpublished Opinion No. 2015-UP-303
Heard April 16, 2015 – Filed June 24, 2015

AFFIRMED

Bernard E. Ferrara, Jr., Joseph Dawson, III, Bradley Allen Mitchell, and Austin Adams Bruner, all of the Charleston County Attorney's Office, of North Charleston, for Appellant.

Stanley Clarence Rodgers, of the Law Office of Stanley C. Rodgers, LLC, of Charleston, for Respondent.

PER CURIAM: The Charleston County Assessor (Assessor) appeals the administrative law court's (ALC) order valuing 121 units (the Units) on a piece of

property owned by LMP Properties, Inc. (LMP) at $8,565,000 for the 2008 tax year. Assessor argues the ALC erred in (1) finding condominiums were not the highest and best use of the Units, (2) calculating the market value of the Units when used as condominiums, and (3) construing our supreme court's holding in *Lindsey v. South Carolina Tax Commission*, 302 S.C. 504, 508, 397 S.E.2d 95, 97 (1990), to stand for the proposition that use is the determining factor in property valuation. We affirm.

As to whether the ALC erred in finding condominiums were not the highest and best use of the Units, we find substantial evidence supports the ALC's finding that condominiums were not a financially feasible use of the Units. Specifically, LMP's expert's testimony supports the conclusion that—based on the depressed market for condominiums in Charleston in 2007—condominiums were not a financially feasible use of the Units. Because condominiums were not a financially feasible use of the Units, condominiums could not be the highest and best use of the Units. Moreover, we find substantial evidence supports the ALC's finding that apartments were the highest and best use of the Units. *See Taylor v. Aiken Cnty. Assessor*, 402 S.C. 559, 561, 741 S.E.2d 31, 32 (Ct. App. 2013) ("The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." (alteration in original) (citation and internal quotation marks omitted)); *Hull v. Spartanburg Cnty. Assessor*, 372 S.C. 420, 424, 641 S.E.2d 909, 911 (Ct. App. 2007) ("'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981))); *Charleston Cnty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct. App. 2013) (stating under the Appraisal Institute's methodology, "a property's highest and best use must be physically possible, legally permissible, financially feasible, and maximally profitable" (internal quotation marks omitted)).

Because we find substantial evidence supports the ALC's holding that condominiums were not a financially feasible use of the Units, we do not reach the issue of whether the ALC improperly valued the Units when used as condominiums or whether the ALC erred in its application of the holding in *Lindsey*. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate courts need not address remaining issues when determination of a prior issue is dispositive).

AFFIRMED.

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

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Shirley C. Robinson, Administrative Law Judge

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Charleston County Assessor, ... Appellant,

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APPELLANT'S PETITION FOR REHEARING

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Appellant

SUMMARY OF THE PETITION FOR REHEARING

This Court's Unpublished Opinion No. 2015-UP-303 misapprehends the Administrative Law Court's ("ALC") error of law in its application of the quadrennial reassessment statute when it applied 2007 condominium market values to the taxpayer's property instead of December 2003 condominium market values, which is the date of value for the last countywide quadrennial reassessment. In addition, in affirming that 2007 is the correct market valuation year for condominiums, this Court overlooked that fact that the ALC compared the 2007 condominium market valuation to the 2003 apartment market valuation, to conclude that the apartment was the highest and best use for the property.

ARGUMENT

I. SOUTH CAROLINA LAW REQUIRES PROPERTY TO BE ASSESSED BASED ON ITS FAIR MARKET VALUE AS OF THE LAST REASSESSMENT, NOT ON DECEMBER 31, 2007.

The ALC valued LMP's units based on market values of condominiums in 2007, rather than the market values of condominiums as they existed at the last reassessment in 2003. This Court affirmed the ALC finding that "[s]pecifically, LMP's expert's testimony supports the conclusion that — based on the depressed market for condominiums in Charleston in 2007 — condominiums were not a financially feasible use of the Units. Because condominiums were not a financially feasible use of the Units, condominiums could not be the highest and best use of the Units." Charleston Cnty. Assessor v. LMP Props., Inc., Unpublished Opinion No. 2015-UP-303. Although this Court found that substantial evidence supports the ALC's finding that condominiums were not a financially feasible use of the units in 2007, this Court overlooks the point that the evidence in the record is based on the ALC's failure to correctly apply S.C. Code Ann. § 12-43-215 in the

manner consistent with this Court's decision in Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013) ("LMP I"). The LMP I Court addressed two issues. First, S.C. Code Ann. § 12-43-215 mandates that any adjustment be based on market values as of the last reassessment. Second, S.C. Code Ann. § 12-43-215 is silent regarding the date to determine highest and best use. The LMP I Court stated:

> **Section 12-43-215 states merely that any adjustment to a property's value must be "based on the market values of real property as they existed** in the year that the equalization and reassessment program was conducted . . . ." **The statute is silent on the date to be used for determining the highest and best use of the property**. Accordingly, it cannot be read to mandate a diversion form the general rule that the **use of the property is to be determined as of December 31st of the preceding year**. Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from time of the last reassessment.

Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013).

The LMP I Court reversed the ALC when it found that December 31, 2007, was the correct date to determine highest and best use. However, the LMP I Court did not invalidate the law of reassessment, which requires adjustments to be made based on the market values and conditions of real property as they existed in the year that the equalization and reassessment program was conducted. S.C. Code Ann. § 12-43-215; See also, Id. In Charleston County, the last reassessment was in 2004 with a date of value of December 31, 2003. Therefore, under State law, the market values, trends, and conditions for this property tax assessment appeal cannot be based on 2007 market conditions. Instead, in accordance with the statute and decision of this Court in LMP I, the market values, trends and conditions for the units are based on 2003 market conditions.

II. THE COURT OF APPEALS' AFFIRMATION OF THE ALC'S DECISION IS BASED ON 2007 CONDOMINIUMS VALUES COMPARED TO 2003 APARTMENT VALUES.

This Court affirmed that the LMP units' highest and best use is as apartments with a fair market value of $8,565,000. However, that value is based on market values, trends, and conditions as they existed in 2003.

After the first contested case hearing in 2011, the ALC ruled that LMP's 121 units' highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0002-12) (Order, Oct. 11, 2011). In that 2011 Order, the ALC stated that "[t]he critical date for valuation in this case is December 31, 2003. . . . The 121 units must be valued as apartments, a use that satisfies all four steps of the highest and best use analysis. The Court finds the value of the 121 units as an apartment complex to be $8,565,000. (R. pp. 0002-12) (Order, Oct. 11, 2011).

After the LMP I Court remanded the valuation, based on oral arguments and submission of proposed orders from the parties, the ALC again ruled that the 121 units' highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0668-84) (Order, Sept. 20, 2013). In the 2013 Order, the ALC ruled that "[b]ased on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be uses. Using this valuation method, the Assessor's expert valued the subject property as apartments at $8,565,000." (R. pp. 0668-84) (Order, Sept. 20, 2013).

This Court overlooks the point that the fair market value of $8,565,000 of the units as apartments is based on market values and conditions as they existed in 2003, instead of

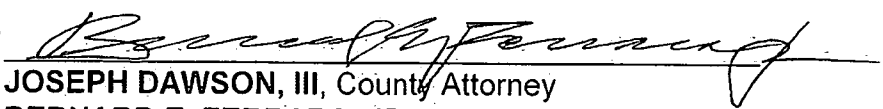
market conditions in 2007, as affirmed in this Court's decision. Therefore, the ALC's decision arbitrarily applies 2007 and 2003 market conditions for condominiums and apartments in violation of the quadrennial reassessment statute and this Court's decision in LMP I.

CONCLUSION

For the reasons stated herein, the Appellant Charleston County Assessor respectfully requests that this Court vacate its Opinion No. 2015-UP-303 and grant the County's petition for rehearing.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR



JOSEPH DAWSON, III, County Attorney
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CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
July 8, 2015

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In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

PROOF OF SERVICE

I certify that I have served the **Appellant's Petitioner for Rehearing** upon Respondent LMP Properties, Inc. by depositing a copy of the same in the United States Mail, postage prepaid, on July 8, 2015, addressed to its counsel of record as follows:

Stanley C. Rodgers, Esquire
LAW OFFICE OF STANLEY C. RODGERS, L.L.C.
101 Queen Street, Suite 200
Charleston, South Carolina 29401
Attorney for Respondent

Amanda K. Durham

Amanda K. Durham, Certified Paralegal
CHARLESTON COUNTY ATTORNEY'S OFFICE

The South Carolina Court of Appeals

Charleston County Assessor, Appellant,

v.

LMP Properties, Inc., Respondent.

Appellate Case No. 2013-002264

ORDER

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

_____ C. J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Stanley Clarence Rodgers, Esquire
Austin Adams Bruner, Esquire

FILED

August 20, 2015

Bradley Allen Mitchell, Esquire
The Honorable Shirley C. Robinson