

9

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438
Appellate Case No. 2015-0001795

RECEIVED

JUN 10 2016

SC Court of Appeals

Community Services Associates, ... Appellant,

v.

Stephen H. Wall and Maria P Snyder Wall, ... Respondents.

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0702438

Community Service
Associates Inc

Stephen Wall

Maria P Snyder Wall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

Order

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/ M.H. Dukes, III
Circuit Court Judge

3069
Judge Code

5/7/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on **7th day of May, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of May, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

F. Ward Borden, Esq.
7 Plantation Park Dr., Suite 3
Bluffton, SC 29910

ATTORNEY(S) FOR THE PLAINTIFF(S)

Drew A. Laughlin, Esq.
PO Drawer 21119
Hilton Head Island, SC 29925

ATTORNEY(S) FOR THE DEFENDANT(S)

Trena Patterson/staff

Court Reporter

Jerri Ann Roseneau - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-07-2438

Community Services Associates, Inc.,)
)
Plaintiff,)
)
v.)
)
Stephen H. Wall and Maria P. Snyder Wall,)
)
Defendants.)
_____)

ORDER

2015 MAY -7 AM 11:58
BEAUFORT COUNTY CLERK

Plaintiff seeks an injunction prohibiting the Defendants from renting their residence short-term while they simultaneously reside in second floor room and bath that has separate access by an outside stairway. Pursuant to Order of Reference, I held a hearing on April 21, 2015. All parties and counsel were present.

Defendants' home is located at 48 Planters Wood Drive, Hilton Head Island, South Carolina. The parties agreed to the following stipulations:

1. The property is subject to the Restrictive Covenants dated April 1, 1970 Applicable to All Class "A" Residential Areas in Sea Pines Plantation as described in the Complaint.
2. The property includes a 2-story detached residential dwelling unit. The second story heated space has a separate entrance and is not accessible from the first floor.
3. Certain property is rented by the Defendants to 3rd parties through an internet rental site.
4. The rented property consists of the entire first floor of the dwelling unit, save & except for one locked closet.
5. The second floor of the dwelling unit is off-limits to the renters and is occupied exclusively by the Defendants.

There was un-contradicted testimony that the dwelling has only one kitchen, which located on the first floor. The Defendants have a portable toaster oven, an induction-style hot plate, and a dorm-style refrigerator in the second floor space.

Short-term rentals are not prohibited under the covenants.

1094

Plaintiff contends that rental of less than an entire dwelling is prohibited by paragraphs 5 and 6 of the Covenants, which state:

- "5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.
6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in overcrowding the site."

The Parties both contend that the applicable Covenants are unambiguous; however, they interpret them differently. Defendants contend that although the Covenants include a specific restriction against renting guest suites without kitchens except as part of the entire premises, there is no restriction against owners remaining in such a guest suite while they rent the rest of the premises. Defendants contend that such a restriction cannot be created by inference or implication. Plaintiff contends that the unambiguous language of the covenants expressly prohibits what it contends is a joint occupancy in a single dwelling.

"[A] restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006), quoting *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). "The Court is to construe any ambiguity in favor of limited duration and against restricting property. Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." *Id.* "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." *Id.* "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect . . ." *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999) (citation omitted).



To that end, when the language creating restrictions on the use of property is unambiguous, the restrictions will be enforced according to their plain and obvious meaning. *Shipyard Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992).

Applying these principals to the express language of paragraphs 5 and 6 of the Covenants, I find and conclude:

1. It is undisputed that short-term rentals are common in Sea Pines and do not violate the provision of paragraph 5 that all lots shall be used for residential purposes.
2. It is undisputed that the improvements on Defendants' lot consist of one (1) two-story single family dwelling. There is no accessory building. There is no claim that the structure has not received all architectural and plans approvals required by the Covenants.
3. It is undisputed that the site is not overcrowded.
4. The Defendants' property has only one kitchen which is located on the first floor. Defendants' use of several dormitory-style portable appliances to store and prepare foods on the second floor does not create a kitchen, as the term is commonly used. A guest suite without a kitchen is specifically permitted. The existence of a kitchen-less guest suite does not convert the single family dwelling into a duplex (or more specifically: "from" a single family residential dwelling to something else) under the Covenants.
5. The Covenants allow guest suites or similar facility without a kitchen, but such guest suites shall not be rented or leased except as part of the entire premises, including the main dwelling.
6. There is no language in the Covenants that would prohibit the rental or leasing of the main dwelling without including the kitchen-less guest suite or like facility.
7. Defendants do not rent individual rooms. They rent the entire first floor to single rental parties.

It would have been a simple matter for the developer to include a sentence that properties in Class "A" residential areas with an accessory suite, or any such property, may only be rented in its entirety and as a whole. It did not.

The Plaintiff seeks to have me interpret the Covenants in such a way as to infer that the developer intended to prevent an owner from remaining in a guest suite while renting the main dwelling. I think that such an interpretation requires me to ignore the plain meaning of the covenants and to add a restriction which currently does not exist. See, e.g., *Taylor v. Lindsey*,

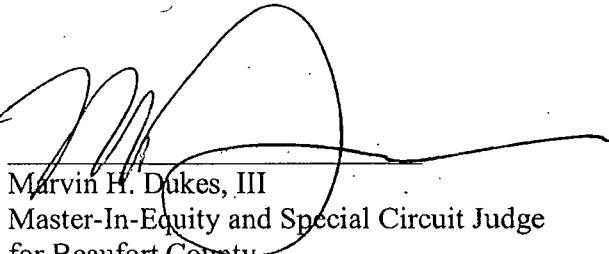
309

supra, where the South Carolina Supreme Court refused to enlarge a restriction by construction or implication beyond the clear meaning of its terms to include a restriction on mobile homes. Accordingly, I find that the Covenants do not prohibit Defendants from occupying the kitchenless guest suite on the second story of their home while they rent the first floor.

Plaintiff expresses the legitimate concern that an expansion of the Defendants' use to the rest of the Plantation will detrimentally affect the quality of life in Sea Pines. In this very fact-specific case, however, it appears to me that such a use (owner on-site) actually minimizes the possibility of loud or destructive tenants in what all agree is an area with numerous resort rentals.

Based on the foregoing, Plaintiff's request for an injunction is denied, and the Complaint is dismissed. No attorney's fees are claimed and none are awarded. Each party shall bear their own fees and costs.

AND IT IS SO ORDERED.


Marvin H. Dukes, III
Master-In-Equity and Special Circuit Judge
for Beaufort County

14 - 2438

Date:

5/7/15

4 of 4

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2014-CP-07-2438

Community Services Associates, Inc.,)

Plaintiff,)

v.)

Stephen H. Wall and Maria P. Snyder Wall,)

Defendants.)

ORDER DENYING MOTION
TO ALTER, AMEND OR FOR
NEW TRIAL

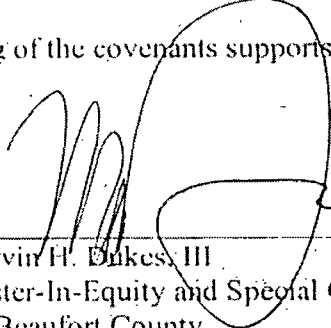
Pursuant to a Motion to reconsider (SCRCP 52 and 59) filed May 15th, 2015, Plaintiff seeks alteration, amendment or vacation of my Order heretofore filed in this case. Specifically, Plaintiff respectfully disagrees with the Court's interpretation of the plain meaning of paragraphs 5 and 6 of the covenants.

It is obvious and undisputed that the original planners of Sea Pines sought to develop an upscale community. In doing so, it is not inconceivable that the original planners sought to prevent landowners from developing small, inexpensive rentals which would conflict with the high-end intentions of the developers.

Plaintiff seeks an injunction prohibiting the Defendants from renting their residence short-term while Defendants simultaneously reside in a second floor room and bath that has separate access by an outside stairway. The Plaintiff admits that the circumstances and its objections mirror those which would occur if a Sea Pines property accommodated a live-in domestic staff. I do not believe that the intentions of the developers of an upscale resort community would include prohibiting live-in domestic staff.

I remain convinced that the plain meaning of the covenants supports the Defendant's position and I deny the Plaintiff's motion.

AND IT IS SO ORDERED.


Marvin H. Enkes, III
Master-In-Equity and Special Circuit Judge
for Beaufort County

Date: 8/10/15

2015 AUG 10 PM 12:20
CLERK OF COURT
COUNTY OF BEAUFORT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

COMMUNITY SERVICES
ASSOCIATES, INC.,)

Plaintiff,)

v.)

STEPHEN H. WALL and MARIA P.
SNYDER WALL,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-07-2438

VERIFIED COMPLAINT

2014 SEP 25 M.C. 15

COMES NOW the Plaintiff, Community Services Associates, Inc. (hereinafter "CSA"), by counsel, and for its Verified Complaint states the following.

1. CSA is a South Carolina non-profit corporation operating at Hilton Head Island, South Carolina as a property owners' association for Sea Pines Plantation.

2. CSA enforces, and operates pursuant to, without limit, a set of "Class 'A' Land Use Restrictions, as amended (hereinafter "Covenants"), as well as bylaws and regulations.

3. The lot located at 48 Planters Wood Drive, Hilton Head Island, South Carolina is an improved lot with a house on it, located in Sea Pines Plantation, and subject to the Covenants, enforced by CSA and others as provided (hereinafter "Subject House"). The Subject House is owned by Stephen H. Wall and Maria P. Snyder Wall (hereinafter "Defendants"). The Defendants acquired the Subject House by deed dated April 17, 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina on April 23, 1998 in Book 1035 at Page 2268.

4. The Subject House and the parties to this lawsuit are located in Beaufort County, South Carolina. This Court has jurisdiction over the parties to this matter, and the subject-matter of this case.

1 

5. The Defendants advertise for short-term rental part(s) of the Subject House on an internet site called "airbnb.com". The site offers to consumers the opportunity to rent for short-term, a portion of the Subject House, without renting the entire Subject House. The Defendants remain in a portion of the Subject House while leasing other portions. The Defendants prepare food and beverages in the morning for their paying guests.

6. The Defendants collect fees for providing lodging and food in part of the Subject House. "A bed and breakfast (or B&B, also spelled BnB) is a small lodging establishment that offers overnight accommodation [in part of the house] and breakfast, but usually does not offer other meals. Since, the 1980s, the meaning of the term has also extended to include accommodations that are also known as "self-catering" establishments. Typically, bed and breakfasts are private homes offering accommodation with fewer than 10 bedrooms available for commercial use [in part of the house]." *Wikipedia*, 9/5/14.

7. The Defendants are operating a bed and breakfast in the Subject House.

FOR A FIRST CAUSE OF ACTION
(Breach of Class "A" Land Use Covenants by Walls – Temporary Injunction)

8. CSA realleges and incorporates herein by reference all of its allegations made above in this Complaint as if restated verbatim herein.

9. The Covenants have for an extended time permitted the short-term rental of entire residences, but they have not permitted short-term rental of part of a residence. The Covenants have consistently been enforced that a short-term rental shall be of an entire dwelling.

10. The Covenants do not permit the type of partial rental of the Subject House that is being undertaken. Those Covenants state in relevant part, but without limitation, the following:

5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for an activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

2 *Sub*

6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling and provided, however, that such guest suite would not result in over-crowding the site. Class "A" Land Use Covenants, Sections 5 and 6. (emphasis added)

11. CSA, by counsel, transmitted written notice to the Defendants of their violation of the Covenants on June 20, 2014. A copy of the letter is attached hereto and incorporated herein as Exhibit 1.

12. The Defendants' attorney delivered a response date July 18, 2014 essentially indicating the Defendants would not refrain from the behavior identified as prohibited. A copy of Defendants' July 18, 2014 letter is attached hereto and incorporated herein as Exhibit 2.

13. CSA, by counsel, transmitted an additional written notice to Defendants' counsel dated August 8, 2014 reiterating that what was complained of was a Covenants violation. A copy of the referenced third letter is attached hereto and incorporated herein as Exhibit 3.

14. At the request of Defendants, by counsel, a meeting occurred on August 21, 2014 between Mrs. Wall and several CSA representatives, and counsel, to determine if any resolution of the disagreement could be reached. The effort failed.

15. It is Defendants' unreasonable interpretation that paragraphs 5 and 6 of the Covenants, as written, only prohibit the leasing of a "guest suite". According to Defendants' interpretation any other parts or room or rooms of the Subject House could be rented as long as what was rented was not called a "guest suite". Under this interpretation the Defendants would be able to engage in the business of renting individual rooms and operating a bed and breakfast in part of the Subject House without violating the Covenants requirements that the dwelling be used for residential purpose exclusively and that only a rental of the entire premise is permitted.

16. The interpretation of Sections 5 and 6 of the Covenants has been that short-term rental is accepted; but rentals must be of the entire dwelling. As the objective of the intention of the Covenant is the issue, CSA's application is far more likely representative of the intent of the drafters and those taking subject to the Covenants than the notion that a prohibition on leasing only *guest suites* was authored. Such an interpretation put forth by the Defendants defies reason.

Since the Defendants are knowingly and willfully leasing parts of the Subject House, they are in violation of the Covenants.

17. One definition of "business" is "The occupation, work or trade in which one is engaged." Webster's II New Riverside Dictionary 1984, at page 212. Defendants are carrying on a business in the Subject House. One Defendant, Mrs. Wall, admitted at her meeting with CSA officials on August 21, 2014 that Defendants' bed and breakfast operation provides them with significant income.

18. Town of Hilton Head Island Land Management Ordinance Section 16-4-1309 states that "Bed and breakfast facilities on Hilton Head Island shall be considered resort accommodations, and are permitted subject to the following standards. A. The facility is not located within an existing residential subdivision."

19. The Subject House is located in a subdivision covenanted solely for residential use. A copy of the plat of the residential neighborhood is attached hereto and incorporated herein as Exhibit 4.

20. The Defendants, and the Subject House, are in violation of the Land Management Ordinance of the Town of Hilton Head Island.

21. Emergency and exigent circumstances exist such that CSA is in need of a Temporary Injunction to prohibit the continuing violation of the Covenants and the Land Use Ordinance of the Town of Hilton Head Island, as the objectionable rental practices are advertised well in advance, and reservations made in advance. The effectuation of this cycle of leasing parts of the Subject House requires immediate termination.

22. CSA will be irreparably harmed without a Temporary Injunction prohibiting the present violations referenced in paragraph 21, herein above, for similar reasons. Defendants may allege that in the face of challenge, CSA is unwilling to enforce the Covenants as well as bring legal violations to the attention of the court, and Defendants might argue that they are entitled to equitable consideration because of any failure to vigorously enforce the Covenants and Land Use Ordinance of the Town of Hilton Head Island.

23. The issuance of a Temporary Injunction directing the Defendants to cease their conduct that breaches the Covenants and the Land Use Ordinance of the Town of Hilton Head Island will restore the *status quo* that existed before the violations.

24. Should the Temporary Injunction not be granted, the hardship upon CSA and its members caused by the uncertainty in enforcing the Covenants that would result is great, while a grant of the Temporary Injunction would merely continue to provide the Defendants the same options that their neighbors have concerning short-term rental of their house – no more, no less.

25. There is a likelihood of CSA's success on the merits in this action based upon the facts and applicable South Carolina law.

26. No bond should be required to be provided by CSA for the issuance of a Temporary Injunction because any cost to the Defendants is simply the cost of bringing their property into compliance with applicable Sea Pines covenants and the Land Use Ordinance of the Town of Hilton Head Island.

27. CSA is informed, and therefore believes, that it is entitled to issuance of a Temporary Injunction from this Court enjoining the Defendants from renting out part(s) of the Subject House in violation of applicable Covenants and the Land Use Ordinance of the Town of Hilton Head Island, its costs, attorney's fees and such other and further relief as the honorable court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction)

28. CSA realleges and incorporates herein by reference all of its allegations made above in this Complaint as if restated verbatim herein.

29. Emergency and exigent circumstances exist such that CSA is in need of a Permanent Injunction to prohibit the continuing violation of the Covenants and the Land Use Ordinance of the Town of Hilton Head Island, as the objectionable rental practices are advertised well in advance, and reservations made in advance. The effectuation of this cycle of leasing parts of the Subject House requires immediate termination.

30. CSA will be irreparably harmed without a Permanent Injunction prohibiting the present violations referenced in paragraph 21, herein above, for similar reasons. Defendants may allege that in the face of challenge, CSA is unwilling to enforce the Covenants as well as bring legal violations to the attention of the court, and Defendants might argue that they are entitled to equitable consideration because of any failure to vigorously enforce the Covenants and Land Use Ordinance of the Town of Hilton Head Island.

31. The issuance of a Permanent Injunction directing the Defendants to cease their conduct that breaches the Covenants and the Land Use Ordinance of the Town of Hilton Head Island will restore the *status quo* that existed before the violations.

32. Should the Permanent Injunction not be granted, the hardship upon CSA and its members caused by the uncertainty that would result is great, while a grant of the Permanent Injunction would merely continue to provide the Defendants the same options that their neighbors have concerning short-term rental of their house – no more, no less.

32. There is a likelihood of CSA's success on the merits in this action based upon the facts and applicable South Carolina law.

32. No bond should be required to be provided by CSA for the issuance of a Permanent Injunction because any cost to the Defendants is simply the cost of bringing their property into compliance with applicable Covenants and the Land Use Ordinance of the Town of Hilton Head Island.

33. CSA is informed, and therefore believes that it is entitled to issuance of a Permanent Injunction from this Court enjoining the Defendants from renting out part(s) of their house in violation of applicable Covenants and the Land Use Ordinance of the Town of Hilton Head Island, its costs, attorney's fees and such other and further relief as the honorable court deems just and proper.

WHEREFORE, the Plaintiff Community Services Associates, Inc. respectfully requests that the Honorable Court enter its Order granting CSA the following:

a. Judgment against the Defendants for Temporary and Permanent Injunction prohibiting the Defendants from renting part(s) of the Subject House at one time instead of the entire Subject House;

- b. Prohibiting the Defendants from operating a bed and breakfast at the Subject House;
- c. Costs including attorney's fees; and
- d. Such other and further relief as the Court deems just and proper.

JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-6111

By: 
F. Ward Borden
Counsel for the Plaintiff

Bluffton, SC
Sept. 19, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-07-2438

COMMUNITY SERVICES)
ASSOCIATES, INC.,)

Plaintiff,)

v.)

STEPHEN H. WALL and MARIA P.)
SNYDER WALL,)

Defendants.)

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR TEMPORARY
INJUNCTION

TO: ALL PARTIES OF RECORD AND/OR THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that Plaintiff Community Services Associates, Inc. (hereinafter "CSA"), by counsel, will move, on the tenth day after service hereof, or as soon thereafter as may be heard, for an Order granting it a Temporary Injunction against Defendants Stephen H. Wall and Maria P. Snyder Wall. Said Motion will be argued before the Master-In-Equity for Beaufort County, Beaufort County Courthouse, 102 Ribaut Road, Second Floor, Beaufort, SC 29901.

The Motion is based upon Rule 65, SCRPC, the pleadings and affidavits filed heretofore in this matter, discovery undertaken, and the case and statutory laws of the State of South Carolina and the several United States of the United States of America, and reasons set forth more particularly herein after.

1. CSA is a South Carolina non-profit corporation operating at Hilton Head Island, South Carolina as a property owners' association for Sea Pines Plantation. CSA is the movant herein.

2. CSA enforces, and operates pursuant to, without limit, a set of "Class 'A' Land Use Restrictions, as amended (hereinafter "Covenants"), as well as bylaws and regulations.

3. The lot located at 48 Planters Wood Drive, Hilton Head Island, South Carolina is an improved lot with a house on it, located in Sea Pines Plantation, and subject to the Covenants,

1 *[Signature]*

enforced by CSA and others as provided (hereinafter "Subject House"). The Subject House is owned by Stephen H. Wall and Maria P. Snyder Wall (hereinafter "Defendants"). The Defendants acquired the Subject House by deed dated April 17, 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina on April 23, 1998 in Book 1035 at Page 2268.

4. The Subject House and the parties to this lawsuit are located in Beaufort County, South Carolina. This Court has jurisdiction over the parties to this matter, and the subject-matter of this case.

5. The Defendants advertise for short-term rental part(s) of the Subject House on an internet site called "airbnb.com". The site offers to consumers the opportunity to rent for short-term, a portion of the Subject House, without renting the entire Subject House. The Defendants remain in a portion of the Subject House while leasing other portions. The Defendants prepare food and beverages in the morning for their paying guests.

6. The Defendants collect fees for providing lodging and food in part of the Subject House. "A bed and breakfast (or B&B, also spelled BnB) is a small lodging establishment that offers overnight accommodation [in part of the house] and breakfast, but usually does not offer other meals. Since, the 1980s, the meaning of the term has also extended to include accommodations that are also known as "self-catering" establishments. Typically, bed and breakfasts are private homes offering accommodation with fewer than 10 bedrooms available for commercial use [in part of the house]." *Wikipedia*, 9/5/14.

7. The Defendants are operating a bed and breakfast in the Subject House.

8. The Covenants have for an extended time permitted the short-term rental of entire residences, but they have not permitted short-term rental of part of a residence. The Covenants have consistently been enforced that a short-term rental shall be of an entire dwelling.

9. The Covenants do not permit the type of partial rental of the Subject House that is being undertaken. Those Covenants state in relevant part, but without limitation, the following:

5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected,

altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling and provided, however, that such guest suite would not result in over-crowding the site. Class "A" Land Use Covenants, Sections 5 and 6. (emphasis added)

10. CSA, by counsel, transmitted written notice to the Defendants of their violation of the Covenants on June 20, 2014. A copy of the letter is attached to CSA's Complaint filed concurrently herewith, and is therein labeled Exhibit 1.

11. The Defendants' attorney delivered a response date July 18, 2014 essentially indicating the Defendants would not refrain from the behavior identified as prohibited. A copy of Defendants' July 18, 2014 letter is attached to CSA's Complaint, and is therein labeled Exhibit 2.

12. CSA, by counsel, transmitted an additional written notice to Defendants' counsel dated August 8, 2014 reiterating that what was complained of was a Covenants violation. A copy of the referenced third letter is attached to CSA's Complaint, and is therein labeled Exhibit 3.

13. At the request of Defendants, by counsel, a meeting occurred on August 21, 2014 between Mrs. Wall and several CSA representatives, and counsel, to determine if any resolution of the disagreement could be reached. The effort failed.

14. It is Defendants' unreasonable interpretation that paragraphs 5 and 6 of the Covenants, as written, only prohibit the leasing of a "guest suite". According to Defendants' interpretation any other parts or room or rooms of the Subject House could be rented as long as what was rented was not called a "guest suite". Under this interpretation the Defendants would be able to engage in the business of renting individual rooms and operating a bed and breakfast in part of the Subject House without violating the Covenants requirements that the dwelling be used for residential purpose exclusively and that only a rental of the entire premise is permitted.

15. The interpretation of Sections 5 and 6 of the Covenants has been that short-term rental is accepted; but rentals must be of the entire dwelling. As the objective of the intention of the Covenant is the issue, CSA's application is far more likely representative of the intent of the drafters and those taking subject to the Covenants than the notion that a prohibition on leasing *guest suites* was authored. Such an interpretation put forth by the Defendants defies reason. Since the Defendants are knowingly and willfully leasing parts of the Subject House, they are in violation of the Covenants.

16. One definition of "business" is "The occupation, work or trade in which one is engaged." Webster's II New Riverside Dictionary 1984, at page 212. Defendants are carrying on a business in the Subject House. One Defendant, Mrs. Wall, admitted at her meeting with CSA officials on August 21, 2014 that Defendants' bed and breakfast operation provides them with significant income.

17. Town of Hilton Head Island Land Management Ordinance Section 16-4-1309 states that "Bed and breakfast facilities on Hilton Head Island shall be considered resort accommodations, and are permitted subject to the following standards. A. The facility is not located within an existing residential subdivision."

18. The Subject House is located in a subdivision covenanted solely for residential use. A copy of the plat of the residential neighborhood is attached to CSA's Complaint, and is therein labeled Exhibit 4.

19. The Defendants, and the Subject House, are in violation of the Land Management Ordinance of the Town of Hilton Head Island.

20. Emergency and exigent circumstances exist such that CSA is in need of a Temporary Injunction to prohibit the continuing violation of the Covenants and the Land Use Ordinance of the Town of Hilton Head Island, as the objectionable rental practices are advertised well in advance, and reservations made in advance. The effectuation of this cycle of leasing parts of the Subject House requires immediate termination.

21. CSA will be irreparably harmed without a Temporary Injunction prohibiting the present violations referenced in paragraph 20, herein above, for similar reasons. Defendants may

allege that in the face of challenge, CSA is unwilling to enforce the Covenants as well as bring legal violations to the attention of the court, and Defendants might argue that they are entitled to equitable consideration because of any failure to vigorously enforce the Covenants and Land Use Ordinance of the Town of Hilton Head Island.

22. The issuance of a Temporary Injunction directing the Defendants to cease their conduct that breaches the Covenants and the Land Use Ordinance of the Town of Hilton Head Island will restore the *status quo* that existed before the violations.

23. Should the Temporary Injunction not be granted, the hardship upon CSA and its members caused by the uncertainty in enforcing the Covenants that would result is great, while a grant of the Temporary Injunction would merely continue to provide the Defendants the same options that their neighbors have concerning short-term rental of their house – no more, no less.

24. There is a likelihood of CSA's success on the merits in this action based upon the facts and applicable South Carolina law.

25. No bond should be required to be provided by CSA for the issuance of a Temporary Injunction because any cost to the Defendants is simply the cost of bringing their property into compliance with applicable Sea Pines covenants and the Land Use Ordinance of the Town of Hilton Head Island.

26. CSA is informed, and therefore believes, that it is entitled to issuance of a Temporary Injunction from this Court enjoining the Defendants from renting out part(s) of the Subject House and operating a bed and breakfast in the Subject House in violation of applicable Covenants and the Land Use Ordinance of the Town of Hilton Head Island, its costs, attorney's fees and such other and further relief as the honorable court deems just and proper.

27. AFFIRMATION – Consistent with requirements of Rule 11, SCRPC, the attorney for CSA communicated with opposing counsel and sought to resolve the controversy, but was unsuccessful in that effort.

WHEREFORE, the Plaintiff Community Services Associates, Inc. respectfully requests that the Honorable Court enter its Order granting CSA the following:

- a. A Temporary Injunction prohibiting the Defendants from renting part(s) of the Subject House at one time instead of the entire Subject House;
- b. A Temporary Injunction prohibiting the Defendants from operating a bed and breakfast at the Subject House.
- c. Costs including attorney's fees; and
- d. Such other and further relief as the Court deems just and proper.

JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-6111

By: 
F. Ward Borden
Counsel for the Plaintiff

Bluffton, South Carolina
Sept. 19, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2014-CP-07-2438
	)	
Community Services Associates, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	VERIFIED ANSWER
	)	
Stephen H. Wall and Maria P. Snyder Wall,	)	
	)	
Defendants.	)	
	)	

Defendants Stephen H. Wall and Maria P. Snyder Wall (collectively "Walls" or "Defendants Wall"), answering Plaintiff's Complaint, will respectfully show:

FOR A FIRST DEFENSE

1. They admit the allegations of paragraph 1 of the Complaint, based on information and belief.
2. They admit the allegations of paragraph 2 of the Complaint, based on information and belief.
3. They admit so much of paragraph 3 of the Complaint as alleges that they own the property located at 48 Planters Wood Drive, Hilton Head Island, South Carolina, that they acquired the property in April, 1998, that the property is subject to covenants, and that there are improvements on the property consisting of a main dwelling house and an accessory building/guest suite which has a separate entrance and is not accessible from the main house. They deny any and all other allegations contained in paragraph 3 of the Complaint.
4. They admit the allegations of paragraph 4 of the Complaint.

5. They admit so much of paragraph 5 of the Complaint as alleges that their home is available for short-term rental, that they advertise their home on "airbnb.com" in airbnb.com's "Whole House" category, and that they remain in their accessory building/guest suite when their whole house is rented. They deny all other allegations contained in paragraph 5 of the Complaint.

6. They deny the allegations of paragraph 6 of the Complaint.

7. They deny the allegations of paragraph 7 of the Complaint.

8. As their response to paragraph 8 of the Complaint, Defendants Wall incorporate their responses to paragraphs 1 through 7 of the Complaint as fully as if repeated here verbatim.

9. They admit so much of paragraph 9 of the Complaint as alleges that the Covenants permit short-term rentals. Further, they crave reference to the written language of the Covenants, and they deny any allegations contained in paragraph 9 that conflict with the language of the written Covenants. All other allegations contained in paragraph 9 are denied based on lack of information and belief.

10. In response to paragraph 10 of the Complaint, Defendants Wall deny that they engage in partial rental of their home. Further, they crave reference to the written language of the Covenants, and they deny any allegations contained in paragraph 10 that conflict with the written language of the Covenants.

11. They admit so much of paragraph 11 of the Complaint as alleges that they received the letter identified as Exhibit 1 to the Complaint. They deny any other allegations contained in paragraph 11 of the Complaint.

12. They admit so much of paragraph 12 of the Complaint as alleges that their counsel sent the letter identified as Exhibit 2 to the Complaint. They deny any other allegations contained in paragraph 12 of the Complaint.

13. They admit so much of paragraph 13 of the Complaint as alleges that their counsel received the letter identified as Exhibit 3 to the Complaint. They deny any other allegations contained in paragraph 13 of the Complaint.

14. They admit the allegations of paragraph 14 of the Complaint, but move to strike said allegations pursuant to Rule 12(f), SCRPC on the grounds that the meeting constituted settlement discussions, and as such, any allegations concerning what transpired at the meeting are immaterial or impertinent.

15. They deny the allegations of paragraph 15 of the Complaint.

16. They admit so much of paragraph 16 of the Complaint as alleges that neither the express terms nor the plain and unmistakable implication of the Covenants prohibits the manner in which Wall is using their home. They deny all other allegations of paragraph 16 of the Complaint, and they affirmatively allege that restrictions on the use of property must be created by express terms or by plain and unmistakable implication, and such restrictions are to be strictly construed with all doubts resolved in favor of the free use of the property. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).

17. They admit so much of paragraph 17 of the Complaint as alleges that they derive income from the short-term rentals of their home. They deny all other allegations of paragraph 17 and move to strike said allegations pursuant to Rule 12(f), SCRPC on the grounds that they are immaterial or impertinent, and/or they constitute statements made during settlement discussion.

18. In response to paragraph 18 of the Complaint, Defendants Wall crave reference to the express language of the Ordinance, and they deny all allegations that conflict with the written Ordinance. Wall move to strike the allegations of paragraph 18 of the Complaint pursuant to Rule 12(f), SCRCP on the grounds that said allegations are immaterial or impertinent.

19. In response to paragraph 19 of the Complaint, Defendants Wall crave reference to the express language of the Covenants, and they deny all allegations that conflict with the written documents.

20. They deny the allegations of paragraph 20 of the Complaint and move to strike said allegations pursuant to Rule 12(f), SCRCP on the grounds that said allegations are immaterial or impertinent.

21. They deny the allegations of paragraph 21 of the Complaint.

22. They deny the allegations of paragraph 22 of the Complaint.

23. They deny the allegations of paragraph 23 of the Complaint. They deny the existence of any violations of the Covenants, and they further allege that Plaintiff seeks to change the current status quo, not preserve it.

24. They deny the allegations of paragraph 24 of the Complaint.

25. They deny the allegations of paragraph 25 of the Complaint.

26. They deny the allegations of paragraph 26 of the Complaint, and they affirmatively allege that they will suffer substantial financial loss and hardship if a Temporary Injunction is granted.

27. They deny the allegations of paragraph 27 of the Complaint. Further, they allege that should they prevail in this action, they are entitled to recover the costs of this action, including attorney's fees.

28. As their response to paragraph 28 of the Complaint, Defendants Wall incorporate their responses to paragraphs 1 through 27 of the Complaint as fully as if repeated here verbatim.

29. They deny the allegations of paragraph 29 of the Complaint.

30. They deny the allegations of paragraph 30 of the Complaint.

31. They deny the allegations of paragraph 31 of the Complaint.

32. They deny the allegations of paragraph 32 of the Complaint.

33. They deny the allegations of paragraph 33 of the Complaint. Further, they allege that should they prevail in this action, they are entitled to recover the costs of this action, including attorney's fees.

FOR A SECOND DEFENSE

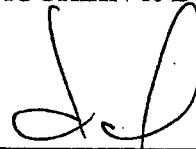
34. Defendants Wall incorporate the preceding paragraphs of their Answer as fully as if repeated here verbatim.

35. Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches.

WHEREFORE, Defendants Wall pray that this Honorable Court enter its Order dismissing Plaintiff's Complaint, with prejudice, awarding costs and attorney's fees to Defendants Wall, and providing such other and further relief as is just and proper.

LAUGHLIN & BOWEN, P.C.

By:



Drew A. Laughlin
Attorneys for Defendants

P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700

November 24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2014-CP-07-2438
Community Services Associates, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' VERIFIED
	)	RETURN TO MOTION FOR
Stephen H. Wall and Maria P. Snyder Wall,	)	TEMPORARY INJUNCTION
	)	
Defendants.	)	
	)	

Defendants Stephen H. Wall and Maria P. Snyder Wall (collectively "Walls" or "Defendants Wall"), as their Return to Plaintiff's Motion for Temporary Injunction, will respectfully show:

FOR A FIRST DEFENSE

1. They admit the allegations of paragraph 1 of the Motion, based on information and belief.
2. They admit the allegations of paragraph 2 of the Motion, based on information and belief.
3. They admit so much of paragraph 3 of the Motion as alleges that they own the property located at 48 Planters Wood Drive, Hilton Head Island, South Carolina, that they acquired the property in April, 1998, that the property is subject to covenants, and that there are improvements on the property consisting of a main dwelling house and an accessory building/guest suite which has a separate entrance and is not accessible from the main house. They deny any and all other allegations contained in paragraph 3 of the Motion.
4. They admit the allegations of paragraph 4 of the Motion.
5. They admit so much of paragraph 5 of the Motion as alleges that their home is available for short-term rental, that they advertise their home on "airbnb.com" in airbnb.com's "Whole

House" category, and that they remain in their accessory building/guest suite when their whole house is rented. They deny all other allegations contained in paragraph 5 of the Motion.

6. They deny the allegations of paragraph 6 of the Motion.

7. They deny the allegations of paragraph 7 of the Motion.

8. They admit so much of paragraph 8 of the Motion as alleges that the Covenants permit short-term rentals. Further, they crave reference to the written language of the Covenants, and they deny any allegations contained in paragraph 8 of the Motion that conflict with the language of the written Covenants. All other allegations contained in paragraph 8 of the Motion are denied based on lack of information and belief.

9. In response to paragraph 9 of the Motion, Defendants Wall deny that they rent parts of their home. Further, they crave reference to the written language of the Covenants, and they deny any allegations contained in paragraph 9 that conflict with the written language of the Covenants.

10. They admit so much of paragraph 10 of the Motion as alleges that they received the letter identified as Exhibit 1 to the Motion. They deny any other allegations contained in paragraph 10 of the Motion.

11. They admit so much of paragraph 11 of the Motion as alleges that their counsel sent the letter identified as Exhibit 2 to the Motion. They deny any other allegations contained in paragraph 11 of the Motion.

12. They admit so much of paragraph 12 of the Motion as alleges that their counsel received the letter identified as Exhibit 3 to the Motion. They deny any other allegations contained in paragraph 12 of the Motion.

13. They admit the allegations of paragraph 13 of the Motion, but move to strike said allegations pursuant to Rule 12(f), SCRCP on the grounds that the meeting constituted settlement

discussions, and as such, any allegations concerning what transpired at the meeting are immaterial or impertinent.

14. They deny the allegations of paragraph 14 of the Motion.

15. They admit so much of paragraph 15 of the Motion as alleges that neither the express terms nor the plain and unmistakable implication of the Covenants prohibits the manner in which Walls are using their home. They deny all other allegations of paragraph 15 of the Motion, and they affirmatively allege that restrictions on the use of property must be created by express terms or by plain and unmistakable implication, and such restrictions are to be strictly construed with all doubts resolved in favor of the free use of the property. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).

16. They admit so much of paragraph 16 of the Motion as alleges that they derive income from the short-term rentals of their home. They deny all other allegations of paragraph 16 and move to strike said allegations pursuant to Rule 12(f), SCRPC on the grounds that they are immaterial or impertinent, and/or they constitute statements made during settlement discussion.

17. In response to paragraph 17 of the Motion, Defendants Wall crave reference to the express language of the Ordinance, and they deny all allegations that conflict with the written Ordinance. Walls move to strike the allegations of paragraph 17 of the Motion pursuant to Rule 12(f), SCRPC on the grounds that said allegations are immaterial or impertinent.

18. In response to paragraph 18 of the Motion, Defendants Wall crave reference to the express language of the Covenants, and they deny all allegations that conflict with the written documents.

19. They deny the allegations of paragraph 19 of the Motion and move to strike said allegations pursuant to Rule 12(f), SCRCPP on the grounds that said allegations are immaterial or impertinent.

20. They deny the allegations of paragraph 20 of the Motion.

21. They deny the allegations of paragraph 21 of the Motion.

22. They deny the allegations of paragraph 22 of the Motion. They deny the existence of any violations of the Covenants, and they further allege that Plaintiff seeks to change the current status quo, not preserve it.

23. They deny the allegations of paragraph 23 of the Motion.

24. They deny the allegations of paragraph 24 of the Motion.

25. They deny the allegations of paragraph 25 of the Motion, and they affirmatively allege that they will suffer substantial financial loss and hardship if a Temporary Injunction is granted.

26. They deny the allegations of paragraph 26 of the Motion. Further, they allege that should they prevail in this action, they are entitled to recover the costs of this action, including attorney's fees.

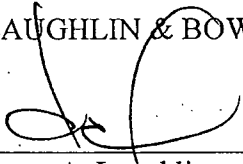
27. Paragraph 27 constitutes an affirmation required by SCRCPP, not an allegation of fact constituting grounds for a motion. Defendants admit that an effort was made to communicate and resolve Plaintiff's Complaint, but deny any consultation with respect to the Motion.

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WHEREFORE, Defendants Wall pray that this Honorable Court enter its Order denying Plaintiff's Motion for Temporary Injunction, with prejudice, awarding costs and attorney's fees to Defendants Wall, and providing such other and further relief as is just and proper.

LAUGHLIN & BOWEN, P.C.

By:


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Attorneys for Defendants

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Hilton Head Island, SC 29925
(843) 689-5700

November 21, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2014-CP-07-2438
COMMUNITY SERVICES ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	PLAINTIFF'S TRIAL BRIEF
	)	FOR ITS CLAIMS IN CONTRACT
	)	AND FOR PERMANENT INJUNCTION
v.	)	
	)	
STEPHEN H. WALL and MARIA P. SNYDER WALL,	)	
	)	
Defendants.	)	
	)	

Introduction

Plaintiff Community Services Associates, Inc. (hereinafter "CSA" or "Plaintiff"), by counsel, filed and served a Summons and Complaint and a Motion for Permanent Injunction in September 2014 against Defendants Stephen H. Wall and Maria P. Snyder Wall to prohibit them from violating the "Class 'A' Covenants, April 1, 1970" of Sea Pines Plantation (hereinafter "Restrictive Covenants"). The Defendants apparently began violating the Restrictive Covenants in early-2013 by renting part of their two-story, single-family detached residential dwelling at 48 Planters Wood Drive to unrelated third parties through an internet rental site called Airbnb, while Defendants simultaneously occupied the same dwelling. For a period, the Defendants served breakfasts to paying occupants as well, but have represented that they ceased that practice. Plaintiff did not immediately learn of the Defendants' violations occurring at their single-structure dwelling.

While the Restrictive Covenants permit owners of single-family detached residential dwellings in Sea Pines to rent/lease their dwellings, the Restrictive Covenants specify that the entire premises must be included in the lease/rental. Defendants willfully cause 48 Planters Wood Drive to be occupied simultaneously by themselves and other families or groups of people whose sole relationship to Defendants is contractual, i.e., a third-party lessor/broker/lessee relationship. Much of the time, the lessors and lessees are under the same 48 Planters Wood

Drive roof at the same time. It is precisely these circumstances that the Restrictive Covenants prohibit.

The Restrictive Covenants under recognized rules of construction are to be strictly interpreted as a whole to ascertain the intent of the drafters. (citations omitted here) Plaintiff's Exhibit 2 is the Restrictive Covenants of this case. The sections specifically being violated are, without limit, the following:

"5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in over-crowding the site."

The above sections of the Restrictive Covenants are unambiguous, and have been recognized for over 40 years to mean that if one rents their Sea Pines residential single-family dwelling, they are to rent the "entire premises". Plaintiff's request for permanent injunctive relief is an effort to restore the *status quo* of over 40 years. Were Defendants to prevail, their actions would, in a highly public and highly unpredictable manner, change the character of Sea Pines Plantation to something different than previous purchasers of Sea Pines Plantation property came to rely upon from the Restrictive Covenants.

Material Facts

The residence at issue in this case, at 48 Planters Wood Drive, Sea Pines Plantation, Hilton Head Island, South Carolina, was initially constructed in 1974. (Plaintiff's Exhibit 3, hereinafter at all times the "Subject Premises") Its construction for owner R. Arnold Ellison, Jr. occurred only about four years following the recordation of the initial Restrictive Covenants.

2 

(Plaintiff's Exhibit 2, with amendments) As such, the Subject Premises and alterations thereto are subject to the Restrictive Covenants.

The original Subject Premises had a finished first floor, but no finished second floor. (Plaintiff's Exhibit 3) In 1981, R. Arnold Ellison, Jr. made application to the Sea Pines Architectural Review Board to add a finished second floor area to the principal structure. The second floor addition was not a separate building, guest house or detached space. However, an exterior stairwell to the upstairs was proposed. (Plaintiff's Exhibit 3) We are fortunate enough to have correspondence about the Subject Premises at that time because such correspondence is maintained by the Sea Pines Architectural Review Board in the course of regularly conducted business activity. Moreover, the written communications relevant to this case have existed for well over 20 years, and are pertinent to customs affecting lands in the community. Note the following:

"In reply to your application dated January 16, 1981 and plans submitted therewith, the Architectural Review Board is very concerned with an outside stairway, since at some future date it could cause an owner to consider the use for a two family setup. [new paragraph] Please put stairway for the second floor addition on the inside of your residence." (Plaintiff's Exhibit 3, January 20, 1981 letter from ARB Administrator to home owner's architect Kermit Huggins, emphasis added)

* * *

"This is to request further consideration to the plans submitted by Kermit Huggins for the completion of a second-floor attic room to my house. Every effort was made to provide access to the attic from inside, but the only way possible is through a very small closet as shown in our plans. ... [New paragraph] This room will be used solely as a play room for our two sons, ages 9 and 11. The house has only two bathrooms; therefore the third bathroom is desirable. I believe that the Architectural Review Board should have confidence in the Restrictive Covenants that absolutely prohibit a house to be used for more than one family; therefore, I respectfully request that you reconsider and approve the plans as submitted." (Plaintiff's Exhibit 3, February 11, 1981 letter from R. Arnold Ellison, Jr., P.E. to the Administrator of the Sea Pines ARB, emphasis added)

* * *

"The Architectural Review Board has received and approved your final plans, application and stake-out for the subject project. This approval is limited to design criteria by the Architectural Review Board as provided by the Restrictive Covenants and should not be interpreted as approval of any variation from restrictions or conditions imposed on the property owner by contract or other

provisions of the recorded restrictions unless so noted herein. The owner is responsible for being within the restrictive covenants. ..." (Plaintiff's Exhibit 3, February 18, 1981 notice from Administrator of Sea Pines ARB to R. Arnold Ellison, emphasis added)

Defendants acquired title to the same Subject Premises in April 1998, over 17 years after the referenced discussion about the usage of the Subject Premises. Upon best information and belief, after about 15 years of customary single family usage by the Defendants, they in early -2013 began utilizing an international rental broker (Airbnb) to facilitate Defendants renting a part of the Subject Premises to families and others from around the world, while residing in the second floor addition portion of the Subject Premises – exactly as R. Arnold Ellison, Jr., P.E., building the addition in 1981, declared would not occur.

The depositions of Stephen H. Wall and Maria P. Snyder Wall make clear, without limit, the following: (a) that in their rental activities, pretty much anything goes including renting by the room; (b) that they often occupy the Subject Premises simultaneously with individuals or groups whose only relationship is a contractual one brokered by Airbnb; and (c) that the Defendants, in violation of the Restrictive Covenants, never rent/lease the entire premises in compliance with the Restrictive Covenants.

The following are illustrative excerpts from Defendants' respective depositions:

- Q. What is private room -- or at that time what was private room?
A. Well, you're basically just renting a room, because at that time we really only wanted to rent a room.
Q. A room accommodating three?
A. That is correct. (Mrs. Wall Transcript, Page 35, Lines 4-10)

* * *

- Q. Is Ms. Snyder Wall your wife or your ex-wife?
A. Current wife.
Q. How many times have you been married?
A. Twice. Three times.
Q. Okay. You regard Maria Snyder Wall as your family also; correct?
A. Correct. (Mr. Wall Transcript, Page 14, Line 22 – Page 15, Line 50)

* * *

- Q. Well, Mr. Wall was saying that there were some limitations but he did not know what they were but you did.
A. That is correct. And it gets a little complicated, but four is what we put here, four, okay? So we really don't – I mean, that's the vast majority of our people. Now, if you're willing to pay extra, you can have six, but we don't get that many rentals with that, you know, and it would have to go through Airbnb.

Q. Okay. And then this goes into Airbnb, and then people who are looking and searching Airbnb would see this, Hilton Head Island?

A. That is correct. ... (Mrs. Wall Transcript, Page 33, Lines 5-21)

* * *

Q. ... I don't have a name for these people or anything else. But under your operation you could come downstairs if they gave you permission or whatever, but under your operating rules you could have a family in place for 28 days and you be that [family] for 28 days all in 48 Planters Wood Drive?

A. Currently, the way it is structured, we could have a guest, not necessarily a family, that could be there for 28 days.

Q. But a family could not?

A. Probably I would not agree to that. It's just too many people for too long.

Q. So perhaps a family for a week?

A. Doable. (Mrs. Wall Transcript, Page 53, Lines 10-25)

* * *

Q. Okay. Is there any way possible for anyone to reach this space [upstairs room] from anything but the door to the stairwell to enter the remainder of your house at 48 Planters Wood Drive?

A. No, sir. (Mr. Wall Transcript, Page 31, Lines 17-21)

* * *

Q. How many of those occupying for rent 48 Planters Wood Drive have stayed in the closed-off area?

A. No one.

Q. Is there a separate key for the closed-off area different from the remainder of the house?

A. Yes. (Mr. Wall Transcript, Page 35, Lines 8-15)

Law and Argument

I. The Restrictive Covenants which the Plaintiff has sued to enforce against the Defendants in this case are valid, clear and unambiguous. Under recognized standards, the Plaintiff is entitled to the equitable relief of a permanent injunction barring the Defendants from leasing only a portion of the Subject Premises, while Defendants continue to occupy another portion of the Subject Premises.

"A suit seeking an injunction to enforce restrictive covenants is an action in equity." Arnoti v. Lukie, 350 S.C. 177, 179, 564 S.E.2d 691, 692 (Ct.App. 2002). "'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998), *quoting* Palmetto Dunes Resort v. Brown,

287 S.C. 1, 336 S.E.2d 15 (1985). Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and against restrictions. This rule, however, obtains only where the parties have failed to express their meaning with sufficient clarity to enable the court to say that its construction is plain and admits of no doubt; the rule will not be applied to defeat the obvious purpose of the restriction, nor does it require an unnatural and strained construction of the words used; and before giving effect to the rule the court will have recourse to every aid, rule, or canon of construction to ascertain the intention of the parties, since it is the duty of courts to enforce, not to make, contracts. Sprouse v. Winston, 212 S.C. 176, 184, 46 S.E.2d 874, 878 (1948) *citing* 26 C.J.S., Deeds, § 163.

Defendants in this case, as defendants sometimes do, sought to cloud and muddle the meaning of the applicable Restrictive Covenants for their profit-seeking purposes; Restrictive Covenant wording is in place that prohibits the conduct in which Defendants are engaged. It is clear and has been stated under oath by the Defendants that they have [informally] bifurcated, from the downstairs of the Subject Premises, an upstairs room that was added to the Subject Premises 17 years before Defendants bought the Subject Premises. The living areas are all under one roof. Defendants now reside in the upstairs room and rent to families and other contracting persons the downstairs of the same house. The Defendants have conceded they are a family, and they have occupied the upstairs of the Subject Premises while leasing the downstairs of the Subject Premises simultaneously to, without limit, another family. That is two families under one roof and in one single family house – often. The Defendants use international broker Airbnb to provide them a steady supply of contract renters/lessees to use part of, but never all of, the Subject Premises while the Defendants simultaneously occupy the Subject Premises. The upstairs of the Subject Premises is part of the house, but the Defendants have stated emphatically under oath that the upstairs of the Subject Premises is off limits to their renters – even protected by a different lock and key.

Sections 5 and 6 of the Restrictive Covenants are not complicated. Section 5 states that lots in Residential Areas [such as Defendants'] shall be “used for residential purposes exclusively.” On such lot is permitted “one (1) detached single family dwelling not to exceed two (2) stories in height ...”. The building is “not used for any activity normally conducted as a business.” Section 6 states in part, “A guest suite or like facility without a kitchen may be

included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling ...". A dwelling is allowed to be used for residential purposes exclusively, consisting of one detached single family dwelling. Rental must include the entire premises. This is the plain use of the terms. If one does not have a *guest suite* or *accessory building* then they may rent the entirety of the premises they have. If they have a *guest suite or like facility*, they may only rent or lease said *guest suite or like facility* with the entire premises.

The Court of Appeals of South Carolina, in a case involving a community just down the road from Sea Pines Plantation, heard argument that *purely aesthetic considerations* were allegedly too vague and ambiguous for enforcement. The Court of Appeals ruled otherwise, holding the architecturally-related covenant at Palmetto Dunes to not be ambiguous. Palmetto Dunes Resort v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 19 (1985).

Others have tried, like Defendants, to evade compliance with restrictive covenants applicable to them. In Easterly v. Hall, 256 S.C. 336, 182 S.E.2d 671 (1971), property was developed in Spartanburg in which a consistent, but more sporadically established set of restrictions were put in place, one in the deeds stating, "*That only one residence may be erected on any one lot, but any person may use two or more lots placing one residence thereon.*" Easterly at 340, 182 S.E.2d at 672. Several years later associated property was subdivided, with detailed covenants on the lots that included the wording, "*All of the lots shall be known and described as residential lots, and no structure shall be erected upon any of said residential lots other than one single family private dwelling house not to exceed two stories in height, and one, two or three-car garage. No apartment house or duplex of any type shall be erected or maintained on any of the lots*" Id.

The appellant in Easterly, Fred N. Hall, tried to get the restriction rescinded, and then got a building permit from the City of Spartanburg authorizing him to build a duplex. His neighbors sued for injunction. Their temporary restraining order was granted. Id. Appellant Hall wrote a letter stating he had gotten the building permit amended for a dwelling for the occupancy of one family. The action by the neighbors was withdrawn. Notwithstanding his contrary representations, Hall continued with the duplex, and was sued by neighbors for injunction again. He said he was going to live on one side, and his divorced son and two children on the other side of the structure he built.

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The trial court held that the restrictions at issue were uniformly imposed on every conveyance up to and including that of the appellant Hall and the respondent Easterly. It was found that all conveyances manifested a definite plan to develop the subdivision as a residential neighborhood. It was held that only single family dwellings had been erected upon any of the lots in the subdivision. The subdivision having been developed in the manner stated embraced all of the necessary elements of a general scheme or plan to subject the several lots therein to the restrictions stated. Id. It was further noted, "The restriction 'that only one residence' or 'one single family private dwelling house' may be erected on any one lot excludes the erection of a duplex. A number of courts have so held. The cases are collected in 14 A.L.R.2d, § 11, commencing on page 1409." Id. at 345, 182 S.E.2d at 675. The trial judge permanently enjoined the use of the Appellant's structure by more than one family, and his ruling was affirmed on appeal (as modified).

The Defendants in this case are trying to do the same "end run" as was attempted by the appellant in the Easterly case, and they are doing so against a clearer set of restrictions. Certainly there are differences between a gradually developed parcel in Spartanburg and Sea Pines Plantation. But the conduct of the defendants in each is similar. Defendants here are operating a "micro hotel" in a house they are treating as a *vertical duplex* with the upstairs artificially designated as separate from the remainder of the Subject Premises. Defendants' position is a fiction. The Defendants have not subdivided their lot (Mrs. Wall Transcript, Page 24, Lines 18-22), and they pay one set of real property taxes on the Subject Premises. Defendants' actions must be permanently enjoined because the Restrictive Covenants and the law concerning same call for such relief to restore the *status quo*. Otherwise, Sea Pines Plantation faces a change in the character of the neighborhood from single family dwellings throughout the neighborhood using international web connections to fill their houses with renters while being simultaneously occupied by the owners. Such a scenario would negatively affect traffic and security, and lessen the solitude one currently associates with Sea Pines Plantation.

By a ruling for Plaintiff, the Defendants would not be *unfairly prejudiced* by a permanent injunction against their present actions. The Defendants can still rent their Subject Premises to earn a living, they would simply be prohibited from living in the house at the same time. They might arrange to rent the entire Subject Premises part of the year, and occupy the Subject Premises fully part of the year. They are not left without options.

In Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 363 S.E.2d 891 (1987), the subdivision developer filed an equity action to enjoin a property owner from modifying construction of a house and re-landscaping his property. At trial, a mandatory injunction was issued directing the lot owner to remove a flagpole, Jacuzzi, satellite antenna wrought iron fence gate, beach walkway, shower, no trespassing sign and all trees, bushes, walls, fences and other structures he had placed blocking easements of view. The Supreme Court of South Carolina, upholding the trial court on injunctive relief granted, stated, "Even though the injunctive remedy may cause some economic hardship ..., injunctions have routinely been granted in such instances." Id. at 275, 363 S.E.2d at 896.

II. The law on restrictive covenants is to determine the overall intent.

The Defendants, in paragraph 16 of their Verified Answer, deny Plaintiff's allegations and affirmatively state that "restrictions on the use of property must be created by express terms or by plain and unmistakable implication...." Should this Court give consideration to Defendants' lack of clarity assertion regarding the Restrictive Covenants the Plaintiff has sued to enforce, under applicable law that is not the "end of the story," nor an assurance that Defendants may continue their conduct which violates the Restrictive Covenants. "In construing covenants the circumstances surrounding their origin are proper considerations for a court when the language used is susceptible of more than one reasonable interpretation." Hoffman v. Cohen, 262 S.C. 71, 77, 202 S.E.2d 363, 366 (1974). (*Landowner instituted class action for declaratory judgment that proposed 62-unit high-rise condominium apartment building would not violate restrictive covenants. Master in Equity recommended approval of project which Circuit Court implemented by its order. Ruling was reversed by Supreme Court of South Carolina finding that surrounding considerations cut against the development.*)

"It has been stated 'where there is any ambiguity in a contract, or where there is doubt as to the proper construction thereof, the construction placed thereon by the parties themselves is entitled to great, if not controlling, influence.'" Id. quoting, Stackhouse v. Pure Oil Co., 176 S.C. 318, 180 S.E. 188 (1935).

The Plaintiff here is enforcing Restrictive Covenants from 1970 against practices that are being substantially enhanced by internet communication. That the drafters could foresee all future relevant elements would be impossible. Nonetheless, in 1981, the then-owner of the

Subject Premises and the community association were confident that housing multiple families under one roof at 48 Planters Wood Drive was prohibited by the Restrictive Covenants (*notwithstanding how the violation is effectuated today*). It was true then, and it is true now.

Conclusion

Based upon the facts, the law and the arguments presented to the Court, the Plaintiff respectfully requests that the Court issue its order granting the Plaintiff a permanent injunction against the Defendants prohibiting the Defendants from renting 48 Planters Wood Drive while occupying those premises, and/or from renting 48 Planters Wood Drive to more than one person under more than one lease at one time, and/or from renting 48 Planters Wood Drive in any form less than the entire premises to the lessee. It is further requested that the Court affirm the Class A Restrictive Covenants of Sea Pines Plantation as argued by the Plaintiff, and that the Court grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,



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April 20, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

COMMUNITY SERVICES
ASSOCIATES, INC.,)

Plaintiff,)

v.)

STEPHEN H. WALL and MARIA P.
SNYDER WALL,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-07-2438

PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO ALTER OR AMEND
JUDGMENT OR FOR NEW TRIAL
PURSUANT TO RULES 52 AND 59,
SCRPC AND OTHER APPLICABLE
LAW

TO: DREW A. LAUGHLIN, ESQUIRE, COUNSEL FOR DEFENDANTS STEPHEN H.
WALL AND MARIA P. SNYDER WALL

NOTICE IS HEREBY GIVEN that Plaintiff Community Services Associates, Inc. (hereinafter "CSA" or "Plaintiff"), by counsel, shall move before the Presiding Judge of the Beaufort County Court of Common Pleas on the tenth day after service hereof or at such later time as counsel may be heard, for its Motion to Alter or Amend Judgment or for New Trial Pursuant to Rules 52 and 59, SCRPC and other Applicable Law. Said hearing shall occur before the Master In Equity at the Beaufort County Courthouse, 102 Ribaut Road, Second Floor, Beaufort, South Carolina 29901. This Motion is based, without limit, upon Rules 52 and 59, S.C. Rules of Civil Procedure, the pleadings filed, discovery made and filed, arguments made and heard, the Order of this Court signed and filed, and the case and statutory laws of the State of South Carolina and the several United States of the United States of America. In further support thereof, the Plaintiff(s) state as follows.

Introduction

1. Plaintiff CSA is the management entity for the common area of Sea Pines Plantation, Hilton Head Island, South Carolina, and for enforcement of existing covenants running with the land at Sea Pines Plantation. (Trial testimony of CSA President Bret Martin) It is a nonprofit South Carolina corporation initially created in 1987. (Exhibit 1, attached hereto)

2. Restrictive covenants known as the "Class 'A' Covenants, April 1, 1970" (as amended), were caused to be prepared and recorded in the land records of Beaufort County, South Carolina by an entity then known as Sea Pines Plantation Company. (Plaintiff's Trial Exhibit 2) At the time of the recordation and amendment of the Class "A" Covenants, Sea Pines Plantation Company administered to the various guidelines and restrictions in the referenced covenants. (Plaintiff's Trial Exhibit 2)

3. Over time and multiple business events, CSA succeeded to the enforcement of the Class "A" Covenants formerly enforced by Sea Pines Plantation Company, as the Sea Pines Plantation Company ultimately went on to forfeit its charter. (Attached hereto and incorporated herein as Exhibits 2a and 2b are printouts of the business filings of Sea Pines Plantation Company with the South Carolina Secretary of State)

4. One of the lots subject to the Class "A" Covenants is located at 48 Planters Wood Drive, Hilton Head Island, South Carolina. (Trial Stipulation 1, a copy of which attached hereto as Exhibit 3) A home was built at 48 Planters Wood Drive on or around 1974. (Plaintiff's Excluded Trial Exhibit 3, included here as Exhibit 4) An addition was constructed to the existing home at 48 Planters Wood Drive on or around 1981 which was an upstairs room only accessible from an exterior stairwell. The addition is part of, and not detached from, the existing main dwelling. At the time of its proposal and construction, it was not characterized as a "guest suite" or described as space used to house guests. Concern was expressed that future owners would attempt to introduce multiple families into the single family dwelling at 48 Planters Wood Drive. (Exhibit 4) Acknowledgements were then made by those involved that the Class "A" Covenants prohibited multiple families occupying the single family dwelling at 48 Planters Wood Drive (as modified). (Exhibit 4)

5. Defendants Stephen H. Wall and Maria P. Snyder Wall (hereinafter the "Defendants") acquired title to the property at 48 Planters Wood Drive, Hilton Head Island, South Carolina by deed dated April 17, 1998 and recorded in the Office of the Beaufort County Register of Deeds on May 26, 1998 in Book 1035 at Page 2268. (Plaintiff's Trial Exhibit 1, attached hereto and incorporated herein as Exhibit 5) The property at 48 Planters Wood Drive, as taken possession of by the Defendants, is subject to the Class "A" Covenants. (Exhibits 3 and 5)

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6. Before their ownership of 48 Planters Wood Drive, the status of Sea Pines Plantation Company as a going concern changed, and the enforcement of the Class "A" Covenants became reposed in CSA. Accordingly, the Defendants were left to interact with a successor of Sea Pines Plantation Company with respect to enforcement of the Class "A" Covenants on the 48 Planters Wood Drive property.

7. Single family detached dwellings at Sea Pines Plantation subject to the Class "A" Covenants may be leased, short-term, by their owners. When such rental occurs, the entire single family dwelling must be rented – not a part or portion alone. (Plaintiff's Trial Exhibit 2)

8. Defendants on or about 2013 began violating the Class "A" Covenants of Sea Pines Plantation. The Defendants began renting part of their two-story, single-family detached residential dwelling at 48 Planters Wood Drive to unrelated third parties through an internet rental site called Airbnb, while Defendants simultaneously occupied the same dwelling. For a period, the Defendants served breakfasts to paying occupants as well, but have represented that they ceased that practice. Defendants also rented to multiple people a single room at 48 Planters Wood Drive. (Plaintiff's Page/Line Designations filed of record, and a portion of which read into the record at hearing) Plaintiff did not immediately learn of the violations occurring at Defendants' single family dwelling.

9. Plaintiff, by counsel, requested in writing multiple times that the Defendants cease their activities violating the Class "A" Covenants. (Plaintiff's Page/Line Designations of record; Plaintiff's Complaint) The Defendants said they had curtailed certain activities such as serving breakfasts and renting a single room at a time; however, they have not fully complied with CSA's requests that they not rent so as to have multiple families under their roof. It appears clear that the Defendants have gone to considerable effort to exploit what they perceive to be a sliver of rental use allegedly not regulated by the Class "A" Covenants.

10. CSA sued the Defendants in September 2014, for breach of contract (i.e., restrictive covenants), and seeking a temporary injunction and a permanent injunction. This case was heard by the Master In Equity on the permanent injunction on April 21, 2015. The Master In Equity communicated with counsel an analysis that would result in a ruling in favor of the

Defendants, and directed Defendants' counsel to prepare an Order. The Master In Equity signed and filed the Order denying CSA's requested relief and dismissing the case on May 7, 2015.

Argument; Errors

11. Error. Respectfully, although the Master In Equity said he was employing the "strict construction" method of interpreting the Class "A" Covenants, he nonetheless did not reach the result to which the plain wording took him – that one detached single family dwelling that is being resided in by multiple families at one time under one roof does not remain a single family dwelling, but is being used for multi-family purposes and is not permitted to remain on any lot. Plaintiff's Trial Exhibit 2 is the Class "A" Covenants applicable to this case. The sections specifically being violated are, without limit, the following:

"5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. (emphasis added)

6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in over-crowding the site. (emphasis added)

a. In being persuaded by Defendants' arguments, the Master In Equity placed his emphasis entirely on paragraph 6 of the two covenant paragraphs referenced. On page 3 of the Master's Order, his finding "4" discusses entirely what appliances amount to a purported *kitchen* in a "guest suite." The Master decided the upstairs room at 48 Planters Wood Drive is a "guest suite." It does not meet that definition now, and did not at its creation. The seemingly most targeted definition in Webster's Dictionary of "guest" is "one to whom entertainment or hospitality has been extended." *Webster's II New Riverside University Dictionary*, page 553 (1984). The definition of "suite" is "[a] series of connected rooms functioning as a living unit." *Webster's II New Riverside University Dictionary*, page 1159 (1984). Accordingly, at 48 Planters Wood Drive and elsewhere, one might conclude by plain wording that a "guest suite" is a series of connected rooms functioning as a living unit for one to whom entertainment or hospitality has been extended. The problem with the Master's interpretation, which

rewards the guile of the Defendants, is that the upstairs room is occupied by the owners of 48 Planters Wood Drive, not lessees or guests. The room in no way is a "guest" suite. Moreover, had the Master investigated the intent of the parties, he would know that the room was permitted to be installed in 1981 when the applicant explained the room was "a play room for our two sons, ages 9 and 11." (Exhibit 4, Page 5) The so-called "guest suite" is off limits to guests. (Exhibit 3, Stipulation 5; Plaintiff's Page/Line Designations)

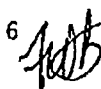
b. In discussing with counsel his reasoning, the Master made clear he considered section 5 of the Class "A" Covenants to pertain to *construction* but not *use*. This appears to be an unsupported distinction. If only a single family dwelling of particular configuration is permitted to remain, it appears clear that use defines the structure. Put bluntly, to call a structure "single family dwelling" where Defendants occupy the upstairs of the home under separate lock and key, while renting the downstairs to potentially multiple families at the same time – is a fiction. The Defendants have made the dwelling multi-family, which is not permitted to remain on the lot. (Class "A" Covenants, § 5) Moreover, the Court has picked and chosen terms from the restrictive covenants to define its own way without context, and has chosen terms to ignore. The Court took a substantial interpretive step in defining the part of the house Defendants reside in as a "guest suite" while excluding evidence that would bear on that definition, but have as emphatically ignored and marginalized "single family dwelling" for interpretive purposes.

12. Error. Respectfully, the method of "strict construction" utilized by the Master In Equity acknowledges a *part* of the stated law on interpretation of restrictive covenants, but omits wording from on-point cases that state that there is more to such interpretation than word parsing. The Master In Equity's Order states, "The Parties both contend that the applicable covenants are unambiguous; however they interpret them differently." (Order, Page 2, Unnumbered paragraph 2) The Master acknowledged that at a minimum the same covenant wording was susceptible to multiple interpretations. The fact that "guest suite," "single family dwelling," and "kitchen" were all undefined terms in the Class "A" Covenants should have informed the Master that the covenant wording at issue demanded broader consideration than initially thought. (*See infra*. ¶ 13, Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (Ct.App. 2007).)

a. "Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "Restrictive

covenants are to be construed most strictly against the grantor and persons seeking of enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and against restrictions. This rule, however, obtains only where the parties have failed to express their meaning with sufficient clarity to enable the court to say that its construction is plain and admits of no doubt; the rule will not be applied to defeat the obvious purpose of the restriction, nor does it require an unnatural and strained construction of the words used; and before giving effect to the rule the court will have recourse to every aid, rule, or canon of construction to ascertain the intention of the parties, since it is the duty of courts to enforce, not to make, contracts.” Sprouse v. Winston, 212 S.C. 176, 184, 46 S.E.2d 874, 878 (1948) *quoting* 26 C.J.S., Deeds. § 163. (emphasis added) “In construing covenants the circumstances surrounding their origin are proper considerations for a court when the language used is susceptible of more than one reasonable interpretation.” Hoffman v. Cohen, 262 S.C. 71, 77, 202 S.E.2d 363, 366 (1974).

b. Respectfully, the Master In Equity fixed on the Class “A” Covenants to the exclusion of all else in reaching an outcome largely ignoring facts offered that provide context; rendering the outcome questionable, and in extreme circumstances - outrageous. Sea Pines Plantation is a gated, regulated community on Hilton Head Island. It was a gated community when the Defendants purchased there in 1998, and for the 14-plus years thereafter that the Defendants did not rent part of their house at 48 Planters Wood Drive while remaining upstairs. The Defendants knew it was a gated community when they purchased, and they know it now. It has recently been the annual site of a well-recognized, nationally televised, professional golf tournament. The Master In Equity’s ruling treats the words “single family dwelling” as merely precatory, while labeling an upstairs addition a “guest suite” without a kitchen [ironically, said room is expressly “off limits” to guests]. Such is the outcome when evidence of context is held irrelevant. The ruling interprets the Class “A” Covenants to embrace multiple families residing simultaneously in a single family dwelling. Interpreting the Class “A” Covenants in such manner leads to unintended outcomes. During the golf tournament, the Defendants might be observed coming down from their upstairs room, via their separate entrance, and as they themselves have stated, “What few dishes we have, we would either rinse them out by a garden hose or in the sink upstairs...” (Plaintiff’s Page/Line Designations, specifically, Maria P. Snyder Wall, page 29, lines 9-11) Unless the drafters were planning for home owners to rinse

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dishes with a garden hose in the yard in lieu of using a kitchen, the Court's interpretation cannot be what the drafters intended from the Class "A" Covenants.

13. Error. The Master In Equity committed reversible error by excluding at hearing Plaintiff's Trial Exhibit 3 (Exhibit 4 hereto), a compilation of documents from the Architectural Review Board file for 48 Planters Wood Drive on the sole ground that the documents were purportedly not relevant. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE (2014). In paragraph 12, *supra*, valid authority is cited that exploring the origins of a document is appropriate when a provision is subject to multiple interpretations. Also, the intent of the parties is the objective of the interpretation being made. Plaintiff's Trial Exhibit 3 offered into evidence contained communications between the then-enforcement authority for the covenants, Sea Pines Plantation Company Architectural Review Board, and the initial owner of 48 Planters Wood Drive. It discussed the implications of the upstairs room added to 48 Planters Wood Drive, and how the Class "A" Covenants would apply to it. Unfortunately, that was the predecessor to today's Plaintiff CSA, but it is the closest thing we have to an expression of intent of the parties. The Court decided that the upstairs room at 48 Planters Wood Drive is a "guest suite," but excluded evidence of the intent of the builders and enforcement body regulating construction of that same Court-labeled "guest suite" when it was created. At the same time, the Court appears to have relegated "single family dwelling" in the covenants to being a description of construction and not a term of usage – another interpretation attributable to the exclusion of evidence.

In Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (Ct.App. 2007), a restrictive covenant stated only single-family dwellings are permitted on the Buonfortes' property. Furthermore, the covenant expressly prohibited the construction of duplexes. However, neither "single-family dwelling" nor "duplex" were defined in the covenants. Attempting to demonstrate the house was a single-family dwelling, the Buonfortes presented the testimony of William Henry Hoge, the Planning Director for the Sumter Planning Commission and another building official. The opposition objected, arguing that only testimony of the person responsible for the restrictive covenants was relevant. The testimony of the city officials was admitted. The S.C. Court of Appeals held, "[T]he admitted testimony was relevant to determine the meaning of

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the term "single-family dwelling" within the restrictive covenants, as the zoning ordinances were evidence of its usual and customary meaning. Thus, the special referee did not err by admitting the testimony." Buonforte at 490, 617 S.E.2d at 754. In this case, Plaintiff offered an ancient document that expressed the exact views of those enforcing the covenants as to 48 Planters Wood Drive only a few years following preparation of the Class "A" Covenants. The document was deemed irrelevant. CSA maintains the ruling to be error highly prejudicial to its case.

14. Error. The third witness that the Plaintiff introduced was Ken Rabon, who testified that he, for a number of years, had been administrator of the Architectural Review Board at Sea Pines. He testified that he was a person with knowledge of records kept in the course of regularly conducted business activity of the Architectural Review Board. Mr. Rabon was asked to identify Plaintiff's Trial Exhibit 3 (Exhibit 4) and in so doing, Mr. Rabon indicated he not only could authenticate the offered exhibit, but upon best recollection offered his view as a fact witness as to the meaning of the exhibit as it reflected on the ultimate issue in the case. Defendants objected. After argument over the basis of the objection, Defendants' objection was upheld, and the Plaintiff's Trial Exhibit 3 and Mr. Rabon's testimony on same, were excluded by the Court on grounds the information was not relevant. While excluding this evidence, the Court opined on the application of "guest suite" and "single family dwelling" in interpreting the restrictive covenants at issue. Pursuant to Rule 401, SCRE, the Court's holding on relevance is error. Moreover, Mr. Rabon's testimony should be admissible under Rules 406 and 704, SCRE (2014).

15. Error. The Master In Equity, again absent the context Plaintiff has emphasized herein above, predicated much of his ruling on a subjective determination of what components constitute a kitchen, and what constitutes being "kitchen-less." The Master In Equity stated,

"Applying these principals [strict construction] to the express language of paragraphs 5 and 6 of the Covenants, I find and conclude: ... 4. The Defendants' property has only one kitchen which is located on the first floor. Defendants' use of several dormitory-style appliances to store and prepare foods on the second floor does not create a kitchen, as the term is commonly used. A guest suite without a kitchen is specifically permitted.

* * *

"6. There is no language in the Covenants that would prohibit the rental or leasing of the main dwelling without including the kitchen-less guest suite or like facility." (Order, Page 3, Findings 4 and 6)

The Master In Equity went on to conclude, "Accordingly, I find that the Covenants do not prohibit Defendants from occupying the kitchen-less guest suite on the second story of their home while they rent the first floor." (Order, Page 4, emphasis added)

Kitchen is a term not defined in the Class "A" Covenants, but is a term upon which the Court's definition dictated the Master In Equity's ruling in this case. Without elaboration in the Class "A" Covenants, the Court decided particular "dormitory-style appliances" are not a *kitchen* "as the term is commonly used." The Defendants have, without limit, a refrigerator, an induction plate, a sink and dishes in their upstairs room. They prepare food there to consume there. (Plaintiff's Page/Line Designations) Webster's number 1 definition of kitchen is "A place where food is cooked or prepared." *Webster's II New Riverside University Dictionary*, page 667 (1984).

New York years ago grappled with the definition of a *kitchen* in a case involving an employee of the corporation "Swanky Franky, Inc." There, a truck would be parked, the steering wheel removed, and a built-in grill lighted upon which frankfurters were prepared. The food with beverages was sold to customers. *People v. Kupas*, 171 Misc. 480, 481 (Court of Special Sessions, Borough of Queens, New York, Part II, 1939). The Court held, "The preparation of the frankfurters and the coffee on the grill make that a kitchen, for a kitchen has been defined as a place where food is prepared." This vehicle must be construed as a combination of both, and the defendant therefore requires a permit from the Board of Health, and not having one, is guilty as charged." *Id.* at 482. (emphasis added) Accordingly, neither Webster's dictionary, nor the Court of Special Sessions, Borough of Queens support the Court's interpretation of kitchen to be that *commonly used*. If the Court's emphasis is on paragraph 6 of the Class "A" Covenants, and the Court insists that an upstairs room occupied by home owners instead of guests is a "guest suite," then that "guest suite" is not permitted to have a kitchen. In Webster's dictionary, and elsewhere, the Defendants' upstairs room is a place where food is cooked or prepared. Accordingly, in whole or part, it is a kitchen. That is a violation of the Class "A" Covenants. The Plaintiff respectfully requests the Master In Equity to reconsider the decision on what constitutes *kitchen* for purposes of the Class "A" Covenants and this case.

16. Error. By rigidly considering only the content of part of the Class "A" Covenants to the exclusion of virtually all else, the Master in Equity failed to observe that the ruling was ratification of conduct by Defendants which ran counter to long-term interpretation of the restrictive covenant at issue, and that the Court's ruling would result in failure to restore the *status quo* of the past 40 years. A permanent injunction may be granted to prevent the violation of restrictive covenants. Buffington v. T.O.E. Enterprises, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009). The case for injunction is a case in equity, with equitable considerations even in a covenant enforcement matter. Id. "It has long been established that where a defendant with notice in an injunction proceeding completes the acts sought to be enjoined the court may by mandatory injunction restore the *status quo*." Porter v. Lee, 328 U.S. 246, 250, 66 S.Ct. 1096, 1099 (1946). The Court acknowledged in its Order in this case that the Plaintiff expressed concerns that the character of the neighborhood would be substantially changed without the injunctive relief sought. The Court, in its Order, disagreed. However, the Court did not accept evidence of history or custom and usage concerning the covenant at issue, and so was not as informed as it could have been to balance the equities based upon considerations other than solely the Class "A" Covenants themselves.

Conclusion

17. Based upon the facts, the law and the arguments presented to the Court, the Plaintiff respectfully requests that the Court reconsider its position on the matters identified herein above as "error," and alter its Order to find for Plaintiff Community Services Associates, Inc. and to grant to the Plaintiff the injunctive relief requested.

WHEREFORE, Plaintiff Community Services Associates, Inc., by counsel, respectfully requests that the Court reconsider its positions, that Plaintiff's Motion here be granted; and that an Order be entered granting the Plaintiff a permanent injunction against the Defendants and in favor of the Plaintiff, without bond.

Respectfully submitted,



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5-15, 2015

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
No.: 2014-CP-07-2438

COPY

4 Community Services)
5 Associates, Inc.,)

6 Plaintiff,)

7 vs.)

8 Stephen H. Wall and)
9 Maria P. Snyder Wall,)

10 Defendants.)

HEARING

April 21, 2015

11
12 Hearing reported by Deborah S. Thomas,
13 Certified Verbatim Reporter and Notary Public in and
14 for the State of South Carolina; said hearing held
15 before the Honorable Marvin H. Dukes, III, Beaufort
16 County Master in Equity and Special Circuit Court
17 Judge in accordance with the South Carolina Rules of
18 Civil Procedure, at the Beaufort County Courthouse,
19 102 Ribaut Road, Room 212, Beaufort, South Carolina,
20 on April 21, 2015, at the hour of 9:30 a.m.

21
22
23 THOMAS REPORTING SERVICES
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* * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 (MARKED PLAINTIFF'S EXHIBIT NOS. 1,
4 2, 4, 6, 7, AND 9.)

5 JUDGE DUKES: Good morning then. We
6 are here in 2014-CP-07-2438. Today is April 21st.
7 We were here two weeks ago on the 7th for a
8 temporary injunction hearing. At that time we
9 opened that hearing and it made more sense and we
10 rescheduled the matter for an injunction hearing
11 which we are going to have today.

12 I don't believe that record was actually
13 closed out, so unless there is some objection we
14 will close out that record from the hearing on
15 April 7th with a ruling that that matter be
16 continued to today's date at this time. And I
17 believe all parties are present. So is that
18 counsels' recollection for purposes of the record?

19 MR. LAUGHLIN: It is, Your Honor.

20 MR. BORDEN: Yes, Your Honor.

21 JUDGE DUKES: All right. Second
22 issue, during that hearing we did accomplish
23 something which was put together some stipulations.
24 I know Mr. Laughlin hadn't seen the typewritten
25 version before a couple minutes ago. Drew, did you

1 get a chance to look at that? Is that --

2 MR. LAUGHLIN: I did, Your Honor.

3 And we are fine with it. One point of
4 clarification, and I don't think it's material to
5 the resolution of the matter where it says that the
6 property is a two-story detached residential
7 dwelling unit.

8 That is, I think, correct, but the second
9 story is -- the only part -- the only thing that is
10 above the first floor is this bonus room that is --
11 or whatever you want to call it that the Walls
12 occupy when they are renting -- well, they occupy
13 it, period.

14 So there is not a full second story. It's
15 kind of just a one room and a bathroom over the
16 first floor.

17 JUDGE DUKES: Well, I mean --

18 MR. LAUGHLIN: And I don't think
19 that --

20 JUDGE DUKES: -- I don't know how
21 else to describe that other than two story.

22 MR. LAUGHLIN: No, I don't think
23 anything turns on that distinction.

24 JUDGE DUKES: Okay.

25 MR. LAUGHLIN: I'm just trying to be

1 clear.

2 JUDGE DUKES: Well, because my plan
3 was to enter this as Court's Exhibit 1 or something.
4 So I just want to make sure everyone is happy with
5 it. And, I mean, it may be I'm too simplistic about
6 this. I would think a building is either one story,
7 split-level, two story, or multi-story.

8 So, I mean, if those are the choices, is
9 this a two-story building?

10 MR. LAUGHLIN: Yes. Yes, sir. I
11 think that is fine. Again, I don't think that it
12 matters from the standpoint of a resolution of it.

13 JUDGE DUKES: Okay. All right. So
14 it would be accurate to say that what we all have in
15 front of us which is titled Stipulations 14-2438
16 are, in fact, stipulations of both parties? Ward,
17 are you good with it?

18 MR. BORDEN: I agree with that, Your
19 Honor.

20 MR. LAUGHLIN: Yes, sir.

21 JUDGE DUKES: All right. Well, let's
22 start then by making that document -- and, Deborah,
23 you have a copy right there. Just pick one of them
24 and make that one Court's Exhibit 1.

25 (MARKED COURT'S EXHIBIT NO. 1.)

1
2 JUDGE DUKES: And, Mr. Borden, happy
3 to hear from you, sir.

4 MR. BORDEN: I -- most of what my
5 opening comments would be are in the memorandum
6 that -- or the brief that was submitted and filed
7 today. Your Honor, the main thing that I would add
8 to that is that during the pendency of the case
9 certain things have evolved. Certain actions have
10 occurred.

11 The implementation of a new land
12 management ordinance on Hilton Head Island occurred
13 after the filing of this lawsuit. And I think the
14 only thing that I would have to add to our -- what
15 is in our memo there is that we are here enforcing
16 the covenants today.

17 The alteration of the land management
18 ordinance on the town of Hilton Head Island which
19 was referenced in our complaint has changed. It's a
20 different ordinance now. And so we are not trying
21 to enforce the ordinance at this point. We are
22 simply trying to enforce the Sea Pines Class A
23 Covenants.

24 And other than making note of that, and
25 that we are seeking a permanent injunction from

1 conduct that -- certain conduct that will be
2 testified to, that we think is contrary to the
3 restrictive covenants, that is what we are here for
4 is seeking a permanent injunction to enforce Class A
5 covenants and to have conduct that is contrary to it
6 cease.

7 And I have a witness that I would like to
8 start this off with if I may.

9 JUDGE DUKES: All right. Well, let
10 me ask Drew; any opening?

11 MR. LAUGHLIN: Your Honor, I think
12 that for the most part the material facts are not in
13 dispute. My clients own a home in Sea Pines at 48
14 Planters Wood Drive. They've owned it for a number
15 of years. They live on the property full-time. And
16 they lease out short-term the property except for
17 the space that they occupy on the second floor which
18 is accessible only from outside the building.

19 And I think as we look to apply these
20 covenants here the questions are going to boil down
21 to is the property being used for residential
22 purposes? Is there something in the covenants that
23 says that if you lease the property out you can only
24 lease out the entire premises? And is there
25 anything in the covenants that says that only

1 members of one family can reside in a home at the
2 same time?

3 I think those are the issues in
4 contention. With respect to the brief, the brief --
5 or Plaintiff's brief, we would simply say that there
6 are a lot of statements of fact in there that may or
7 may not be -- well, let's just say we don't agree
8 with them all.

9 JUDGE DUKES: Let me ask you this,
10 and maybe this is a matter of stipulation or a
11 matter of contention. What is the Defendant's
12 position on whether or not leasing, letting, renting
13 rooms is a -- would you agree or disagree that that
14 is a commercial activity?

15 MR. LAUGHLIN: Well, first of all, we
16 are not renting rooms. We rent to one rental party
17 at a time. And they occupy the entire first floor
18 of the house. So the Walls just simply continue to
19 reside on the premises while these folks come. And
20 these folks have the run of the property except for
21 the space above the first floor that the Walls live
22 in.

23 So we don't agree that it's a commercial
24 use. We believe that it is being used for
25 residential purposes. We explored this in

1 depositions particularly with Mr. Martin here about,
2 you know, what are the interpretations -- reasonable
3 interpretations of these things.

4 And clearly C.S.A. does not consider
5 renting homes out short-term to be a violation of
6 the covenants. I don't think that they actually are
7 taking the position, at least based on Mr. Martin's
8 testimony, that all folks who reside in a home have
9 to be members of the same family.

10 And there is nothing to prevent somebody
11 from doing what I did when I lived in Sea Pines
12 which is taking a roommate in the property that I
13 was leasing to help me with the expenses.

14 There is nothing in there that -- I don't
15 think anybody would suggest that if I am visiting
16 Hilton Head and renting a home in Sea Pines
17 short-term and I have servants who travel with me,
18 they can come with me and reside on the property
19 with me while I am there.

20 So corporations can own homes who aren't
21 families at all. So, you know, it is not, I
22 believe, a violation of the covenants to derive
23 income from the property, from rental of the
24 property.

25 And despite what might be suggested in the

1 brief, I don't think there is anything in the
2 covenants that says if I am -- that if I am living
3 in a home that everybody else who lives in that home
4 with me has to be a member of my family.

5 So, you know, we don't agree that we are
6 using the property for commercial purposes. There
7 is also nothing, by the way, that prevents somebody
8 from having a home-based business provided that they
9 don't -- I mean, that in itself is not a violation
10 of the covenants.

11 Now, having, you know, advertisements, you
12 know, signs out there, having customers or clients
13 coming in and out and all of that kind of stuff may
14 be, but a resident sitting in his home on his
15 computer doing something from which he derives
16 income is not a violation of the covenants.

17 So, you know, we think that the only use
18 of the property is as residential purposes. And we
19 don't think that there is any violation of the
20 covenants here. And I would say that, you know, as
21 Your Honor is aware restrictive covenants should be,
22 must be strictly construed with all doubts and
23 ambiguities resolved in favor of the free use of the
24 property.

25 Covenants at least as I see it don't

1 specifically define some of these terms. They don't
2 specifically define residential purposes. So, you
3 know, that is kind of where we are coming from. We
4 don't think there is a violation of the covenants.
5 We have modified some of what we've done in response
6 to the concerns and objections that were voiced by
7 C.S.A.

8 We used to serve breakfast to the folks
9 who were renting. We don't do that anymore. And
10 while we always have only rented to one rental
11 party, we no longer advertise for one or two
12 bedrooms. We advertise for the home. And we have
13 attempted to the best that we can without completely
14 abandoning what we are doing to meet their concerns.

15 And I think to the extent that the
16 covenants that we talked about, we haven't. And,
17 you know, I don't know that the covenants
18 specifically say you can't use it for commercial
19 purposes anyway except to the extent that that means
20 you are not using it for residential purposes.

21 JUDGE DUKES: All right. Thank you.
22 All right, Mr. Borden, call your first witness if
23 you would, please.

24 MR. BORDEN: Ms. Beverly. We would
25 like to call Roxanne Beverly.

1 JUDGE DUKES: All right. Come around
2 here if you would. Watch out for all the various
3 tripping hazards.

4 MR. LAUGHLIN: Yeah. I'll let you
5 out. Let me get this out of your way.

6 MS. BEVERLY: I'm fine. How are you?

7 JUDGE DUKES: Could I get you to hold
8 your right hand up for me, please. Do you swear or
9 affirm to tell the truth, the whole truth, and
10 nothing but the truth so help you God?

11 MS. BEVERLY: Yes.

12 JUDGE DUKES: All right. Can you
13 state your full name for the record.

14 THE WITNESS: Roxanne Beverly.

15 JUDGE DUKES: Answer any questions
16 Mr. Borden may have for you.

17 MR. BORDEN: Initially, Your Honor,
18 do you want me to -- as I try to enter into the
19 record documents that we have, can I identify what I
20 am submitting initially as Plaintiff's 1 for this
21 hearing?

22 JUDGE DUKES: You know, I think --

23 MR. BORDEN: Does that create
24 confusion?

25 JUDGE DUKES: Have you already put

1 stickers on them?

2 MR. BORDEN: I already have, but, I
3 mean, I can --

4 JUDGE DUKES: No. As long as we keep
5 up with the right order, I don't think -- I think I
6 would be happy to save those stickers.

7 MR. BORDEN: You had identified that
8 first document as Court's 1, specifically?

9 JUDGE DUKES: Right. I figured you
10 all were going to start with one on your own. So,
11 yeah, that would be fine.

12 MR. BORDEN: Okay.

13 JUDGE DUKES: Just try not to -- we
14 are not going to skip any numbers? You are not
15 going to go from one to eight or anything, are you?
16 You've got them in order.

17 MR. BORDEN: I've got them in order
18 and there are not many.

19 JUDGE DUKES: Yeah. I don't think
20 that will be a problem.

21 WHEREUPON:

22 ROXANNE BEVERLY, being duly sworn and
23 cautioned to speak the truth, the whole truth and
24 nothing but the truth, testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. BORDEN:

2 Q. Ms. Beverly, could you please state your
3 name for the court.

4 A. Roxanne Beverly.

5 Q. What do you do for a living?

6 A. I'm a title abstracter.

7 Q. How long have you been in the title
8 search, title abstracting business?

9 A. Thirty-four years.

10 Q. Okay. How long have you been associated
11 with Sea Island Abstract?

12 A. Twenty years.

13 Q. Prior to today, did any of your
14 services -- did we request you to engage in any
15 services involving Stephen Wall and Maria P. Snyder
16 Wall?

17 A. Yes.

18 Q. And what -- to your knowledge, did you
19 obtain any records?

20 A. Yes.

21 Q. And where did you get those records from?

22 A. Beaufort County Clerk of -- R.O.D.,
23 Registrar of Deeds.

24 Q. Okay. In doing your search, did you
25 locate a deed to 48 Planters Wood Drive to the

1 Walls?

2 A. Yes. Yes, I did.

3 Q. I would like to show you Plaintiff's
4 Exhibit 1 and ask if you can identify that document?

5 A. Yes. This is our deed from the Brennans
6 to the Walls recorded in Deed Book 1035 at 2268 in
7 April of 1998. It's a certified copy.

8 MR. BORDEN: Okay. I would like to
9 move that in as Plaintiff's 1, Your Honor.

10 MR. LAUGHLIN: No objection.

11 JUDGE DUKES: All right. Plaintiff's
12 1 without objection.

13 BY MR. BORDEN:

14 Q. I have another document I would like to
15 show you. I'm going to hand you several, to be
16 precise, four documents with a clip on them that has
17 been labeled Plaintiff's Exhibit 2. And ask if you
18 can identify the collection of documents there?

19 A. These are the Class A Covenants for Sea
20 Pines Plantation on Hilton Head. And the
21 amendments -- there are four amendments.

22 Q. And I believe -- well, it's for you to
23 check. I think there were three.

24 A. Okay. Three.

25 Q. But at any rate, were those amendments

1 obtained -- why did you obtain the amendments? Was
2 that part of any greater records search?

3 A. Yes, it was -- we were asked to bring
4 forward the restrictions to see if there was
5 anything else amended from the original covenants.
6 And we searched that in the Beaufort County
7 Registrar of Deeds Office.

8 Q. Okay. And the three amendments that are
9 attached are what you found to be in the chain of
10 amendments?

11 A. Yes. Uh-huh.

12 Q. To that particular set?

13 A. To this particular document, yes.

14 Q. And there are other covenants as well?

15 A. There are other covenants.

16 Q. Okay. Now having reviewed and -- reviewed
17 the Class A covenants and retrieved the three
18 amendments, are any of the amendments material to
19 what we are here about today?

20 A. No, sir.

21 MR. LAUGHLIN: Objection. Legal
22 conclusion.

23 JUDGE DUKES: Sustained.

24 BY MR. BORDEN:

25 Q. Is what you have there in your hand a true

1 set of copies of the records that you found?

2 A. Yes, they are all certified copies.

3 Q. Okay. And does that accurately reflect
4 what -- based upon your bring down what you believe
5 to be the Class A covenants --

6 A. Yes.

7 Q. -- as they stand today?

8 A. Yes.

9 MR. BORDEN: Okay. I would like to
10 move them in as Plaintiff's 2, Your Honor.

11 MR. LAUGHLIN: No objection.

12 JUDGE DUKES: All right. Without
13 objection. I note the Stipulation Number 1. I
14 think we have already agreed that the Class A
15 covenants are applicable to this property.

16 MR. BORDEN: Right. I don't have any
17 further questions for this witness, Your Honor.

18 JUDGE DUKES: Mr. Laughlin?

19 MR. LAUGHLIN: No questions.

20 JUDGE DUKES: All right. Thank you.

21 THE WITNESS: Mr. Borden, may I be
22 excused?

23 MR. BORDEN: I have nothing --

24 MR. LAUGHLIN: No objection from me.

25 JUDGE DUKES: Have a great day.

1 THE WITNESS: Thank you.

2 JUDGE DUKES: Thank you.

3 MR. BORDEN: Okay. I would like to
4 call Mr. Brett Martin as the next witness.

5 JUDGE DUKES: Hold your right hand up
6 for me, please. Do you swear or affirm to tell the
7 truth, the whole truth, and nothing but the truth so
8 help you God?

9 MR. MARTIN: I do.

10 JUDGE DUKES: All right. State your
11 full name for the record, please.

12 MR. MARTIN: My name is Brett
13 Lee Martin.

14 JUDGE DUKES: Please answer any
15 questions Mr. Borden may have.

16 WHEREUPON:

17 BRETT MARTIN, being duly sworn and
18 cautioned to speak the truth, the whole truth and
19 nothing but the truth, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. BORDEN:

22 Q. Mr. Martin, where do you live?

23 A. I live at [REDACTED]

24 Q. Is that -- what town?

25 A. In Hilton Head Island, South Carolina.

1 Q. Okay. And what do you do for a living at
2 this time?

3 A. I am president of C.S.A. in Sea Pines.

4 Q. What is C.S.A. an abbreviation for?

5 A. Community Services Associates,
6 Incorporated.

7 Q. And what does your job entail in terms of
8 responsibilities?

9 A. I oversee the common area and services for
10 the owners within Sea Pines.

11 Q. What does C.S.A. do at Sea Pines
12 Plantation?

13 A. We do a variety of things. We maintain
14 the common areas. We provide securities. We
15 operate the gates. We enforce covenants. We
16 oversee multiple other operations that are within
17 Sea Pines including the cemetery, the forest
18 preserve, those areas.

19 Q. Are you familiar with the reasons that we
20 are here today?

21 A. I am.

22 Q. Have you taken any measures to familiarize
23 yourself with this controversy?

24 A. I have.

25 Q. And what measures have you taken to know

1 more about this?

2 A. Well, I've certainly reviewed the briefs,
3 the filings, the covenants that are related as well
4 as a lot of unrelated covenants that I've searched
5 for relationships for. And then spoken to a variety
6 of different people including our own Board and
7 members of the association or Community Services
8 Associates.

9 Q. When did you first hear about this matter?

10 A. I actually heard about this while I was
11 employed by the Town of Hilton Head Island.

12 Q. Okay. How far back was that when you --

13 A. I believe it was last winter. Maybe
14 last -- not last winter but the winter preceding the
15 last winter and possibly the fall preceding the last
16 fall.

17 Q. Okay.

18 A. Somewhere in that neighborhood.

19 Q. And could you explain how when you were
20 with the town how you came to learn of the
21 circumstances -- the fact circumstances for which we
22 are here?

23 A. One of the rules that I had at the town
24 was the collection of accommodations taxes. And
25 through that role we searched for compliance

1 basically with paying accommodations taxes. The
2 internet has provided a bit of a challenge for us.
3 We used to get most of our accommodations taxes
4 actually provided to use directly from management
5 companies. And now we are seeing a lot more of
6 those accommodations taxes being provided directly
7 from owners since they are now able to market their
8 unit or their home or their condominium via the
9 internet.

10 Q. Do you have any knowledge of who or how
11 the Defendants are marketing 48 Planters Wood Drive?

12 A. I believe they are using an internet site
13 called Airbnb. They may be using others, but that
14 is the one I'm aware of.

15 Q. Okay. Do you know anything about that
16 Airbnb as far as its scope, what they do?

17 A. The primary --

18 MR. LAUGHLIN: Objection.

19 THE WITNESS: The primary purpose --

20 JUDGE DUKES: Hold on just a second.

21 What is the objection?

22 MR. LAUGHLIN: I mean, there is no
23 foundation for that. You know, he's asking for a
24 characterization of what this internet website does.

25 JUDGE DUKES: Well, see if you can

1 lay a foundation as to what he's observed at least.

2 BY MR. BORDEN:

3 Q. Have you observed -- have you ever been on
4 the Airbnb website?

5 A. Yes.

6 Q. Have you ever read their rules and
7 guidelines or any portion of them?

8 A. I don't recall specifically. It's been
9 awhile since I've been on Airbnb specifically.

10 Q. Have you seen any printed records from
11 Airbnb showing the Walls advertising their house?

12 A. Yes. Yes.

13 Q. And was that document -- was that
14 documentation printed matter at that point?

15 A. Yes, it was.

16 Q. So from that printed matter, you were able
17 to take away that they were -- something about them
18 using that website, while working at the town, to
19 look at things -- look at the Walls in terms of
20 accommodation taxes?

21 MR. LAUGHLIN: I'm going to object to
22 that because it's more than a tad leading.

23 JUDGE DUKES: It was a little
24 leading, yes. I mean, the fact is I think within
25 the stipulations and the conversations we've had we

1 know what the focus of this is. I mean, I don't
2 know if it matters if it's Airbnb or VRBO or
3 whatever. I mean, that is not necessarily the focus
4 of it, but try to ask the question maybe in a less
5 leading way. And then we will get it into the
6 record because again, Drew, you don't -- you don't
7 object to the fact that the real focus of this, the
8 gravamen of this case, real doesn't have anything to
9 do with whether or not it's Airbnb or VRBO. The
10 question is within the covenants can this particular
11 set of facts fit within the covenants.

12 MR. LAUGHLIN: I think that is
13 exactly correct, Your Honor.

14 JUDGE DUKES: So -- or maybe you
15 could just try to make it less leading and we can
16 get that part in.

17 BY MR. BORDEN:

18 Q. Based upon what you've read, does Airbnb
19 cater to an international audience?

20 A. Yes.

21 Q. There has been a discussion before you as
22 we started this hearing about the second floor of
23 the 48 Planters Wood Drive premises. Do you know
24 when the house was built?

25 A. I do not recall the specific date, no.

1 Q. Do you know if it had a second floor room
2 as part of its original construction?

3 A. I don't believe so. I believe that
4 happened later.

5 Q. Okay. And how would one go about doing
6 that under -- telling us as president of C.S.A.,
7 what does one have to do to go about doing to make a
8 change to their house like that?

9 A. Well, they would have to get plans drawn
10 up and then submit them to the Architectural Review
11 Board for approval. They would also have to get
12 permits issued by the town of Hilton Head Island.

13 Q. Okay. And so if they didn't -- if 48
14 Planters Wood Drive did not start out with a second
15 floor, but now has a second floor, one would hope
16 they had gone through that process?

17 A. Yes.

18 Q. What is it that -- to your understanding,
19 what is it that C.S.A. has a problem with with
20 respect to the Walls and the use of 48 Planters Wood
21 Drive?

22 A. Specifically it's renting a portion of the
23 premise to an unrelated party while they remain or
24 renting a portion of the premise to multiple
25 parties. I believe that is where we started, I

1 believe. Where we are today is where they remain in
2 renting it to another unrelated party.

3 Q. Did C.S.A. take any measures prior to
4 filing this lawsuit to attain a resolution?

5 A. Yes. Multiple letters were written and I
6 believe some conversations were conducted and --
7 requesting the Walls to cease that practice.

8 Q. You identified the situation a moment ago.
9 Are you aware of any -- familiar with any other
10 households that are subject to the Class A Covenants
11 that have engaged in similar acts?

12 A. I am aware of one from reading some of the
13 documentation that we've had and some conversations
14 that I've been active with. And those folks have
15 ceased that operation because of our requests.

16 Q. Okay. What do you want from the court
17 today and why?

18 A. We are seeking a permanent injunction to
19 prevent the Walls from leasing a portion of their
20 home while they remain or a portion to multiple
21 parties even if they were not to remain.

22 Q. Do you -- does C.S.A. have any objection
23 to the Walls renting the entire premises --

24 A. No.

25 Q. -- to someone?

1 A. No, we do not.

2 Q. Or group of people? Multiple -- when I
3 say group of people I mean multiple individuals?

4 A. What our interest is is that they rent
5 this to a single interest that may have multiple
6 family members or multiple friends of family, but
7 for residential family use.

8 Q. Would it be fair to say that you're
9 looking at the entire premises being under one lease
10 agreement?

11 A. Yes.

12 MR. LAUGHLIN: Judge, again I object
13 to his leading the witness.

14 JUDGE DUKES: Yeah, try not to lead
15 so much.

16 MR. BORDEN: I don't have any other
17 questions at this time.

18 JUDGE DUKES: All right. Thanks.
19 Mr. Laughlin?

20 CROSS EXAMINATION

21 BY MR. LAUGHLIN:

22 Q. Mr. Martin, short-term rentals of
23 properties subject to the Class A Covenants are
24 permitted; is that right?

25 A. Yes.

1 Q. Bear with me. This is going to shorten
2 this up considerably. All right. And if I am well
3 healed enough to have servants that travel with me
4 and I rent a home in Sea Pines that is subject to
5 the Class A Covenants I can bring them with me and
6 have them occupy the home at the same time I am,
7 can't I?

8 A. In general, yes.

9 Q. In fact, the covenants specifically refer
10 to servants quarters, do they not?

11 A. There are references.

12 Q. All right. So if I own or lease a home in
13 Sea Pines that is subject to the Class A Covenants,
14 I can have servants residing with me on the
15 property?

16 A. Yes.

17 Q. And if I own or rent a home in Sea Pines
18 that is subject to the Class A Covenants and I want
19 to take a roommate in to help share expenses, is
20 that a violation of the covenants?

21 A. That would be dependent upon the
22 relationships and the monetary contract.

23 Q. All right. Under what circumstances would
24 it be a violation of the covenants?

25 A. I believe that if it's within a

1 contractual agreement.

2 Q. Can you explain that? What do you mean by
3 that?

4 A. I'm not an attorney. I'm not sure what --
5 you know, that would be the definition of the court
6 for a contract, but my understanding is either a
7 written or verbal agreement between two parties
8 where there is beneficial gain and service provided.

9 Q. Well, again let's assume that I own or
10 rent a home in Sea Pines in which I reside. Can I
11 take in a roommate?

12 MR. BORDEN: Objection.

13 BY MR. LAUGHLIN:

14 Q. And can I have him pay me to live there?

15 JUDGE DUKES: What was the objection?

16 MR. BORDEN: It's a hypothetical
17 calling for speculation without any foundation to
18 it. Can I take in a roommate? People -- in other
19 words, that is the portion of the question that I
20 have a problem with. What does that mean?

21 JUDGE DUKES: Well, I thought the
22 question was a little more specific than that, but
23 to the extent you can, Mr. Laughlin, try to make it
24 specific. I thought it was more specific than --

25 MR. LAUGHLIN: Yeah. I'm not sure

1 how much more specific I can make it.

2 BY MR. LAUGHLIN:

3 Q. If I own or lease a home in Sea Pines that
4 is subject to the Class A Covenants and I live
5 there, and I want to bring in a roommate to help me
6 share expenses, can I do that?

7 JUDGE DUKES: Rather than can I do
8 that, you mean is it permissible under the Class A
9 Covenants --

10 MR. LAUGHLIN: Yeah.

11 BY MR. LAUGHLIN:

12 Q. Would that be a violation of the
13 covenants?

14 A. Possibly. My thought would be if you are
15 entering into a contract for gain, as I've described
16 before, it probably would be.

17 Q. And what kind of contract for gain are you
18 describing? I'm trying to find out under what
19 circumstances that would be a violation of the
20 covenants.

21 A. If you entered into a contract for gain
22 with another unrelated party.

23 Q. So are you saying that the covenants
24 prohibit someone from taking in a roommate who is
25 not a member of their same -- of their family?

1 A. No.

2 Q. And do the covenants -- I already did
3 that. And is it C.S.A.'s position that the
4 covenants only permit members of the same family to
5 occupy a home that is subject to the Class A
6 Covenants?

7 A. No.

8 Q. Deriving income from renting a property
9 that is subject to the Class A Covenants is not in
10 itself a violation, is it?

11 A. I can't recall any specific, but I haven't
12 reviewed the entire documents specific to that.

13 Q. Now, the covenants -- the covenants in
14 part say no structure except as hereunder provided
15 shall be erected, placed, or permitted to remain on
16 any lot other than one detached single family
17 dwelling not to exceed two stories in height and one
18 small one-story accessory building which may include
19 a detached private garage and/or servants quarters
20 provided the use of such dwelling or accessory
21 building does not overcrowd the site. And provided
22 further that such building is not used for any
23 activity normally conducted as a business.

24 Is there on this property a detached
25 single family dwelling?

1 A. Yes.

2 Q. Are there any structures on the property
3 that violate the covenants?

4 A. I do not believe so.

5 Q. Has C.S.A. received any complaints that
6 the Walls use of their home is overburdening the
7 site? Overcrowding the site, I'm sorry, is the word
8 in the covenants.

9 A. I'm not aware of any.

10 Q. And do the covenants prohibit someone
11 residing in a home that is subject to the Class A
12 Covenants from engaging in income producing
13 activity?

14 A. Possibly.

15 Q. Under what circumstances?

16 A. Well, there would be multiple
17 circumstances. And it would be really dependent
18 upon the specific circumstance to understand what
19 violations might occur.

20 Q. All right. Well --

21 A. As well as a thorough review of the
22 documents given the circumstances.

23 Q. But where is the line? I mean, what
24 constitutes a violation as opposed to not? If I
25 am -- if I am sitting in my study at my computer and

1 I am a day-trader and I'm using the internet to
2 trade stocks in hopes of making money. And I have
3 no clients coming to see me, I'm not doing anything
4 that from the outward appearance of the property
5 would make it appear to be anything other than a
6 home, is that a violation in itself without more?

7 A. Again, I would need to really go through
8 the documents, but, in general, I'm not sure how
9 that would be determined as a violation or not a
10 violation.

11 Q. All right.

12 A. And I'm referring to how that specific
13 circumstance, without going into more detail into
14 the review of the documents.

15 Q. Sure. If that is the only thing that I am
16 doing that is different from anybody else, there are
17 no signs, no customers coming, no deliveries,
18 nothing else is going on other than I'm sitting at
19 my computer doing something that is making money for
20 me, is that by itself a violation of the covenants?

21 A. I would not believe so.

22 Q. Does C.S.A. have any information that
23 suggests or leads C.S.A. to conclude that the Walls
24 are renting a guest suite or like facility without a
25 kitchen separately from the main dwelling?

1 A. I don't recall specifically.

2 Q. Mr. Martin, earlier in response to one of
3 Mr. Borden's questions you made a statement that the
4 covenants require that rentals be to a single
5 interest or something to that effect. Do you recall
6 that?

7 A. I recall generally that.

8 Q. What do you mean by a single interest?

9 A. A single party.

10 Q. You don't mean just one person, do you?

11 A. Generally contracts are entered in by a
12 signature, but there may be multiple signatures.

13 Q. All right. But in terms of occupying the
14 property, you don't mean to suggest that only person
15 can occupy the property at a time, do you?

16 A. No.

17 Q. If I have three buddies and we want to
18 take a vacation to Hilton Head, I rent a home in Sea
19 Pines that is subject to the Class A Covenants and
20 we all go down there and stay in that home for a
21 week, is that a violation?

22 A. I would not say so as long as they are
23 your invited guests.

24 MR. LAUGHLIN: I have no further
25 questions. Thank you.

1 JUDGE DUKES: Mr. Borden?

2 MR. BORDEN: I have a couple on
3 re-direct.

4 REDIRECT EXAMINATION

5 BY MR. BORDEN:

6 Q. Do you recall the section of the Class A
7 Covenants, if there is one, that refers to taking in
8 a roommate and is worded as such?

9 A. No, I do not recall --

10 Q. Okay.

11 A. -- any reference to such.

12 Q. And --

13 A. To specifically a roommate.

14 Q. -- do you know -- do you know if guest
15 suite is a defined term in the Class A Covenants?

16 A. I don't recall seeing a guest suite
17 specifically defined. I do not recall that.

18 Q. If I were to --

19 A. I've seen some references I believe to
20 that, but I don't recall a specifically defined
21 term.

22 Q. If I -- if I bifurcate my home and, you
23 know, 40 percent of the square footage I'm occupying
24 and 60 percent of the square footage I'm leasing to
25 one or more people on a regular basis, while I

1 continue to occupy, which is the guest suite in that
2 scenario? Is the guest suit the 60 percent of the
3 space that is being leased or is it the 40 percent
4 of the space that I live in all the time but I take
5 in -- but from which I take in renters?

6 A. I don't believe that that's specific in
7 the covenants to percentage. It's referenced as the
8 entire premise --

9 Q. Okay.

10 A. -- for lease.

11 Q. Okay.

12 A. May be leased.

13 Q. Okay. So if I were doing that, whether we
14 called the 60 percent of the space a guest suite or
15 what have you, it would be a practice that you would
16 consider to be a violation of the covenants?

17 A. Yes.

18 MR. LAUGHLIN: Objection.

19 JUDGE DUKES: What was the -- just
20 leading?

21 MR. LAUGHLIN: Well, it's leading,
22 but it also is a hypothetical that is based on
23 percentages of the house and all of that kind of
24 stuff which has got really nothing to do with what
25 we are talking about.

1 JUDGE DUKES: Well, I'll let him --
2 if he wanted to ask him does he have a -- does
3 C.S.A. have an opinion as to whether or not that
4 would be a violation or if he could point to it,
5 I'll let him ask that, but rather, you know, a
6 question that ends in a yes or a no or the response
7 is a yes or a no.

8 MR. BORDEN: I think we can do that,
9 Your Honor.

10 BY MR. BORDEN:

11 Q. The question I have is why would you
12 consider the hypothetical which I laid out which is
13 that I'm occupying 40 or 30 or 20 percent of 48
14 Plantation Woods Drive or -- excuse me. Planters
15 Wood Drive. And I'm leasing another percentage of
16 the house discreetly to others. You indicated that
17 is a violation. Why is it a violation?

18 A. Well, specifically the violation is
19 related to the apportionment of the premise for only
20 a part of the premise for lease. So it is not the
21 entire premise that is let.

22 Q. If I -- if I don't have a guest suite --
23 if I don't have anything that even the Defendants
24 would call a guest suite on the premises, if I don't
25 have that, then what, if any, requirements under the

1 Class A Covenants do I face in terms of my ability
2 to rent? What are the parameters for me renting my
3 48 Planters Wood Drive dwelling which by no one's
4 definition has a guest suite?

5 A. Well, in conjunction with all of the
6 covenants requirements, specifically you would need
7 to rent the entire dwelling.

8 Q. And if I have a guest suite?

9 A. You would still need to rent the entire
10 dwelling.

11 MR. BORDEN: Okay. That is all --
12 the only questions I have.

13 JUDGE DUKES: Mr. Laughlin?

14 MR. LAUGHLIN: I have no other
15 questions.

16 JUDGE DUKES: Just a couple of quick
17 questions here, and then I'm going to have some for
18 the attorneys, but Mr. Laughlin brought up the issue
19 of those fortunate enough to travel with servants
20 and that sort of thing. If there is -- first of
21 all, short-term rental is not an issue. That is
22 legal under Class A. Is that the current position
23 of C.S.A.?

24 THE WITNESS: Correct. Yes.

25 JUDGE DUKES: And so if a home is

1 offered with short-term rental and it comes with
2 24-hour maid service and cook service, butlers and
3 that sort of thing, is that legal? Permissible?
4 I'm sorry.

5 THE WITNESS: Generally, yes. You
6 know, it would really be dependent upon if that
7 service was staying overnight and they were
8 unrelated.

9 JUDGE DUKES: So I mean -- but, I
10 mean, ordinarily servants would be unrelated, right?
11 I mean -- let me ask you the hypothetical.

12 THE WITNESS: Okay.

13 JUDGE DUKES: A property is rented
14 short-term and it comes with 24-hour maid/butler
15 service, some sort of service that involves
16 servants. Those servants would be unrelated by
17 blood or marriage to the tenants. And based on the
18 nature of the 24-hour service would probably be
19 residing on the property. That would be a part of
20 the rental. Is that permissible?

21 THE WITNESS: I would say no because
22 they were residing on the property especially for
23 that duration, but just to explain, if you need maid
24 service or you need maintenance service, our normal
25 residents and single family residential use would

1 include those types of services being available to
2 them. We have service providers providing services
3 specifically. They are just not specifically
4 remaining in a contractual relationship with the
5 owner separate from the guest or the renter.

6 JUDGE DUKES: All right. And this is
7 the question for the attorneys. I've been given
8 repeatedly Section 5, Section 6 of the Class A
9 Covenants. Are those the two sections? Are there
10 other sections that I'm supposed to be looking at or
11 is it just 5 and 6.

12 MR. BORDEN: Well, Your Honor, my --
13 it's Plaintiff's position that those are the
14 operative passages in the Class A Covenants for this
15 situation. And that -- and the reason for that is
16 that taken as a whole, in other words, reading those
17 two passages and then stepping back and then picking
18 up the entire document and reading it as a whole as
19 amended, that the way that those passages should be
20 construed and, in fact, have been construed since
21 1981 are that you have to rent out the entire
22 dwelling. Guest suite --

23 JUDGE DUKES: I'm just curious
24 whether or not I should be reading 5, 6, and 14 or
25 26, I mean, for purposes of this trial I'm focused

1 on 5 and 6.

2 MR. BORDEN: No, Your Honor.

3 JUDGE DUKES: I understand the entire
4 document is --

5 MR. BORDEN: And what the
6 association's position is, C.S.A.'s, is that if you
7 have premises that do not include a guest suite
8 or --

9 JUDGE DUKES: Oh, no. I understand
10 the position of the Plaintiff. I was just curious
11 whether or not the position of the Plaintiff was
12 essentially encompassed in 5 or 6 or --

13 MR. BORDEN: It is. It is.

14 JUDGE DUKES: Okay.

15 MR. BORDEN: And if you -- whether
16 you -- if you have a guest suite or you don't have a
17 guest suit, the entire premises need to be leased.
18 That is C.S.A.'s position.

19 JUDGE DUKES: No. No. I get that.

20 MR. BORDEN: And if it's leased --

21 JUDGE DUKES: Based on 5 and 6?

22 MR. BORDEN: Correct.

23 JUDGE DUKES: Okay. Okay. Any
24 questions of this witness follow-up to my questions?
25 All right. Thank you very much, sir.

1 MR. BORDEN: I would like to call
2 Mr. Ken Raben.

3 JUDGE DUKES: All right. Come
4 around, sir. Hold your right hand up for me,
5 please. Do you swear or affirm to tell the truth,
6 the whole truth, and nothing but the truth so help
7 you God?

8 MR. RABEN: Yes, I do.

9 JUDGE DUKES: All right. Please have
10 a seat and state your full name for the court
11 reporter, please.

12 MR. RABEN: Kenneth Raben.

13 JUDGE DUKES: Please answer any
14 questions Mr. Borden may have.

15 WHEREUPON:

16 KENNETH RABEN, being duly sworn and
17 cautioned to speak the truth, the whole truth and
18 nothing but the truth, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. BORDEN:

21 Q. Where do you make your residence, Mr.
22 Raben?

23 A. 

24 Q. Okay. And what do you do for a living?

25 A. I'm the administrator for the Sea Pines

1 Architectural Review Board.

2 Q. How did you become the administrator of
3 the Sea Pines A.R.B.?

4 A. I applied for the job 18 years ago and got
5 it.

6 Q. What does your job entail in terms of
7 responsibilities?

8 A. I gather applications, accept applications
9 for additions, pools, new homes for the
10 Architectural Review Board. Submit them to the
11 Board at our regularly scheduled meetings. Interact
12 with the applicants and property owners. Look after
13 and visit construction sites to assure compliance
14 with the approved plans. I do final inspections
15 after the construction is complete. Help with
16 the assistant administrator in maintaining all of
17 the accurate records for the A.R.B.

18 Q. So I take it that from the last part of
19 your description of your duties that you have a
20 working knowledge of records?

21 A. I do.

22 Q. Are there files maintained on respective
23 premises?

24 A. There are files maintained on every
25 property.

1 Q. Okay. Does that include 48 Planters Wood
2 Drive --

3 A. It does.

4 Q. -- which is?

5 A. It does.

6 Q. -- in this case? I'd like to show you a
7 set of pages. And, in fact, I'll -- 11 pages that
8 have been labeled -- stapled together and labeled
9 Plaintiff's Exhibit 3. And ask you if you can
10 identify what that is, what that might be?

11 A. This is the complete file for 48 Planters
12 Wood Drive including the initial application for
13 construction.

14 Q. Okay. Would you look through that for
15 just a moment and then let me ask you a couple
16 questions about the contents of that.

17 A. Okay.

18 Q. Are the letters -- are there letters in
19 the package?

20 A. Yes, there are letters.

21 Q. What do they concern just in general?

22 A. Just several different approvals.

23 Q. Are there forms in there as well?

24 A. Yes, there are.

25 Q. Is there anything -- is there anything

1 extraordinary about that set of records as compared
2 to other properties that also have similar files?

3 A. Yes. As a matter of fact there are
4 unusual circumstances recorded in this letter in
5 regard to the addition. In 1981 there was an
6 addition, and apparently the Board -- A.R.B. Board
7 was concerned that it could be used as multi-family
8 or a duplex. And as far as I know the property has
9 one density unit or building unit as established in
10 the covenants. And a duplex would require two, I
11 would assume.

12 And so the Board I think initially
13 disapproved the addition because it had an outside
14 entrance and could theoretically be used for
15 multi-family. And then got a letter from the
16 applicant saying that -- may I read this?

17 MR. LAUGHLIN: Your Honor, I object
18 to all of that testimony. And I certainly object to
19 these letters. Where they are going here is that in
20 1981, a former owner of the property made an
21 application to add the space that is on the second
22 floor. And there was a letter written from the then
23 administrator of the A.R.B. to Kermit Huggins who
24 was the architect for the owner at that time who was
25 making the application that says, in reply to your

1 application dated January 16, 1981, and plans
2 submitted therewith the Architectural Review Board
3 is very concerned with an outside stairway since at
4 some further date it could cause an owner to
5 consider the use for a two-family set-up. Please
6 put stairway for the second floor addition on the
7 inside of your residence.

8 And then the owner wrote back and said,
9 well, we are only going to use this room for a
10 playroom for our two sons, et cetera, et cetera.
11 And after which it was approved. Now, first off
12 what dialogue may or may not have occurred between
13 C.S.A. or the A.R.B. at that time and a former owner
14 that does not involve my clients can't bind them.

15 And, secondly, to the extent that the
16 letter from the A.R.B. expressing concern about the
17 outside stairway, it may or may not suggest that
18 they thought that such an arrangement would violate
19 the covenants.

20 I don't -- you know, I can't cross examine
21 them, but they may not have thought that. They may
22 have had some other concern. They may have been
23 interpreting the covenants in a certain way, but
24 their interpretation, if that is what was, is not
25 the issue here. The issue is what do the covenants

1 say. I object to this. I think it's prejudicial.
2 I don't think it's probative.

3 JUDGE DUKES: This is the early
4 1980s?

5 MR. LAUGHLIN: This is 1981, Your
6 Honor.

7 MR. BORDEN: May I speak, Your Honor?

8 JUDGE DUKES: Yes, go ahead.

9 MR. BORDEN: I'm not certain, but I'm
10 hearing a hearsay objection. I'm not -- although
11 I'm having a little bit of trouble getting that. I
12 know that the Defendants have raised in their answer
13 and grounds of defense that the covenants must be
14 strictly construed and so forth.

15 Basically they have in a backhanded way
16 pointed to ambiguity or making the assertion of
17 ambiguity in the covenants themselves as to this
18 issue. And in light of that, in light of the fact
19 that they are arguing that in their answer and
20 grounds and so forth, I think we are looking at the
21 law on this and saying that if they maintain that
22 it's not clear, then we look at law that says it's
23 been stated that where there is an ambiguity in a
24 contract or whether there is doubt as to the proper
25 construction, the construction placed thereon by the

1 parties themselves is entitled to great if not
2 controlling influence.

3 So I think that we are talking about the
4 dealings of the then owner of 48 Planters Wood Drive
5 with the administration of C.S.A., it's A.R.B., and
6 then some interaction and comment by, I think, it's
7 a predecessor entity to C.S.A. actually is what one
8 of these is.

9 JUDGE DUKES: But as I understand
10 what you are saying, you are saying because the
11 owners in 1981, and I understand your opinion is
12 they agreed with C.S.A.'s interpretation of the
13 covenants. And a third party's predecessor is in
14 title agreed -- and I haven't read all of this, but
15 I understand your interpretation is they agreed with
16 a certain interpretation of the covenants, then
17 subsequent owners are bound by that interpretation?

18 MR. BORDEN: I think that if -- I
19 think that if those records point to C.S.A.'s
20 interpretation of the covenants that, Number One,
21 it's an ancient record. It's over 20 years old.
22 The letters that we are making reference to, and
23 they are over 20 years old. They are also business
24 records.

25 JUDGE DUKES: But what is the

1 relevance? That is the part I guess I'm a little
2 shady on because that is what I interpret the
3 objection --

4 MR. LAUGHLIN: That is -- my
5 objection is not that it's hearsay. You know, I'm
6 quite confident that they could lay the predicate
7 for bringing it in as a business record.

8 JUDGE DUKES: I think so, too.

9 MR. LAUGHLIN: My objection is
10 relevance. You know, what the dialogue was in 1981
11 between the A.R.B. and a former owner of the
12 property is simply not relevant here. And this is
13 not a normal contract, Your Honor, in the sense
14 that -- you know, I think the law is quite clear
15 that if a material term of these covenants is
16 ambiguous then the court must resolve that ambiguity
17 in favor of the free use of the property, not take
18 parole evidence to see what the interpretations
19 were.

20 MR. BORDEN: We are in a position at
21 this point Your Honor, where we don't think it's
22 ambiguous and we don't concede that point, however
23 defense has been raised by the Defendants. And the
24 fact is is that the communications that were
25 occurring about this house among the A.R.B. and the

1 predecessor to C.S.A. were -- the house was built in
2 1974. The covenants came on line in 1970. The
3 adding of the room was 1981. And so in terms of
4 intent, the people who are quoted in -- who are
5 quoted in these letters were much closer to the
6 Class A Covenants of the -- at the time that they
7 came on line than is -- that is one of the reasons I
8 think that there is legitimacy as an ancient
9 document here. There was nobody being quoted there.
10 I think it may go to the weight that you -- the
11 weight that you wish to put on it, but --

12 JUDGE DUKES: Let me ask you this.
13 The covenants were the same then and now.

14 MR. BORDEN: Right.

15 JUDGE DUKES: If they were ambiguous
16 then, they are ambiguous now. If they weren't, they
17 weren't. I mean, they have to be strictly construed
18 as I think you both pointed out under the law with
19 all -- everything about the free use of property in
20 favor of the homeowner -- I mean, or property owner.
21 I mean, that is sort of black letter law in South
22 Carolina and probably everywhere, but the part I'm
23 not getting is the relevance of -- there was a
24 concern it sounds like that C.S.A. was concerned
25 that -- or whoever, C.S.A. predecessor, maybe C.S.A.

1 goes all the way back, I don't know, but C.S.A.'s
2 predecessor or maybe the A.R.B. that this property
3 was going to be a duplex. And that was a previous
4 owner. And for whatever reason they said, oh, go
5 ahead and build a stairway anyway I guess is what
6 happened. And that was the end of it. But that was
7 a predecessor. And that was, I don't know, how many
8 years ago 1981 is. That was a long time ago. And
9 that is over and done and has nothing to do with
10 these guys.

11 MR. BORDEN: Well, if they thought
12 that --

13 JUDGE DUKES: Who is they?

14 MR. BORDEN: If the A.R.B. and C.S.A.
15 at the time thought that --

16 JUDGE DUKES: I mean, it's possible
17 for their interpretation of the covenants to have
18 been wrong for decades. And that doesn't make them
19 right.

20 MR. BORDEN: I think that goes to
21 weight rather than to exclusion of the document,
22 Your Honor. I think that -- and that is what I
23 would argue. That this goes back more than 20
24 years. And it speaks to the character of that house
25 as it is currently situated, which is an odd one

1 with this closed off attic room upstairs that nobody
2 can get access to. Well, this is what they were
3 saying about it when it was done. And they were
4 commenting on the covenants at the same time. And
5 for that reason I think that there is some
6 relevance, particularly if someone is tilting on
7 whether there is certainty. I understand if it was
8 ambiguous then it's ambiguous now. But I still
9 think that it's helpful to know what was on the
10 minds of the people who were doing this because
11 these folks didn't acquire the house until years
12 later. And I'm not trying to get -- to hold them to
13 a decision. I'm just saying this is the history of
14 that particular house. And the way that the
15 structure is constructed at this time is pivotal to
16 the usage that is being made and the manner that
17 it's being made right now.

18 JUDGE DUKES: Why does it even matter
19 if these Defendants didn't have notice of that whole
20 thing?

21 MR. BORDEN: Well, I think they had
22 notice of the covenants, Your Honor.

23 JUDGE DUKES: But I'm talking about
24 the series of letters back and forth from someone
25 back in 1981. I mean, how could that --

1 MR. BORDEN: Well, it's not a matter
2 of -- it's not a matter of recorded public record,
3 but the information was certainly available. And --
4 and the thing that I would also note is these folks
5 in their depositions they basically testified they'd
6 been doing this for a couple years. I think 2013 we
7 have some documents that have been produced to us
8 talking about -- that go back to 2013 as far as
9 collecting rentals, rental income on the unit.

10 That means they were there for 15 years
11 based on their own, you know, version of things not
12 renting it in the manner that they are. Now, why
13 didn't they? In other words, if the Defendants were
14 interpreting the usage to be one where you are not
15 prohibited from doing this, then why for 15 years
16 did they own the property and live on it and not do
17 until now what they are doing?

18 JUDGE DUKES: What I'm --

19 MR. BORDEN: And -- and --

20 JUDGE DUKES: -- pipe up and say
21 because internet short-term rental is a new
22 phenomena. But I don't know. Why don't we do this.
23 I think it's irrelevant. I'm going to sustain the
24 objection.

25 MR. BORDEN: Okay.

1 JUDGE DUKES: And why don't we move
2 on. So what do you have next, Mr. Borden?

3 MR. BORDEN: Well, mainly I just
4 wanted to enter the documents as an exhibit.

5 JUDGE DUKES: Okay. All right.
6 Anything else then of this witness?

7 BY MR. BORDEN:

8 Q. The document that is labeled Exhibit 3, is
9 that a true copy of the contents of the 48 Planters
10 Wood Drive A.R.B. file?

11 A. It is.

12 Q. And are there documents in that file that
13 are over 20 years old?

14 A. Yes.

15 MR. BORDEN: I have no further
16 questions.

17 JUDGE DUKES: That is not an exhibit,
18 Deborah. You are just putting it there --

19 COURT REPORTER: It's an exhibit.

20 JUDGE DUKES: Huh?

21 COURT REPORTER: It's an exhibit.
22 Exhibit 3.

23 JUDGE DUKES: No. I sustained the
24 objection, so --

25 COURT REPORTER: Oh, I'm sorry.

1 JUDGE DUKES: That's all right. I'll
2 talk louder. All right. Mr. Laughlin, any
3 questions?

4 MR. LAUGHLIN: I have no questions
5 for Mr. Raben.

6 JUDGE DUKES: All right. Thank you
7 so much. And does anyone have any objection to him
8 leaving?

9 MR. BORDEN: No.

10 MR. LAUGHLIN: None from the
11 Defendants, Your Honor.

12 JUDGE DUKES: All right. Thank you.
13 All right. What next, Mr. Borden?

14 MR. BORDEN: Next we want to read a
15 little bit of limited testimony into the record.

16 JUDGE DUKES: All right.

17 COURT REPORTER: Now my exhibits are
18 going to be out of order.

19 JUDGE DUKES: I know. We are going
20 to have to put stickers over the rest of them. Have
21 to put stickers over stickers. How many pages are
22 we reading?

23 MR. BORDEN: Not a great deal, Your
24 Honor.

25 JUDGE DUKES: Okay.

1 MR. BORDEN: Actually I scaled it way
2 down from what was actually noticed.

3 JUDGE DUKES: No worries.

4 MR. BORDEN: I'm handing over to
5 Ms. Jill Dawson copies of the deposition
6 transcript --

7 JUDGE DUKES: Do you all have a copy
8 of a summary transcript or anything I can follow
9 along with or --

10 MR. BORDEN: I can give you a
11 compressed copies.

12 JUDGE DUKES: All right. Thanks.
13 Two of them? Three? Thanks.

14 COURT REPORTER: What is your last
15 name again?

16 MS. DAWSON: Dawson, D-a-w-s-o-n.

17 MR. BORDEN: I'm handing the
18 deposition over of Maria P. Snyder Wall as well.
19 First of all, what is the date these depositions
20 were taken?

21 MS. DAWSON: The 10th of March, 2015.

22 JUDGE DUKES: Which one are you doing
23 first?

24 MR. BORDEN: We are doing the
25 deposition of Stephen Wall first, Your Honor.

1 JUDGE DUKES: All right.

2 MR. BORDEN: If you will bear with me
3 one moment while I get my notes together. I would
4 direct you to the deposition of Stephen Wall and ask
5 that you go to Page 14 beginning at Line 22.
6 Actually 21. And I'll ask the question and you
7 please read back the response. And we are going
8 from Page 14, Line 22 -- Line 21 to Page 15. And we
9 will see how far that goes.

10 JUDGE DUKES: You are on Stephen's,
11 right?

12 MR. BORDEN: I'm sorry?

13 JUDGE DUKES: You are on Stephen's?

14 MR. BORDEN: Yes. Yes, Your Honor.
15 Well, I see why I'm confused. Okay. Let's begin
16 with -- let's begin with Line 6, actually. How many
17 people do you have in what you would consider to be
18 your immediate family?

19 JUDGE DUKES: Line six on what page?
20 I'm sorry.

21 MR. BORDEN: Page 14.

22 MS. DAWSON: Are you referring to
23 growing up as a young boy?

24 MR. BORDEN: Well, I'm thinking of at
25 least that portion of the family as you sit here

1 today, you know, with whom you are familiar, with
2 whom you may visit, who may visit you, children,
3 grandchildren.

4 MS. DAWSON: Two siblings.

5 MR. BORDEN: Okay. And do you have
6 any children or grandchildren?

7 MS. DAWSON: Five children.

8 MR. BORDEN: Okay. And then your
9 wife by marriage?

10 MS. DAWSON: Ex-wife, no children.

11 MR. BORDEN: Is Ms. Snyder Wall your
12 wife or your ex-wife?

13 MS. DAWSON: Current wife.

14 MR. BORDEN: How many times have you
15 been married?

16 MS. DAWSON: Twice. Three times.

17 MR. BORDEN: Okay. Do you regard
18 Maria Snyder Wall as your family also; is that
19 correct?

20 MS. DAWSON: Correct.

21 MR. BORDEN: Okay. Does she have
22 children or grandchildren that you embrace as
23 family?

24 MS. DAWSON: Correct.

25 MR. BORDEN: Could you describe that

1 for me?

2 MS. DAWSON: She has a son and a
3 daughter.

4 MR. BORDEN: Next we go to Page 22,
5 Line 22. And we proceed to Page 23, Line 13 which
6 includes a reference to an Exhibit 4-B. Okay. I'm
7 going to show you a photograph labeled Plaintiff's
8 4. It's also got two photographs. And I'm going to
9 ask you if you can identify A.

10 MS. DAWSON: That is my house.

11 MR. BORDEN: Okay. Now, on A you
12 have trees in your yard. Do you have water behind
13 the house? Is there a lagoon or anything behind the
14 house?

15 MS. DAWSON: Yes, sir.

16 MR. BORDEN: Okay. Now that Photo
17 A -- it doesn't encompass the entire house. What
18 portion of the house is that a picture of? In other
19 words, what is basically there?

20 MS. DAWSON: Well, you've captured
21 the back half of the carport. You've captured the
22 rest of the north side of the house.

23 MR. BORDEN: Okay. Now we resume at
24 Line 25. And let's go to B on that page. Can you
25 describe that?

1 MS. DAWSON: That is my house.

2 MR. BORDEN: And does that take into
3 account the full length of the front of the house?

4 MS. DAWSON: Yes, sir.

5 MR. BORDEN: This last one you've got
6 much better photos of it than I do, but this is
7 labeled Plaintiff's 5. And I was going to ask you
8 can you identify it?

9 MS. DAWSON: That is the south
10 portion of the house, of my house.

11 MR. BORDEN: Okay. And, Your Honor,
12 we wanted to include those photographs with the
13 record, which they've been put in through the page
14 line designation that was submitted earlier, but we
15 make specific reference in the deposition to them
16 having been identified by the Defendants.

17 JUDGE DUKES: You are going to submit
18 these transcripts as a part of the record; is that
19 correct.

20 MR. BORDEN: We already have.

21 JUDGE DUKES: Okay.

22 MR. BORDEN: We submitted a page/line
23 designation --

24 JUDGE DUKES: Okay.

25 MR. BORDEN: -- that had everything

1 attached to it.

2 JUDGE DUKES: Do we have a copy of it
3 for this record just so we can --

4 MR. BORDEN: I can give you one
5 today, Your Honor. What we agreed to with the court
6 reporter on these, I believe -- actually, I take
7 that back. There was an agreement with Erin Solomon
8 on one of these, but --

9 JUDGE DUKES: I just want to have a
10 nice complete set of exhibits in case this ends up
11 going to Columbia.

12 MR. BORDEN: We've done that.

13 JUDGE DUKES: Okay. But I mean don't
14 we need to add it to this stack at some point? We
15 can do that when we take a break. I just want to
16 make sure that at some point we have a complete set
17 of exhibits for everything that might need to be
18 referenced if somebody requests a transcript.

19 MR. BORDEN: Okay. All right, Your
20 Honor. That is fine.

21 JUDGE DUKES: Okay.

22 MR. LAUGHLIN: Your Honor, I do not
23 agree as a general matter that just because it's
24 included in his designation that that makes it
25 admissible or part of the record. I do not object

1 to these photographs.

2 JUDGE DUKES: Okay. But you concur
3 that at some point during the break we need to make
4 this Exhibit such-and-such? You don't object to it
5 I understand.

6 MR. LAUGHLIN: I don't object to it,
7 but I don't agree that just because he's designated
8 it makes it admissible. For example, one of the
9 exhibits that he's designated is the one -- is what
10 he offered as Plaintiff's Exhibit 3 which --

11 JUDGE DUKES: Oh, no. No. I
12 understand we may get to things that you may object
13 to.

14 MR. LAUGHLIN: Right.

15 JUDGE DUKES: I get that part, but
16 I'm talking about those that are not objected to I
17 think need to be made a part of this record today.

18 MR. LAUGHLIN: And that is fine.

19 JUDGE DUKES: So -- but, no, I
20 acknowledge your ability to continue to object to
21 things, perhaps things we've already talked about.
22 So -- all right. Mr. Borden?

23 MR. BORDEN: Okay. So we've dealt
24 with 4-B, Exhibit 4-B. I'd like to go to Page 26,
25 Line 9. And we are going to be going to Page 30,

1 Line 24. Okay. Going back to if you'll look back
2 at the photographs that I handed you, I'd like you
3 to flip to Number 4 and look at B. Now that
4 photograph I believe you identified as encompassing
5 the whole length -- the full length of the house. I
6 would like you to take this pen if you would and
7 draw a couple of arrows for me. I would like you to
8 point an arrow just right across the picture if you
9 want, point an arrow to the part of the house where
10 the kitchen is located.

11 MS. DAWSON: Complies.

12 MR. BORDEN: Okay. And the master
13 bedroom.

14 MS. DAWSON: Complies.

15 MR. BORDEN: And where you started
16 the line in the margin, would you mind saying master
17 bedroom and kitchen so that I know which arrow goes
18 to which?

19 MS. DAWSON: Complies.

20 MR. BORDEN: Okay. And I have one
21 more for you, the dining room, dining area, your
22 principal dining room.

23 MS. DAWSON: Complies.

24 MR. BORDEN: That is all I have on
25 that part. As an associate graduate in art, my

1 compliments. I'm going to show you a document that
2 we are going to label Exhibit 6 and ask if you can
3 identify it.

4 MS. DAWSON: Should I read that part
5 in parentheses?

6 MR. BORDEN: Whereupon the
7 Plaintiff's Exhibit Number 6 was marked for
8 identification.

9 MS. DAWSON: Well, this appears to be
10 a letter. I'm not sure who Walt is. I can't
11 identify it. I have not seen it before.

12 MR. BORDEN: Do you know who wrote
13 it?

14 MS. DAWSON: Well, it says Toozie.
15 My wife wrote it.

16 MR. BORDEN: Okay. Well, she
17 included your name on it as well.

18 MS. DAWSON: It looks like it.

19 MR. BORDEN: Okay. That is fine.
20 I'm going to read you a quote from it, and it is in
21 front of you. And I'm not trying to -- the letter
22 itself is about a page and a quarter, single spaced
23 long; is that correct?

24 MS. DAWSON: Correct.

25 MR. BORDEN: For purposes of time I'm

1 going to read a portion of the letter. It says,
2 quote, a separate office/studio upstairs (No kitchen
3 as per covenants) where we can retreat to. There is
4 nothing in the covenants that disallows this. Only
5 that this separate space cannot be rented by itself,
6 closed quote. Do you know what that refers to?

7 MS. DAWSON: That refers to the
8 upstairs addition.

9 MR. BORDEN: Okay. And that is an
10 addition. It was not part of the original house?

11 MS. DAWSON: Correct.

12 MR. BORDEN: I'm going to refer to
13 this area for the purposes of my questions
14 throughout as the closed off area, the area that you
15 referenced as an addition and which I referenced as
16 the closed off area, it's describing a portion of 48
17 Planters Wood Drive that is accessible to the
18 house -- part of the house that is accessible only
19 by exterior stairwell; is that correct?

20 MS. DAWSON: Yes, sir.

21 MR. BORDEN: Do you know about how
22 many square feet is in that space that we just
23 referenced?

24 MS. DAWSON: No, sir, I don't.

25 MR. BORDEN: Is there a full bath in

1 that area?

2 MS. DAWSON: Yes, sir.

3 MR. BORDEN: Which means there are
4 bathing facilities as well as toiletry facilities?

5 MS. DAWSON: Yes, sir.

6 MR. BORDEN: Okay. Is the space
7 divided into different sections? Are there any
8 partitions?

9 MS. DAWSON: No, sir.

10 MR. BORDEN: Or any things of that
11 nature? Okay. I'm going to give you a piece of
12 paper and ask that you do something for my. I'm
13 going to ask you to exercise your art skills, again.
14 And I'm handing you a pen. And what I'm asking
15 you -- what I'm asking is could you just to the best
16 of my ability on your recollection sketch a floor
17 plan of the closed off room which would include the
18 bath facilities, the whole thing, whatever is in
19 there.

20 MS. DAWSON: Complies.

21 MR. BORDEN: Okay. I'm going to ask
22 you to do one more thing. What I see is an outer
23 border with several boxes or circles drawn. Could
24 you please label what is a room, what is a closet,
25 what is a bathroom on that?

1 MS. DAWSON: Complies.

2 MR. BORDEN: Thank you very much.

3 MS. DAWSON: Uh-huh. Affirmative.

4 MR. BORDEN: Let me ask you to do one
5 last thing, that is if there are any principal
6 pieces of furniture, I would like you to put the
7 location where they are on that drawing. In other
8 words if it's a sofa or an arm chair or the master
9 bed or the bed, just what is that room you've drawn,
10 those rooms that you've drawn.

11 MS. DAWSON: Complies.

12 MR. BORDEN: Again, thank you. So
13 you have a refrigerator in that space. How big a
14 refrigerator? Is it standard size?

15 MS. DAWSON: No. Small.

16 MR. BORDEN: Okay. Well, I
17 appreciate it. I'm going to take this document and
18 label it Plaintiff's 7. Number 7 was marked for
19 identification.

20 JUDGE DUKES: Mr. Borden, let me ask
21 you real quick.

22 MR. BORDEN: Yes, sir.

23 JUDGE DUKES: I want to make sure you
24 get everything in the record that you want to get in
25 that is not objected to and sustained.

1 MR. BORDEN: Right.

2 JUDGE DUKES: But we have certain
3 stipulations. And I guess I'm trying to understand
4 where this testimony is going because there is no
5 dispute at all as far as I know on how this property
6 is used. Is there a factual determination for me to
7 make at some point down the line as to how this
8 property is used?

9 And, again, let me give you my
10 understanding, and you all correct me if I'm wrong.
11 My understanding is, and a lot of it is taken from
12 the stipulations, we have a two-story detached
13 residential dwelling unit. All right? We have a
14 second floor which is apparently accessed from a
15 stairway outside which is completely inaccessible
16 from the first floor. It's its own sort of
17 independent unit.

18 And the first floor, everything but the
19 top part, is rented short-term to renters. And
20 during that period of short-term rental the
21 Defendants occupy the second floor. I mean, is
22 that -- that is the undisputed portion of this case,
23 I think, right? Are there factual determinations
24 within that? Have I gotten any of that wrong?

25 MR. BORDEN: No, Your Honor. That

1 is -- that's on point.

2 JUDGE DUKES: Okay.

3 MR. BORDEN: The -- I think that some
4 of the verbiage in the deposition would also
5 indicate that they basically -- they make limited
6 use of the downstairs, but don't occupy the
7 downstairs -- don't basically occupy the downstairs
8 whether it's rented or whether it isn't.

9 And one other fact that may be revealed
10 from what we are quoting is that they have, in fact,
11 rented just a room before to an individual. And I
12 know that is not done now, but in terms of
13 interpreting the declaration -- the Class A
14 Covenants and interpreting how their usage dovetails
15 into those Class A Covenants, we think that some of
16 the conduct that is revealed is helpful because as
17 Defendants counsel was asking, you know, how are you
18 defining residential use and how are you -- and so
19 forth.

20 JUDGE DUKES: Well, let me ask this
21 because that one point may or may not be the only
22 factual thing that I can see in all of this that may
23 be an issue.

24 MR. BORDEN: Right.

25 JUDGE DUKES: And this is an

1 injunction, so you are not seeking to punish for
2 past bad acts. You are seeking to prevent acts in
3 the future.

4 MR. BORDEN: Correct.

5 JUDGE DUKES: Mr. Laughlin, do you
6 all acknowledge that you can't rent just room out of
7 the house or not? You tell me for future purposes.

8 MR. LAUGHLIN: We certainly don't and
9 do not intend to in the future.

10 JUDGE DUKES: Is it your reading of
11 the covenants -- your clients' reading of the
12 covenants that renting individual rooms within the
13 house subject to the Class A Covenants and whatever
14 else it is would be a violation of the covenants,
15 renting single rooms, not the whole house? And if
16 you haven't formed a determination of that, maybe --

17 MR. LAUGHLIN: I don't know that we
18 have formed a determination of that, but I will tell
19 that -- and I don't think the Walls would have any
20 objection to representing to the court that we do
21 not rent out single rooms now. We don't intend to
22 rent out single rooms. We rent to one rental party
23 at a time and they have the use of the entire
24 downstairs.

25 JUDGE DUKES: Okay. All right. I

1 don't know if that shortens it up any at all.

2 MR. BORDEN: I don't have a great
3 deal more, Your Honor.

4 JUDGE DUKES: Okay. Anyway, just --

5 MR. BORDEN: And we had another owner
6 tell us that this wasn't going to happen in fact at
7 all 18 years ago. And so whatever we are told as
8 far as usage -- the Walls have already curtailed
9 certain acts upon our request that would be deemed a
10 little more -- well, like the single room situation.
11 A little more obvious, a little bit more clear.
12 And --

13 JUDGE DUKES: So I mean we are not
14 sitting here today about that then. Those have been
15 curtailed prior to the litigation?

16 MR. BORDEN: Well, they -- except
17 that in answer to your question a moment ago,
18 Defendants' counsel said, well, I don't know where
19 you draw the line on that. So, you know, in other
20 words, they all had -- there is the same issue
21 there. You know, if they say the covenants apply,
22 but they don't know where to draw the line.

23 MR. LAUGHLIN: Well, I don't know
24 that I said I didn't know where to draw the line. I
25 think I was responding to your specific question,

1 but what -- again, you know, we would stipulate to
2 that, that, you know, we will not rent single rooms.
3 We are not renting single rooms. We will not rent
4 single rooms. We will -- you know, if -- you know,
5 if the court deems it's allowable, we intend to
6 continue what we are doing now which is renting the
7 entire downstairs of the home to a single rental
8 party.

9 MR. BORDEN: Your Honor, in the time
10 that we have argued this point, I can be done.

11 JUDGE DUKES: All right.

12 MR. BORDEN: In less time.

13 JUDGE DUKES: Well, the argument
14 helped me understand it a little bit so -- but point
15 taken. Go ahead and finish up.

16 MR. BORDEN: And I would refer you
17 to -- let's see where it's covered. And 31, Line
18 17. Okay. Is there any way possible for anyone to
19 reach this space from anything but the door of the
20 stairwell to enter the remainder of your house at 48
21 Planters Wood Drive?

22 MS. DAWSON: No, sir.

23 MR. BORDEN: Go to Page 34, please.
24 Actually let's go to Page 35, Line 8. How many of
25 those occupying for rent 48 Planters Wood Drive have

1 stayed in the closed off area?

2 MS. DAWSON: No one.

3 MR. BORDEN: Is there a separate key
4 for the for the closed off area different from the
5 remainder of the house?

6 MS. DAWSON: Yes.

7 MR. BORDEN: Okay. That is all I
8 have in the deposition of Stephen Wall.

9 JUDGE DUKES: All right. Now let's
10 remember when we next break we need to find those
11 photographic exhibits that were referred to and make
12 those exhibits, but why don't we go ahead and go on
13 with Ms. Wall and then do that at the next break.

14 MR. BORDEN: All right. Ms. Wall,
15 Page 33, beginning on Line 5. Well, Mr. Wall was
16 saying there were some limitations, but he did not
17 know what they were but you did. That's -- I'm
18 sorry. Go ahead.

19 MS. DAWSON: That is correct. And it
20 gets a little complicated but four is what we put
21 here for. Okay. So we really don't -- I mean, that
22 is the vast majority of our people. Now, if you are
23 willing to pay extra you can have six, but we don't
24 get that many rentals with that, you know. And it
25 would have to go through Airbnb.

1 MR. BORDEN: Okay. Then this goes
2 into Airbnb, and then people who are looking and
3 searching Airbnb would see this Hilton Head Island?

4 MS. DAWSON: That is correct. There
5 is a different search criteria. And Airbnb tries to
6 take into consideration matching the product with
7 the request.

8 MR. BORDEN: Okay. Now, as you -- as
9 you have that document completed, the closed off
10 area would not be part of the area utilized?

11 MS. DAWSON: That is correct.

12 MR. BORDEN: In other words, if you
13 got a positive response. Okay?

14 MS. DAWSON: Never mentioned, never
15 depicted.

16 MR. BORDEN: Okay. I'd like to show
17 you Exhibit 9. And it again purports to be -- it's
18 a printout of what purports to be from the Airbnb
19 site. Can you tell me what it is?

20 MS. DAWSON: Sure. It appears to be
21 an old listing. This was something that was -- this
22 says Hilton Head Organic B&B, Sea Pines. And that
23 is something that it is a title we used for a search
24 term, but when we talked with you and our attorney
25 we decided that that was probably not a good thing "

1 to use because it would be in violation. So we
2 stopped doing that. And I think that was some time
3 ago.

4 MR. BORDEN: That it would be a
5 violation?

6 MS. DAWSON: The bed and breakfast.

7 MR. BORDEN: Okay. Go to Page 35,
8 beginning Line 4. What is private room or, at that
9 time, what was private room?

10 MS. DAWSON: Well, you are basically
11 just renting a room because at that time we really
12 only wanted to rent a room.

13 MR. BORDEN: A room accommodating
14 three.

15 MS. DAWSON: That is correct.

16 MR. BORDEN: Go to line -- to
17 Page 53, beginning line 9. I understand. I'm
18 simply getting to the point. And it's sort of a
19 hypothetical. I don't have a name for these people
20 or anything else, but under your operation you could
21 come downstairs if they give you -- gave you
22 permission or whatever, but under your operating
23 rules you could have a family in place for 28 days
24 and you would be that for 28 days all in 48 Planters
25 Wood Drive.

1 MS. DAWSON: Currently the way it is
2 structured we could have a guest, not necessarily a
3 family, that could be there for 28 days.

4 MR. BORDEN: But a family could not?

5 MS. DAWSON: Probably I would not
6 agree to that. It's just too many people for too
7 long.

8 MR. BORDEN: So perhaps a family for
9 a week?

10 MS. DAWSON: Doable.

11 MR. BORDEN: Week? Two weeks maybe?

12 MS. DAWSON: You know, doable, but
13 it's not something we like.

14 MR. BORDEN: That is all we have,
15 Your Honor.

16 JUDGE DUKES: All right. Thank you.
17 Why don't we try to put together those exhibits that
18 you had referenced on Mr. Wall's and get those in as
19 Exhibit -- probably just put them in as one exhibit
20 number associated with that -- those deposition
21 excerpts.

22 MR. BORDEN: Yes, Your Honor.

23 JUDGE DUKES: I think those included
24 the photographs that Mr. Laughlin said he didn't
25 object to or any --

1 MR. BORDEN: My quality of my copies
2 is not very good, Your Honor, but, yes, I've got
3 them here.

4 JUDGE DUKES: All right.

5 MR. BORDEN: I've got what was being
6 referenced as -- well, it's not just photographs.
7 It's also a hand-done drawing of the floor plan of
8 the second floor space as attested by the Defendant.

9 MR. LAUGHLIN: I have no objection to
10 the drawing.

11 JUDGE DUKES: All right. Well,
12 let's --

13 MR. BORDEN: And we've got the
14 letter -- the letter was also referenced which is
15 Plaintiff's Exhibit 6 in the -- in that same
16 deposition. And I think we --

17 MR. LAUGHLIN: No objection.

18 JUDGE DUKES: I think we need to make
19 the transcripts exhibits as well, don't we?

20 MR. BORDEN: The entire transcript?

21 JUDGE DUKES: Well, if we can figure
22 out how to take them apart, just those pages. That
23 might be a little easier for all concerned if you
24 wanted to do that. Do you have any objection to him
25 submitting that after the fact?

1 MR. LAUGHLIN: No.

2 JUDGE DUKES: Why don't we do that
3 then. You can take those apart or copy them or
4 however you want to do it. And we will just make
5 sure those are in the record.

6 MR. BORDEN: All right, Your Honor.

7 JUDGE DUKES: All right. Why don't
8 we do this. Are we at a breaking point? We've been
9 at this for awhile?

10 MR. BORDEN: Well, other than
11 argument, I have no other witnesses that we intend
12 to put on.

13 JUDGE DUKES: Oh, we'll go ahead and
14 let's let you rest if that is your intent. So
15 anything else for --

16 MR. BORDEN: No other evidence at the
17 moment, Your Honor. We would move for judgment for
18 a permit injunction at this point based upon the
19 Class A Covenants and the interpretation that the
20 Plaintiff has applied which is that specifically
21 Paragraphs 5 and 6 as interpreted then and now
22 provides for rental of the entire premises.

23 In other words, you may rent the entire
24 premises. There is no issue as to that, but
25 occupying a portion of a single family detached

1 dwelling, which is occurring, while at the same time
2 renting a portion of the detached dwelling, which is
3 occurring, is inconsistent with the covenants as
4 interpreted and applied then and now by C.S.A.

5 And we think that the relief that we've
6 requested is consistent, and we also maintain that
7 the interpretation applied is consistent with the
8 text of the covenants.

9 JUDGE DUKES: Plaintiff has rested.
10 Anything before you begin or did you want to take a
11 break?

12 MR. LAUGHLIN: We can take a short
13 break. That would be fine.

14 JUDGE DUKES: All right. Let's do
15 that then. We will try to take a 10-minute break.

16 COURT REPORTER: Those exhibits, you
17 want to --

18 MR. BORDEN: I'm trying to get you
19 together everything I remember that came up. Four,
20 6, 7, and I don't think that Mr. Laughlin had any
21 objection to any of those. And then in --

22 JUDGE DUKES: Why don't you just keep
23 them aside and then when Drew gets back we can take
24 a last look at them before we go in.

25 MR. BORDEN: Yes, sir.

1 MR. LAUGHLIN: I do not object to the
2 photos. I do not object to the hand-drawing that
3 was an exhibit to the deposition. And I do not
4 object to the Walls' letter to --

5 MR. BORDEN: That is the only other
6 number that came up. And that came up in Ms. --
7 that came up in Ms. Wall's -- reading her
8 deposition. She testified about that. At the time
9 Mr. Wall didn't know nearly the details that
10 Ms. Wall did on that stuff.

11 MR. LAUGHLIN: I don't know that I
12 have an objection to this. And I would simply --
13 well, I do actually to an extent because it
14 includes -- it includes comments from guests which I
15 would consider to be hearsay. I don't have an
16 objection to the balance of it except to note that
17 it speaks to what was going on in May of 2014 and
18 not what is going on now.

19 JUDGE DUKES: Well, let me make sure
20 it's specific, possibly redacted. Fixed by
21 redaction objections have to do with the comments of
22 individuals who are not here, and those would be the
23 online -- I haven't seen that, but online comments I
24 guess?

25 MR. BORDEN: That would be correct.

1 JUDGE DUKES: Okay. So --

2 MR. LAUGHLIN: I don't have a problem
3 with that qualification, Your Honor.

4 JUDGE DUKES: Well, let's do that
5 then. We will mark those. What is the next
6 Plaintiff's exhibit, Deborah?

7 COURT REPORTER: Well, he's already
8 got them all marked. So his next exhibit is 4.

9 MR. BORDEN: Well, actually these
10 were -- these are markings born from the --

11 COURT REPORTER: They are from the
12 deposition but they are still in this sequence.

13 MR. BORDEN: They are from the
14 deposition transcript itself.

15 JUDGE DUKES: Oh, it just happened
16 just coincidentally?

17 COURT REPORTER: It happened
18 coincidentally.

19 JUDGE DUKES: It works out.

20 COURT REPORTER: Because we had
21 scratched out 3.

22 JUDGE DUKES: So let's just make them
23 what they are then and save the stickers and redact
24 if we can maybe just by making a big X through them
25 with a line. And, Drew, you can check on it when

1 you get back, the comments that we've discussed. So
2 does that work for everybody?

3 ~~MR. BORDEN: That's fine. I mean,~~
4 I'm content simply with the ruling that those
5 portions of it are not -- you know, that it's --

6 JUDGE DUKES: I just like to have it
7 all match, you know. So why don't we take a break.
8 When we get back, that is what we will do. Anything
9 else for the record before we take a break?

10 MR. BORDEN: No, sir.

11 JUDGE DUKES: Let's take a break.

12 (RECESS 11:27 to 11:41.)

13 JUDGE DUKES: All right. Back on the
14 record in 14-2438, Community Services versus Wall.
15 When we left off the Plaintiff had rested. Happy to
16 hear from you, Mr. Laughlin.

17 MR. LAUGHLIN: Call Stephen Wall to
18 the stand.

19 JUDGE DUKES: Raise your right hand
20 for me. Do you swear or affirm to tell the truth,
21 the whole truth, and nothing but the truth so help
22 you God?

23 MR. WALL: Yes, sir.

24 JUDGE DUKES: All right. Have a
25 seat. State your full name for the record, please.

1 MR. WALL: Steven H. Wall.

2 JUDGE DUKES: All right. Mr.

3 Laughlin?

4 WHEREUPON:

5 STEPHEN WALL, being duly sworn and
6 cautioned to speak the truth, the whole truth and
7 nothing but the truth, testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. LAUGHLIN:

10 Q. Mr. Wall, you and your wife Maria P.
11 Snyder Wall here own the property at 48 Planters
12 Woods that we've been talking about?

13 A. Yes, sir.

14 Q. And when did you all acquire that
15 property?

16 A. 1998.

17 Q. And how many kitchens are in that home
18 today?

19 A. One.

20 Q. And where is that kitchen located?

21 A. Downstairs north side of the house.

22 Q. Do you all prepare any meals -- well, let
23 me back up. You all occupy the second floor space
24 that has been described during the proceedings
25 today?

1 A. Yes, sir.

2 Q. Is there a kitchen in there?

3 A. No, sir.

4 Q. Are there any appliances in there?

5 A. Yes, sir.

6 Q. And what is in there?

7 A. We've got an induction -- little induction
8 plate.

9 Q. A hot plate?

10 A. Yeah, kind of like a hot plate. And we've
11 got a little toaster oven.

12 Q. Okay. I think reference was made earlier
13 to a refrigerator?

14 A. Correct.

15 Q. And what size refrigerator is that?

16 A. Just a small, little mini.

17 Q. Sort of like you would see in a dorm room
18 or something?

19 A. Correct.

20 Q. And have you and Ms. Wall made any
21 modifications to the floor plan or structure of this
22 home since you've owned it?

23 A. No, sir.

24 Q. So the floor plan, the layout, and the
25 basic structure are as they were when you acquired

1 it in 1998?

2 A. Yes, sir.

3 Q. I want to show you a grouping of seven
4 pictures that were collectively marked as
5 Plaintiff's Exhibit 17 to your deposition and ask if
6 you can tell us what is depicted in those pictures?

7 A. The south side of the house, the stairway
8 going upstairs.

9 Q. Anything else?

10 A. Again, this is the south side of the
11 house. This is the stairway going up to the second
12 floor unit that we occupy. This is an east side
13 view of the same landing upstairs, second floor of
14 the part we live in. This is the beginning of the
15 stairway going up to the second floor of the unit
16 that we stay at.

17 This is part of the unit that we live in
18 depicting part of the futon and the desk, chair, et
19 cetera, work area. This is the other half of the
20 futon chair with partial sliding glass door. And
21 this is the entrance to our place where we live.
22 And this is another picture of the futon in the
23 place that we live.

24 Q. And who took those photographs?

25 A. Oh, certainly not me, but I would have to

1 say my wife.

2 Q. Okay. Do those photographs accurately and
3 fairly depict the conditions at the house that they
4 reflect?

5 A. Yes, sir.

6 MR. LAUGHLIN: We would move those
7 into evidence collectively as Defendant's Exhibit 1.,

8 MR. BORDEN: No objection.

9 JUDGE DUKES: All right.

10 (MARKED DEFENDANT'S EXHIBIT NO. 1.)

11 MR. LAUGHLIN: No further questions,
12 Your Honor.

13 JUDGE DUKES: Mr. Borden, any
14 questions of Mr. Wall?

15 CROSS EXAMINATION

16 BY MR. BORDEN:

17 Q. Mr. Wall, is the -- who are the owners of
18 48 Plantation -- excuse me. I keep saying
19 Plantation. Planters Wood Drive?

20 A. My wife and I.

21 Q. And you receive one tax bill a year for
22 that property, correct?

23 A. Correct.

24 Q. But you physically treat it as two
25 structures for purposes of residence -- you reside

1 in part of the structure and you rent the other part
2 of the structure regularly; is that correct?

3 A. Correct.

4 Q. And so when you rent you do not offer
5 access of the upstairs portion of the house to any
6 renters; is that correct?

7 A. Correct.

8 Q. So when they lease -- when you lease, you
9 do not lease the entire premises as part of your
10 Airbnb rental arrangements, do you?

11 A. We offer just the bottom.

12 Q. Okay. And, again, you offer just the
13 bottom and you lease only a portion of the house?

14 A. We live upstairs and we rent the bottom
15 half.

16 Q. Okay. And you have -- have you ever heard
17 of Wall to Wall, L.L.C.?

18 A. I have.

19 Q. And Wall to Wall, L.L.C. was formed for
20 multiple income undertakings on the part of you and
21 your wife, correct?

22 A. Correct.

23 Q. And that includes -- on your tax returns,
24 you would include income from Wall to Wall in the
25 rental -- the rental revenues, correct?

1 A. I'm not sure how that goes through -- it
2 goes through channels. It doesn't come directly to
3 us, so I'm not really sure how that is done.

4 Q. Do you all receive rental income from
5 your -- the rental undertakings?

6 A. Yes, we do.

7 Q. And where does the check come from?

8 A. Pay Pal.

9 Q. And is that from or through Airbnb?

10 A. Correct.

11 Q. Okay. And, again, there is a -- you
12 formed a limited liability company which has a
13 relationship with those earnings, correct?

14 A. Correct.

15 Q. Okay. And Wall to Wall, L.L.C., does not
16 have any ownership interest in 48 Planters Wood
17 Drive, correct?

18 A. I'm not sure -- I'm not sure I understand
19 what --

20 Q. There is no deed to the property at 48
21 Planters Wood Drive to Wall to Wall, L.L.C.,
22 correct?

23 A. Not to my knowledge.

24 Q. So the connection between Wall to Wall,
25 L.L.C. and 48 Planters Wood Drive is your ownership

1 interest in both?

2 A. Yes.

3 Q. Okay. Why did you form an L.L.C.?

4 A. Always worked for myself. It was advised
5 by our accountants for tax purposes.

6 Q. Okay. You have rented single rooms in the
7 past to folks, correct?

8 A. Correct.

9 MR. BORDEN: I don't have any further
10 questions.

11 MR. LAUGHLIN: Nothing further. No
12 further questions, thank you.

13 JUDGE DUKES: Any other witnesses?

14 MR. LAUGHLIN: No, sir. Defendants
15 rest.

16 JUDGE DUKES: All right. Both
17 parties rested. Any motions? Hearing none?

18 MR. BORDEN: Well, we moved for
19 judgment. And I guess in this posture summary
20 judgment or judgment on the pleadings. Your Honor,
21 we think that -- we maintain that the covenants are
22 not ambiguous, but are clear. We maintain that they
23 have not been interpreted in error in 1974 when the
24 house was built or in 1981 when the room was added
25 or today.

1 And they've been calling them the same way
2 during that entire time. So if -- if the hundreds
3 of homes at Sea Pines that are subject to the Class
4 A Covenants all are now dealt with under the
5 interpretation that is being propounded by the
6 Defendants, it will change the character of Sea
7 Pines Plantation.

8 It's a substantial change. Take the
9 situation which we have where they were fixing
10 breakfast for people, they were putting three people
11 in a single room. And then when it came to C.S.A.'s
12 attention, and C.S.A., you know, made comment on it,
13 they rolled back several of those things so they are
14 not doing quite as much that would be maybe quite as
15 offensive to a neighbor or what have you. But now
16 take that situation of theirs and multiply it by 75
17 or a hundred homes or more, which is the potential
18 you have.

19 And then see where -- if the covenants are
20 interpreted differently and moved to some different
21 line than you were leasing the entire premises,
22 premises whether they have a guest room, premises or
23 a guest suite as its been termed or whether it
24 doesn't have a so-called guest suite, when you rent
25 the premises, you rent the entire premises. And you

1 may do that. And you may do short-term rentals.

2 To go to the other extreme, and to take

3 and put three people in a room, I've been there.

4 You know, I've seen it. I've seen people take a
5 dining room and put partitions up and having people
6 sleeping on cots and stuff like that. Take what
7 they are doing, multiply it by a hundred. And then
8 ascertain whether or not Sea Pines Plantation has a
9 changed condition as a result of that application of
10 the Class A Covenants and that interpretation of
11 them.

12 And I think that you would come to the
13 conclusion that if Defendants' interpretation of
14 those covenants is applied then you are looking at a
15 substantial change in the character of the areas
16 covered by the Class A Covenants. And there is no
17 way that C.S.A. could take in a reasonable fashion
18 and keep track of the individuals who are serving
19 breakfast, not serving breakfast this week, stacking
20 three people in one room, not stacking three people
21 in one room, having it be a discreet separation of
22 the portions of the house.

23 Once that door is opened it will change
24 the character of the residential -- single-family
25 residential portion of that community. And we think

1 that that is clear and has been clear for this whole
2 time. And that is our argument, Your Honor. It
3 just does not -- take these actions, take this
4 scenario and multiply it by a hundred or 200 homes
5 with people who are a little tight on their mortgage
6 and how does it work?

7 JUDGE DUKES: All right. Mr.
8 Laughlin, any response?

9 MR. LAUGHLIN: Your Honor, first of
10 all I would suggest that Mr. Borden's comments are
11 replete with speculations and assertions of facts
12 that are not supported by any evidence in this
13 record.

14 I think the sole question here is do any
15 of the activities that the Walls are currently
16 involved with in this home violate these covenants
17 and particularly Sections 5 and 6 of the Class A
18 Covenants applicable to residential areas. We don't
19 think those covenants are ambiguous. We think if
20 you read them strictly as they are, they do not
21 prohibit what we are doing.

22 However, if they are ambiguous, if there
23 is any doubt about what they say, then clearly the
24 free use of the property gets the benefit of that
25 doubt and the resolution of those ambiguities if

1 they exist.

2 The question isn't how they may have been
3 interpreted in the past or now. It's whether they
4 prohibit an activity. And if you look at them, 5,
5 all lots in said residential areas shall be used for
6 residential purposes exclusively. Well, that is
7 exactly what is going on here.

8 Yes, there is rental, but there are
9 rentals all through Sea Pines. And renting property
10 does not make it a nonresidential use. No structure
11 except as hereinafter provided shall be erected,
12 altered, placed or permitted to remain on any lot
13 other than one detached single family dwelling not
14 to exceed two stories in height and one small one
15 story accessory building which may include a
16 detached private garage and/or servants quarters
17 provided use of such dwelling or accessory building
18 does not overcrowd the site and provided further
19 that such building is not used for any activity
20 normally conducted as a business. Such accessory
21 building may not be constructed prior to the
22 construction of the main building.

23 Well, there is not an accessory building
24 here. And the lot -- the site is not overcrowded.
25 The structures are the site are in compliance with

1 the covenants. A guest suite or like facility
2 without a kitchen may be included as part of the
3 main dwelling or accessory building, but such suite
4 may not be rented or leased except as part of the
5 entire premises including the main dwelling and
6 provided however that such guest suite would not
7 result in overcrowding the site.

8 Well, there is no suite or like facility
9 without a kitchen that is rented separately from the
10 home. That just isn't happening. And, again, the
11 testimony was that there are no complaints that the
12 site is overcrowded.

13 So, you know, if you read those things
14 literally, there is nothing about what we are doing
15 that violates any of that stuff. And, you know, if
16 the Walls rented this home and simply locked the
17 upstairs section and rendered in accessible to the
18 tenants, that would be no different than what they
19 doing here materially in terms of how the covenants
20 spell to themselves.

21 A single family home describes a type of
22 dwelling, not the use. I think it's been pretty
23 well established that members of more than one
24 family can reside in one of these homes. There is
25 just nothing there that says that you can only rent

1 out -- that you cannot rent out part of the prepares
2 unless it's the guest suite or like facility without
3 a kitchen.

4 There is nothing in there that says
5 members of more than one family cannot reside in one
6 of these homes. And there is no use there that is
7 not a residential use. So we would maintain that
8 the covenants are not ambiguous. They just simply
9 don't prohibit what we are doing.

10 And as Mr. Borden has pointed out, when we
11 received complaints from C.S.A. we discontinued some
12 activities. You know, not necessarily because they
13 were deemed to be a violation, although they could
14 have been, but because we were trying to resolve
15 this and be responsive to their concerns, but once
16 you start getting into questions of what is a family
17 and you are just kind of going down a slippery slope
18 that the covenants don't require you to go to.

19 You know, they could rent this thing -- if
20 the court were to find that they could only rent the
21 entire premises, they could rent the entire premises
22 under a lease that says, you know, you got the whole
23 house, but you agree that we are going to stay in
24 our upstairs section, you know.

25 It cannot possibly be a material

1 difference whether somebody brings in their own
2 traveling servant or whether whoever rents them the
3 house provides a live-in servant for their stay. I
4 mean, that just can't be a material fact in terms of
5 whether there is a violation of the covenants or
6 not.

7 So we would maintain that there is simply
8 no violation here and the court should so find.

9 JUDGE DUKES: Let me ask you all
10 this, getting back to my question earlier on 5 and
11 6. As I look through these, particularly 5, a much
12 of this doesn't even have to do with -- either
13 stipulated or agreed or was uncontradicted testimony
14 that does away most of what 5 is.

15 For instance, the first sentence. All
16 lots in said residential areas shall be used for
17 residential purposes exclusively. Now, I think we
18 heard testimony from the Plaintiff that short-term
19 rentals are permitted. Is that -- is that accurate?
20 In Class A there is no dispute there. So we are not
21 calling this a commercial activity. So it's a lot
22 that is being used for residential purposes.

23 All right? Next sentence. No structure
24 except as hereafter provided shall be erected,
25 altered, placed, or permitted to remain on any lot

1 other than one detached single family dwelling not
2 to exceed two stories in height. All right? That
3 is not even a dispute. That is there, right? So we
4 can cross that out.

5 And one small one story accessory
6 building. Well, that is not there so that is not
7 applicable. We can cross that out. Which may
8 include a detached private garage and/or servants
9 quarters. All right. That is not there. We can
10 cross that out. Not subject to this litigation.

11 Provided the use of such dwelling or
12 accessory building does not overcrowd the site. I
13 think we've heard testimony or at least there was no
14 assertion by the Plaintiff that the site was
15 overcrowded. We can cross out the site.

16 And provided further that such building is
17 not used for any activity normally conducted as a
18 business. All right. That phrase to me relates
19 back to the accessory building previously described,
20 not the dwelling, otherwise they would have used a
21 different word. They used building. We all know
22 words mean things.

23 They described a one-story accessory
24 building. They had referred to the main dwelling as
25 a dwelling. So therefore building, which doesn't

1 exist, isn't there so we can cross that out.

2 And then we go on to such accessory
3 building. It doesn't exist. We can cross that out.

4 I think that completely eliminates 5 from the
5 discussion of this case.

6 Then we move to 6. A guest suite or like
7 facility without a kitchen may be included as a part
8 of the main dwelling, and we can get rid of or
9 accessory building. All right. And the rest of
10 it -- well, we can get rid of the last phrase
11 without overcrowding because overcrowding I think
12 was not claimed.

13 So I think what we are left with is
14 Paragraph 6. It says a guest suite or like facility
15 without a kitchen may be included as a part of the
16 main dwelling, but such suite may not be rented or
17 leased except as a part of the entire premises
18 including the main dwelling.

19 I mean, you all help me out, but isn't
20 that what this case is about, 6, right there? Is
21 there any other part of this that matters other than
22 6, that portion of 6?

23 MR. BORDEN: Your Honor, I think that
24 5 -- I honestly do believe that 5 and 6 need to be
25 read together. And we -- we also got into the

1 discussion a little bit of what is a guest suite.

2 JUDGE DUKES: Well, but that is in 6.

3 MR. BORDEN: It is in 6. And, you
4 know --

5 JUDGE DUKES: I mean, I agree that 6
6 is applicable. I guess I'm thinking 5 mainly refers
7 to these separate accessory buildings which there is
8 no separate accessory building. This is a, Number
9 6, guest suite case. This is a guest suite or like
10 facility without a kitchen. I don't know if that is
11 in dispute. There was a hot plate, I think. May be
12 included as part of the main dwelling.

13 Okay. So far so good. It's part of the
14 main dwelling, but such suite may not be rented or
15 leased except as a part of the entire premises. So
16 obviously Mr. Laughlin would have me read that to
17 say, okay, fine. You can't just rent out the guest
18 suite.

19 MR. BORDEN: And he's limiting it to
20 that.

21 JUDGE DUKES: Well, and, again, I've
22 got to read it strictly with any ambiguities figured
23 in favor of free use of the property. But it gives
24 me pause because it would have been very easy when
25 writing this to throw in an additional sentence

1 MR. BORDEN: Well, and then the
2 question I get to on that is what appliances do you
3 have? What arrangements or appliances does one have
4 to qualify as having a kitchen or not? And I've
5 literally seen those situations. I mean, we have
6 heating -- we have, you know, the differentiations
7 that are being given are, well, we warm our food.
8 We don't cook our food. We've got an induction
9 plate. We have another cooker. We've got a -- it's
10 not a normal size refrigerator. It's a small
11 refrigerator. You know, so forth and so on. So
12 they are really trying to straddle that --

13 JUDGE DUKES: Well, again, this may
14 be a finding of fact issue, I don't know. But the
15 appliances that were described are kind of the same
16 appliances we all had in college stuffed in dorm
17 rooms. I mean, those -- I wouldn't say I had a
18 kitchen in my dorm room. I had a small refrigerator
19 and an iron turned upside down. You know, but, I
20 mean, these aren't dissimilar from that, but I don't
21 know. You know, I don't know if kitchen is defined
22 in here or not, but I mean in common parlance
23 kitchen is not what was described by the witness,
24 Mr. Wall, as to what he had.

25 Well, let me do this. Anything else from

1 the parties and I'll take a look at it and see what
2 we can do. You both asked for attorneys fees; is
3 that right? Ordinarily what I do in these
4 situations is hold this record open and let me see
5 what I can figure out on that and get back with you
6 with regard to that unless you would both like to
7 put something in today on that.

8 MR. BORDEN: Your Honor, if I might,
9 I don't think there is any provision in the
10 covenants for attorneys fees either way.

11 MR. LAUGHLIN: Correct.

12 JUDGE DUKES: Well, you both asked
13 for it, so I'll deny it both ways then if you both
14 agree that there is no provision for it. Good. We
15 won't have to worry about that then. All right. Is
16 there anything else for this record before I close
17 it out? All right. Thank you very much. I'll take
18 a look at it. Why don't we schedule -- Heather is
19 not in as you know.

20 Ward is the Plaintiff. Can I get you and
21 your office to contact Heather tomorrow or the next
22 day and Drew's office and let's schedule a
23 conference call in about 10 days to two weeks out to
24 follow-up on any questions I may have or further
25 discussions.

1 MR. BORDEN: Sure.

2 MR. LAUGHLIN: And you are talking
3 about a telephone conference?

4 JUDGE DUKES: Yes.

5 (Whereupon, the hearing was concluded
6 at 12:11 p.m.)

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1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3) No.: 2014-CP-07-2438

4 Community Services)
5 Associates, Inc.,)

6 Plaintiff,)

7 vs.)

HEARING

8 Stephen H. Wall and)
9 Maria P. Snyder Wall,)

10 Defendants.)

July 28, 2015

11
12 Hearing reported by Deborah S. Thomas,
13 Certified Verbatim Reporter and Notary Public in and
14 for the State of South Carolina; said hearing held
15 before the Honorable Marvin H. Dukes, III, Beaufort
16 County Master in Equity and Special Circuit Court
17 Judge in accordance with the South Carolina Rules of
18 Civil Procedure, at the Beaufort County Courthouse,
19 102 Ribaut Road, Room 212, Beaufort, South Carolina,
20 on July 28, 2015, at the hour of 8:57 a.m.

21 COPY

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9 Exhibits:

Marked at Page

10 (None were proffered.)

11 * * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We are
4 here on 14-CP-07-2438. This is Community Services
5 versus Wall. This is Plaintiff's motion to alter or
6 amend filed May 15th, 2015. And, Mr. Nichols, are
7 you going to --

8 MR. NICHOLS: Yes, sir, Judge. Thank
9 you. John Nichols here on behalf of the Plaintiff
10 Community Services Associates. Judge, we've filed a
11 Written Motion for Reconsideration pursuant to Rules
12 52 and 59. We were asking you under Elam versus the
13 Highway Department, you can ask a judge to
14 reconsider under that rule. The Supreme Court
15 adopted the Federal construction of Rule 59. So we
16 are asking you to reconsider it as to the merits,
17 but we are also pointing out what we think are
18 things that you may have overlooked or
19 misapprehended in your decision.

20 And I'll -- the written motion will speak
21 for itself, but I can just kind of go through them
22 as bullet points. And I will do it however you
23 like, Judge. We can stop at each or I can get
24 through it and then we can -- however you would like
25 to do it.

1 JUDGE DUKES: Really up to you.
2 However you would like to do it is fine with me.

3 MR. NICHOLS: Well, the first point
4 is that it is true that the law of South Carolina is
5 that you are supposed to strictly construe covenants
6 most favorably for the free use of property. And --
7 but the Supreme Court has made it plain that you are
8 not supposed to use that rule of strict construction
9 to -- so as to the defeat the plain and obvious
10 purpose of the instrument.

11 And that is what the court said in Taylor
12 v. Lindsey in '98. And that case had to do with a
13 restriction against different types of structures.
14 And they were trying to prevent placement of mobile
15 homes there. And actually the Supreme Court held
16 that the restriction was not drafted in such a way
17 to prevent that, but the important thing is that the
18 Supreme Court didn't just apply this rule of strict
19 construction in a vacuum. They looked at the
20 circumstances surrounding the adoption of the
21 restrictions.

22 And so what we would -- what we are
23 arguing here is that the circumstances surrounding
24 the adoption of these restrictions both at the
25 outset in the 1970 and certainly at the point in

1 time that this property was purchased ended in 1974
2 by the original owners who built the property and
3 then at the time of the addition in 1981 and
4 certainly when the Walls purchased it in 1998, when
5 you look at the purpose of these restrictions it was
6 actually to prevent what we believe -- was to
7 prevent exactly what the Walls are doing here which
8 is a couple of things.

9 First off, in your order you held that the
10 restrictions did not prevent the Walls from
11 occupying a guest suite at the point in time that
12 they are renting the rest of the property. And our
13 argument there is where the extra room is being
14 occupied by the owners it is not a guest suite. It
15 is actually an additional suite because if you look
16 at what the definition of guest and just the normal
17 definition of guest, these are not guests. They are
18 the actual owners of the property.

19 And so -- and, in fact, the way that
20 Airbnb -- they have rented this under the Airbnb
21 process, guests are off limits to this suite. They
22 have no access to this suite as well as one closet
23 in the main thing, but so we would like for you to
24 reconsider whether this -- what was originally built
25 as a playroom for kids with assurances that -- over

1 concerns that this could happen, that it's not
2 really a guest suite. It creates a multi-family, a
3 multi-occupant structure which was the -- which is
4 sort of the heart and soul of Paragraphs 5 and 6 of
5 the restrictive covenant.

6 The other thing, there is a sense in the
7 order that you viewed the restrictions as applying
8 only during the time of construction or perhaps use,
9 but as we've stated in our memo it also says that
10 the restrictions say that these unpermitted uses,
11 which we believe this is, are not permitted to
12 remain. So it's not just construction or use.

13 And we believe that the Walls have truly
14 converted this premise into a multi-family,
15 multi-occupancy dwelling. And that is the first
16 point that we make. It's on Page 4. It's, I think,
17 Paragraph 11 in the subparts.

18 The second point that we would like to
19 make here is that something I said a moment ago
20 which was that you have to look at these and apply
21 this rule of strict construction in the context of
22 what was in the minds of the grantor and the
23 grantee, the parties to the contract at the time it
24 was entered.

25 This was intended to be a gated community

1 of single family dwellings, detached dwellings.
2 There is -- rental is permitted, but rental
3 contemplated that it would be the rental of the
4 entire unit and not rental in such a way that you
5 could rent part of it but still occupy part.

6 You focused on the way the restriction was
7 written that you could have this additional room,
8 but you couldn't rent it as separate occupancy, but
9 sort of stepping back and looking at this
10 restriction in the context in which it was adopted
11 both in 1970 and at the time that the Walls
12 purchased the property, this restriction was
13 intended to avoid the very thing that they are doing
14 here.

15 And so you have to look at this strict
16 rule of construction, but against the back drop of
17 all the facts, all the circumstances. Justice
18 Littlejohn wrote in the Arrants case, the court
19 attempts to give effect to the intent of the
20 parties. You consider the instrument as well as the
21 circumstances surrounding the origin of the
22 covenants.

23 Now, Judge Littlejohn did rely on a case
24 that had been overruled, Nance versus Walter had
25 been overruled in Taylor v. Lindsey, but not on this

1 point. What Nance said was, hey, when people got
2 these restrictions here there were no such things as
3 mobile homes. And so what Nance said was these
4 restrictions -- therefore that the restrictions
5 could keep it out.

6 And what they said later in Taylor was,
7 well, wait a minute. It may be true that nobody
8 thought of mobile homes when they had the
9 restrictions, but using the strict rule of
10 construction that means that it would be permitted
11 because it just wasn't contemplated at the time.

12 It's tempting for me to argue that nobody
13 contemplated something like Airbnb at the time in
14 1970 and again in 1981, but candor has to tell me --
15 requires me to tell you that that argument would
16 fail in the face of Taylor versus Lindsey, but it
17 still doesn't remove the basic principle in Nance v.
18 Walter which wasn't overruled which is that you have
19 to look at the facts and circumstances. It's just
20 that the Supreme Court found Nance was wrongly
21 decided.

22 I think Justice Toal or whoever wrote -- I
23 can't remember who wrote it. I think Justice Toal
24 wrote it. She said it was a 3-2 decision which is
25 in my view in my world a way of sort of

1 minimizing -- it was a 3-2 decision. It could have
2 gone the other way, but Nance was followed in
3 Arrants v. Rankin on this -- on the point that I'm
4 making here. And that Arrants is still good law.

5 And I believe that that principle from
6 Nance is still good law, it's just what the holding
7 of Nance they undid in Taylor, the result in Nance.

8 So what we would argue is that you do look
9 at the language of the restrictions and you apply
10 the strict rule of construction, but you don't do it
11 in a vacuum. You do it against the backdrop of the
12 facts and circumstances on the ground and what the
13 intent of the parties was at the time that the
14 restrictions were made.

15 And we believe that the intent of the
16 parties was to have single-family detached
17 residences that were not multiple occupancy
18 dwellings, certainly not what was contemplated --
19 certainly what is going on here was not what was
20 contemplated.

21 Our third point is really an evidentiary
22 point. And looking at the memo Mr. Borden had
23 offered Plaintiff's Exhibit 3 which were Airbnb
24 documents -- excuse me. Architectural Review Board
25 documents including a letter -- the Ellison letter

1 of February of 1981 in which Mr. Ellison, who was a
2 prior owner of the house, gave assurances that this
3 addition would only be used as a child's playroom.

4 Now, I realize the Walls weren't party to
5 that and certainly they weren't the ones making that
6 representation, but they take the property sort of
7 with that as a backdrop. And that is part of the
8 facts and circumstances that we believe that you
9 need to consider.

10 That at the time that Mr. Ellison had said
11 that he wanted to add this and he wanted to do it in
12 an economical way and a structural way, but it would
13 require outside access, he needed another bathroom,
14 the Architectural Review Board wrote him back and
15 said, we are concerned that somebody down the road
16 might think this will allow more than single-family
17 occupancy.

18 And he gave his assurances there. That is
19 part of the background. That is part of the
20 circumstances surrounding how you apply this
21 restriction under these circumstances but you had
22 excluded that evidence. You found that it was not
23 relevant. And so we are asking you to reconsider
24 that.

25 Ken Raben, the next point, which is on

1 Page 8 of the memo, Ken Raben who is the former
2 Architectural Review Board administrator, his
3 testimony was excluded and his testimony is in the
4 same vein. And he was essentially testifying as to
5 what these restrictions mean. So we would ask you
6 to reconsider that. You again held that that was
7 not relevant. We believe that relevance is a fairly
8 allow standard, under Rule 401. So we would ask you
9 to reconsider that.

10 And I realize this is not a jury trial. I
11 realize that you are both the finder of fact. And
12 you are sort of the judge and the jury here; but we
13 would raise that point as a separate point in our
14 motion for reconsideration.

15 Next you held that the extra room was a
16 kitchen-less guest suite. And there is just not a
17 lot of law on what is a kitchen. We do have this
18 old New York case where a fellow was cooking
19 frankfurters out of a truck. And it was whether he
20 was subject to regulation. And essentially what the
21 court said, without any sort of any much ado, is a
22 kitchen is a place where you prepare food.

23 We believe that the placement of the dorm
24 refrigerator -- I think -- it's conflicting. And I
25 have not seen the record here, but I think that they

1 had a toaster oven. I know that they had a hot
2 plate. They washed dishes in the sink. Or the ones
3 that they don't do in the sink, they carry out in
4 the backyard or outside and rinse off with a garden
5 hose.

6 We believe that without any other
7 definition of kitchen, that this -- that they are
8 preparing food in the unit. I know that Mr. Wall I
9 think testified that they reheated oatmeal or they
10 ate oatmeal up there, they kept some food there.
11 They did say that they kept some food in the
12 refrigerator in the main place, and that they would
13 notify guests if they needed to come down and get
14 it.

15 They also said that they prepared food
16 down there, but that is not the key. The key is
17 that they have a second facility where they are
18 preparing food. And that was their testimony as I
19 understand. Now, again I haven't seen the record.
20 I've only seen deposition -- parts of depositions.

21 But it was my understanding that when you
22 look at sort of this holistically, they have an area
23 where they are preparing food. And we believe that
24 that means that it's not a kitchen-less guest suite.

25 At one time they were doing sort of the

1 classic B&B where Ms. Wall would prepare food for
2 the guests. And they did agree to stop doing that.
3 And it's our understanding that that -- we have no
4 evidence that there is anything other than -- that
5 she has. Anything other than that she has stopped.

6 And the last thing, you made a finding
7 that this would not detrimentally impact the
8 character of the neighborhood and, in fact -- the
9 fact that the owners would be on premises would add
10 to the security and lack of it becoming a nuisance
11 to the neighborhood.

12 But, Judge, your order is going to affect
13 quite a bit in this gated community. It is going to
14 essentially change the character. You know, it's
15 our fear that these restrictions were put in place
16 to prevent the kind of thing that is going on here.

17 There is no question that folks can rent
18 the entire structure. I mean, that was
19 contemplated. I think everyone stipulated that --
20 to that. I think a lot of folks buy property down
21 here as second homes so that they can have a place
22 to go vacation. And, of course, it makes no sense
23 for it not to be used otherwise. And so folks do
24 rent the entire structures of their home.

25 But when folks buy in to the Sea Pines

1 area, when they buy into this area they think if you
2 look at this -- if you look at how 5 and 6 are
3 drafted, they believe they are buying into a
4 community where no one can conduct a business of a
5 B&B. They can't have multi-family dwellings. And
6 it's going to be single-family structures.

7 And that is sort of the sum and substance
8 of our arguments, Judge. I'll answer any question
9 that you may have.

10 JUDGE DUKES: All right. Maybe I can
11 hear the other side and then maybe ask a few
12 questions if that would be all right.

13 MR. NICHOLS: Okay. Thank you.

14 JUDGE DUKES: Mr. Spitz?

15 MR. SPITZ: This will surprise you,
16 Your Honor, but I am brand new in this case and I
17 defer everything to trial counsel at the moment.

18 JUDGE DUKES: Mr. Laughlin?

19 MR. LAUGHLIN: You notice he says at
20 the moment. Your Honor, we -- Paragraph 7 of their
21 motion to alter or amend has a statement of what we
22 have always understood their position to be with
23 respect to the covenants. And it says,
24 single-family detached dwellings at Sea Pines
25 Plantation subject to the Class A Covenants may be

1 leased short-term by their owners. When such rental
2 occurs the entire single-family dwelling must be
3 rented, not a part or portion alone.

4 That restriction is simply not there. It
5 is not in the covenants. They are seeking to
6 enforce a restriction that simply does not exist.
7 And, you know, I don't think we take much issue with
8 the statement that, you know, as was made in Spruce
9 versus Winston which is the case that they cite in
10 their motion where it says, you know, yes, you know,
11 the rule is strict construction. And any doubts
12 resolved in favor of the free use of the property or
13 the use of the property free of the restriction that
14 is being argued to exist.

15 And then it says, the rule however obtains
16 only where the parties have failed to express their
17 meaning with sufficient clarity to enable the court
18 to say that its construction is plain and admits of
19 no doubt. The rule will not be applied to defeat
20 the obvious purpose of the restriction nor does it
21 require an unnatural or strained construction of the
22 words used.

23 And before giving effect to the rule the
24 court will have recourse to every aid, rule, or
25 cannon of construction. We don't quibble with that

1 as a statement of law, but in fact there is nothing
2 in these covenants that can be read anyway other
3 than the way the court read them originally.

4 You know, there is one statement in there
5 and one statement only. And that says that you can
6 have a guest suite, but you can't rent the guest
7 suite independent of the whole thing.

8 They want to expand that and say if you
9 want to rent your home or any part of your home you
10 have to rent the whole thing. And you can't remain
11 on the premises while you do it. It would have been
12 easy for the covenants to say that. They don't.

13 And there was frankly not a shred of
14 evidence offered about what the intent of the
15 drafters in 1970 was when they drafted this. So you
16 have to take it from the language. And the language
17 here does not admit to only the reading that they
18 want.

19 And the Spruce case is very illustrative
20 of it. You know, the issue there was, you know, you
21 had a subdivision that allowed for detached garages
22 only on the back quarter of a lot. The lot in
23 question was a corner lot. And the issue was does a
24 corner lot have a back and therefore a back quarter.

25 And the lower court said, no, it doesn't

1 have a back. It has sides only. And therefore they
2 can put the garage wherever they want. And the guy
3 put his garage forward of the neighbor's house way
4 outside of what would be the obvious back quadrant.

5 And they looked at it and they said, well,
6 even the description of his lot says it fronts on
7 this road. And, you know, they didn't really have
8 to go much further. That was a definitional issue.
9 It wasn't an attempt to create or expand a
10 restriction, which is what they are trying to do
11 here.

12 So, you know, we think the court got it
13 right the first time. Now, if we are going to apply
14 the federal construction of Rule 59, all the federal
15 court opinions that I've seen about Rule 59 construe
16 it very narrowly and say quite plainly that it is
17 not intended to give folks another shot at making
18 the same arguments hoping for a different result.

19 So, you know, there just isn't any clear
20 evidence that the only way you can read this is the
21 way they want to read it. And absent either clear
22 language or clear evidence that that is the only way
23 you can read it, then the court has to, as it did,
24 resolve the case in favor of the absence of the
25 restriction, particularly in this case where it

1 would have been so easy for them to say what they
2 now say it should say.

3 You know, Sea Pines is a community of
4 multi-uses. It's got single-family. It's got
5 multi-family which are defined. And it's got
6 commercial and it's got all kinds of things, but,
7 you know, the best evidence of what was contemplated
8 by the parties is the plain language of what they
9 wrote in 1970.

10 The Ellison letter, you know, the
11 statement was -- the argument was that my clients
12 take the property with the Ellison letter as a back
13 drop. Well, they didn't even know about the Ellison
14 letter. And frankly, you know, I don't know what
15 the A.R.B. meant in the letter they wrote or in
16 terms of how they interpreted covenants.

17 One can doubt whether an A.R.B., which is
18 concerned with esthetic issues, should be concerned
19 at all about how something that is constructed in
20 compliance with the covenant will be used, but it
21 simply wasn't relevant about what -- what one person
22 thought or was concerned about or, you know,
23 whatever that may have been is simply not relevant
24 to whether that restriction actually existed.

25 And certainly my clients can't be bound by

1 some statement that Mr. Ellison may have made that
2 they had nothing -- no knowledge of and which is not
3 part of any recorded document anywhere, much less a
4 restrictive covenant.

5 And I think it's significant that
6 Mr. Martin, the C.S.A.'s president, testified, and I
7 think correctly so, that this is not a case about
8 improvements that are not in compliance. You know,
9 the home, all of the improvements that are
10 constructed on the property are in compliance with
11 the requirements of the covenants. There is no
12 doubt about that. There was no controversy or
13 dispute about that.

14 So what we are talking about is simply --
15 is solely the way that the property is being used.
16 So, you know, I don't -- there wasn't, I don't
17 think, any real testimony about detrimental impact
18 of any of this. There was not one person in the
19 neighborhood who -- there was no evidence that any
20 of the neighbors complained. There was no witness
21 produced from the neighborhood that said there is
22 anything different going on there about, you know,
23 what should be going on there.

24 And, in fact, the testimony of Mr. Martin
25 was that there was nothing there that was

1 overburdening the site or creating that kind of an
2 issue. So, you know, they may fear a detrimental
3 impact, but there is no evidence that there would be
4 a detrimental impact of anything that my clients are
5 doing.

6 The idea of a kitchen or not I think is a
7 red herring, you know. If you have two fully
8 functional kitchens then you can argue that
9 something is not a single-family dwelling, it's a
10 multi-family dwelling. You know, I don't really
11 know what the Sea Pines covenants say. I know in
12 Spanish Wells where I live if you have a separate
13 detached structure on your single-family lot, you
14 can't put a fully functional kitchen in there
15 because then it becomes basically a separate
16 dwelling. That is not what we have here.

17 Again, the 1981 letter, I mean there was
18 no evidence that my clients knew about it. They
19 can't be bound by something that they didn't know
20 about, they had no actual knowledge of, that is not
21 of record. It simply is not relevant to this
22 inquiry and certainly is not rise to the level of a
23 restriction or anything like that.

24 I think that is basically it, Your Honor.
25 I mean, you know, the restriction is simply not

1 there. The covenant doesn't say what they would
2 like the court to interpret it as saying.

3 MR. NICHOLS: Judge, may I respond to
4 one thing?

5 JUDGE DUKES: Yeah, you can -- no
6 problem. Go ahead.

7 MR. NICHOLS: I would take issue with
8 the characterization of Federal -- how Federal
9 courts have construed Rule? 59. And I would just
10 point you to the case I cited earlier, Elam versus
11 the South Carolina Department of Transportation in
12 which our Supreme Court was discussing how to point
13 up -- how to construe Rule 59.

14 And if you don't mind my reading a little
15 bit to it, you know, they ultimately come down to
16 saying that the Federal circuits, even though the
17 word reconsideration doesn't appear anywhere in
18 Rule 59, they read the word reconsideration in. And
19 they essentially say that Rule 59 allows you a
20 second bite of the apple as to any ruling. Any
21 ruling.

22 It's not required. It's only required if
23 a judge fails to rule on an issue that was presented
24 or rules on an issue sua sponte and you want to
25 challenge it under the Pelican Builders versus

1 Dutton case or makes some sort of mistake that could
2 be fixed by a Rule 59 like a mathematical mistake or
3 sort of a factual mistake, but what the Supreme
4 Court said in Elam v. the Highway Department, and
5 that is at 361 S.C. 9, and I'm sorry, I don't have
6 the parallel cite because of the way West Law is
7 done here, but they essentially said the
8 commentators explain that the approach taken in
9 today's rulings allow a Motion to Réconsideration
10 which addresses the merits of the case at hand
11 originated at common law. And they cite the Wright
12 Miller and Cane and Moore Federal Practice.

13 And they go through several other reasons
14 why they adopted this broader view Rule of 59. And
15 essentially hold that -- it said the Federal Courts
16 consider it appropriate for a party to make a Motion
17 for Reconsideration under Rule 59(e) even though the
18 rule mentions only a Motion to Alter or Amend the
19 Judgment. This view holds true even when a party
20 mislabels the post-trial motion.

21 The wisdom of giving District Courts the
22 opportunity promptly to correct their own alleged
23 errors is all the justification needed for the
24 practice of freely allowing motions for
25 reconsideration.

1 So our court adopted the broadest view of
2 Rule 59 in Elam v. the Highway Department. And that
3 was back in -- I'm trying to get back to the top so
4 I can see the date again. That was in 2004. And
5 the parallel cite is 602 SE 2d 772.

6 So if you would like to ask a judge in any
7 ruling, you can ask for a second bite of the apple
8 as to any ruling under Elam. And that was -- prior
9 to Elam that was a matter that was up in the air.
10 And where this came was in the context of the Coward
11 Hun, Collins versus I.G.T. where people were making
12 successive Rule 59 motions.

13 And the Supreme Court essentially viewed
14 Rule 203 of the Appellate Court rules as saying a
15 timely motion under Rule 59 stays the time for
16 appeal, but if you make a successive motion you
17 better be challenging something new that appeared in
18 the order ruling on Rule 59 or that second motion is
19 not considered a timely motion and your time to
20 appeal is not being stayed.

21 And that is what caught the parties
22 Collins. And that is what caught the parties in
23 Cowart Hun. And that is what caught the parties in
24 Elam. So -- but what they were saying in Elam was
25 you can make a motion to reconsider as to any ruling

1 as to the merits. You can ask a judge to
2 reconsider. And that is what we are doing here
3 today, although we do also believe that we've
4 pointed up some things that we think we would like
5 for you to consider them that we feel you might have
6 overlooked.

7 I would also say that if I said that I
8 thought that the laws were bound by the 1981
9 letter -- I don't think that is what I said, but if
10 I said that I will agree that I don't believe that
11 is in their record title. I don't believe they had
12 any duty to go searching for that kind of thing
13 unless it was available to the public.

14 But I think what I said was that it was
15 that relevancy was a low bar. And what the Supreme
16 Court has explained is that you don't just look at
17 the words of the covenant in a vacuum, but as the
18 cases that we've cited, particularly the Taylor
19 case, you have to look at the facts and
20 circumstances. And that letter of 1981 is one of
21 those facts and circumstances that explain the
22 intent of the covenants here. But if I did say
23 that, I misspoke. I want to clear the record there.

24 I don't believe the Walls were bound by
25 the 1981 letter. So --

1 JUDGE DUKES: It was not a
2 restriction running with the land or anything like
3 that?

4 MR. NICHOLS: No, sir.

5 JUDGE DUKES: I think everyone agrees
6 to that, I think.

7 MR. NICHOLS: Yeah. I don't believe
8 that letter was ever recorded or intended or viewed
9 to be as a restriction that ran with the land, but
10 it certainly explains the purpose -- it's one of the
11 circumstances that explains the purpose of these
12 covenants and the Architectural Review Board's
13 concern that -- back to Mr. Ellison that as to
14 where, you know, you may be building this for a
15 playroom for your kids and to have another bathroom
16 in the building especially since you are not going
17 to have a direct access to the rest of the building.
18 It's going to be off on its own. And we are
19 concerned with what folks in the future might do.

20 And Mr. Ellison writing back, I guess not
21 contemplating that he would sell the property or
22 that -- you know, he certainly wasn't thinking
23 about, I don't think, as he was being honest in his
24 letter I don't think he was thinking that we would
25 be sitting here today debating this situation, but,

1 again,, if I said that the Walls were bound by that,
2 there is no evidence that they even knew that. I
3 will agree with that.

4 JUDGE DUKES: Other than -- and, of
5 course, I guess this is part of the -- the
6 '81 letter is part of what your -- where you are
7 getting the obvious -- quote obvious intent, but I
8 mean where the -- in the record is the obvious
9 intent that this wasn't supposed to happen this way?

10 MR. NICHOLS: Well, we would point to
11 the -- first to the language of the restrictions
12 themselves which talk in terms -- and, again, you
13 look at the plain words but you also have to kind of
14 look at what do they mean? And the plain words of
15 the language say you are not supposed to conduct a
16 business. Well, why would you do that? Because
17 what you are trying to do is make sure that this is
18 a single-family dwelling which is what it said in
19 Paragraph 5?

20 And then in Paragraph 6 you can have a
21 guest suite. Well, this certainly isn't a guest
22 suite if the owners are staying there. So we say
23 that it's not a guest suite. And like facility
24 without a kitchen. And, again, the whole point of
25 saying it's a guest suite, somewhere where someone

1 can go sleep and then come back down and share in
2 the kitchen and the main place is to say we -- the
3 only reason you would say that would be to prevent
4 multiple renters or multiple occupancy of the
5 building or rental of less than the entire. It may
6 be included as part of the main building, but such
7 suite may not be rented and leased. And certainly
8 they are not renting or leasing such suite.

9 First off, we say it's not a guest suite
10 if they are staying there because they are not
11 guests in their own home. But if you look at the
12 intent of that, the intent of that is to prevent you
13 from living in the main place and not having a
14 little apartment that you are renting.

15 And again, why? Because you don't want to
16 have multiple occupancy of the building at one time
17 which is what is going on here. That is what I'm
18 saying. I realize it doesn't say you can't rent the
19 whole building and occupy -- it doesn't say that
20 expressly, but that is the intent of the very
21 language.

22 But even so, and again I wasn't at trial,
23 but it's my understanding that Mr. Raben offered
24 evidence as to what the intent -- what the intent
25 was. He was the original administrator of the

1 Architectural Review Board. This is a gated
2 community. Folks buy in here thinking that they are
3 getting single-family detached dwellings. And that
4 is not what the Walls are -- how they are using
5 their home.

6 JUDGE DUKES: But, I mean, they buy
7 in -- I think what was -- I don't know if it was
8 stipulated, but I think what is agreed is that Sea
9 Pines is a resort community where it is quite common
10 to rent practically everything in there. I mean,
11 that's -- I don't know if that was part of the
12 record. I'm sure it was part of the discussion.
13 Certainly it's not prohibited. I don't know if it's
14 even considered a business. It's just the way
15 things are in Sea Pines. So I don't know if the
16 rental of property -- as a matter of fact I'm sure
17 we had this discussion at trial which is probably
18 somewhere on the record, but I don't think Plaintiff
19 considered, at least from the argument as I
20 understand it, the rental of property to be a
21 business because that is just the normal course of
22 things at Sea Pines.

23 MR. NICHOLS: That's correct, judge.
24 There was a stipulation that -- as I understand it
25 there was a stipulation that short-term rentals are

1 common in Sea Pines. And the restrictions
2 themselves contemplate rental, but of the entire
3 structure.

4 So I agree with you, I don't think that
5 the prohibition on a business activity was intended
6 to prevent rental because rental was contemplated by
7 the very restrictions, but of the entire structure,
8 but advertising on a B&B website and conducting a
9 B&B is certainly a business.

10 And while Ms. Wall has said that she has
11 stopped cooking for the guests and that she is no
12 longer -- you know, she will check on them, I think
13 that is the deposition testimony. I can't imagine
14 that she testified differently at trial. You can
15 put silk on it, but it still what it is. And what
16 it is is they are conducting a business of a bed and
17 breakfast at this facility.

18 Now they are not cooking -- they say they
19 are not cooking for the guests anymore, but
20 essentially the owner is on-site is one of the
21 features that they advertise on Airbnb. And so we
22 also are concerned, Judge, and frankly I don't think
23 this comes as a surprise, and it was on the record,
24 and it's expressed in the 1981 exchange with Mr.
25 Ellison, they are concerned about -- and I don't

1 want to make a slippery slope argument because I
2 don't like slippery slope arguments, but you are
3 certainly concerned about what the next person might
4 attempt to do under this construction that allows
5 multi-occupancy at a single-family detached
6 dwelling.

7 JUDGE DUKES: And I think we might
8 have discuss this had briefly at the trial, but
9 let's assume for the moment that a cook and
10 housekeeper lived in this suite upstairs. And you
11 rented the house with a cook and housekeeper. Would
12 that be prohibited?

13 MR. NICHOLS: I don't think it would
14 necessarily be prohibited. And I don't want to kind
15 of bind myself too much, but they would then be a
16 guest in a guest suite as long as they didn't have a
17 refrigerator, a hot plate, and an oven and washing
18 dishes in the sink or outside.

19 I mean, the Walls are using this suite as
20 a detached apartment. That is the use. Now, if you
21 had on-premise cook and housekeeper who were
22 preparing their meals in that suite, it would be --
23 our position would be it would be prohibited because
24 then now what you've got is multi -- you've got a
25 multi-use. And, in fact, I'm going to go back and

1 say I believe that would be prohibited if you rented
2 this thing with a housekeeper and a cook living in
3 there you would have multi-family occupancy of the
4 dwelling or you would have multiple occupancy of the
5 dwelling. And I do believe that that would be
6 prohibited. I've just talked myself into that.

7 JUDGE DUKES: So if Sea Pines, under
8 the Plaintiff's interpretation of these covenants
9 you couldn't rent a house that had on-site staff?

10 MR. NICHOLS: I don't believe you
11 can, Judge. And I believe that if you do offer and
12 advertise that you will rent a house with on-site
13 staff, you will change the character of Sea Pines.

14 JUDGE DUKES: Okay. Anything else?
15 We have a little time if anyone else has anything.

16 MR. LAUGHLIN: I don't think so, Your
17 Honor. You know, as far as the concept of
18 multi-occupancy, I mean, you know Mr. Martin and I
19 discussed at some length various scenarios of
20 multi-occupancy. And it became very clear very
21 quickly that many of them are things that I think
22 folks in Sea Pines would be quite surprised if
23 somebody suggested they couldn't do, you know.

24 I lived in Sea Pines when, you know, in
25 the days when I had roommates, you know. They

1 weren't part of my family. They occupied a separate
2 bedroom in the house. You know, so you can spin out
3 all kinds of real world or hypothetical conditions
4 regarding the use of a home by folks that are not
5 part of the same family.

6 And that is the problem here, you know
7 because the restriction that they argue is something
8 that would have been very, very easy to state. And
9 did not -- and would not have required prescient
10 knowledge of new developments to come up with. And
11 it just isn't there.

12 JUDGE DUKES: Give Mr. Nichols the
13 last word if he wants it.

14 MR. NICHOLS: Judge, we just stand on
15 the arguments we've made. I don't think there is
16 anything else to argue.

17 JUDGE DUKES: All right. Well, I'll
18 read all of this and take a look at it. Do you have
19 your hand up or just --

20 MR. SPITZ: No. No. No.

21 JUDGE DUKES: Okay. All right. And
22 I'll take a look at it at trial and let you all know
23 something as quickly as possible.

24 MR. BORDEN: Thank you, Judge.

25 MR. LAUGHLIN: Thank you, Judge.

1 JUDGE DUKES: So that will conclude
2 the record.

3 (Whereupon, the hearing was concluded
4 at 9:40 a.m.)
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2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT

6 COMMUNITY SERVICES
7 ASSOCIATES, INC.,

8 Plaintiff,

9
10 vs.

CIVIL ACTION NUMBER
2014-CP-07-2438

11
12
13 STEPHEN H. WALL and MARIA P.
14 SNYDER WALL,

15 Defendants.
16 -----/

COPY

17 The deposition of STEPHEN H. WALL, a
18 witness in the above-entitled cause, taken
19 pursuant to Notice and agreement, before Cathy
20 M. Knoettner, Certified Court Reporter and
21 Notary Public, at the Law Offices of Jones,
22 Simpson & Newton, P.A., 18 Pope Avenue, Hilton
23 Head Island, South Carolina, on the 10th day of
24 March, 2015, commencing at or about the hour of
25 10:20 a.m.

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1
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19 ALSO PRESENT:

20 Maria P. Snyder Wall

21
22
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I N D E X

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DOCUMENTARY EVIDENCE

	NUMBER	DESCRIPTION	PAGE
1			
2			
3			
4	PX-1	Class A Covenants, April 1, 1970	18
5	PX-2	Two colored photographs	20
6	PX-3	Two colored photographs	20
7	PX-4	Two colored photographs	20
8	PX-5	One colored photograph	20
9	PX-6	Letter to Walt from Tuzy and Steve Wall, dated 10-15-13	27
10	PX-7	Handwritten diagram	30
11	PX-8	Document entitled List Your Space	36
12	PX-9	Document entitled Hilton Head Organic B&B, Sea Pines, with attachments	48
13			
14	PX-10	Document entitled Hilton Head Organic B&B, Sea Pines, with attachments	49
15			
16	PX-11	Listing for 48 Planters Wood Drive	50
17			
18	PX-12	Letter to Stephen H. Wall and Maria P. Snyder Wall from F. Ward Borden, dated 6-20-14	55
19			
20	PX-13	Letter to F. Ward Borden from Drew A. Laughlin, dated 7-18-14	55
21	PX-14	Letter to Drew A. Laughlin from F. Ward Borden, dated 8-8-14	55
22			
23	PX-15	Letter to Drew A. Laughlin from F. Ward Borden, dated 2-6-15	55
24	PX-16	Letter to Stephen H. Wall from Ken Rabon, dated 11-13-14, with attachments	59
25			

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2

STEPHEN H. WALL,

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having been produced and first duly sworn as a
witness, testified as follows:

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5

MR. BORDEN: As a preliminary

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matter, we subpoenaed the witness here,

7

as well as including with that

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subpoena, a subpoena duces tecum to

9

which oral objection, at least, was

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made to me by counsel for the witness.

11

However, through some discussion it

12

was, I think, agreed that we wouldn't

13

get into a formal court proceeding and

14

fight over the documents requested in

15

the subpoena but that we would instead

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just look at what you had in as a

17

straightforward manner as possible.

18

MR. LAUGHLIN: I think that's

19

fair. We do object to the document

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subpoena to the extent that it attempts

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to -- or that it requests documents

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that were not previously requested in

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the Rule 34 request. That said we have

24

attempted to gather up what we have for

25

the most part. We haven't tried to go

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2 back seven years in some cases, but we
3 have tried to gather what we have that
4 would give you a reasonable picture of
5 what we have currently for the last
6 couple of years at least.

7 MR. BORDEN: Okay. May I take a
8 look at those documents?

9 MR. LAUGHLIN: You may. I brought
10 some things that they had previously
11 given -- that Mr. and Mrs. Wall had
12 previously given to me and they
13 include, looks like, seven pictures of
14 various parts of the property primarily
15 focusing on the space that they occupy
16 when the home is being occupied by
17 guests both inside and out. There's a
18 2014 1099 from Airbnb. There is a
19 spreadsheet identifying individual
20 guests and the amounts paid by each for
21 2013 and 2014, which I had printed out,
22 and I don't know whether they've been
23 squashed, but in any case it will give
24 you, I think, the names, dates and
25 amounts paid by guests in 2013 and

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2014.

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MR. BORDEN: Okay.

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MRS. WALL: Not this. This was
ours.

MR. LAUGHLIN: No, the one of the
addition.

MRS. WALL: Right, right.

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MR. LAUGHLIN: There are various materials that are distributed by folks advertising things on Hilton Head they brought with them. There are receipts for some services on the property for some purchases of appliances or furnishings which may not necessarily have been purchased, acquired because of guests but were acquired for the home. And you can look through all of this stuff if you like.

MR. BORDEN: Okay.

MR. LAUGHLIN: I do not have copies of these so to the extent I can either -- you can copy them or I can copy them later and give them to you, the copies, or whatever you want to do, but I will need those originals back.

MR. BORDEN: Okay, that's fine.

MR. LAUGHLIN: The things that I gave you that I had before, I don't need copies of. I've got them.

MR. BORDEN: That's fine. I think we have some photos. There are some

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 things here that I think I would like
3 to have in the deposition record but
4 not necessarily all of that.

5 MR. LAUGHLIN: Those things you
6 have in your hand are copies that I
7 made for you.

8 MR. BORDEN: Okay, thank you. And
9 we'll get some copies of some copies
10 made.

11 MR. LAUGHLIN: Things that they
12 brought with them I do not have copies
13 of yet.

14 MR. BORDEN: Okay. Well, we'll
15 put these in at an appropriate time.

16 DIRECT EXAMINATION

17 BY MR. BORDEN:

18 Q Mr. Wall, my name is Ward Borden. I'm
19 an attorney working for Community Services
20 Associates, Inc. in this litigation. I've
21 asked you to come here today, along with your
22 wife, in order that we can get some information,
23 some further information about a conflict
24 between yourselves and CSA right now. I'm not
25 the judge so I'm not passing judgment on

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1 BORDEN - S. WALL (DIRECT EXAMINATION)
2 anybody. I am simply wanting to get some
3 further information than what we'd already
4 gathered. I wanted to let you know as
5 preliminaries that you're free to take a break,
6 use the restroom, get something to drink.
7 Please just try to give me -- let me know if
8 that's coming. I'd rather not be in the middle
9 of a question where somebody is all like this
10 and then I've got go to the bathroom, that kind
11 of thing. If you're confused about any question
12 that I ask, please just say so and I'll be happy
13 to try to clarify what I've asked. When you
14 answer questions, please do so audibly rather
15 than than the tendency, which is for all of us,
16 to get into nodding one's head, and so forth, a
17 few minutes after it starts, as the court
18 reporter often can't take down accurately facial
19 expressions or gestures or that sort of thing.
20 Please do not consult or speak with your
21 attorney about the deposition and subjects
22 covered in it while the deposition is convened
23 during a break or what have you. That
24 limitation is part of the Circuit Court's rules
25 of procedure, so that's not a limit that I'm

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 just cooking up for you. And with that I'd like
3 to begin.

4 Would you please -- I know you've been
5 sworn in, but would you please again state for
6 the record your name, your full name.

7 A Stephen H. Wall.

8 Q And, Mr. Wall, do you have any medical
9 condition or are you taking any medication that
10 would impair your ability to understand my
11 questions and answer them truthfully?

12 A No.

13 Q Have you ever been deposed before?

14 A Not to my knowledge.

15 Q Have you ever been in a lawsuit as a
16 party before?

17 A No.

18 Q Did you inform anyone other than your
19 attorney that you would be getting deposed
20 today?

21 A No, I didn't.

22 Q Did you discuss this deposition with
23 anyone other than your attorney before now?

24 A My wife.

25 Q Have you ever been arrested and

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 detained?

3 A Yes.

4 Q Could you please describe the
5 circumstances about how it came about and where
6 it occurred, how it concluded.

7 A The memory is I can't recall. It's so
8 long ago.

9 Q Do you know what part of the country
10 you were in?

11 A Michigan.

12 Q Okay. Were you convicted of a crime?

13 A No.

14 Q Okay. Do you know if your -- again,
15 I'm just trying to jog your memory here. Do you
16 know if your detention lasted longer than 30
17 days?

18 A One day.

19 Q Okay. Have you ever been convicted of
20 a crime other than a basic traffic violation
21 which resulted in no physical injury?

22 A No.

23 Q Would you please tell me your date of
24 birth.

25 A January 10, 1949.

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 Q And your place of birth?

3 A Elgin, Illinois.

4 Q This is somewhat general to different
5 people, but where did you grow up and go to
6 school?

7 A Most of my education is in Michigan.

8 Q Like as far as like I'm talking about
9 grade school, middle school high school, those
10 sorts of things.

11 A Michigan.

12 Q Okay. Any particular town?

13 A Plymouth, Jackson, East Lansing, Mount
14 Pleasant.

15 Q What is the extent of your schooling;
16 in other words, what is the highest degree that
17 you attained while attending school?

18 A Associate in arts.

19 Q Where from?

20 A Jackson Community College.

21 Q And do you hold any professional
22 licenses for either this state or other states
23 or federal?

24 A Certified surgical tech.

25 Q Okay. Where are you certified?

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 A South Carolina.

3 Q For how long? When was that obtained?

4 A I don't recall.

5 Q Just very briefly, what did you have to
6 do or need to do to obtain certification as a
7 surgical technician?

8 A A year in school at Beaufort -- or
9 Technical College of the Lowcountry.

10 Q Okay. Do they make you take a test or
11 anything like that --

12 A Correct.

13 Q -- to actually --

14 A Yeah.

15 Q Okay. Where do you presently reside?

16 A 48 Planters Wood Drive, Hilton Head
17 Island, South Carolina.

18 Q Have you ever personally built a home
19 or participated in the building of a home?

20 A Yes.

21 Q When was that?

22 A I don't recall. It's been a long time.

23 Q Do you know what the venue was?

24 A I'm not sure I know what you mean.

25 Q If you built a house, where did you do

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 it?

3 A Hilton Head Island.

4 Q I'm going to come back to that. I'd
5 like to go back to your growing up and your
6 personal background. How many people do you
7 have in what you would consider to be your
8 immediate family?

9 A Are you referring to growing up as a
10 young boy?

11 Q Well, I'm thinking of least that
12 portion of the family as you sit here today, you
13 know, with whom you are familiar, with whom you
14 may visit, who may visit you, children,
15 grandchildren.

16 A Two siblings.

17 Q Okay. And do you have any children or
18 grandchildren?

19 A Five children.

20 Q Okay. And then your wife by marriage?

21 A Ex-wife. No children.

22 Q Is Ms. Snyder Wall your wife or your
23 ex-wife?

24 A Current wife.

25 Q How many times have you been married?

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- 1 BORDEN - S. WALL (DIRECT EXAMINATION)
- 2 A Twice. Three times.
- 3 Q Okay. You regard Maria Snyder Wall as
- 4 your family also; correct?
- 5 A Correct.
- 6 Q Okay. Does she have children or
- 7 grandchildren that you embrace as family?
- 8 A Correct.
- 9 Q Could you describe that for me?
- 10 A She has a son and a daughter.
- 11 Q Okay. Do you have a job right now at
- 12 this time?
- 13 A Yes.
- 14 Q What is it?
- 15 A Harbour Town Yacht Club, food and
- 16 beverage.
- 17 Q What is your position in that
- 18 employment?
- 19 A Kitchen, wait staff, bartending.
- 20 Q Who's the employer?
- 21 A Harbour Town Yacht Club.
- 22 Q How long have you been employed there?
- 23 A I'm on an as-needed basis. I'm been
- 24 called on for about eight years maybe, nine
- 25 years; I'm not sure.

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 Q Okay. Did you have work previous to
3 that here in Hilton Head Island?

4 A Yes.

5 Q What was that work?

6 A I've done home healthcare, maintenance
7 and painting.

8 Q Those were sort of, while they were
9 certainly important, different odd jobs. Did
10 that precede you're kind of heading into the
11 food and beverage, or is it all kind of combined
12 where you're dividing your time between some of
13 the different things?

14 A Those are different jobs, different --

15 Q At different periods of time?

16 A Yes.

17 Q Okay. Do you have or have you had any
18 involvement in the designing or building of
19 improvements at 48 Planters Wood Drive?

20 A No.

21 Q How long have you resided there?

22 A 1998.

23 Q Where did you reside previously?

24 A The Spa at Port Royal.

25 Q Were you an owner there?

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 A Yes.

3 Q Is that a condominium?

4 A Yes.

5 Q So at The Spa, is it a gated community?

6 A Yes.

7 Q And they have master deed and bylaws

8 that one has to adhere to there; correct?

9 A Yes.

10 Q And they charge assessments?

11 A Correct.

12 Q And they also, as I understand in their
13 master deed -- in their master deed, at least,
14 have restrictions on one's usage of the common
15 elements of the condominium; is that fair to
16 say?

17 A I can't remember.

18 Q Okay. How long were you there?

19 A I can't remember. A couple years,
20 maybe.

21 Q Okay. Before we get off that, I have
22 an example for you. What I was driving at with
23 restrictions in the master deed, an example,
24 again to maybe jog your memory, would be I would
25 expect there would be a prohibition on unit

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2 owners planting things in the common area, in
3 the common elements, like bushes, flowers, et
4 cetera. Do you remember anything like that?

5 A I don't.

6 Q Okay. Do you recall where you lived
7 before then?

8 A No, quite frankly, I don't.

9 Q Do you recall, other than Sea Pines,
10 having resided in a location where there were
11 detached single-family homes?

12 A No.

13 Q Okay. Have you ever been involved in a
14 property owners association as an officer or
15 director?

16 A No.

17 Q Have you ever participated in an
18 official board or committee at Sea Pines
19 Plantation?

20 A Could you repeat that again.

21 Q Have you ever participated in an
22 official board or committee at Sea Pines
23 Plantation?

24 A No, sir.

25 (Whereupon, Plaintiff's Exhibit

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2 Number 1 was marked for
3 identification.)

4 BY MR. BORDEN:

5 Q I have a document that I'd like to show
6 you; it has been labeled Plaintiff's Exhibit 1.
7 And what you might find easier is I know that
8 you have -- I made an additional copy of my
9 planned exhibits for your attorney, and as I
10 hand you Exhibit -- which begins with the one
11 you just pointed at, I would suggest that you
12 hand those to him because what will end up
13 happening is you'll end up with a stack in front
14 of you and you'll end up with two copies of the
15 same thing, one labeled and one not. Can you
16 identify this document?

17 A Yes.

18 Q What is it?

19 A It's Class A Covenants for Sea Pines
20 Plantation Company.

21 Q Okay. Have you ever read through it?

22 A Yes, yes, I have, sir.

23 Q Do you know if there are any amendments
24 to it that affect 48 Planters Wood Drive in any
25 particular way?

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2 A No.

3 Q Okay. I've got some photos that are
4 not as good as yours but which I'd like to show
5 you, and I'm labeling them 2, 3, 4 and 5.

6 (Whereupon, Plaintiff's Exhibits
7 Numbers 2 - 5 were marked for
8 identification.)

9 BY MR. BORDEN:

10 Q And several of these pages have two
11 photographs, one photocopied above another, and
12 in those instances I'm going to refer in each
13 case the top photo as being A or -- such as
14 Plaintiff's 2-A, or B for the bottom photo,
15 which would then be referred to as Plaintiff's
16 2-B for purposes of our addressing them. I'm
17 handing you 2-A and 2-B. Can you identify the
18 top photo for me?

19 A Mailbox.

20 Q Whose mailbox is it?

21 A 48.

22 Q Do you recognize the street it is on?

23 A Well, it doesn't say, but it just says
24 48 and it's a mailbox.

25 Q Is it in front of your house?

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2 A We have a mailbox that says 48 in front
3 of it.

4 Q Okay. So that's the number -- okay, 48
5 is the address of your house?

6 A 48.

7 Q Is it possible that that is your
8 mailbox --

9 A Yes.

10 Q -- based upon its appearance?

11 A (Nods head in the affirmative.)

12 Q Going to B, the second photo, can you
13 identify what is in that photo?

14 A That is a picture of my house.

15 Q All right, you can keep that for the
16 time being. And then I'm showing you
17 Plaintiff's Exhibit 3 now, which again is two
18 photos on one page. Can you identify the top
19 photo, what it is?

20 A It is a picture of my house.

21 Q Okay. And does it show all of your
22 house?

23 A Well, most of the carport. North side
24 of the house is not visible.

25 Q Okay. Looking at the photo is a photo

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2 from the vantage point of the street looking at
3 the front of the house; is that correct?

4 A Correct.

5 Q And the carport would be to the left or
6 the right as one looks at the front of the
7 house?

8 A The carport would be to the left.

9 Q Okay, and again that's photo 3-A. Can
10 you identify what photo 3-B is?

11 A That's a picture of my house.

12 Q And does it reveal more of the carport?

13 A Yes, sir.

14 Q There appears to be just to the right,
15 a little bit to the right of the carport a
16 wreath. Is that the front door of your house?

17 A Well, you've got one door on the front
18 door. The other one appears to be blocked by
19 the tree.

20 Q So there are dual doors?

21 A Correct.

22 Q Okay. I'm going to show you a
23 photograph labeled Plaintiff's 4. It's also got
24 two photographs and I'm going to ask you if you
25 can identify A.

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2 A That is my house.

3 Q Okay. Now, on A you have trees in your
4 yard. Do you have water behind the house? Is
5 there a lagoon or anything behind the house?

6 A Yes, sir.

7 Q Okay. Now, that photo A, it doesn't
8 encompass the entire house. What portion of the
9 house is that a picture of; in other words,
10 what's basically there?

11 A We'll, you've captured the back half of
12 the carport. You've captured the rest of the
13 north side of the house.

14 Q Okay. And is there anything on the
15 north side of the house in the way of sliding
16 glass doors or patio or porch?

17 A Well, there is a little courtyard, yes.

18 Q And is that surrounded by, more or
19 less, of what I call a board-on-board fence?

20 A No.

21 Q It is not?

22 A I'm sorry, you said surrounded?

23 Q Yes.

24 A It's not.

25 Q And let's go to B on that page; can you

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2 describe that?

3 A That is my house.

4 Q And does that take into account the
5 full length of the front of the house?

6 A Yes, sir.

7 Q This last one you've got much better
8 photos of it than I do, but this is labeled
9 Plaintiff's 5, and I was going to ask can you
10 identify it?

11 A That is the south portion of the house,
12 of my house.

13 Q Okay. Now, I have not shown you any
14 photographs of the rear of your home as it would
15 have entailed either me obtaining access or
16 trespass potentially, so that's why we have the
17 vantage point that we have. Having gotten at
18 least a fair view through the Exhibits 2 through
19 5, how many standalone buildings are on the lot
20 which is 48 Planters Wood Drive?

21 A Could you rephrase that?

22 Q Well, sure. How many standalone
23 buildings are on or at 48 Planters Wood Drive?

24 A One.

25 Q Okay. All of the heated and cooled

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2 living space for the residence at 48 Planters

3 Wood Drive is under one roof; correct?

4 A No.

5 Q It's not under one roof?

6 A No.

7 Q How many roofs are there?

8 A There's one roof.

9 Q Okay. Now, I'm not saying -- are you
10 saying that there are areas that are under the
11 roof that are not heated and cooled?

12 A I guess you have to rephrase that. I
13 misunderstood you.

14 Q Well, ordinarily, for example, one
15 might look at a garage on a house and a garage
16 not be heated, as an example, and houses when
17 looking at them in those terms are looked upon
18 as the heated and cooled living space versus
19 perhaps some other square footage that is not --

20 A Okay.

21 Q -- and my question was, is all of the
22 heated and cooled living space at 48 Planters
23 Wood Drive under the one roof?

24 A Yes, yes.

25 Q Is the mailbox that we photographed the

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2 only mailbox for -- do you only have one mailbox
3 at 48 Planters Wood Drive?

4 A Yes, sir.

5 Q Are you and your spouse the only ones
6 that receive mail in the mailbox at 48 Planters
7 Wood Drive?

8 A Yes, sir.

9 Q Okay. Going back to -- if you'll look
10 at the photographs that I handed you, I'd like
11 you to flip to Number 4 and look at B. Now,
12 that photograph, I believe, you identified as
13 encompassing the full length of the house. I'd
14 like you to take this pen, if you would, and
15 draw a couple of arrows for me. I'd like you to
16 point an arrow -- just write across the picture,
17 if you want, point an arrow to the part of the
18 house where the kitchen is located.

19 A (Complies.)

20 Q Okay. And the master bedroom?

21 A (Complies.)

22 Q And where you started the line in the
23 margin, would you mind saying master bedroom and
24 kitchen so that that I know which arrow goes to
25 which.

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2 A (Complies.)

3 Q Okay. And I have one more for you, the
4 dining room, dining area, your principal dining
5 room.

6 A (Complies.)

7 Q That's all I have on that part. As an
8 associate graduate in art, my compliments.

9 I'm going to show you a document that
10 we're going to label Exhibit 6 and ask if you
11 can identify it.

12 (Whereupon, Plaintiff's Exhibit
13 Number 6 was marked for
14 identification.)

15 THE WITNESS: Well, this appears
16 to be a letter. I'm not sure who Walt
17 is. I can't identify it. I have not
18 seen it before.

19 BY MR. BORDEN:

20 Q Do you know who wrote it?

21 A Well, it says Tuzy. My wife wrote it.

22 Q Okay. Well, she included your name on
23 it as well.

24 A It looks like it.

25 Q Okay, that's fine. I'm going to read

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2 you a quote from it and it is in front of you,
3 and I'm not trying to -- the letter itself is
4 about a page and a quarter single-space-long;
5 correct?

6 A Correct.

7 Q For purposes of time I'm going to read
8 a portion of that letter. It says, quote, "a
9 separate office/studio upstairs (no kitchen as
10 per covenants) where we can retreat to. There
11 is nothing in the covenants that disallows this,
12 only that this separate space cannot be rented
13 by itself", closed quote. Do you know what that
14 refers to?

15 A That refers to the upstairs addition.

16 Q Okay. And that is an addition; it was
17 it was not part of the original house?

18 A Correct.

19 Q I'm going to refer to this area for
20 purposes of my questions throughout as the
21 closed-off area. The area that you referenced
22 as an addition and which I referenced as the
23 closed-off area is describing a portion of 48
24 Planters Wood Drive that is accessible -- the
25 house, part of the house that is accessible only

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2 by exterior stairwell; is that correct?

3 A Yes, sir.

4 Q Do you know about how many square feet
5 is in that space that we just referenced?

6 A No, sir, I don't.

7 Q Is there a full bath in that area?

8 A Yes, sir.

9 Q Which means there are bathing
10 facilities, as well as toiletry facilities?

11 A Yes, sir.

12 Q Okay. Is the space divided into
13 different sections? Are there any partitions --

14 A No sir.

15 Q -- or any things of that nature?

16 Okay. I'm going to give you a piece of
17 paper and ask that you do something for me. I'm
18 going to ask you to exercise your art skills
19 again. And I'm handing you a pen and what I'm
20 asking is could you, just to the best of my
21 ability on your recollection, sketch a floor
22 plan of the closed-off room, which would include
23 the bath facilities, the whole thing, whatever
24 is in there.

25 A (Complies.)

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2 Q Okay. I'm going to ask you to do one
3 more thing. What I see is an outer border with
4 several boxes or circles drawn. Could you
5 please label what is a room, what is a closet,
6 what is a bathroom on that.

7 A (Complies.)

8 Q Thank you very much.

9 A Uh-huh (affirmative).

10 Q Let me ask you to do one last thing;
11 that is, if there are any principal pieces of
12 furniture, I'd like you to put the location
13 where they are on that drawing; in other words,
14 if it's a sofa or an armchair or the master bed
15 or the bed, just what's in that room you've
16 drawn, those rooms that you've drawn.

17 A (Complies.)

18 Q Again, thank you. So you have a
19 refrigerator in that space. How big a
20 refrigerator? Is it a standard size?

21 A No, small.

22 Q Okay. Well, I appreciate it. I'm
23 going to take this document and label it
24 Plaintiff's 7.

25 (Whereupon, Plaintiff's Exhibit

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2 Number 7 was marked for
3 identification.)

4 BY MR. BORDEN:

5 Q Now, looking at this Plaintiff's 7,
6 you've labeled an area main area and then there
7 is a -- where you wrote main area, there is the
8 greatest amount of open space, and then at the
9 end of that open space there's two lines. Do
10 they signify a doorway?

11 A Yes.

12 Q Would you note that.

13 A (Complies.)

14 Q And that doorway is from the exterior
15 stairwell; is that correct?

16 A Correct.

17 Q Okay. Is there any way possible for
18 anyone to reach this space from anything but the
19 door to the stairwell to enter the remainder of
20 your house at 48 Planters Wood Drive?

21 A No, sir.

22 Q A cubbyhole, a shelf, a sliding drawer
23 that goes through the wall, anything whatever of
24 that nature?

25 A No, sir.

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2 Q Okay. So when one is in here, one is
3 closed off from the remainder of the house?

4 A Yes, sir.

5 Q Do you have a television in the
6 closed-off area?

7 A No, sir.

8 Q Do you have a cable connection in the
9 closed-off area?

10 A No, sir.

11 Q Do you have any cooking apparatus in
12 the closed-off area?

13 A Yes, sir.

14 Q What sort of cooking apparatus?

15 A A small induction -- I'm not sure what
16 you call it. It's just an induction plate.

17 Q And do you use the induction plate to
18 prepare food for yourself or anyone else?

19 A Occasionally for ourself.

20 Q When you say "ourself", do you mean you
21 and your wife?

22 A Correct.

23 Q Do you and your wife keep all of your
24 clothes in the closed-off area?

25 A No, sir.

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2 Q Do you and your spouse keep food in the
3 closed-off area?

4 A Some.

5 Q Is the closed-off area serviced by a
6 separate HVAC source or separate water source?

7 A Separate HVAC.

8 Q What sorts of -- let me ask you this:
9 If you wanted to have cereal and milk on a given
10 day when you had tenants in the house, paying
11 tenants, would that require you to go down the
12 outside stairs and into the house for something
13 like that?

14 A No, sir.

15 Q Why is that; why would you not have to
16 go outside the house, as I described, and go
17 down the outside stairwell?

18 A Because we'd have it up in our
19 possession upstairs.

20 Q Okay. What sorts of meals do you
21 prepare there?

22 A Cereals, we eat cereal, drink juice,
23 eat fruit. We eat a lot of fruit, salad.

24 Q How about the convection plate, what do
25 you use that for?

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2 A Well, we don't use it a lot, but we
3 make oatmeal.

4 Q What's the most, let's say, complicated
5 or extravagant thing you've ever fixed up there
6 with the equipment you have up there?

7 A Oatmeal.

8 Q If you wished to communicate with
9 vacationers occupying the part of your house
10 that is not closed off, do you have to go
11 outside and down the stairwell to gain access to
12 them to do so?

13 A Text, we generally text.

14 Q Okay. Do you watch television in any
15 part of your -- do you have any televisions in
16 your house?

17 A No, sir. One.

18 Q Do you watch television in any part of
19 your house?

20 A No, sir.

21 Q Do you cook in the kitchen at your
22 house at 48 Planters Wood Drive?

23 A Occasionally.

24 Q Where do you do your laundry?

25 A Downstairs.

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2 Q When you say "downstairs", that would
3 be a part of the non-closed-off part of the
4 house?

5 A Correct.

6 Q And your dishes?

7 A Minimal. We wash them upstairs.

8 Q How many of those occupying for rent 48
9 Planters Wood Drive have stayed in the
10 closed-off area?

11 A No one.

12 Q Is there a separate key for the
13 closed-off area different from the remainder of
14 the house?

15 A Yes.

16 Q Okay. When you have rented 48 Planters
17 Wood Drive, short-term rental, you've done that
18 through the Airbnb website; is that correct?

19 A Yes, sir.

20 Q And if I go to it and and hit list your
21 space, it would come up with questions to be
22 filled in; correct, options?

23 A I'm not totally familiar with how it
24 works. That's not something --

25 Q Let me show you this document that I am

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2 labeling Exhibit 8 and ask if you've seen
3 anything like that before whether printed out or
4 online.

5 A I have not. I have not.

6 (Whereupon, Plaintiff's Exhibit
7 Number 8 was marked for
8 identification.)

9 BY MR. BORDEN:

10 Q If you have not seen that, then it
11 would follow that you have never filled one of
12 those out; is that correct?

13 A Correct.

14 Q Airbnb has terms of service. Do you or
15 your wife have a hard copy or documents stored
16 on your computers or iPads or similar devices
17 the terms of service?

18 A I'm not sure. I don't know.

19 Q Okay. How do you and your wife
20 personally keep track of who is coming and when
21 and with how many people in there?

22 A You'd have to defer to Tuzy on that.

23 Q Okay. You do not participate in that
24 part of things at all?

25 A No, sir.

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2 Q Bear with me one moment (brief pause).

3 The documents that have been prepared in
4 response qualifiedly to the subpoena duces tecum
5 that was served upon each of the witnesses, are
6 there copies of any e-mails between Airbnb and
7 the defendants or vice versa?

8 MR. LAUGHLIN: You're asking me?

9 I don't believe I've seen any, but
10 you'd have to ask either Mrs. Wall or
11 Mr. Wall.

12 THE WITNESS: I'm not sure.

13 Again, that's not --

14 BY MR. BORDEN:

15 Q Well, let me ask you this. On your
16 computer, does there exist e-mail exchanges,
17 communications between you or your wife and
18 Airbnb?

19 A I'd have to say yes, yes.

20 Q Okay. Do you know if any of those were
21 brought today under the definition of documents?

22 A I don't know.

23 Q Okay. Do you have on your computer
24 e-mail communications or exchanges between
25 yourself, or you or your wife, and customer

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2 clients?

3 A Again, you'd have to defer -- that's
4 not an area that I participate in.

5 Q Okay. Do you have e-mail
6 communications with prospective customer
7 clients?

8 A Again, you'd have to defer to her.

9 Q In connection with Airbnb and the
10 enterprise that y'all are undertaking through
11 that group, how long do you keep your e-mails?

12 A Again, you'd have to...

13 Q Could you complete your -- just for the
14 record, could you complete your answer on that?

15 A I don't know and you would have to
16 defer to Tuzy on those.

17 Q Okay. Have any of the communications
18 that I've described with respect to Airbnb or
19 customer clients ever been deleted?

20 A I don't know and check with Tuzy on
21 that.

22 Q Were any of them deleted after CSA
23 filed suit in this case?

24 A Again, I don't know and refer to Tuzy
25 on those.

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2 Q Okay. Is anyone renting -- anyone
3 other than yourselves occupying 48 Planters Wood
4 Drive presently?

5 A Yes.

6 Q Where did you have dinner last night?

7 A I worked last night so I didn't eat
8 dinner.

9 Q Okay. Where did you work?

10 A Harbour Town Yacht Club.

11 Q Okay. Where did you have breakfast
12 yesterday?

13 A 48 Planters Wood Drive.

14 Q Whereabouts in that house?

15 A Upstairs.

16 Q In the closed-off room?

17 A Correct.

18 Q Okay. Did you use the heating device?

19 A No, sir.

20 Q Okay. Where did you have lunch
21 Tuesday?

22 A Tuesday?

23 Q This past Tuesday; do you recall?

24 A No, I don't, sir.

25 Q Was the first floor of your house at 48

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2 Planters Wood Drive rented on any of the days
3 when you had meals on the first floor?

4 A I'm not sure I understand.

5 Q Let me see if I can explain. The first
6 floor would not be considered part of the
7 closed-off area?

8 A Correct.

9 Q Okay. So if the first floor was rented
10 to a paying renter or renters group, for any of
11 the days when the first floor was rented did you
12 have meals on the first floor?

13 A I can't remember, no.

14 Q Ever having done so?

15 A No, no. It's been awhile lately but,
16 yes, we have. In terms of if you're asking me
17 if we have ever eaten downstairs when somebody
18 has been renting the place --

19 Q Right.

20 A -- I'd say yes. It's been too long ago
21 to remember any time soon, lately.

22 Q Any time recently?

23 A Uh-huh (affirmative).

24 Q Okay. Do you keep food in the
25 refrigerator down on the first floor?

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- 1 BORDEN - S. WALL (DIRECT EXAMINATION)
- 2 A We have some condiments.
- 3 Q And that's your stuff; is that correct?
- 4 A Well, we share it. Anybody is welcome
- 5 to it.
- 6 Q I think we've been through TV. Do you
- 7 watch any TV?
- 8 A No, sir.
- 9 Q Okay. You have one TV and it is in the
- 10 non-closed-off area; correct?
- 11 A Correct.
- 12 Q Where do you access the Internet?
- 13 A Upstairs.
- 14 Q So there is an Internet access to the
- 15 closed-off room; is that correct?
- 16 A Correct.
- 17 Q Do you have a desktop computer?
- 18 A Yes, sir.
- 19 Q And where do you keep it?
- 20 A On the worktable.
- 21 Q Is that in the closed-off area?
- 22 A Correct.
- 23 Q Do you ever eat meals with your guests,
- 24 with your paying guests?
- 25 A We have.

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2 Q Have you done that recently?

3 A No, sir.

4 Q Do you know when the last time was that
5 you did?

6 A No, sir, I can't remember.

7 Q When you have renters, how much of your
8 day do you spend in the closed-off area?

9 A I'd have to say as little as possible.

10 Q Could you distill that into hours?

11 A For myself, not including sleeping
12 hours --

13 Q Well, I was excluding sleeping. I was
14 just saying during an ordinary day.

15 A Perhaps three.

16 Q How about same situation, same renters,
17 how much of that day would you spend downstairs
18 out of the closed-off room on the first floor?

19 A Virtually none.

20 Q Do you ever sleep downstairs on the
21 first floor of 48 Planters Wood Drive when there
22 are renters?

23 A No, sir.

24 Q Is it fair to say that you sleep, eat,
25 cook and bathe in the closed-off area when

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2 you -- excuse me, strike that.

3 Where do you sleep, eat, cook and bathe
4 when you do not have renters?

5 A Upstairs.

6 Q Is that in the closed-off area?

7 A In the closed-off area.

8 Q Does that apply to you and your spouse?

9 A Correct.

10 Q Do you have a dishwasher?

11 A Downstairs.

12 Q Do you use it?

13 A No, sir.

14 Q I mean, at any time?

15 A No, sir.

16 Q Even if there are no renters?

17 A I guess you'd have to say we have used
18 it to start it, but we don't use it to use it.

19 We don't accumulate dishes downstairs.

20 Q Okay. Do you have a cleaning person or
21 a maid?

22 A No, sir.

23 Q Who cleans up after the short-term
24 renters leave?

25 A My wife and I.

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2 Q Do you have a landline telephone?

3 A No, sir.

4 Q Do your renters contact you when you're
5 staying at your home while they are in the home?

6 A Occasionally.

7 Q Is that usually -- or can that be
8 identified as -- is it does strictly utilitarian
9 or is it social? Looking at the Airbnb
10 material, it would lead one to think that
11 there's interaction between renters and those
12 from whom they're renting?

13 MR. LAUGHLIN: Object to the form.

14 MR. BORDEN: You could still
15 answer the question.

16 THE WITNESS: When direction is
17 sought, a place to eat, where to go to
18 get this, they will text us or call us
19 to say where do you do this or that.

20 BY MR. BORDEN:

21 Q Okay. And is that generally the extent
22 of your interactions?

23 A Correct.

24 Q What is provided -- and I'll go down
25 the line. If I were to be a short-term renter

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2 at 48 Planters Wood Drive, what services could I
3 expect?

4 A I'm not sure I understand services.

5 Q Well, when I come in, will I be
6 provided with linens and towels?

7 A Yes, sir.

8 Q When I come in, will I be permitted to
9 use your washer and dryer?

10 A Yes, sir.

11 Q Do you provide soap for the washing
12 machine?

13 A Yes, sir.

14 Q You have a TV, you indicated.

15 A Yes, sir.

16 Q Would that be available to them?

17 A Yes, sir.

18 Q Do you have an Internet for me, as a
19 renter, to make use of if I were to rent 48
20 Planters Wood Drive?

21 A Yes, sir.

22 Q Would it be downstairs or would I have
23 to come up --

24 A No, downstairs.

25 Q Okay. Do you know how one -- the

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2 Internet that you have downstairs, do you know
3 how one accesses it? Do you furnish them a
4 password to enable them to get on or --

5 A That's correct, sir.

6 Q Okay. If I were staying as a renter
7 and put on -- and I like to cook, and I cooked a
8 bunch, and I dirtied a bunch and used your
9 dishwasher; who would empty it out? Does
10 anybody take care of that, or am I on my own on
11 that?

12 A You're on your own on that, sir.

13 Q Okay. How, if at all, do you
14 differentiate your food from your renter's food
15 that is kept in the refrigerator-freezer
16 downstairs?

17 MR. LAUGHLIN: Object to the form.

18 THE WITNESS: We don't have food
19 downstairs, just condiments.

20 BY MR. BORDEN:

21 Q Okay. Your Airbnb listing says,
22 Staying here is more like visiting good friends
23 with great benefits. What are the great
24 benefits?

25 A I'm not sure. That was said by

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2 somebody else. If they had a good time, so be
3 it, but I'm not sure what they were referring
4 to.

5 Q Okay. Do renters leave food when they
6 end their stays?

7 A Occasionally.

8 Q What do you do with it?

9 A Generally we discard it.

10 Q Do you have any kind of recycling
11 container?

12 A Yes, sir.

13 Q And who handles that?

14 A I do.

15 Q Okay. And who removes trash during the
16 period of a stay of a renter?

17 A I do.

18 Q Does your renter have the ability to
19 control the heating and cooling of the
20 first-floor living area at 48 Planters Wood
21 Drive?

22 A Yes, sir.

23 Q Okay. Can your renter use the
24 fireplace at 48 Planters Wood Drive?

25 A Yes, sir.

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2 Q Is it wood or gas?

3 A Wood.

4 Q And do you supply the wood?

5 A No, sir.

6 Q They would have to go out and get it?

7 A Correct.

8 Q Who cleans out the fireplace during the
9 stay of a renter?

10 A Well, I would I would.

11 Q I'd like to show you a couple quick
12 documents.

13 (Whereupon, Plaintiff's Exhibit
14 Number 9 was marked for
15 identification.)

16 BY MR. BORDEN:

17 Q I'm going to show you a document
18 labeled 9. Can you identify it?

19 A This is the dining area of our home,
20 part of the kitchen.

21 Q Okay. And that's a printout from an
22 Airbnb -- is that something that you facilitate
23 at Airbnb to post for you?

24 A I'm not sure. You'd have to check with
25 my wife on that.

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2 Q Okay. And I'm going to flip to page
3 three of six of that document, and there's a
4 list in the center of the page beginning with
5 room type, bed type, accommodates. Did you or
6 your wife provide that information to Airbnb to
7 be reproduced.

8 A Again, you'd have to check with my
9 wife.

10 (Whereupon, Plaintiff's Exhibit
11 Number 10 was marked for
12 identification.)

13 BY MR. BORDEN:

14 Q All right. Number 10, can you identify
15 this, please.

16 A I can identify that picture. This I
17 don't know.

18 Q That information purports to be Hilton
19 Head Organic B & B, Sea Pines with a photograph
20 of you and your wife in the lower right-hand
21 corner. In the middle of the page there are a
22 number of items that one might identify in an
23 accommodation.

24 A I see, yes.

25 Q They're set off by checkmarks. Do you

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2 know if anyone furnished -- the information that
3 is listed on Exhibit 10, whether that
4 information was furnished to Airbnb by you or
5 your wife?

6 A I didn't furnish this, so.

7 Q Okay. Do you know if your wife did?

8 A You would have to check with her on
9 that.

10 (Whereupon, Plaintiff's Exhibit
11 Number 11 was marked for
12 identification.)

13 BY MR. BORDEN:

14 Q All right. I have a document here,
15 it's two pages, that's Plaintiff's Exhibit 11.
16 I'm just going to ask if you have ever seen that
17 before.

18 A I have not.

19 Q In the bottom left-hand corner of that
20 document, it says description; is that correct?

21 A Correct.

22 Q And it says four beds -- or it says
23 beds: 4, baths: 3, square feet: 2,942; is
24 that correct?

25 A The four-bedroom, three-bath is an

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2 accumulation, I'm assuming, of the entire house
3 lumped together under one roof in which there is
4 four bedrooms and three baths. The square
5 footage, every time someone comes in and
6 measures it, it's different, so.

7 Q Okay. It characterizes in the second
8 sentence of a small description, "three bedrooms
9 down, first floor master bedroom, bedroom (or
10 office, mother-in-law suite, or rental) with
11 separate entrance and full bath". Is it your
12 understanding that -- do you have any
13 understanding as to what part of 48 Planters
14 Wood Drive is being referenced as an office,
15 mother-in-law suite or rental?

16 A Not according to this, I don't. It's
17 not directing it to anywhere except first-floor
18 master bedroom.

19 Q Have you ever discussed listing this
20 with Mr. Rick Saba who is listed as the agent?

21 A Well, we have listed it with him
22 before.

23 Q Have you ever -- does he ever show you
24 his descriptions that he's using for marketing
25 your house?

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2 A I haven't seen those, no.

3 Q Okay. Do you have any opinion as to
4 whether under the Class A covenants the
5 closed-off space for which you have a separate
6 key could be rented while the downstairs is
7 occupied by the owner?

8 A Not according to the covenants, you
9 can't rent that upstairs.

10 Q Okay. But you can live upstairs and
11 rent the downstairs?

12 A The covenants just says you can't rent
13 the upstairs.

14 Q Okay. Going back, I'd like to refer
15 you back to Number 6, and that is the letter
16 written to Walter Nester -- or Walt, excuse me,
17 written to Walt, and it is stated -- again, it's
18 a substantial letter so to save some time, part
19 of it says, "One guest party has the choice of
20 renting one or two rooms depending on their
21 needs. We limit the number of people in this
22 party to four people." And then there's some
23 wording which we've skipped over and then picked
24 up with, "No wild party throwers or heavy
25 drinkers or overcrowding of the property",

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2 closed quote. Does that sound consistent with
3 your rental practices for 48 Planters Wood
4 Drive?

5 A Well, again, that's something I'm going
6 to defer to my wife because I, quite frankly,
7 don't recall this letter, and I don't know who
8 Walter Nester is.

9 Q Okay. Well, I've asked you about your
10 family, and something else I'd like to know is
11 I'd like to know a little bit about the
12 demographics about those that are renters from
13 you through Airbnb. Do any families or parts of
14 families stay at 48 Planters Wood Drive as
15 paying renters?

16 A No --

17 Q I'm identifying a family as a husband
18 and wife, a father and a couple of children, a
19 grandfather, grandmother and a couple of their
20 grandkids; in other words, people related by
21 marriage or by blood that bear that relationship
22 as opposed to two people dating or, you know,
23 singles. In other words, I'm asking just as a
24 demographic, do you get families in there or --

25 A Yes.

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2 Q Have you in the past?

3 A Oh yes.

4 Q And does that that still occur?

5 A Yes.

6 Q Okay. Do you permit children of a
7 particular age?

8 A There is an age limit. I'm going to
9 defer to my wife on that because she sets the
10 boundaries and guidelines.

11 Q Okay. Must they be accompanied by a
12 parent?

13 A Oh, of course.

14 Q Okay. Do you provide what -- I seemed
15 to have read somewhere concierge services when a
16 family is there?

17 A Well, we supply brochures and
18 information or are available if they have a
19 question.

20 Q Is there any limitation on the duration
21 of time which a family who wishes to rent at 48
22 Planters Wood Drive may rent?

23 A No. Can they stay as long as they
24 want; is that what you're saying?

25 Q Well, obviously --

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2 A I think there's limits and you'd have
3 to check with my wife on that.

4 Q Well, obviously provided they're
5 paying.

6 A Correct. But I think there is limits.
7 I'm not familiar with that. Best defer to her
8 on those.

9 Q Okay. I've got documents that I'm
10 going to label Plaintiff's 12, 13, 14 and 15.
11 (Whereupon, Plaintiff's Exhibits
12 Numbers 12 - 15 were marked for
13 identification.)

14 BY MR. BORDEN:

15 Q This is a series of letters and they're
16 in chronological order, and I'd ask that you
17 please take a look at them and tell me if you
18 can identify them.

19 A (Examines documents.) I can identify
20 them.

21 Q You have seen them?

22 A Yes, sir.

23 Q Okay. Exhibit 12 is a letter dated
24 June 20, 2014 to you and to Maria P. Snyder
25 Wall; is that correct?

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2 A Correct.

3 Q And you received this letter; correct?

4 A Correct.

5 Q And citing to Sections 5 and 6 of the
6 Class A land use restrictions, you are, quote,
7 "given notice" on behalf of CSA that your
8 referenced acts violate the Class A Covenants,
9 and those referenced acts are your renting the
10 48 Planters Wood Drive house; is that correct?

11 A That's correct.

12 Q And how did you and your spouse respond
13 to that notice?

14 A With question.

15 Q Did you direct questions to the author
16 of the letter or to someone at CSA, or who?

17 A We talked to ourselves questioning
18 whether we were in violation of the covenants.

19 Q Okay. Let's go to 13. Thirteen is a
20 letter dated July 18, 2014, addressed to me at
21 this law office. It says, The covenants -- to
22 paraphrase, The covenants do not prohibit owners
23 from remaining in their home while it is
24 occupied by renters or guests. How did this
25 letter come into being, to your knowledge,

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2 because obviously it's signed by the attorney
3 who's defending your deposition today, Mr.
4 Laughlin?

5 A Well, this came into being after our
6 study of the covenants and we saw no violation
7 of what we were doing.

8 Q Thank you. And now as to Number 14,
9 it's a letter addressed to Mr. Laughlin from
10 myself in which -- if you would, for the record,
11 would you read the last sentence of the letter?

12 A Let's see, If the Walls do not cease
13 the activities complained of and provide us
14 written notice of same within ten days of the
15 date of this letter, we shall pursue judicial
16 remedies for the violation of Class A land use
17 covenants and applicable laws of the Town of
18 Hilton Head Island.

19 Q Okay. So is it fair to say -- well,
20 let me put it this way; I don't want to know
21 what your discussions with Mr. Laughlin are, but
22 you indicated that you could identify these
23 documents when I handed them to you. This
24 August 8th letter, which is Plaintiff's Exhibit
25 14, you've seen it before now; is that correct?

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2 A Yes, yes.

3 Q Did you see it -- do you recall seeing
4 it before CSA commenced its lawsuit?

5 A I can't recall that.

6 Q Okay. And I have an exhibit that's
7 Exhibit 15 in which, to summarize, it's a
8 cease-and-desist letter citing to the language
9 used by Mr. Saba in Exhibit 11, citing to the
10 characterization of there being an office,
11 mother-in-law suite or rental. You had seen
12 this letter?

13 A Yes, sir.

14 Q Did you do anything to respond to this
15 letter or in response to the letter?

16 A I'm not sure I understand what --

17 Q Did you contact Rick Saba?

18 A Not to my knowledge.

19 Q Did you ask him to not refer to there
20 being -- not using wording that could lead to --
21 did you ask him to not use wording that could
22 lead to, or infer, or imply a rental unit in the
23 closed-off area?

24 A No. I'm trying to remember when we had
25 them represent us, and it's been awhile. So he

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2 doesn't represent us anymore and, quite frankly,
3 I'm surprised it went there because he's a Sea
4 Pines resident, as well, and has a copy of the
5 same covenants that we have that says you can't
6 rent such a unit. So I have no answer for how
7 that came into being.

8 Q And because Mr. -- I take it that at
9 this time, Mr. Saba was no longer your real
10 estate agent?

11 A Correct.

12 Q Okay. When I say "this time", I mean
13 at the time of the cease-and-desist letter that
14 I just referenced --

15 A Correct.

16 Q -- Exhibit 15.

17 Have you ever examined your ARB file
18 maintained by the architectural review board?

19 A I haven't.

20 Q And you indicated earlier you purchased
21 your house in 1988; is that correct?

22 A No, sir, 1998.

23 Q 1998, okay.

24 (Whereupon, Plaintiff's Exhibit

25 Number 16 was marked for

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2 identification.)

3 BY MR. BORDEN:

4 Q Okay. I'd like you to look at -- this
5 document is a stapled-together document, Exhibit
6 16, that has multiple pages. The first page
7 bears the legend of ARB of Sea Pines Plantation,
8 just for the record. I'd like for you to take a
9 look at the fifth and sixth pages, which each
10 are individual letters, and then let me ask you
11 a couple of questions about them.

12 A (Examines documents.) All right, sir.

13 Q At the time that these letters were
14 generated in 1981, the architectural review
15 board expressed concern, did it not, that the
16 installation of an outside stairwell, as you now
17 have, would result in someone trying to do what
18 you're doing --

19 MR. LAUGHLIN: Object to the form.

20 BY MR. BORDEN:

21 Q -- which is to have a two-family setup?

22 MR. LAUGHLIN: Object to the form.

23 BY MR. BORDEN:

24 Q If you could just read the first
25 paragraph of the January 20, 1981 letter into

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2 the record. That's this page of that exhibit.

3 A "In reply to your application dated
4 January 16, 1981, and plans submitted therewith,
5 the architectural review board is very concerned
6 with an outside stairway since at some further
7 date it could cause an owner to consider the use
8 for a two-family setup."

9 Q Okay. Then an appeal is made by -- I'm
10 going to a letter of February 11, 1981, and an
11 appeal in the form of a letter is being made to
12 the author of the letter you just read from.
13 And would you read the last paragraph of that
14 letter.

15 A "This room will be used solely as a
16 playroom for our two sons, ages 9 and 11. The
17 house has only two bathrooms; therefore, the
18 third bathroom is desirable. I believe that the
19 architectural review board should have
20 confidence in the restrictive covenants that
21 absolutely prohibit a house to be used for more
22 than one family; therefore, I respectfully
23 request that you consider and approve the plans
24 as submitted."

25 Q Okay, sir. And if you'd flip just to

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2 the page ahead of that, could you read the first
3 paragraph, which is Sea Pines Plantation
4 Company --

5 MR. BORDEN: May we stop for one
6 second, please, and go off the record.

7 MR. LAUGHLIN: Yes.

8 (Whereupon, a short break
9 ensued.)

10 BY MR. BORDEN:

11 Q Okay. I had gone back and simply asked
12 that you read for the record page four of what
13 I've handed you that represented as being
14 contents of your home's ARB file. Could you
15 please read the first paragraph; the document is
16 dated 2/18/81, Sea Pines Plantation Company.

17 A "The architectural review board has
18 received and reviewed your final plans,
19 application and stake-out for the subject
20 project. This approval is limited to design
21 criteria by the architectural review board as
22 provided by the restrictive covenants and should
23 not be interpreted as approval of any variation
24 from restrictions or conditions imposed on the
25 property owner by contract or other provisions

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2 of the recorded restrictions, unless so noted
3 herein. The owner is responsible for being
4 within the restrictive covenants. No changes in
5 the exterior appearance, materials or colors are
6 to be made until prior approval has been secured
7 by you from the architectural review board."

8 Q That's as far as you need to go on
9 that. In light of the communications that were
10 occurring around the time of the construction of
11 48 Planters Wood Drive, doesn't it appear to you
12 that there was a concern over two families
13 occupying space at 48 Planters Wood Drive at the
14 same time?

15 MR. LAUGHLIN: Object to the form.

16 THE WITNESS: I have no idea. I
17 just have no knowledge of that.

18 BY MR. BORDEN:

19 Q Okay. Well, let me step back a second
20 and say that's what we've got, isn't it, two
21 families occupying the same 48 Planters Wood
22 Drive home?

23 A Well, that's the contention of Sea
24 Pines, CSA, maybe. I have no idea except that
25 according to the covenants, restrictions that

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1 BORDEN - S. WALL (DIRECT EXAMINATION)
2 were given to us, we're okay. Five and six was
3 what the questions were about, and I don't see
4 we're violating any of those restrictions.

5 Q I understand. I understand. You had
6 indicated and testified earlier that you and
7 your spouse constitute what in normal terms
8 would constitute a family; you may have other
9 family members but you're a family. You reside
10 at 48 Planters Wood Drive; correct?

11 A Correct.

12 Q You and your spouse?

13 A Correct.

14 Q You rent for periods of time, varied
15 periods of time a portion of 48 Planters Wood
16 Drive to other families; correct?

17 A Correct.

18 Q And unless you're traveling -- and
19 you've indicated you're not always traveling, I
20 think; if you're not traveling, then you've got
21 two families occupying that house at one time,
22 whether it be for a week or a month or 12
23 months, I mean, and the covenants expressly
24 reject that --

25 MR. LAUGHLIN: Object to the form.

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1 BORDEN - S. WALL (DIRECT EXAMINATION)

2 BY MR. BORDEN:

3 Q -- do they not?

4 MR. LAUGHLIN: Object to the form.

5 THE WITNESS: Again, I see no
6 violation in what we're doing according
7 to five and six that we've been shown.

8 MR. BORDEN: I don't have any
9 further questions at this time.

10 MR. LAUGHLIN: I have no questions
11 for Mr. Wall.

12 (Whereupon, the witness
13 expressly waived the right to
14 read and sign the deposition
15 transcript.)

16 (Whereupon, the deposition of
17 Stephen H. Wall was concluded at
18 approximately 12:40 p.m.)

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COMMUNITY SERVICES
ASSOCIATES, INC.,

Plaintiff,

vs.

CIVIL ACTION NUMBER
2014-CP-07-2438

STEPHEN H. WALL and MARIA P.
SNYDER WALL,

Defendants.

COPY

-----/

The deposition of MARIA P. SNYDER WALL,
a witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Cathy
M. Knoettner, Certified Court Reporter and
Notary Public, at the Law Offices of Jones,
Simpson & Newton, P.A., 18 Pope Avenue, Hilton
Head Island, South Carolina, on the 10th day of
March, 2015, commencing at or about the hour of
12:50 p.m.

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1
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19 ALSO PRESENT:

20 Stephen H. Wall

21 - - -

22 I N D E X

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D O C U M E N T A R Y E V I D E N C E

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REPORTER'S NOTE: EXHIBITS MARKED IN THE
DEPOSITION OF STEPHEN H. WALL WERE ALSO
REFERENCED IN THIS DEPOSITION AND NUMBERING
REMAINED SEQUENTIAL.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 MARIA PATRICIA WALL,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BORDEN:

7 Q Mrs. Wall, you were present when I took
8 your husband's deposition a few moments ago; is
9 that correct?

10 A Correct.

11 Q And did you during that time hear me at
12 the beginning of his deposition read some rules
13 to you that you were free -- that the witness is
14 free to take a break and to ask a question or to
15 clarify if you don't understand a question and
16 so forth; did you hear all that?

17 A I did but I don't recall all of it.

18 Q Well, let me go through it then just
19 very quickly. You're free to take a break, use
20 the restroom, get something to drink, please
21 just let me know. I don't think that we'll run
22 too long. If you're confused about a question I
23 ask, please say so and I'll be happy to try to
24 clarify what I've asked. When you answer
25 questions, please do so audibly rather than by

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1 BORDEN - M. WALL (CROSS-EXAMINATION)
2 nodding your head or making a gesture. Every
3 now and then I elicit a gesture and as the court
4 reporter needs to take down your actual oral
5 answer to questions. Please do not consult or
6 speak with your attorney about the deposition
7 and the subjects covered in it while the
8 deposition is convened, including during any
9 breaks we may take. That limitation is part of
10 the Circuit Court's rules of procedure. That is
11 a little introductory set of rules.

12 Would you please state your full name
13 for the record.

14 A Maria Patricia Wall.

15 Q Ms. Wall, do you have any medical
16 condition or are you taking any medication that
17 would impair your ability to understand my
18 questions and answer them truthfully?

19 A Not to my knowledge.

20 Q Okay. Have you ever been deposed
21 before?

22 A No.

23 Q Did you inform anyone other than your
24 attorney and your husband -- other than your
25 attorney that you would be getting deposed

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 today?

3 A No, I did not?

4 Q Did you discuss this deposition with
5 anyone other than your attorney before now?

6 A Other than my husband and my attorney;
7 those were the only two.

8 Q Have you ever been sued before?

9 A No, sir.

10 Q Have you ever been arrested and
11 detained?

12 A No, sir.

13 Q Have you ever been convicted of a crime
14 other than a basic traffic violation which
15 resulted in no injury to anyone?

16 A No, sir.

17 Q Could I please have your date of birth?

18 A November 5, 1950.

19 Q And your place of birth?

20 A It would be in Pennsylvania.

21 Q Do you know what town?

22 A I knew you were going to ask that. I
23 don't remember what the birth certificate says.
24 It could be -- I don't remember what the birth
25 certificate says.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Well, stepping outside the birth
3 certificate, I mean, do you have an idea of what
4 town you were born in?

5 A I can tell you where I went to school
6 and, you know, as a child where my parents
7 lived.

8 Q That's fine?

9 A Hollidaysburg, Pennsylvania is where my
10 parents lived and where I went to school as a
11 child. That's part, only a little bit.

12 Q Okay. And how far along did you go in
13 your schooling, in your education?

14 A I graduated with a Bachelor of Arts.

15 Q From where?

16 A It would be the Women's College of the
17 University of Virginia.

18 Q And what's your Bachelor of Arts in?

19 A Economics.

20 Q Do you hold any professional licenses
21 for either this state or other states or a
22 license that has federal application?

23 A No sir. Driver's license.

24 Q South Carolina driver's license?

25 A Yes, sir.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Have you ever personally built a home
3 or participated in the building of a home?

4 A No, I have not.

5 Q Going back to your growing up and your
6 personal background, how many people do you
7 today consider to be part of your recognized
8 family?

9 A That gets more difficult every year
10 with all the extended families. Do you want
11 like by blood, by marriage?

12 Q By blood and marriage through
13 grandchildren. In other words, if somebody is
14 out there and you're fortunate enough to have a
15 great grandchild, and I'm also not looking for a
16 precise number but an idea.

17 A Okay. Would that include the spouses
18 of blood?

19 Q Yes.

20 A It would, okay. I've got two brothers.
21 One brother is married; the other brother is
22 separated. And I've got two children, both
23 unmarried. I've got my husband Steve, and he
24 has five children, one of which is married.

25 Q One of which is?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A Married. One of his five children.

3 Q Okay. Do they pay visits to you-all?

4 A Occasionally. Not enough.

5 Q Okay. And you mentioned Steve; that's
6 your husband so you clearly regard him as
7 family?

8 A Indeed.

9 Q Do you have a job or multiple jobs?

10 A Are you referring to do I have an
11 employer that gives me a W-9 or something in
12 which I engage that I receive payment?

13 Q I would say that I would consider a job
14 to be the provision of goods or services by you
15 to someone else, that someone being a natural
16 person or company for compensation.

17 A Okay. I write, sometimes I help my
18 designer friend, and then of course we have our
19 rental.

20 Q Okay. When you say the designer, could
21 you explain who that is and what that
22 undertaking is?

23 A Sure. And that only occurred recently.
24 She wanted me to help her decorate a home for
25 Christmas.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Her name isn't Wadsworth, is it?

3 A No, sir.

4 Q Okay. With your writing could you
5 describe what you deliver in the way of a
6 product and what you are compensated for and to
7 provide further explanation, would your writing
8 be considered that of a journalist, writing
9 pieces for, perhaps, local periodicals, or are
10 you a novelist; if you are, are you published,
11 that sort of thing?

12 A Are you talking about currently or in
13 the past?

14 Q Well, both.

15 A Both, all right. In the past I have
16 have been writing articles for publication.
17 I've written articles for the Chamber of
18 Commerce. I have been -- I've written for, you
19 know, obviously the places that that I worked
20 with. You know, I was in marketing and public
21 relations before so I did a lot of writing for a
22 lot of groups.

23 So currently I write for a woman called
24 Marian Schaffer who owns the website
25 southeastdiscovery.com, and I write blogs for

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 her. I write community pages if she gets a new
3 community. I edit and sometimes I do search
4 engine optimization writing for her.

5 Q Okay. And how are you paid; are you
6 paid by the article?

7 A Sometimes. Sometimes it's by the word.

8 Q Okay. Do you still do the writing?

9 A For Marian Schaffer, for Southeast
10 Discovery, I still do writing assignments.

11 Q What period of time, are we talking
12 months or years, have you been working with
13 Marian Schaffer?

14 A I have been with her a number of years
15 but, forgive me, I don't remember exactly how
16 many.

17 Q Can you tell me, ballpark, take three
18 given years, what your annual income from work
19 with Ms. Schaffer is?

20 A I would say the average is somewhere
21 between 3- and \$5,000.

22 Q Per year?

23 A Uh-huh (affirmative).

24 Q Okay. Since you were contacted by
25 Community Services Associates for rental

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 activities and cooking being alleged violations,
3 what have you done, if anything, to change your
4 practices?

5 A Okay. We certainly -- I think you will
6 recall at the meeting that we had with you and
7 some of the CSA and board members back in August
8 that we said we would stop cooking breakfast.
9 What we did, Mr. Borden, is as soon as those
10 folks that we had advertised -- or I should say
11 promised breakfast to from earlier reservations,
12 when they run out, we stopped. We didn't want
13 to exhibit any bad faith.

14 Q Did you have any involvement in
15 designing or building any improvements at 48
16 Planters Wood Drive?

17 A I'm not sure what you mean by
18 improvements. Are you talking about the
19 original house or upstairs and improvements
20 meaning structural improvements, painting? I'm
21 not sure what you mean.

22 Q Improvements would be alter -- well,
23 they are -- I would say I would call
24 improvements alterations to the structure that
25 are not visible to one from the exterior or

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 alterations to the home that are visible from
3 the exterior; such as painting, adding a deck,
4 doing substantial landscaping that alters the
5 appearance of the house or yard; that is what I
6 identify as improvements.

7 A Okay. On the exterior both Mr. Wall
8 and I put in, you know, pavers, new pavers; that
9 would be the exterior, probably the extent of
10 that.

11 The inside, now are you including
12 painting, carpet, light fixtures? I mean,
13 improvements is kind of a --

14 Q As far as things that are not visible
15 from the exterior, I'm only talking about
16 structural. In other words, your interior
17 painting, and so forth, I would not consider an
18 improvement. I'll tell you what, let me make
19 the question a little bit different. Was what I
20 call the closed-off area in existence when you
21 bought your home?

22 A Indeed it was.

23 Q Do you know if it was part of the
24 original construction?

25 A According to the plans, no; and

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 according to my conversation with Susanne
3 Sherman at the ARB, which was recently, no, it
4 was not.

5 Q Okay, so that was added. I never asked
6 you, but do you reside at 48 Planters Wood
7 Drive?

8 A That is the address.

9 Q Okay. Is there somewhere else that you
10 reside?

11 A You mean like when we go on vacation
12 or --

13 Q The commonly used term reside, stay,
14 occupy; is there anywhere else besides 48
15 Planters Wood Drive?

16 A Well, this is where we live and when we
17 go on vacation, we reside in other places, but
18 we don't own another place. Does that help?

19 Q Yeah.

20 A Okay.

21 Q How long have you lived or resided at
22 48 Planters Wood Drive?

23 A I believe that year is 1998.

24 Q Okay. And where did you reside
25 previously?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A I lived in Colonnade Club.

3 Q Colonnade Club?

4 A Yes, sir. That's in Shipyard.

5 Q When were you and Mr. Wall married?

6 A '97? No? Somewhere around -- it was
7 before we moved into the house, before we -- we
8 don't even remember our anniversary date. I
9 really don't.

10 Q The Colonnade Club is in Shipyard?

11 A Yes.

12 Q Did you pay assessments while you were
13 there?

14 A No, I rented.

15 Q Okay. So you rented it from an owner
16 from there?

17 A Yes.

18 Q Were you familiar with the existence of
19 any restrictive covenants that were enforced in
20 Shipyard while you lived there?

21 A No, no.

22 Q Do you recall where you lived before
23 Colonnade Club?

24 A I lived in Mount Pleasant, South
25 Carolina.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q When did you live in Mount Pleasant?

3 A I lived there until Hurricane Hugo blew
4 me out pretty much, which I believe was --

5 Q '80?

6 A No, I think it was '89, Hurricane Hugo.
7 I remember it was September. '89. But, Mr.
8 Borden, I maintained a residence there for a
9 while because everything was sort of in
10 disarray, but it was after that that I came to
11 Hilton Head. I don't remember the year, though.

12 Q That's fine. What type of -- what sort
13 of structure was your residence when you lived
14 in Mount Pleasant?

15 A I had three residences; I had a house,
16 a house and a townhouse. But, I mean,
17 separately, not all at one time.

18 Q Were you the owner?

19 A Yes, we were the owner of all three. I
20 was previously married.

21 Q Okay. Were any of those homes located
22 in communities that have restrictive covenants
23 about common area and usage and things?

24 A You know, probably. Maybe not the
25 first one but maybe the second and third. Did I

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 read them at that time, no. Did I know about
3 them, no. So I can't really say they had it.

4 Q Okay. And then after the hurricane you
5 came down to the Colonnade Club, and as I
6 understand, there probably were things being --
7 there was a lot of disarray to deal with at that
8 time. How many homes have you resided in that
9 were detached single-family homes?

10 A Including my childhood or --

11 Q If you can remember.

12 A Let's see, I can't. I can't remember.
13 So I can only tell you from Charleston,
14 basically.

15 Q Okay.

16 A Two in Charleston, one here.

17 Q Okay. In any of the situations you
18 remember besides here, in either of the
19 Charleston situations did you rent portions of
20 the home; were there any subletters or rentals?

21 A Yes, in Charleston.

22 Q Okay. Were the homes, the
23 single-family dwellings in Charleston at which
24 you resided, were they in regulated communities,
25 as far as you know, with covenants and whatnot

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 or --

3 A I do not know. It was not a gated
4 community.

5 Q Okay. How many communities have you
6 lived in where charges for assessments for
7 common area and maintenance were made?

8 A Remember when they were saying that I
9 take care of everything now, well, back then I
10 didn't take care of anything, so I don't know if
11 we paid an assessment in Charleston. So the
12 only one I'm aware of is Sea Pines.

13 Q Okay. Have you ever been an officer or
14 director on a property owner association?

15 A No, sir.

16 Q Have you ever participated in an
17 official board or committee at Sea Pines
18 Plantation?

19 A No, sir.

20 Q If you'll bear with me one moment
21 (brief pause). I'm going to show you Exhibit 1
22 and ask that you take a look at paragraph five
23 and six, please.

24 A (Examines document.) Okay.

25 Q In reading paragraphs five and six of

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 the Class A Covenants together, in your opinion,
3 what possible purpose could paragraph six have
4 other than to preserve a single-family dwelling?

5 MR. LAUGHLIN: Object to the form.

6 THE WITNESS: Yeah, I was going
7 say I don't know. I wouldn't pose an
8 opinion on that. I don't know.

9 BY MR. BORDEN:

10 Q And I'm saying that's with the
11 exception of the criteria in paragraph five that
12 go into a fair amount of detail about
13 construction characteristics. In other words,
14 so basically as long as you do not call some
15 portion of a house a guest suite, you can have
16 two families occupy it; would that be your
17 position?

18 A I don't know what -- I mean, you know,
19 you're asking me to form opinions or positions.
20 I'm only reading what I can see here and
21 interpreting it -- I mean, I'm not even
22 interpreting it; I'm just reading it. I'm just
23 reading it.

24 Q I'm just wondering why there would be a
25 paragraph here if you can so easily put two

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 families under one roof.

3 MR. LAUGHLIN: Object to the form.

4 MR. BORDEN: You can answer.

5 THE WITNESS: I know. I'm just
6 trying to say -- I mean, I'm looking
7 back at some of our guests and, you
8 know, I used to be in the business and
9 there was often more than two families
10 under one roof, I mean in a rental.

11 They weren't always related.

12 BY MR. BORDEN:

13 Q Right, right. Well, here we're talking
14 about, obviously, Sea Pines.

15 A Uh-huh (affirmative).

16 Q Okay. Well, let's go through our
17 photos. Can you identify Exhibit 2, please, the
18 top picture?

19 A Is a mailbox with the number 48 on it.

20 Q And do you know whether it's your
21 mailbox or not?

22 A It appears to be our mailbox.

23 Q Okay. And how about the second
24 photograph?

25 A It appears to be the front of 48

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Planters Wood Drive. Or most of the front, I
3 should say.

4 Q Okay. And going to Exhibit 3, can you
5 identify 3-A, the top photo?

6 A Uh-huh (affirmative), 3-A is the main
7 dwelling which is downstairs, and the upper --
8 whatever you want to call it. What did you call
9 it; you called it a closed-off unit or something
10 like that, accessory dwelling that is upstairs.

11 Q Okay, we have Plaintiff's Exhibit 4.
12 Can you identify the photograph that is A and
13 the photograph that is B in that document?

14 A A is a portion of our -- I was going to
15 say a portion of the three-bedroom, two-bath
16 portion of 48 Planters Wood.

17 Q Okay.

18 A And B is, again, mostly that's what you
19 see, although you do see some of the accessory
20 dwelling or whatever you want call it. I'm
21 sorry, I don't know what you called it.
22 Closed-off portion, yeah. Okay, that's what I
23 see in B.

24 Q Okay.

25 A Now, that's just basically the front

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 and a little bit of the side.

3 Q I asked your husband to point out just
4 as best he could discern from looking at the
5 exterior of the house as depicted in that photo
6 where certain rooms were. Are you in agreement
7 with where he has basically identified those
8 rooms as being with pen ink?

9 A Well, yes and no. I mean, the room
10 that he mentioned as the dining room is
11 someplace where we've made a dining room, we put
12 our table there, but I don't think the original
13 plans call it, I don't know. When we bought it,
14 it was a little -- but otherwise, yes. But we
15 do currently use that as the dining room.

16 Q Okay. And everything else is --

17 A Master bedroom and bath, if that's what
18 they call that, there is a front room that has
19 an on-suite bath.

20 Q In the master bedroom what kind of bed
21 is in that room?

22 A If that is a master bedroom, it's a
23 queen bed. I mean, like I said, he called it a
24 master bedroom. It is a bedroom with an
25 on-suite bath, but there's a queen-size bed in

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2 there.

3 Q Okay. So it has an adjoining bath?

4 A Yeah. We call on-suite, meaning you
5 have to enter into the bedroom to get to the
6 bath.

7 Q And that's the only bedroom in your
8 house that has that characteristic?

9 A That is correct. And the
10 three-bedroom, two-bath downstairs, that is
11 correct.

12 Q Three-bedroom, two-bath downstairs?

13 A Uh-huh (affirmative).

14 Q Okay. This is Plaintiff's 5. It's a
15 very blurry; my apologies for that. Can you
16 identify it?

17 A I'm not sure what it is that I'm
18 supposed to identify here, Mr. Borden. It
19 appears -- again, it appears to be the side of
20 our house that shows the stairway, but I mean.
21 The exterior stairway, that's what it appears to
22 be.

23 Q Would you agree with Mr. Wall that
24 there is a single standalone building on the lot
25 at 48 Planters Wood Drive with heating and

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2 cooling under one roof?

3 A There is a single standalone building
4 on that lot, but the heating and cooling are
5 separate. I mean, the heating and cooling for
6 the three-bedroom, two-bath is one thing, and
7 we've got an upstairs -- you know, it's a wall
8 unit, which I do believe you mentioned.

9 Q Okay. The mailbox that -- provided
10 that the mailbox that we photographed with 48 on
11 it is yours, is that the only mailbox at the
12 house?

13 A Yes.

14 Q And you and your spouse are the only
15 ones that receive mail in the mailbox at 48
16 Planters Wood?

17 A That is correct.

18 Q Have you y'all ever sought to subdivide
19 your lot?

20 A What do you mean subdivide our lot?

21 Q Subdivide your lot.

22 A I didn't even know you could do that.

23 Q Have you ever sought to designate as
24 two separate addresses the standalone
25 building -- or, excuse me, the closed-off area

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2 and the remainder of the house at 48 Planters
3 Wood?

4 A We did not.

5 Q Okay. I think this must have been
6 written by you, but maybe I'm jumping the gun
7 here. I'm going to show you a writing dated
8 October 15, 2013, saying "Dear Walt" and ask if
9 you can identify that, please.

10 A Yes, I can identify it.

11 Q Did you write it?

12 A Yes. And Walt was with McNair; is that
13 correct, Walt Nester?

14 Q Okay. So you were writing to him in
15 response to communications from Walter Nester?

16 A That is correct.

17 Q Okay. And then your letter says in the
18 third paragraph there's nothing in the covenants
19 that disallows this, a separate office/studio
20 upstairs or kitchen as per covenants where we
21 were to retreat to that disallows this, only
22 that this separate space cannot be rented by
23 itself. So you do have some opinion about
24 paragraphs five and six, the covenants that
25 you've expressed that are reflected in your

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2 statements to Mr. Nester; is that correct?

3 A You know, this is something that I
4 wrote when I reviewed the covenants; and as I
5 said, when I read it, it appeared that there was
6 nothing there that disallowed.

7 Q Okay.

8 A So I won't say it's an opinion as much
9 as that's what I was reading.

10 Q Okay. Plaintiff's Exhibit 7 I would
11 ask that you -- that is a drawing that was done
12 by your husband; and I would simply ask if you
13 have any comment with respect to the accuracy of
14 the depictions in it.

15 A (Examines document.) It just doesn't
16 show the wall unit is all.

17 Q Would you like to put the wall unit on
18 there?

19 A Sure.

20 Q How about use blue ink.

21 A Okay. (Complies.)

22 Q Is is that a heat pump?

23 A It's just a wall unit.

24 Q I mean, does it produce hot air and
25 cold air?

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2 A That is correct. I just said wall AC.
3 Should I say something different? I mean, it's
4 a heater-air conditioner, but it's not attached
5 to the other one, so.

6 Q No, you use your terms, that's fine.

7 A Okay. And I'll just put "and heater"
8 just to be specific.

9 Q Okay. And you're handing it back to
10 me. I was going to ask you, is there anything
11 else before we move on?

12 A I would just say futon here. Other
13 than that.

14 Q All right. Do you and Mr. Wall keep
15 all of your clothes in the closed-off area.

16 A No.

17 Q Where do you keep the remainder of your
18 clothes?

19 A We have a locked closet downstairs, and
20 we have another closet that is in the hallway.

21 Q Downstairs?

22 A Uh-huh (affirmative).

23 Q And that is a portion of the house of
24 48 Planters Wood that is rented?

25 A That is downstairs; correct.

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2 Q Do you remove -- those closets that are
3 kept locked, do your clothes remain there during
4 times when the house is rented?

5 A Yes.

6 Q Do you and your spouse, Mr. Wall, keep
7 food in the closed-off area?

8 A We have some things.

9 Q It's my understanding that the
10 closed-off area is entirely closed off and
11 there's no access through the interior -- from
12 the closed-off area to the remainder of the
13 house without going outside and down the
14 stairwell; is that correct?

15 A That is correct.

16 Q Okay. Are you a TV watcher?

17 A No.

18 Q Do you cook in the kitchen at your
19 house at 48 Planters Wood Drive?

20 A You're talking about downstairs?

21 Q Uh-huh (affirmative).

22 A Occasionally.

23 Q Do you ever do that at times when it is
24 rented?

25 A If the guest allows it, yes. We

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2 usually give them notice and if it's okay with
3 them, then.

4 Q Okay. Where do you do your laundry?

5 A I do it downstairs.

6 Q Even at times when the house is rented?

7 A We generally don't have to do that.

8 Q Where do you wash your dishes?

9 A What few dishes we have, we would
10 either rinse them out by a garden hose or in the
11 sink upstairs; occasionally downstairs.

12 Q Okay. So you have a dishwasher
13 downstairs and you do not use it; is that
14 correct?

15 A Not as a rule, no.

16 Q Okay. And how many of those occupying
17 48 Planters Wood Drive for a rental stay, be it
18 any period of time, have stayed in the
19 closed-off area?

20 A None.

21 Q And you agree that you do have a
22 separate key for that area --

23 A That is correct.

24 Q -- from the remainder of the house,
25 okay.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Now, Exhibit 8, can you identify what
3 that is?

4 A Yes, it appears to be a page from
5 Airbnb, from the airbnb.com site.

6 Q Now, have you ever completed one of
7 these?

8 A For listing --

9 Q Yes.

10 A -- listing a space, yes.

11 Q Do you know how -- have your answers
12 always been the same?

13 A No, they have not. You can change
14 them.

15 Q Okay. Would it be possible for you to
16 fill one of those out in a way -- if I had a
17 party of three adults related, could you fill
18 that out as you would fill it out under those
19 circumstances?

20 A I don't understand.

21 Q We want to stay a week. We are two
22 adult parents and an adult child, a 20-year-old
23 child, and we want to stay one week and we go
24 through Airbnb; is that form -- do you complete
25 that form in order to make representations that

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 get passed back to us about what accommodations
3 are available?

4 A Wow, that's a tough question because
5 I'm not sure I understand that.

6 Q What is the purpose of -- to your
7 knowledge, what is the purpose of that document
8 that's Exhibit 8?

9 A Okay, let me go through this and let me
10 see. Okay, List Your Space. Well, it gives you
11 a home type and you can select apartment, house,
12 bed and breakfast, or other, okay? So that's
13 obviously a choice that they give you. A room
14 type, the way they describe it is an entire home
15 or apartment, a private room or a shared room,
16 okay? So you can select which one that is. And
17 then accommodates and you have a choice of how
18 many people that you would like in your place.
19 You know, if you don't want any more than one
20 person, you can say one person.

21 Q So this is what you send in before you
22 have -- in other words, that group of three that
23 I was making reference to, this is something
24 that you have completed and sent into -- Exhibit
25 8 is an example of something that you would have

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2 completed online and transmitted to Airbnb to
3 potentially bring in a renter who wants those
4 criteria that you've described; is that --

5 A This is a portion of probably the
6 beginning of a listing, I mean.

7 Q And a listing is that your house is
8 available or --

9 A Or your space is available or whatever,
10 yeah.

11 Q Or this space is available as
12 described, as described herein?

13 A There you go; I'll take that.

14 Q Okay. Can you give me an example,
15 marking it up, of something that would fit what
16 you-all have sought or, for example, what you
17 are seeking now? In other words, if you wanted
18 to seek out a renter right now, how would you
19 fill that out?

20 A Okay, currently it would always be a
21 house. In facts, it's always been a house --

22 Q You can mark on it.

23 A Okay, it's always been a house. And
24 the room type currently is the entire home and
25 apartment.

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2 Q Okay. And do you have a preference on
3 number? I understand that --

4 A We do.

5 Q Well, Mr. Wall was saying that there
6 were some limitations but he did not know what
7 they were but you did.

8 A That is correct. And it gets a little
9 complicated, but four is what we put here, four,
10 okay? So we really don't -- I mean, that's the
11 vast majority of our people. Now, if you're
12 willing to pay extra, you can have six, but we
13 don't get that many rentals with that, you know,
14 and it would have to go through Airbnb.

15 Q Okay. And then this goes into Airbnb,
16 and then people who are looking and searching
17 Airbnb would see this, Hilton Head Island?

18 A That is correct. There is different
19 search criteria, and Airbnb tries to take into
20 consideration matching the product with the
21 request.

22 Q Okay. Now, as you have that document
23 completed, the closed-off area would not be part
24 of the area utilized?

25 A That is correct.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q In other words, if you got a positive
3 response -- okay.

4 A Never mentioned, never depicted.

5 Q Okay. I'd like owed to show you
6 Exhibit 9, and it again purports to be -- it's a
7 print-out of what purports to be something from
8 the Airbnb site. Can you tell me what it is?

9 A Sure. It appears to be an old listing.
10 This was something that was -- this says Hilton
11 Head Organic B&B, Sea Pines, and that is
12 something that -- it os a title we used for
13 search term, but when we talked with you and our
14 attorney we decided that that was probably not a
15 good thing to use because it would be in
16 violation, so we stopped doing that, and I think
17 that was sometime ago.

18 Q That it would be a violation?

19 A The bed and breakfast.

20 Q Okay. I'm flipping to page three. Are
21 you in agreement with the way that 48 Planters
22 Wood Drive is characterized in the little strip
23 down the middle that has room type, bed type, so
24 forth?

25 A No, because this is an old listing. It

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 says room type private room and we don't do
3 that. This is an old listing.

4 Q What is private room -- or at that time
5 what was private room?

6 A Well, you're basically just renting a
7 room, because at that time we really only wanted
8 to rent a room.

9 Q A room accommodating three?

10 A That is correct.

11 Q Okay, Airbnb has terms of service. Do
12 you-all have hard copy or documents stored on
13 your computer or iPads or similar devices of the
14 terms of service?

15 A Stored, no. It's part of the website.

16 Q Okay. How do you keep track of who's
17 coming and when and with how many people?

18 A Well, once a reservation is made, it
19 becomes part of the website, you know, you can
20 see who's coming in.

21 Q Do you keep a hard copy of files,
22 notes, computer files, I would even say a
23 calendar, you know, marking on a calendar?

24 A No, I do not.

25 Q Okay. Do you have on your computer at

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 this time e-mails with Airbnb, you know,
3 transactional business e-mails with Airbnb?

4 A Transactional business being?

5 Q Communication.

6 A They do send you a reminder if someone
7 is coming in and they do send you a notice if
8 they've sent payment.

9 Q Does there ever arise anything else
10 such as -- and I'm only saying this by way of
11 example in terms of an e-mail -- you know, you
12 end up getting somebody that Airbnb sets you up
13 with and they turn out to be pigs, you know, and
14 you might get your money out of it but,
15 nonetheless, you're very unhappy with the result
16 of Airbnb as the conduit to that particular set
17 of renters; or the reverse, Airbnb communicating
18 with you and saying, you know, we sent some
19 people who had high expectations for Hilton Head
20 Island and didn't think that your place was what
21 you held it out to be. In other words, does any
22 of that kind of communication over and above the
23 strictly form communication that you're talking
24 can't about get exchanged that you have on
25 e-mail?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A Mr. Borden, did you see on the website
3 the testimonials of the guests, like here?

4 Q Uh-huh (affirmative).

5 A So that's how they rate us, and we're
6 given the opportunity to rate them, and that is
7 stored on Airbnb and it's not -- it's, you know,
8 they send us a link, click here, rate this
9 person. So if you had any bad things to write,
10 there would be the time, but you also write a
11 public testimony of the person as well. But
12 that's all done through the site.

13 Q Okay. How about direct e-mails between
14 yourself and clients, customer -- well, renters?

15 A It goes through the site. They are --
16 they being Airbnb is very good about protecting
17 privacy. So unless you -- even after, even
18 after you make a reservation, your personal
19 e-mail is not revealed. You have to go through
20 a unique e-mail on the site to communicate by
21 e-mail with this person. The phone number is
22 given once the reservation is made, which is
23 good because you want to make sure, you know,
24 you know when they're coming type thing; but
25 other than that the e-mail is never divulged.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Okay. So is it fair to say that you do
3 not have stored a store of e-mails with Airbnb
4 or a store of e-mails that went through Airbnb
5 to your customers and clients?

6 A Okay, I don't understand the question.
7 Did I have a store, meaning on my hard drive; is
8 that what you mean --

9 Q Correct.

10 A No, I do not have that.

11 Q Okay. When this lawsuit was commenced,
12 did you delete any documents from your computer
13 system that you thought could relate to this
14 lawsuit?

15 A No, because we've had very few
16 documents on the computer.

17 Q Okay. Well, I know your husband didn't
18 have dinner last night, but where did you have
19 dinner last night?

20 A I don't even remember what I had for
21 dinner last night. You know, I may have had a
22 banana, a cup of tea. We're pretty simple.

23 Q How about breakfast?

24 A You know, we have some cereal and milk
25 of some sort.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q And that is in the closed-off area?

3 A That is correct.

4 Q This would apply to yourself as well as
5 your husband; was the first floor rented for any
6 of the days when you've had meals on the first
7 floor?

8 A Yes, actually. And he didn't think
9 there was, but in the past there has been.

10 Q Do these tend to be meals where your
11 renters and yourself get together more as a
12 social matter, or would it be more of a scenario
13 of you going down and using a particular
14 appliance downstairs to prepare what you needed
15 to and so you ended up downstairs?

16 A Now, are you talking about currently or
17 prior?

18 Q Both.

19 A Okay. Well, prior, as you know, we did
20 offer a wonderful breakfast. Now what we do is
21 we go down occasionally to use the kitchen
22 always alerting the renters if we want to use
23 it, is it okay with them type thing. We try to
24 to do it at their consent, if you will, as their
25 guest, if you will. But as far as social meals

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 down there, no, I can't say we do that.

3 Q Okay. Where do you do your wash?

4 A We have a laundry room downstairs.

5 Q Okay. And you use it regardless of
6 whether the downstairs is rented or not?

7 A Generally we do it at a turn.

8 Q Okay. And where do you cook?

9 A Well, you know, you'd have to
10 understand our lifestyle, but sometimes we cook
11 downstairs and I wouldn't classify upstairs as
12 cooking as much as heating up. I mean, oatmeal,
13 like he said, is about as far as you get, you
14 know what I'm saying, from preparing it from
15 scratch.

16 Q And would you agree regarding do you
17 keep food in the refrigerator on the first floor
18 in the kitchen?

19 A There are some condiments in there.

20 Q There's nothing there that is likely to
21 be confused with food purchased by your renter
22 at a given time?

23 A You know, when a renter comes in we
24 orient them to the home and we tell them that
25 they're welcome to use whatever they want. We

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- 1 BORDEN - M. WALL (CROSS-EXAMINATION)
- 2 don't get into that this is yours, this is mine.
- 3 Q Do you watch TV?
- 4 A No, I do not. We don't have cable.
- 5 Q Okay. How do you access the Internet?
- 6 A We have a wireless system in the house.
- 7 Q And do you use a computer in the
- 8 closed-off area?
- 9 A Yes, we do.
- 10 Q Do you use a computer in the house --
- 11 A Occasionally.
- 12 Q -- in the downstairs?
- 13 Do you ever stay down on the first
- 14 floor when you have guests in the house?
- 15 A Are you talking about currently or
- 16 before?
- 17 Q Both.
- 18 A We haven't done that in probably, I
- 19 don't know, 15 months.
- 20 Q In other words, you have not slept --
- 21 A Downstairs.
- 22 Q -- downstairs while you had guests in
- 23 the house --
- 24 A That is correct.
- 25 Q -- for 15 months, approximately?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A Approximately.

3 Q And so you sleep, eat, cook and bathe
4 for the most part -- well, where do you sleep,
5 eat, cook and bathe when you don't have guests?

6 A When we don't have guests, we sleep on
7 a futon upstairs; that's our preferred method of
8 sleeping. We bathe upstairs. Cooking, you
9 know, that's kind of a liberal statement. I
10 can't say we really cook, more like heat up.
11 What was the other thing? Sleep, eat --

12 Q Cook and bathe?

13 A Cook and bathe, yeah. Eating could be
14 anywhere; but, yes, we have eaten upstairs
15 before.

16 Q Okay. And would you agree with your
17 husband's testimony about the means of cooking
18 food or preparing food on the closed-off area?

19 A We do have an induction hotplate. I
20 don't know if you're familiar with induction,
21 but it's not hot to the touch.

22 Q Right.

23 A Yeah.

24 Q And you use that to heat --

25 A Correct.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q -- certain things?

3 And you have a small refrigerator as
4 well?

5 A Correct; mini.

6 Q And I think that you've already
7 outlined where you wash your glasses, pots and
8 pans. You do not have a cleaning person or a
9 maid?

10 A No.

11 Q And Mr. Wall does the cleaning of the
12 downstairs house after the renters leave?

13 A Did he take full credit for that?

14 Q I think he did.

15 A We both do.

16 MR. LAUGHLIN: I thought he said
17 both. I think you're okay.

18 BY MR. BORDEN:

19 Q Okay. Do you provide renters with
20 linens and towels?

21 A Correct.

22 Q Can renters use your washer and dryer?

23 A Yes.

24 Q And do you provide soap for them for
25 the washer?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A Sometimes.

3 Q And you have a TV downstairs that is
4 not attached to cable for their use?

5 A That is correct.

6 Q And do you find yourself washing dishes
7 for the renters?

8 A Never. Now never. You know, there's
9 before and after.

10 Q You do have Internet for the renters;
11 is that correct?

12 A It is the house Internet which is a
13 wireless system, yeah.

14 Q And you can provide them, as I
15 understand it, a password for them to use?

16 A Yes, it is the same password.

17 Q Okay. And your renters are welcome to
18 store food in the refrigerator downstairs?

19 A Indeed. It's there for their use.

20 Q Your Airbnb listing says staying here
21 is more like visiting good friends and great
22 benefits. What are the great benefits? Does
23 this visiting good friends mean you intend to
24 spend time with your renters on the premises
25 you've rented to them? That's from an old

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 comment, I believe.

3 A It is. That is an old description and
4 it was -- remember, what I do, I write and I
5 market, so I try to make it sound inviting and
6 indeed unlike lots of rentals where you never
7 ever see the owner, you do see us. You know, we
8 to get to know the guests and the guests can get
9 to know us if they want.

10 Q I'm going to show you, if I may,
11 quickly Exhibit 10. What is that, if you can
12 identify it?

13 A Yeah, it looks to me like, you know, a
14 copy of an old listing of our Airbnb back when
15 it was called B&B. And may I say this, Mr.
16 Borden?

17 Q Sure.

18 A Again, this up here, Hilton Head
19 Organic B&B, Sea Pines is merely a title. It is
20 a title which can change -- and I have changed
21 it, as you well know. It is not really the name
22 a place. You can change your title at any time.
23 It's strictly for search purposes and to try to
24 sound inviting.

25 Q Okay, I understand that. Have you and

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1 BORDEN - M. WALL (CROSS-EXAMINATION)
2 your husband together or individually actually
3 formed a company other than what I would
4 consider -- well, have you formed a corporation,
5 limited liability company, a limited partnership
6 or a general partnership with a written
7 partnership agreement to conduct the business of
8 renting your house that you've been doing? And
9 I can repeat it if I need to clarify; but, in
10 other words, instead of you simply doing
11 business in your own name, have you created a
12 business entity, be it a corporation, a limited
13 liability company, limited partnership, general
14 partnership or variation of that to actually
15 transact your business?

16 A The business of Airbnb?

17 Q Correct.

18 A We did not form an L.L.C. to conduct
19 the business of Airbnb. We had an L.L.C. from
20 prior to Airbnb.

21 Q What does that entity do?

22 A Well, it was advised us to have an
23 L.L.C. because, particularly Steve, was in
24 business for himself so that was what we were
25 advised to have. We at that time, also, were

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 trying to perhaps relocate and buy a business
3 elsewhere, and again the person advised us to
4 have an L.L.C. But to do it just for Airbnb,
5 no, it was already there.

6 Q Just a couple of follow-up questions on
7 that. What is the name of the L.L.C.

8 A Wall to Wall, L.L.C.

9 Q Is it active and in good standing?

10 A Well, I believe so. I mean, that's
11 how -- I mean, I don't know what would make it
12 not active and in good standing.

13 Q Okay. Is it a South Carolina entity;
14 was it formed in the state of South Carolina?

15 A Yes, it was.

16 Q Does it have a bank account?

17 A Yes, it does actually.

18 Q Are there any goods or services of any
19 kind provided by that entity or by you and Mr.
20 Wall within the purview of that company?

21 A See, now you've lost me.

22 Q Well, does that company provide any
23 goods, manufacture anything or provide services
24 to anyone of any kind?

25 A Are you talking about, for example, any

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 painting work or writing work or food and
3 beverage work or any of the things that my
4 husband does?

5 Q Sure. I'm not putting any limit on it.
6 I mean, it could be laying carpet.

7 A Yes. I mean, the reason for that
8 existence, as we were advised to have that, to
9 run expenses through.

10 Q Okay. Do any of your services, such as
11 your writings, are any of those earnings run
12 through Wall to Wall, L.L.C.

13 A That's a good question only because
14 sometimes she writes it to me personally and
15 sometimes she makes it out to Wall to Wall,
16 L.L.C. It's just not tidy.

17 Q Does any of the household rental -- and
18 you may have answered this; I'm not certain.
19 I'm not going to limit it to Airbnb. I'm just
20 going to say is any rental of 48 Planters Wood
21 Drive, is any rental activity administered by
22 and through Wall to Wall, L.L.C. or the income
23 from it go to Wall to Wall, L.L.C.?

24 A I mean, again, I'm not sure what you
25 mean by administered, but we do report the

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Airbnb income.

3 Q In your name or in the Wall to Wall,
4 L.L.C.

5 A Well, to me, it's the -- I think you
6 have the income tax forms. I believe she put
7 that in Wall to Wall.

8 Q Okay. I'm going to offer you
9 Plaintiff's Exhibits 11, 12, 13 and 14. Let's
10 see 11 is -- can you identify that?

11 A Well, let's see here. I can see from
12 the price that it's an old listing for the sale
13 of the house.

14 Q Did y'all ever contact Mr. Saba about
15 confusion that might arise from describing there
16 being a mother-in-law suite or rental room?

17 A You know what, I have no recollection
18 of that and probably didn't even have the
19 knowledge.

20 Q Okay. I'm going to hand you Exhibits
21 12, 13 and 14 -- well, 12 through 15 and ask you
22 have you seen all those communications prior to
23 today?

24 A (Examines documents.) It appears that
25 I have seen these, Mr. Borden.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Okay. And is it fair to say that you
3 received notice in advance of the litigation
4 that it was CSA's position that you-all were in
5 violation of the covenants?

6 A I would say that it was fair to receive
7 incorrect notification. Someone is still
8 staying it's a bed and breakfast which, you
9 know, we had stopped doing. That's the only
10 thing that I would disagree with.

11 Q Okay. And the reason you didn't cease
12 and desist with the Rick Saba ad is because you
13 were no longer listing with Rick Saba?

14 A That is correct.

15 Q Would you agree with Mr. Wall that the
16 demographic among your rental occupants has
17 occasionally been, before and now, families?

18 A There are some families that come.

19 Q Okay. I remember there was some
20 confusion, some uncertainty about the duration
21 in which individuals could rent for an
22 interrupted period of time --

23 A Length of time --

24 Q Yes?

25 A -- is that what you mean, how long can

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 they stay?

3 Q That's right, without interruption.

4 A Correct.

5 Q What is the maximum?

6 A You can change that at any time, but
7 currently I believe -- and it's not something
8 that I checked before I came here, so I'm going
9 to say currently I believe I put a maximum of 28
10 days. I didn't want to get into the long-term
11 rental, 30-day thing.

12 Q Okay. So it could be 28 days or
13 something less --

14 A Or something less.

15 Q -- is that correct?

16 A That is correct.

17 Q Okay. And so under the present rental
18 program that you have, you could have a family,
19 being a couple of parents and a child, or
20 whatever the composition, rent 48 Planters Wood
21 Drive for a maximum of 28 consecutive days?

22 A Unlikely, but as long as I have 28
23 there, if I approve it, they can do it. Now,
24 you have to understand, I get to approve all
25 rentals.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Right, right. And in such a situation
3 there would be nothing other than possibly cabin
4 fever stopping you from staying at the same time
5 in the closed-off area, what I been calling the
6 closed-off area; is that correct?

7 A Well, not particularly because you have
8 to remember that we still come in the house at
9 the guest's good graces, if you will. So we're
10 talking about what ifs here.

11 Q But I guess -- I'm not saying -- my
12 question -- and if it implied it, I didn't mean
13 to imply it. My question wasn't that you were
14 exclusively and solely during such a 28-day
15 period, as we talked about, that you were solely
16 in the closed-off area. Let's just say you were
17 in town and obviously that's where you're
18 spending the time that you do what you do when
19 you've got guests in town. So for 28 days your
20 family and another family could be in the home?

21 A You mean downstairs?

22 Q Correct. Well, I mean, under that roof
23 that keeps the closed-off area and the
24 downstairs dry.

25 A Well, as I said, we can share -- at the

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 guest's good graces, we can share the downstairs
3 for the kitchen and the laundry, so nothing
4 prevents us from doing that except for our
5 guests, you know. And I probably would never
6 agree; if we're talking about what ifs, I
7 probably would never agree to that and I would
8 certainly make sure the guest understood it.

9 Q I understand. I'm simply getting to
10 the point -- and it's sort of a hypothetical. I
11 don't have a name for these people or anything
12 else. But under your operation you could come
13 downstairs if they gave you permission or
14 whatever, but under your operating rules you
15 could have a family in place for 28 days and you
16 be that for 28 days all in 48 Planters Wood
17 Drive?

18 A Currently, the way it is structured, we
19 could have a guest, not necessarily a family,
20 that could be there for 28 days.

21 Q But a family could not?

22 A Probably I would not agree to that.
23 It's just too many people for too long.

24 Q So perhaps a family for a week?

25 A Doable.

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Q Week, two weeks, maybe?

3 A You know, doable, but it's not
4 something we like.

5 Q Okay. The tax returns prepared by
6 Chris Cassidy are in your name, your individual
7 names, and I don't know whether to make further
8 inquiry. This is fully what's been filed.

9 A May I see, please (examines documents).
10 Okay. So what was the question?

11 Q Well, let me ask you a couple of
12 questions.

13 A Okay.

14 Q You've looked at a 2013 -- please
15 identify these two documents that I'm going to
16 label -- I'll tell you what, I don't really want
17 them in the deposition transcript. I'm going to
18 simply refer to the one that's got 2013 in the
19 middle of it as document one, tax document one.
20 What is that document?

21 A Well, it appears that it was -- it says
22 extension granted to 10/15/2013, and the form is
23 1040.

24 Q So that's a 2012 tax return -- or tax
25 return for the year 2012?

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 A That's what it appears to be. Or is it
3 amended? See, one was amended. She went back
4 and amended 2012.

5 Q Here's the other one. We'll call it
6 tax document two.

7 A Okay, where it says Amended U.S.
8 Individual Tax Return, that I believe is 2012.

9 Q Now, is there income earned through
10 Wall to Wall, L.L.C. that is not reflected on
11 these tax returns?

12 A I don't know what kind of income that
13 would be. Are you talking about Airbnb or --

14 Q I'm uncertain how you-all divide up Mr.
15 Wall's individual tasks with Airbnb, so I'm at a
16 loss to narrow it down very much.

17 A Right. Well, all I know, is that she
18 had all of our -- what do you call them, the
19 W-2s, W-9s, whatever they are, she had any
20 statement that we had from anybody who -- from
21 the people that we worked for, like Marian
22 Schaffer or Harbour Town Yacht Club, you know,
23 she had that and she had the Airbnb --

24 Q All of it?

25 A All of it. And I believe she even

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 had -- in fact, I'm sure that she even had the
3 Wall to Wall L.L.C. articles because I remember
4 her asking it for me.

5 Q Has Wall to Wall, L.L.C. filed a tax
6 return?

7 A I thought that there was some of that
8 in 2012 and '13, and that's why she amended it,
9 was to go back and take some of the expenses
10 that when it was filed by Mr. Tillotson, there
11 was either mention of it, and I'm talking about
12 like -- you know, this is accounting stuff so
13 you're asking a layperson. But she went back to
14 amend it for a more favorable outcome, I guess,
15 is the best way to put it. That's 2012.

16 Q We have a covenants matter here and
17 we're obviously dealing with that, but in terms
18 of impetus, motivation, this, that and the other
19 thing, if this is a two million dollar
20 enterprise -- and I know you're grinning and I'm
21 being facetious when I throw out that big
22 number, but depending on the size of the
23 enterprise, that would or could influence
24 somebody's desire to sustain a business of a
25 particular type, and that's why I'm asking that

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 question.

3 A I can tell you in 2012, I still was
4 employed by a company so there's going to be
5 some of the income there. We really didn't
6 start Airbnb till late 2012. It was hardly
7 incidental. It was a sort of a fun thing. In
8 2013 we had a little more income than 2012
9 because we had full year. But how and why she
10 filed it as she did, I'm sure she's a fine,
11 upstanding accountant and she did what she felt
12 was legal and right.

13 MR. LAUGHLIN: May I for a second?

14 MR. BORDEN: Certainly.

15 MR. LAUGHLIN: And correct me if
16 I'm wrong, but I think what he wants to
17 know is, is all your income reported on
18 this return or is there another return
19 where some income is reported?

20 THE WITNESS: Oh. This is the
21 only return we have.

22 MR. LAUGHLIN: I guess you -- what
23 I know about taxes you could fit on the
24 head of a pin, but it does look to me
25 like one of the schedules here shows

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 income from the rental of 48 Planters
3 Wood Drive.

4 Q All right. Now, I'd like to show you
5 what has been labeled Plaintiff's 16 and ask you
6 to read the flagged parts particularly and the
7 page which precedes the first flag.

8 A (Examines documents.) Okay.

9 Q All right. My question is when one
10 reads the correspondence that constitutes pages
11 four, five and six of Plaintiff's Exhibit 16,
12 which goes back to 1981, written communication
13 since 1981, doesn't that communication make it
14 clear that since that time, the covenants have
15 disallowed two families occupying a
16 single-family dwelling?

17 MR. LAUGHLIN: Object to the form.

18 THE WITNESS: I mean, nothing is
19 clear to me. That's why we're here.

20 MR. BORDEN: I have one more thing
21 and that is to put in as -- we'll call
22 it Exhibit 17, the collective documents
23 for which there was a separate copy,
24 and we'll make that Exhibit 17 to Mrs.
25 Wall's deposition, and any further

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 documents that exist and may get copied
3 or otherwise produced responsive to the
4 subpoena duces tecum with qualification.
5 subject to objection will not be part
6 of the documents of this deposition but
7 will simply be discovery documents that
8 we received.

9 (Whereupon, Plaintiff's Exhibit
10 Number 17 was marked for
11 identification.)

12 THE WITNESS: I have a question,
13 Mr. Borden, about this.

14 MR. BORDEN: Yes, ma'am.

15 THE WITNESS: It seems to me when
16 I read five and six it always said
17 something about so long as those
18 structures that they refer to are not
19 rented separately and I don't see it
20 here. I mean, you can look at it but I
21 don't see it.

22 MR. BORDEN: Let's take a look,
23 (examines documents).

24 THE WITNESS: Like here, number
25 six, it says a guest suite or like

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 facility without a kitchen may be
3 included as part of the main dwelling
4 or accessory building but such suite
5 may not be rented or leased except as
6 part of the entire premises, including
7 the main dwelling and provided,
8 however, that such guest suite would
9 not result in overcrowding of the site.

10 Now, does number six read like
11 that? Have I overlooked that?

12 MR. BORDEN: (Examines documents.)

13 No, the spot on the quote on the letter
14 that you received is --

15 THE WITNESS: Does say that?

16 MR. BORDEN: It tracks it word for
17 word. There's some underscoring for
18 emphasis and that's noted but --

19 THE WITNESS: May I see six again
20 (examines document). It could be I'm
21 reading too much here. Okay, there it
22 is. Okay, got it (examines document).
23 Sorry, too much paper.

24 BY MR. BORDEN:

25 Q Provided that you can tell me that

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1 BORDEN - M. WALL (CROSS-EXAMINATION)

2 Exhibit 17, which is this entire stack of
3 documents, is what you're delivering to me today
4 in response to my request for records in
5 relation to these depositions, I have no other
6 questions.

7 A (Examines documents.) Well, I did
8 bring the reservations going forward for 2015,
9 also, somewhere.

10 MR. LAUGHLIN: What you brought is
11 right here.

12 THE WITNESS: Okay.

13 MR. BORDEN: And what I
14 anticipated was that records over and
15 above what's in the paper-clipped stack
16 will be photocopied by your office or
17 my office and simply provided.

18 MR. LAUGHLIN: I'll make copies of
19 this stuff. You don't need copies of
20 all of this stuff I brought. Would the
21 front page, front cover be sufficient?

22 MR. BORDEN: That's fine. Okay,
23 thank you.

24 (Whereupon, the witness
25 expressly waived the right to

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1 BORDEN - M. WALL (CROSS-EXAMINATION)
2 read and sign the deposition
3 transcript.)
4 (Whereupon, the deposition of
5 Maria P. Snyder Wall was
6 concluded at approximately
7 3:00 p.m.)
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Plaintiff's Trial Exhibits



7/10

17892

BEAUFORT COUNTY, S.C.
COUNTY FEES COLLECTED 2268
TAXES \$ 551.25
WARRANT \$ 242.50 STATE \$ 573.30

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE
(GENERAL WARRANTY)

KNOW ALL MEN BY THESE PRESENTS, that R. FROST BRANON, JR. and SUSAN H. BRANON ("GRANTOR") in the state aforesaid in consideration of the sum of TWO HUNDRED TWENTY THOUSAND FIVE HUNDRED AND NO/100THS (\$220,500.00) DOLLARS, to the said Grantor in hand paid at and before the sealing of these presents by STEPHEN H. WALL and MARIA P. SNYDER WALL ("GRANTEE") in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said STEPHEN H. WALL and MARIA P. SNYDER WALL, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

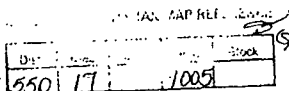
FOR REFERENCE SEE TMS No.:	DISTRICT	MAP	SUBMAP
	550	17	
	PARCEL	BLOCK	
	1005		

GRANTEE'S ADDRESS: 48 PLANTERS WOODS
HILTON HEAD ISLAND, SC 29928

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said STEPHEN H. WALL and MARIA P. SNYDER WALL, as joint tenants with the rights of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple.

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



CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
Date: April 23, 1998
in OR Book 1035 Page 2268
This document contains _____ pages.
Janetia Bailey
Register of Deeds - Beaufort County, SC
March 31, 2015

2269

WITNESS Grantor's Hand(s) and Seal(s), this 17th day of
April, 1998.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Leuten Ellis

R. Frost Branon, Jr.
R. FROST BRANON, JR.

[Signature]

Susan H. Branon
SUSAN H. BRANON

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that R. FROST BRANON, JR. and SUSAN H. BRANON, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 17th day of April,
1998.

[Signature]
Notary Public for: S.C.
My Commission Expires: 7/24/2000

5014 BFB

2271

FILED
JOHN A. SULLIVAN - RICH
FARMER COUNTY, S.C.

98 APR 23 AM 10:08

EX 1035 2268
FOLDER#

RECORDED THIS 26th DAY
OF May 1998
IN BOOK AE PAGE 466

Sharon O. Brown Rep
AUDITOR, FARMER COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DECLARATION OF RIGHTS,
RESTRICTIONS, AFFIRMATIVE
OBLIGATIONS, CONDITIONS,
ETC., WHICH CONSTITUTE
COVENANTS RUNNING WITH
CERTAIN LANDS OF SEA PINES
PLANTATION COMPANY.

PLAINTIFF'S
EXHIBIT

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CLASS "A" COVENANTS - April 11, 1970.

WHEREAS, SEA PINES PLANTATION COMPANY, a corporation organized and existing under the laws of the State of South Carolina, is the owner of certain lands located within Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina;

WHEREAS, SEA PINES PLANTATION COMPANY has previously made, published and recorded a Declaration of restrictive covenants affecting said lands, recorded in Deed Book 88 at Page 263, and in Deed Book 90 at Page 93, in the Office of the Clerk of Court for Beaufort County, South Carolina, reserving the right in each instance to add additional restrictive covenants in respect to said property;

WHEREAS, SEA PINES PLANTATION COMPANY, subsequent to the above Declaration of restrictions and covenants, made, published and recorded a Declaration of uniform covenants to restrict all Sea Pines Plantation residential areas, designated in subsequent deeds of conveyance as Class "A" Limited Residential Areas, together with special restrictions affecting Beach Residential Areas, Calibogue Cay Residential Areas and Point Comfort Residential Areas, all such uniform and special covenants and restrictions being recorded in Deed Book 97 at Page 157, and Deed Book 92 at Page 187 in the Office of the Clerk of Court for Beaufort County, South Carolina;

WHEREAS, SEA PINES PLANTATION COMPANY, in addition to the covenants above described, has also made, published and recorded additional special covenants of limited area application to restrict certain lands of Sea Pines Plantation Company, said special covenants of limited area application being recorded in Deed Book 100 at Page 270, in Deed Book 106 at Page 130, and in Deed Book 111 at Page 159 in the Office of the Clerk of Court for Beaufort County, South Carolina;

WHEREAS, SEA PINES PLANTATION COMPANY has also made, published and recorded consolidated uniform covenants applicable to all Class "A" Residential Areas, together with special restrictions affecting certain limited areas, which consolidated covenants are substantially identical to the covenants previously recorded, except that additional restrictive covenants have been added, all as recorded in Deed Book 112 at Page 189 in the Office of the Clerk of Court for Beaufort County, South Carolina; and

WHEREAS, SEA PINES PLANTATION COMPANY, in accordance with a resolution of its Board of Directors adopted at a meeting held on September 10, 1970, wherein the President and the Secretary of Sea Pines Plantation Company were authorized to make this Declaration and to execute the same on behalf of said Company, and wishes to add certain additional restrictive covenants to the aforesaid consolidated uniform covenants and to restate said consolidated uniform covenants together with the additional restrictive covenants contained herein;

NOW, THEREFORE, SEA PINES PLANTATION COMPANY, does hereby declare that the consolidated uniform covenants contained herein and the special covenants of limited area application contained herein shall be covenants running with the land and shall apply to lands conveyed in the future in Sea Pines Plantation by deed hereafter made, which make reference to this Declaration of covenants. The company reserves in each instance the right to add additional restrictive covenants in respect to said properties so conveyed, or to limit the application of the consolidated uniform covenants contained herein.

IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the covenants contained herein shall be the sole applicable covenants restricting and affecting properties conveyed in Class "A" Limited Residential Areas by Sea Pines Plantation Company, subsequent to the recording of this Declaration, and such other property in Sea Pines Plantation as may be added subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations, to the extent that there is any variation from and addition to covenants heretofore recorded, and further, it is the true intent and purpose of Sea Pines Plantation Company, that to the extent that there is conflict between these restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant Declaration shall govern and restrict properties hereafter conveyed in deed, making reference to this declaration.

DEFINITIONS

Whenever used herein, the term "the Company" shall refer to Sea Pines Plantation Company, its successors and assigns.

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Recorded 10/6/1
Book 262, Page 112
M & L Land & Dev. Co.
Let Through!
Scamp Ed. Shild.
H. H.

Release of just
recorded 8-24
book 213, page
Diana K. Brester
Let 167 Hutter
Woods, H. H.

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in Deed Book # 173, Pg. # 446
On 5-1-76
This Document contains 13 pages.
Mary J. Gomer 10-28-14
Beaufort County, SC - Register of Deeds

The Covenants and Restrictions below will be referred to as the Class "A" Covenants of April 1, 1970, and will be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, and will be incorporated by reference in deeds to residential property issued by Sea Pines Plantation Company by reference to the Book and Page of recording in the realty records in the Office of the Clerk of Court for Beaufort County, South Carolina.

PART I

COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO ALL CLASS "A" RESIDENTIAL AREAS

1. No building, fence or other structure shall be erected, placed or altered on any lot in such Residential Area until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall have been approved in writing by Sea Pines Plantation Company, its successors or assigns. Refusal of approval of plans, location or specifications may be based by the Company upon any ground, including purely aesthetic conditions, which in its sole and uncontrolled discretion of the Company shall seem sufficient. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Company. One (1) copy of all plans and related data shall be furnished to the Company for its records.

2. No plans will be approved unless the proposed house will have the minimum required square footage of enclosed dwelling area. Such minimum requirements for each lot will normally be specified in each sales contract and expressly stipulated in each deed. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, boat sheds, terraces, decks, open porches, and the like areas; provided further, that shed-type porches, even though attached to the house, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area". The term does include, however, screen porches, if the roof of such porches form an integral part of the roof line of the main dwelling or if they are on the ground floor of a two-story structure.

3. Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly to the side of other houses with detrimental effects on privacy, view of the ocean, preservation of important trees, etc., no specific setback lines are established by these covenants. In order to assure, however, that location of houses will be staggered where practical and appropriate, so that the maximum amount of view and breeze will be available to each house, that the structures will be located with regard to the topography of each individual lot, taking into consideration the intent of the dunes, the location of large trees and similar considerations, the Company reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house or dwelling on other

structure on all lots and every lot within the Class "A" Residential Area. Provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site; and provided further, that in the event an agreed location is stipulated in writing in the contract of purchase, the Company shall approve automatically such location for a residence.

4. The exterior of all houses and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency or natural calamities.

5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overencumber the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

6. A guest suite or like facility, without a kitchen, may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in over-crowding the site.

7. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

8. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal existence or existence in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or deny the enjoyment of other property in the neighborhood by the owner thereof.

9. In order to implement effective insect, reptile and weed control, the Company reserves for itself and its agents the right to enter upon any residential lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the Company or such plan), such entry to be made by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth which in the opinion of the Company detracts from the overall beauty, health and safety of the Sea Pines Plantation. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed trespass. The Company and its agents may, if necessary, enter upon such land to remove any trash which has collected on such lot with or without entrance and removal being deemed a trespass. The provision in this paragraph shall not be construed as an obligation on the part of the Company or the Sea Pines Association to mow, clear, cut or prune any lot or to provide garbage or trash removal services.

10. In the event the owner desires to sell a residential site within Sea Pines Plantation together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price; and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company.

11. No commercial signs, including "for rent", "for sale", and other similar signs, shall be erected or maintained on any lot except with the written permission of the Company or excepting they be required by legal proceedings. It being understood that the Company will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the property owner. If such permission is granted, the Company reserves the right to restrict size, color and content of such signs. Property identification and like signs exceeding a combined total of more than two (2) square feet may not be erected without the written permission of the Company.

12. Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Company.

13. Each lot owner shall provide receptacles for garbage in

13. Each lot owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Company.

14. Prior to the occupancy of a residence on any lot, proper and suitable provision shall be made for the disposal of sewage by connection with the sewer mains of the Sea Pines Public Service District, or if no such main has been constructed in the vicinity of such lot, the such disposal shall be made by means of a septic tank or tanks constructed on such lot for the disposal of all sewage, and all sewage shall be emptied or discharged into such main or tanks. No sewage shall be emptied or discharged into the ocean, any creek, marsh, river, pond or beach or streambed thereof. No sewage disposal system shall be permitted on any lot nor may any sewage disposal system be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards, and recommendations of the appropriate public health authority. Approval of such system shall be obtained from such authority after the completion of said system and prior to the use of the system.

15. The Company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right to run over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities over and over the reservation (10) feet of each lot and ten (10) feet along one (1) side of each lot and such other areas as are shown on the applicable plat provided further that the Company may cut drainways for surface water wherever and whenever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plat of a residential subdivision or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

16. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house. It being clearly understood that these latter temporary shelters may not at any time be used as residences or permitted to remain on the lot after completion of construction.

17. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any lot at any time, either temporarily or permanently.

18. No vault and/or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house, within the accessory building, within the screened area required in Paragraph 19 herein, or buried underground.

19. Each lot owner must construct a screening fence to shield and hide from view a small service yard. Plans for such fence delineating the size, design, texture, appearance and location must be approved by the Company prior to construction.

20. No private water wells may be drilled or maintained on any residential lot so long as the Sea Pines Water Works Company or the Sea Pines Public Service District Commission, their agents, successors or assigns, plans a water distribution line within fifty (50) feet of such lot with an average daily water pressure in such line adequate for normal household use in dwellings served by such distribution line, provided further that such water distribution line must be completed within five (5) days from the date of completion of the residence or a private well may be drilled by the lot owner.

21. No large trees measuring six (6) inches or more in diameter at ground level may be removed without the written approval of the Company, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building.

22. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Company. However, the Company hereby expressly reserves to itself, its successors or assigns, the right to replat any two (2) or more lots shown on the plat of any said subdivision in order to create a modified building lot or lots and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as a building site to include, but not be limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of said replatted lots, provided that no lot originally shown on a recorded plat is reduced by more than twenty (20) percent from its original size, but further provided that any such lot may be

shown on a recorded plat is reduced by more than twenty (20) percent from its original size, but further provided, that any such lot may be reduced in size to a minimum of one acre whether or not such reduction in size is more than twenty (20) percent of the area of the lot as originally platted. The restrictions and covenants herein apply to each lot so created except that the subdivision of Estate Sites shall not be governed by the provisions of the instant paragraph, but shall be governed by the provision of Part IV, Paragraph 8, of these covenants together with the other applicable provisions contained herein.

23. The Sea Pines Plantation Company expressly reserves to itself, its agents or assigns, any other provision in this Declaration notwithstanding the right to build any bridges, walkways, or fixed spans across any or all natural or man-made canals, creeks or lagoons in Sea Pines Plantation, provided that such walkway, bridge or fixed span, if it be over navigable and tidal waters, shall provide a minimum clearance of twelve (12) feet at mean sea level, fifteen (15) feet at mean low tide and nine (9) feet at mean high tide. Nothing in this paragraph shall be construed as placing an affirmative obligation on the Company to provide or construct any bridge, walkway or fixed span unless such bridge, walkway or fixed span shall be shown and specifically designated on the recorded plat of the subdivision or section of lots referred to and incorporated in the deed of conveyance to the grantee lot owner asserting such affirmative obligation to the grantor Company.

PART II

SPECIAL RESTRICTIONS PERTAINING TO BEACH RESIDENTIAL AREAS

1. In order to provide a permanent fund to maintain, landscape and repair private streets (except those located within a privately owned lot), walkways and like community areas, maintain adjacent areas in a clean and orderly condition, provide fund for pest control when needed, and in general provide a fund for those services important to the development and preservation of an exclusive community, and further to maintain the privacy and general safety of the residential communities which are in Sea Pines Plantation, each owner of a lot shall pay annually to the Sea Pines Plantation Company, as agent for the Sea Pines Association, the sum of eighty dollars (\$80.00) per building site, said sum to be placed in an account and to be used exclusively for the purposes hereinabove noted. For the purpose of this paragraph the term building site means the lot, portion of any lot, or group of lots, intended for the construction of a single dwelling unit. From and after January 1st 1973, this annual payment may be increased each year by the percentage of increase in the consumer price index for the previous year, or at the option of the Company, may be increased each year up to five (5) percent of the maximum authorized payment for the previous year. The Company assumes the obligation to provide maintenance and all other services stated above only to the extent such maintenance and services can be provided with the proceeds of each payment.

2. Owners of oceanfront lots may not remove, reduce, cut down or otherwise lower the elevation of sand dunes and ridges located on the rear (oceanside) half of any oceanfront lot to a level lower than fourteen (14) feet above the mean low water, except with the written permission of the Company.

3. There shall be reserved for the use and benefit of adjacent second-row lot owners an easement of view running along the side boundary lines of oceanfront lots for a width of five (5) feet on each side of each oceanfront lot. It is herein specified that the purpose of this easement is to enable second-row lot owners to maintain permanently an open area sufficiently unobstructed to afford a direct view of the ocean and direct circulation of ocean breezes. Owners of oceanfront lots may not erect any fence, wall or other structure interfering with such easements. Agents of the Company, acting at the request of the owners of second-row lots, may enter onto front row lots and cut or trim any trees, limbs, bushes or shrubs or other obstructions located within such easement areas and interfering with the view of second-row property owners. Such clearing and maintenance shall be at the expense of the second-row

lot owners, except when the easement of view was willfully obstructed by the owner of an oceanfront lot or his agent, in which event removal of such obstruction shall be at the expense of the ocean front lot owner who obstructed or authorized the obstruction of the easement of view. Such side boundary line easements of view shall not be applicable, however, to the center dividing line between two lots combined to form one building site.

4. The Company covenants and agrees that it will hold in trust all lands, if any, located between the front property lines of any oceanfront lot and the high water mark of the Atlantic Ocean directly in front of each lot for the use and benefit of residents of the beach residential areas of Sea Pines Plantation, and that it will not subdivide, sell or otherwise dispose of such land under conditions which would permit its use for the erection of any structure whatsoever without the written permission of the owner of the one oceanfront lot contiguous to and immediately behind such portion of the trust property involved.

5. Whenever the Company is permitted by these covenants to correct, repair, clean, preserve, clear out, or do any action on the property of any lot owners, entering the property and taking such action shall not be deemed a trespass.

PART III

SPECIAL RESTRICTIONS AFFECTING GOLF FAIRWAY RESIDENTIAL AREAS

1. In order to provide a permanent fund to maintain, landscape and repair private streets, (except those located within a privately owned lot, walkways, and like community areas, maintain adjacent areas used by residents in a clean and orderly condition, provide a fund for pest control when needed, and generally provide a fund for those services important to the development and preservation of an attractive community, and to further maintain the privacy and general safety of the residential communities which are in Sea Pines Plantation, each owner of a lot within such Golf Fairway Residential Areas shall pay annually to Sea Pines Plantation Company, as agent for the Sea Pines Association, the sum of eighty dollars (\$80.00) per building site. Said sum to be placed in an account and to be used exclusively for the purposes hereinabove noted. For the purpose of this paragraph the term "building site" means the lot, portion of any lot, or group of lots, intended for the construction of a single dwelling unit. From and after January 1, 1973, this annual payment may be increased each year by the percentage of increase in the consumer price index for the previous year, or at the option of the Company, may be increased each year up to five (5) percent of the maximum authorized payment for the previous year. The Company assumes the obligation to provide maintenance and all other services stated above only to the extent such maintenance and services can be provided with the proceeds of such payment.

2. The landscaping plan for the areas of any lot or block of future lots within fifty (50) feet of the boundary of the lot or block line adjacent to golf fairway property shall be in general conformity with the overall landscaping pattern for the golf course fairway area established by the golf course architect, and all individual lot or block landscaping plans must be approved by Sea Pines Plantation Company, its agents, successors and assigns before implementation.

3. There is reserved to the Grantor, Sea Pines Plantation Company, its agents, successors or assigns, a Golf Course Maintenance Easement Area on each lot adjacent to the fairway, or greens of the Sea Pines Golf Course. This reserved easement shall permit the Grantor, its agents, successors and assigns, at its election, to go on to any fairway lot at any reasonable hour and maintain or landscape the Golf Course Maintenance Easement Area. Such maintenance and landscaping shall include regular removal of underbrush, trees less than six (6) inches in diameter, stumps, trash or debris, planting of grass, watering, application of fertilizer, and mowing the Easement Area. This Golf Course Maintenance Easement

Area shall be limited to the portion of such lot within thirty (30) feet of the lot line bordering the fairway, or such lesser areas may be shown as a "Golf Course Maintenance Area" on the recorded plat of such lot; provided, however, that the above described maintenance and landscaping rights shall apply to the entire lot until there has been filed with the Company a landscaping plan for such lot by the owner thereof, or alternatively, a residence constructed on the lot.

4. Until such time as a residence is constructed on a lot, the Grantor, its agents, successors or assigns, reserves an easement to permit and authorize registered golf course players and their caddies to enter upon a lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass. After a residence is constructed, such easement shall be limited to that portion of the lot included in the Golf Course Maintenance Easement Area, and recovery of balls only, not play, shall be permitted in such Easement Area. Registered players or their caddies shall not be entitled to enter on any such lot with a golf cart or other vehicle, nor spend unreasonable time on such lot, or in any way, commit a nuisance while on such lot. After construction of a residence on a Golf Fairway lot, "Out of Bounds" markers shall be placed on said lot at the expense of the Company.

5. Owners of golf fairway lots shall be obligated to refrain from any actions which would detract from the playing qualities of the Sea Pines Golf Course or the development of an attractive overall landscaping plan for the entire golf course area. Such prohibited actions shall include, but are not limited to, such activities as burning trash on a lot when the smoke would cross on to the fairway, and the maintenance of unleashed dogs or other pets on the lot under conditions interfering with play due to their loud barking, running on the fairways, picking up balls or other like interferences with play.

6. Except for plats filed for record by the Sea Pines Plantation Company, no block of golf course property shall be subdivided into lots which do not have either a minimum of thirty (30) feet of coverage on a golf fairway or similar golf course area, or alternatively, contain a minimum of twenty thousand (20,000) square feet of ground area, except where such smaller lot shall have been approved in writing by a declaration of Sea Pines Plantation Company entered of record in connection with the filing of a subdivision plat showing a golf residential block divided into individual lots.

7. Whenever used in the foregoing special restrictions affecting "Golf Fairway Residential Lots", the term "lot" shall mean a platted lot, or two (2) or more contiguous platted lots if owned by the same party or parties, and a residence has been constructed on one (1) of the contiguous lots.

PART IV

SPECIAL RESTRICTIONS AFFECTING ALL WATERFRONT AND WOODLAND AREAS

1. In order to provide a permanent fund to maintain, landscape and repair private streets (except those located on a privately owned lot), walkways and like community areas in a clean and orderly fashion, provide for pest control when needed, and in general provide those services important to the development and preservation of an attractive community appearance, and further maintain the privacy and general safety of all waterfront or woodland areas, each owner of a lot or estate site in such waterfront or woodland areas shall pay annually to the Sea Pines Plantation Company, as agent for the Sea Pines Association, the sum of eighty dollars (\$80.00) per building site. Said sum to be placed in an account and to be used exclusively for the purposes hereinabove noted. For the purpose of this paragraph the term "building site" means the lot, portion of any lot, or group of lots intended for the construction of a single dwelling unit, from and after January 1, 1973; this annual payment may be increased each year by the percentage of increase in the consumer price index for the previous year, or at the option of the Company may be increased each year or twice (2) percent of the maximum authorized payment for the previous year. The Company assumes the obligation to provide maintenance and all other services stated above only to the extent such maintenance and services can be provided with the proceeds of such payment.

2. There shall be reserved for the use and benefit of adjacent second-row lot owners, if any, an easement of view, with said easement running along the side boundary lines of all lots located on and facing towards any creek, sound, tidal marshlands or wet lands. Said lots located on and facing towards any creek, sound, tidal marshlands or wet lands are hereinafter referred to as "outer perimeter lots." Said easement shall extend five (5) feet on either side of said boundary lines, it being the purpose of this easement to enable second-row lot owners to maintain permanently an open area sufficiently unobstructed to afford a view and direct circulation of breezes. Owners of outer perimeter lots may not erect any fence, wall or other structure interfering with such easements. Agents of the Company, acting at the request of owners of second-row lots, may enter onto said outer perimeter lots and cut or trim trees, limbs, bushes, shrubs, or other obstructions located within such easement area and interfering with the view of said second-row property owners. Such clearing and maintenance shall be

located within such easement area and interfering with the view of said second-row property owners. Such clearing and maintenance shall be at the expense of the second-row lot owners, except when the easement of view was willfully obstructed by the owner or agent thereof of an outer perimeter lot, in which event removal of such obstruction shall be at the expense of the outer perimeter lot owner who so obstructed such easement. Such side boundary line easements of view shall not be applicable, however, to the center dividing line between two lots combined to form one building site.

3. The Company covenants and agrees that it will hold in trust all lands, if any, located between the front property line of outer perimeter lots and the high water mark of any adjacent creek or canal, for the use and benefit of the owners of waterfront or woodland area lots, and that the Company will not subdivide, sell, otherwise dispose of, nor permit the erection of any structure upon such trust property without the written permission of the owner of the one outer perimeter lot contiguous to and immediately behind such portion of the trust property involved; provided, however, that this covenant extends only to lands contiguous to and located on or fronting on water navigable at low tide.

4. Owners of lots fronting on the trust property described in Paragraph 3 above may erect docks (and boat houses where appropriate in the discretion of the Company) upon the trust property located between the outer boundary of their lots and contiguous to same and the high water mark upon complying with the following terms and conditions:

(a) Complete plans and specifications, including site, color or finish must be submitted to the Company in writing;

(b) Written approval of the Company to such plans and specifications must be secured, the Company reserving the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds, including purely aesthetic reasons.

Any alterations of the plans and specifications or of the completed structure must also be submitted to the Company in writing and the Company's approval in writing must be similarly secured prior to construction, the Company reserving the same rights to disapprove alterations as it retains for disapproving the original structures.

5. All lot owners who construct or cause to be constructed said docks and/or boat houses, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings, and to maintain such paint or preservatives in an attractive manner. The Company shall be the judge as to whether the docks and/or boat houses are safe, clean, orderly in appearance, and properly painted or preserved in accordance with reasonable standards, and where the Company notifies the particular lot owner in writing that said dock and/or boat house fails to meet acceptable standards, said lot owner shall thereupon remedy such conditions within thirty (30) days to the satisfaction of the Company, and that failing to so remedy such conditions, the lot owners hereby covenant and agree that the Company may make the necessary repairs, but is not obligated to make such repairs or take such actions as will bring the said dock and/or boat house up to acceptable standards. All such repairs and actions to be at the expense, solely, of the lot owner in question.

6. Owners of lots located and fronting on any dredged creek, canal, marshlands or wet lands shall pay to the Sea Pines Plantation Company, in addition to the maintenance charge set forth in Part IV, Paragraph 1 above, the additional sum of twenty-five dollars (\$25.00) a year, said sum to be placed in an account and used exclusively for creek, canal, marshlands or wet lands shore maintenance and removal of accumulated silt.

7. Whenever the Company is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on the property of any lot owner, or on the easement areas adjacent thereto entering the property and taking such action shall not be deemed a trespass.

8. After February 15, 1971, any owner of an Estate Site containing two (2) acres or more may divide such site into a total of two (2) sites, neither site having less than one (1) acre of ground, notwithstanding the provisions of Part I, Paragraph 22 of these covenants relating to the general subdividing of lots. In the event of such a division, each lot so created shall be considered a separate individual lot for purposes of these covenants.

9. The provisions of Paragraph 23 of Part I of these covenants shall apply to any bridges, walkways, or crossings over any dredged salt water channel or natural channel providing navigable access between Calibogue Sound and any lot conveyed by Sea Pines Plantation.

salt water channel or natural channel providing navigable access between Calibogue Sound and any lot conveyed by Sea Pines Plantation Company, its successors and assigns. Except as may be provided from the proceeds of the twenty-five dollars (\$25.00) per lot maintenance and silt removal fee stipulated in Paragraph C above of this Part IV, Sea Pines Plantation Company expressly assumes no responsibility for silt or obstruction removal by dredging or any other means within natural or dredged channel providing access to any lot conveyed by Sea Pines Plantation Company. Should the Company fail to maintain an average depth of six (6) feet below mean sea level (approximately nine and one-half (9 1/2) feet below average high tide and two and one-half (2 1/2) feet below average low tide), any owner or group of owners may privately undertake to remove any accumulated silt or other obstruction in any natural or dredged channel providing navigable water access to their property.

PART V

SPECIAL RESTRICTIONS AFFECTING OPEN SPACE AREAS

It is the intent and purpose of these restrictions and covenants to maintain and enhance certain areas designated as Open Space Areas on this hereinafter filed for record in the Office of the Clerk of Court for Beaufort County, South Carolina, by Sea Pines Plantation Company. It shall be the further intent and purpose of these restrictions and covenants to protect natural streams and water supplies, to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wetlands, beach dunes and tidal marshlands, wildlife, game and migratory birds, enhance the value of abutting and neighboring forests, wildlife preserves, natural reservations or sanctuaries or other open areas and open spaces, and to allow and enhance recreation opportunities, preserve historical sites, and implement generally the Sea Pines Master Plan for development.

It is to be understood that land designated as an Open Space Area will remain undeveloped and natural, woodland, shoreline or tidal marsh land. An Open Space easement is hereby granted to the owner of property immediately contiguous and adjacent to such land (set aside as an Open Space Area) expressly provided that the deed of conveyance of said contiguous and adjacent property makes specific reference to a plan which shall show and designate Open Space Areas abutting the said property, and provided further that said deed of conveyance makes a specific reference to the covenants and restrictions contained herein, by appropriate reference to this Declaration of Covenants by book and page reference in the records of Beaufort County.

It is expressly understood and agreed that no building (tent, trailer or other structure, either temporary or permanent) except as shown elsewhere herein, shall be erected or caused to be placed on any lands shown and set aside on a recorded subdivision plan as an Open Space Area.

In pursuant to its overall program of wildlife conservation and natural area, the right is expressly reserved to the grantor to erect wildlife feeding stations, to plant small patches of cover and food crops for quail, turkeys and other wildlife, to make access trails or paths through said Open Space Areas for the purpose of permitting observation and study of wildlife, hiking and riding, to erect small signs throughout the Open Space Area designating points of particular interest and attraction, and to take such other steps as are reasonable.

necessary and proper to further the aims and purposes of the Open Space Area.

5. The general topography of the landscape, river frontage or creek frontage, as well as distinctive and attractive scenic features in Open Space Areas shall be continued in their present condition, subject only to the exceptions noted herein.

6. The grantor shall have the right to protect from erosion the land described as Open Space Area by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as sea walls, bulkheading, or other means deemed expedient or necessary by said grantor. The right is likewise reserved to the grantor to take necessary steps to provide and insure adequate drainage ways, canals or lagoons in Open Space Areas. The Company shall also have the right to cut fire breaks, and in general do all things necessary to carry on tree farming operations in such Open Space Areas, including harvesting of trees.

7. The Company reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in said Open Space Areas. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Company further reserves the right to locate wells, pumping stations and tanks within such Open Space Areas. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

8. No dumping of trash, garbage, sewage, sludges or any unsightly or offensive material shall be placed upon such Open Space Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Open Space Area.

9. The granting of this easement does in no way grant to the public or to the grantee or to the owners of any surrounding or adjacent land the right to enter such Open Space Area without the express permission of the Company.

10. The Company expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said Open Space Areas in a manner not inconsistent with the provisions of this Declaration.

11. It is expressly understood and agreed that the granting of this easement does in no way place a burden of affirmative action on the Company, that the Company is not bound to make any of the improvements noted herein, or extend to the grantee any service of any kind.

12. Where the grantor is permitted by these covenants to correct, repair, clean, preserve, clear cut or do any action on the restricted property, entering the property and taking such action shall not be deemed a breach of these covenants.

PART IV

DURATION OF COVENANTS TOGETHER WITH A FOREWORD

All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Sea Pines Plantation Company for a period of twenty-five (25) years from the execution date of this Declaration. Except the special restrictions and covenants affecting Open Space Areas, and they shall differ in no particular save they shall run for a period of fifty (50) years from the date so specified and designated on the relevant and applicable plat. After which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of lots substantially affected by such change in covenants, has been recorded, agreeing to change said covenants in whole or in part.

VIOLATION OF COVENANTS

11. In the event of a violation or breach of any of the restrictions contained herein by any lot owner, or agent of such owner, the owners of lots in the neighborhood or subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Sea Pines Plantation Company, its successors and assigns, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Sea Pines Plantation Company, its successors and assigns shall have the right, whenever there shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon such property where such violation exists, and summarily abate or remove the same at their expense on the owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed trespass. The failure to enforce any rights, reservations, restrictions or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar the right to enforce the same.

12. In enforcement, the invalidation by any court of any restrictions of these covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

13. The Company may include in any contract or deed hereafter made, (modifications and/or additions to the restrictive covenants) as contained in this Declaration of Covenants, with such modification, covenant being made applicable by reference to conveyances of land made subsequent to such modifications.

14. The Covenants, restrictions and affirmative obligations contained herein supersede the following prior Declarations of Rights, Restrictions, Conditions, and covenants made by Sea Pines Plantation Company and recorded in the realty records of Seawater County: Declaration of Restrictive Covenants at Deed Book 96 at Page 263 and in Deed Book 90 at Page 98; Declaration of Uniform Covenants at Deed Book 92 at Page 152 and Deed Book 92 at Page 237; Declaration of Special Covenants of Limited Area Application in Deed Book 100 at Page 120 and Deed Book 100 at Page 130; and Declaration of Rights, Restrictions, Conditions, etc., in Deed Book 128 at Page 185. The consolidated uniform covenants contained herein are in many paragraphs substantially identical to those covenants and restrictions previously recorded as set forth above, except that additional restrictions and provisions have been added herein.

15. It is the true intent and purpose of Sea Pines Plantation Company that the covenants and restrictions contained herein shall be the sole applicable covenants restricting and affecting Class "A" Limited Residential Area properties conveyed by Sea Pines Plantation Company to grantees of the Company subsequent to the date of the Declaration adopting these covenants, with these covenants and restrictions being made applicable to such conveyances by specific reference in individual deeds, or by subsequent declaration to the extent that there is any variation from and addition to covenants herein recorded; however, those properties in Sea Pines Plantation conveyed prior to the effective date of this instrument are not governed or otherwise restricted by the provisions of this Declaration and are governed by the covenants

It is the true intent and purpose of the Sea Pines Plantation Company that the covenants and restrictions contained herein shall be the sole applicable covenants restricting and affecting Class "A" Limited Residential Areas, properties conveyed by Sea Pines Plantation Company to grantees of the Company subsequent to the date of the Declaration adopting these covenants, with these covenants and restrictions being made applicable to such conveyances by specific reference in individual deeds, or by subsequent declaration to the extent that there is any variation from and addition to, covenants herein recorded; however, those properties in Sea Pines Plantation conveyed prior to the effective date of this instrument are not governed or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by those covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.

Dated this 11th day of April, 1970.

WITNESSES:

Christine B. Danner

SEA PINES PLANTATION COMPANY

By *Charles E. Fraser*

Charles E. Fraser, President

Connie D. Henman

De L. McCarty

De L. McCarty, Secretary

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Personally appeared before me *Christine B. Danner* who, being duly sworn, deposes and says that she saw SEA PINES PLANTATION COMPANY, by Charles E. Fraser, its President, and De L. McCarty, its Secretary, sign and seal and as its act and deed, execute the foregoing instrument for the uses and purposes therein mentioned and that she with *Connie D. Henman* witnessed the execution thereof.

SWORN to and subscribed before me this 29th day of April, 1970.

Connie D. Henman

Notary Public for South Carolina

My Comm. Exp. 12/31/72

FILED	BEAUFORT	RECORDED
MAY	COUNTY	IN
29	S.C.	BOOK
OCTOBER	MAY 11 1970	PAGE
12		46
CLERK OF COURT, COMMON PLEAS		

223/2046

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT } LIMITATION OF APPLICATION OF CLASS "A"
RESTRICTIVE COVENANTS DATED APRIL 1, 1970,
APPLICABLE TO SEA PINES PLANTATION COMPANY

WHEREAS, on April 1, 1970, SEA PINES PLANTATION COMPANY, a corporation organized and existing under the laws of South Carolina, promulgated Restrictive Covenants known as "Class A Covenants, April 1, 1970;" and

WHEREAS, the above referred to Covenants were recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 173 at Page 46; and

WHEREAS, in said document the said SEA PINES PLANTATION COMPANY reserved "...in each instance the right to add additional restrictive covenants in respect to said properties to be conveyed, or to limit therein the application of the consolidated uniform covenants contained herein;" and

WHEREAS, it is now the intention of SEA PINES PLANTATION COMPANY, to add additional Restrictive Covenants, or to limit the application of the above referred to Restrictive Covenants in respect to those properties to which the above referred to Class A Covenants for residential areas shall be made effective; and

WHEREAS, Paragraph Twenty-one (21) of the above referred to Covenants contains certain restrictive measures concerning the removal of trees measuring six (6) inches or more in diameter; and

WHEREAS, it is the intention of this document to change in certain particulars the above referred to Paragraph Twenty-one (21); and

WHEREAS, in a meeting held on the 2nd day of August, 1974, the Board of Directors of Sea Pines Plantation Company, adopted a resolution authorizing officers of said Corporation to make and execute this document;

NOW, THEREFORE, SEA PINES PLANTATION COMPANY, hereafter referred to as "Company" does hereby declare that the provisions contained in Paragraph Twenty-one (21) of the above described Class A Covenants, of April 1, 1970,

CERTIFIED TRUE COPY
of the document recorded in the Office of
S.C. DEED 223-2046
On 9-23-74
This Document contains 2 pages.
H. J. Sanders, Jr.
Beaufort County, SC - Register of Deeds

LAW OFFICES OF
DOWLING, DOWLING,
SANDERS & DUKES, P.A.
BEAUFORT, S. C.

2047

be limited by amending said provision to read after amendment, as follows:

"21. No large trees measuring three (3) inches or more in diameter at ground level may be removed without the written approval of the Company."

All other provisions contained in the Restrictive Covenants above described are hereby reaffirmed except as may be changed, modified or amended or added to herein.

WITNESSES:

SEA PINES PLANTATION COMPANY (SEAL)

Patricia Starling

By: H. Richard Werth

Barbara T. Richardson

Attest: Ann F. Bibb

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

PROBATE

PERSONALLY appeared before me Patricia Starling, who being duly sworn, says that she saw the corporate seal of the SEA PINES PLANTATION COMPANY affixed to the foregoing instrument and that she also saw H. Richard Werth Ann F. Bibb Vice President and Assistant Secretary of SEA PINES PLANTATION COMPANY sign, and attest the same, and that she with Barbara T. Richardson witnessed the execution and delivery thereof as the act and deed of the said SEA PINES PLANTATION COMPANY.

SWORN TO before me this 16th day of September, 1974.

Patricia Starling
Witness

Barbara T. Richardson (SEAL)
Notary Public for South Carolina

My Commission Expires: 7/25/84

LAW OFFICES OF
DOWLING, DOWLING,
SANDERS & DUKES, P.A.
BEAUFORT, S. C.

- Page Two -

HLN

FILED AT 10:45 O'CLOCK A M	BEAUFORT COUNTY S. C. SEP 23 1974	RECORDED IN BOOK 222 PAGE 2046

Dr. Anita S. Nettles
CLERK OF COURT OF COMMON PLEAS

332

2

224/472

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AMENDMENT AND ADDITIONAL DECLARATION OF
RIGHTS, RESTRICTIONS, CONDITIONS, ETC.,
WHICH CONSTITUTE COVENANTS RUNNING WITH
CERTAIN LANDS OF THE SEA PINES PLANTATION
COMPANY - CLASS "A" COVENANTS, APRIL 1,
1970.

WHEREAS, Sea Pines Plantation Company, a corporation organized
and existing under the laws of the State of South Carolina, is the
owner of certain lands located within Sea Pines Plantation on Hilton
Head Island, in the County and State aforesaid; and

WHEREAS, Sea Pines Plantation Company has heretofore executed
Covenants, Restrictions, and Affirmative Obligations applicable to
all Class "A" Residential areas within Sea Pines Plantation, said
Declaration being recorded in the Office of the Clerk of Court for
Beaufort County, South Carolina in Deed Book 173 at Page 46; and

WHEREAS, Sea Pines Plantation Company reserved the right,
in said Class "A" Covenants to modify or add to said restrictive
covenants;

NOW THEREFORE, Sea Pines Plantation Company does hereby amend
the Class "A" Covenants, April 1, 1970, for Residential Areas which
are recorded in the Office of the Clerk of Court for Beaufort County,
South Carolina, in Deed Book 173 at Page 46 by striking and deleting
paragraph 1 of Part II - Special Restrictions Affecting Beach
Residential Areas, paragraph 1 of Part III - Special Restrictions
Affecting Golf Fairway Residential Areas; and paragraph 1 of Part IV -
Special Restrictions Affecting All Waterfront and Woodland Areas
and replacing in lieu thereof the following:

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in DEED Book # 224 Pg. # 472
On 10-7-74
This Document contains 3 pages.

Mary J. Lammie 4-16-15
Beaufort County, SC - Register of Deeds

1356 K-2

473

In order to provide a community fund for private road maintenance, roadside landscaping, insect control, security and other community services ("Community Services") for Sea Pines Plantation, each Owner shall pay to the Company or its authorized agent, an annual Community Services assessment of One Hundred Eighty (\$180.00) Dollars per each dwelling unit and One Hundred Ten (\$110.00) Dollars per each unimproved lot, said sum to be placed in an account and to be used exclusively for the purposes herein above noted. Each unimproved lot assessment shall increase to the then prevailing assessment, as determined in accordance with the provisions herein, for dwelling units at such time as a dwelling unit is started on the lot (i.e., groundbreaking) and such assessment shall be prorated between the unimproved property assessment and the improved property assessment for that calendar year.

The Company assumes the obligation of furnishing Community Services in Sea Pines Plantation only to the extent that the costs of such services can be defrayed by the proceeds from the aforesaid Community Services assessment.

In determining the amount of the annual Community Services assessment for any current year, the Company may, in its discretion, set an amount different from the immediately preceding year's annual Community Services assessment by as much as the percentage of change in the Consumer Price Index All Items-All Groups (1967 = 100) in the immediately preceding calendar year. The maximum amount of each change in annual assessments shall be determined by multiplying the previous year's annual assessment by the percentage change in the Consumer Price Index.

The "Amendment And Additional Declaration Of Rights, Restrictions, Conditions, Etc., Which Constitute Covenants Running With Certain Lands Of The Sea Pines Plantation Company - Class "A" Covenants, April 1, 1970" as contained herein is applicable only to property within Sea Pines Plantation in which the deed of conveyance and/or the contract of sale make specific reference to said Amendment and/or to those persons or other entities who have purchased property within Sea Pines Plantation prior to said Amendment and who consent to the provisions contained herein.

TAB

1355312

In all other respects the terms of the Class "A" Covenants shall remain unchanged.

DATED this 27th day of September, 1974.

Witness:

Lucy M. Wingard

Thomas A. Beard

SEA PINES PLANTATION COMPANY

By: Joseph B. Fraser, Jr.
its President

Attest: Charles A. Scurminach
its Assistant Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Thomas A. Beard who, being duly sworn, deposes and says that ~~(s)~~he saw SEA PINES PLANTATION COMPANY, by Joseph B. Fraser, Jr. its President and Charles A. Scurminach its Assistant Secretary sign the within Declaration, and the said corporation by said officers seal said Declaration, and as their act and deed, deliver the same, and that ~~(s)~~he with Lucy M. Wingard witnessed the execution thereof.

Thomas A. Beard

Sworn to before me this 27th day of September, 1974.

Lucy M. Wingard
Notary Public for South Carolina
My Commission Expires April 25, 1982

(Seal)

SPPCO

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AT	COUNTY	IN
8:30	S. C.	BOOK
O'CLOCK	OCT 7 1974	PAGE
A M		472
Marion H. Fender CLERK OF COURT OF COMMON PLEAS		

TAB

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385 p1561



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

AMENDMENT AND ADDITIONAL DECLARATION OF
RIGHTS, RESTRICTIONS, CONDITIONS, ETC.
OF COVENANTS RUNNING WITH CERTAIN LANDS
OF THE SEA PINES PLANTATION COMPANY
CLASS "A" COVENANTS, APRIL 1, 1970

WHEREAS, Sea Pines Plantation Company, a corporation organized and existing under the laws of the State of South Carolina (the "Company"), is the owner of certain lands located within Sea Pines Plantation on Hilton Head Island, South Carolina; and

WHEREAS, the Company has heretofore executed Covenants, Restrictions, and Affirmative Obligations applicable to all Class "A" Residential areas within Sea Pines Plantation, said Declaration being recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 173 at Page 46 (the "Covenants"); and

WHEREAS, the Company reserved the right in the Covenants to modify or add to said Restrictive Covenants; and

WHEREAS, it is now the intention of the Company to modify the Covenants in respect to all those properties to which the Covenants have been or shall be made applicable and effective; and

WHEREAS, paragraph twenty (20) of the Covenants contains a specific provision prohibiting the drilling and/or maintenance of private water wells on residential properties in Sea Pines Plantation; and

WHEREAS, it is now the intention of the Company to specifically provide for an exception to the above referred to prohibition under the terms and conditions herein contained;

NOW, THEREFORE, the Company does hereby amend the Covenants by modifying paragraph twenty (20) thereof as herein provided:

1. The above "Whereas" clauses are by reference hereto incorporated herein and made an integral part hereof.

2. The Company reaffirms its declaration and general prohibition against the drilling and/or maintenance of private water wells within Sea Pines Plantation as stated in paragraph twenty (20) of the Covenants and Restrictions.

CERTIFIED TRUE COPY

of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in DEED Book # 385 Pg. # 1561
On 1-11-84

This Document contains 4 pages.

Mary J. Jamieson 4-16-15 -1-
Beaufort County, SC - Register of Deeds

FILED IN DEED - M BOOK 385 PAGE 1561
FILED AT 09:00 ON 01/11/84

3. The Company hereby declares that it shall now provide for a specific exception to the general prohibition against the drilling and/or maintenance of private water wells on residential lots within Sea Pines Plantation.

4. The above-mentioned exception shall apply only to the drilling and maintenance of heat pump water source and reinjection water wells for the sole and exclusive purpose of supplying water for residential heat pump air conditioning/heating systems.

5. It is hereby declared that owners of property subject to the Covenants may apply for a waiver of the prohibition against drilling and/or maintaining heat pump water source and reinjection water wells but must strictly comply with and adhere to the following provisions:

- A. No private heat pump water source and reinjection water well shall be drilled to such a depth so as to penetrate the cap of the Ocala Aquifer. Prior to the initiation of any drilling operation, the Property Owner shall notify his well-drilling contractor in writing of this restriction. Upon the conclusion of well drilling operations, the Property Owner's contractor shall prepare and submit an affidavit identifying the property drilled and certifying that the Ocala Aquifer was not penetrated.
- B. Any property owner desiring heat pump water source and reinjection water wells shall submit an application to the Sea Pines Plantation Company Architectural Review Board or its designee. The Company reserves the right to charge a property owner a reasonable application fee, if the Company so determines that such a fee is warranted.
- C. Any additional costs attendant to filing and reviewing applications with the Sea Pines Architectural Review Board shall also be borne by the applicant/property owner.
- D. The Company through its Architectural Review Board has the absolute right in its sole discretion to disapprove any such application without recourse by the property owner for any reason whatsoever.
- E. Approval of the application shall be contingent upon the assumption by the property owner of all costs associated with the drilling and maintaining of the heat pump water source and reinjection wells.
- F. Any approval granted to drill heat pump water source and reinjection wells, shall be further contingent upon the property owner agreeing that the wells shall be used for the sole and exclusive purpose of supplying water for heat pump air

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FILED AT OCEAN SPRING FLA 11/1/54

conditioning/heating systems and for no other purpose. The Company reserves the right to withdraw said permission in the event of any prohibited use.

G. The Company shall have at all times the right but not the obligation to supervise and monitor all drilling and piping activities with regard to the installation of heat pump water source and reinjection water wells.

H. Approval by the Company to drill heat pump water source and reinjection wells shall not constitute a warranty or guarantee that such wells shall be effective for the specific purpose of operating a heat pump air conditioning/heating system or that such wells will not damage surrounding properties.

I. Upon the approval of an application to drill heat pump water source and reinjection water wells, the property owner covenants and agrees that it shall hold harmless Sea Pines Plantation Company, its successors and assigns, officers, agents and employees, from all claims, suits, damages, liabilities and costs (including attorney's fees) which may arise as a result of the installation, maintenance and operation of such a system including but not limited to claims by other property owners in Sea Pines Plantation.

6. This Amendment and Additional Declaration of Rights, Restrictions, and Conditions, shall constitute covenants running with certain lands of Sea Pines Plantation and shall be applicable only to those properties within Sea Pines Plantation which have been or shall be made subject to the Covenants. Otherwise, in all other respects, the terms of the Sea Pines Class "A" Covenants shall remain unchanged.

IN WITNESS WHEREOF, Sea Pines Plantation Company by its duly authorized officers, has caused this Amendment to be executed and its corporate seal to be affixed as of this 10 day of January, 1987.

WITNESSES:

Billie A. Wiggins

Terry L. Wiggins

SEA PINES PLANTATION COMPANY:

By: [Signature]
Its

Attest: [Signature]
Its Secretary

FILED IN DEED - N BOOK 355 PAGE 1563
FILED AT CANTON ON 21-11-84

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE

PERSONALLY appeared before me Billie A. Wiggins, and made
oath that s/he saw the within named SEA PINES PLANTATION COMPANY, by
John R. Hemphill, its Vice President, sign the
within Instrument, and Charles A. Scarmineach, its
Secretary, attest the same, and that s/he with
Terry L. Wynn witnessed the execution thereof.

Billie A. Wiggins

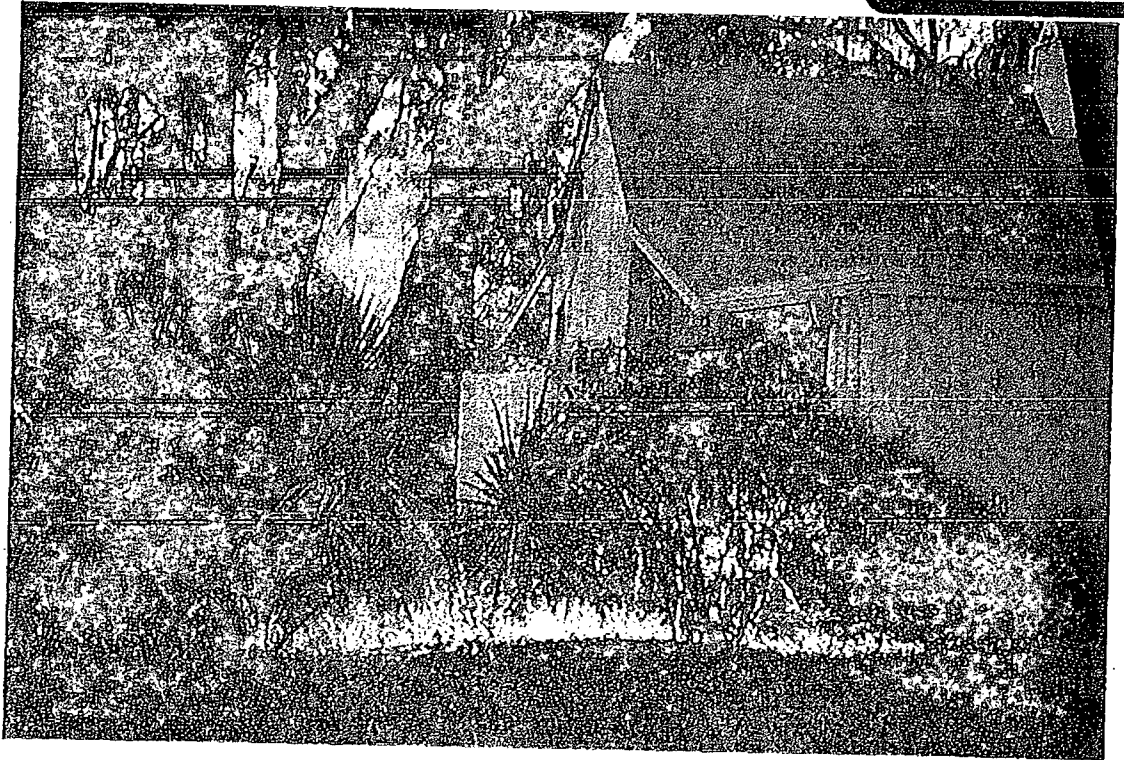
SWORN to and subscribed before me
this 10 day of January 1987.

Terry L. Wynn
Notary Public for South Carolina
My Commission Expires: 10/28/92

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Nds
FILED IN DEED - M BOOK 395 PAGE 1564
FILED AT 093000 ON 01/11/84 28491
BOOK NUMBER 395 PAGES 1561- 1564
FILING FEE 4.00
STATE STAMPS .00
COUNTY STAMPS .00
TOTAL FEES 4.00

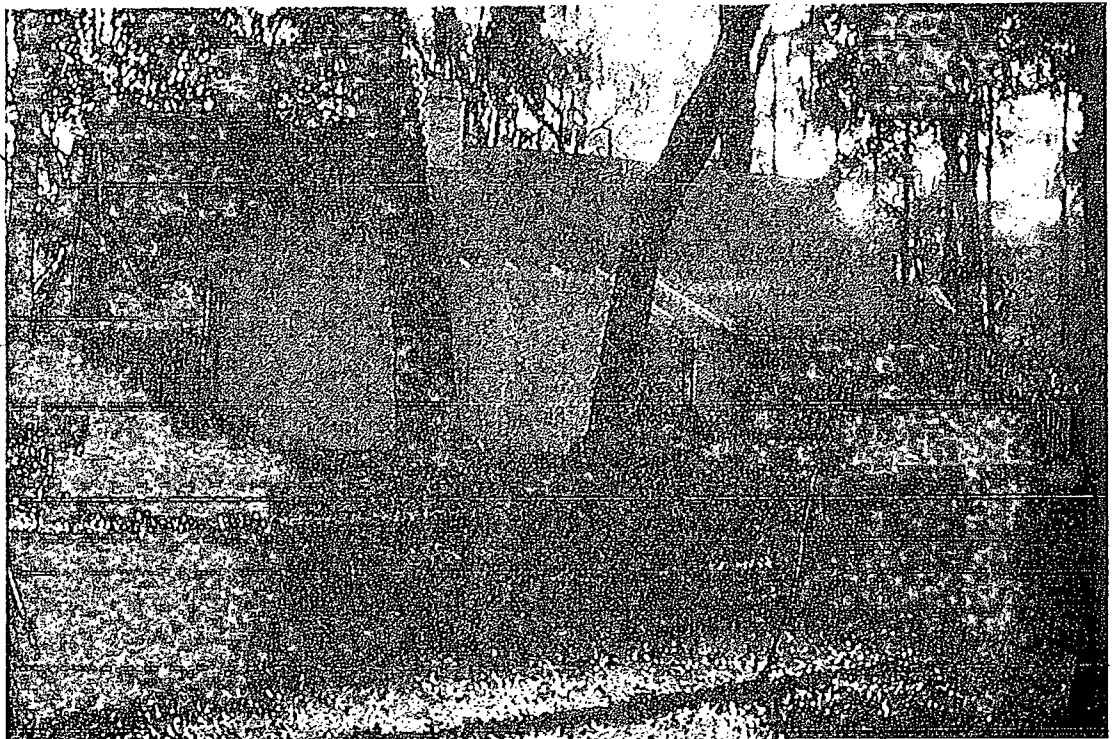
HENRY JACKSON
CLERK OF COURT 3RD DISTRICT, SC



a

KITCHEN

DINING
ROOM



b

N/BEA, BATH

October 15, 2013



Dear Walt,

We received your letter when we returned to the Island October 11. We had been to talk with Chuck Scarminach prior to our departure but did not have him act on Cary Kelley's call since we were leaving. And, we thought, the facts would be discovered in our absence. Airbnb.com is a new and exciting business trend like VRBO.com (Vacation Rentals By Owners) was and there are un-chartered waters, it seems.

First of all, it appears research about Airbnb.com was not thorough and the Sea Pines HOA Board was unaware that Cary had engaged your services to do this, according to a couple of sources. That being said, it should be noted, in spite of the name they chose for their business, (and there is an interesting story about their origin behind it), it is not a website for bnb's. By that I mean, renting multiple rooms to parties not on the same contract, so to speak. An inn would be the same thing, just no breakfast included. We assure you, we do not do that here. ONE guest party has the choice of renting one or two rooms depending on their needs. We limit the number of people in this party to four people. There has never been more than one car in the driveway, making a total of two including ours.

- X We have a separate office/studio upstairs (no kitchen as per covenants) where we can retreat to. There is nothing in the covenants that disallows this, only that this separate space cannot be rented by itself.

We do serve breakfast or leave them breakfast foods as an amenity. An amenity, as you know, is a value added proposition. We could be giving out toiletries or bottled beverages, but preparing breakfast is a relationship builder and we and our guests enjoy that. Again, we have discovered nothing that disallows this in the covenants, nor do we have to be licensed by the state to do this since it is prepared and served in our home to guests residing in it and at no extra charge.

The Town of Hilton Head Island requires a business license if you have more than one rental on the island. We do not, and, by logical extension, we are not a business by their classification. We are simply a short term rental. There are at least 5 other short term rentals on our street.

We have already paid income taxes on this and plan to pay ATAX on the revenue as well. If I have understood it correctly, one pays even if it is one room. We established an R code for guest passes when we discovered we needed to do this even if it is our primary residence. All in order.

We certainly understand the intent of the covenants regarding commerce in a residential area. I would not want our street to have cars lined up and down it on a regular basis, nor unnecessary noise or activity. Our rental doesn't do either of these things. In fact, we have found our guests to be of a much higher caliber than many when it comes to cleanliness, respect for property and courtesy. These folks know there is an on-site caretaker (most of the time it is us if we are not traveling) and this is fine with them. No wild party throwers or heavy drinkers or overcrowding of the property -- which we all know is

what we are trying to avoid. In fact, that is the very thing that can happen where the renters are left to their own devices.

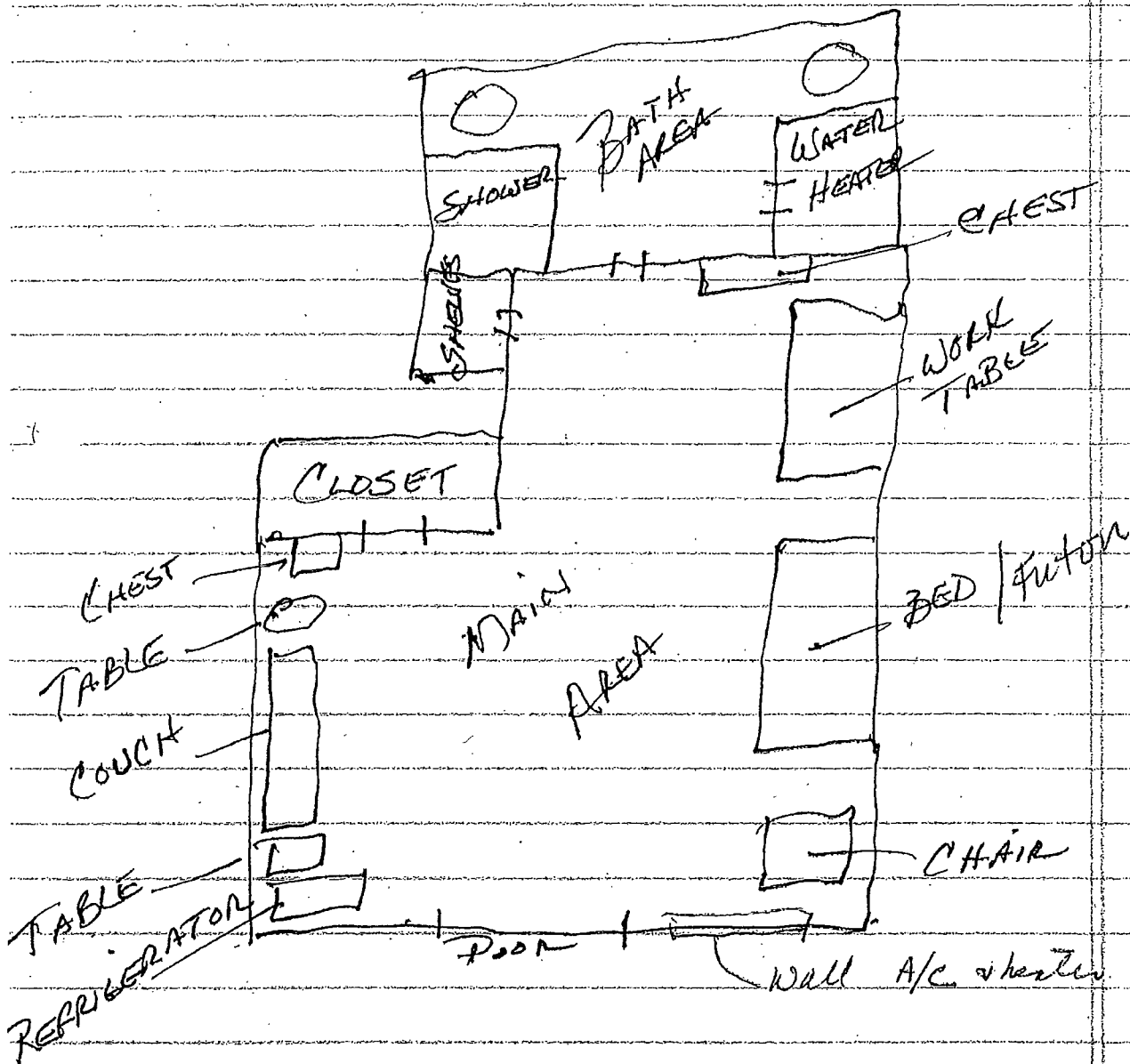
Bottom line - we violate no covenants, or laws, add to the tax base, bring quality people to enjoy Sea Pines and the Island and are able to have a nice addition to our Social Security which helps us keep the property in good order. Listing on Airbnb is an educated choice. We like their professionalism, ease of loading, their provision of revenue information for tax time, their internet optimization skills, and their "pay by performance" charges instead of upfront annual fees. Sounds like a Win/Win to us and apparently to millions around the world who both list and host. In fact, when we travel, we prefer to stay with Airbnb hosts.

Thank you for your time and attention, Walter, we hope this letter sheds some light and a voice of reason. And, give Sharon Potts a hug for us. I worked with Dick for 8 years at RMC and Sharon remains a close friend for us.

Kind regards,

Tuzy and Steve Wall

48 Planter's Wood Drive
Hilton Head Island, SC 29928

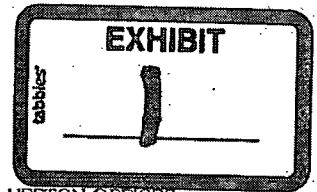
Court's Exhibit 1

STIPULATIONS 14-2438

- 1) Property is subject to Sea Pines Covenants (Class "A" covenants and restrictions) as described in the Complaint.
- 2) Property is a 2-story detached residential dwelling unit. The second story space has a separate entrance and is not accessible from the first floor.
- 3) Certain property is rented by the Defendants to 3rd parties through an internet rental site.
- 4) The rented property consists of the entire first floor of the dwelling unit, save & except for one locked closet.
- 5) The second floor of the dwelling unit is off-limits to the renters and is occupied exclusively by the Defendants.

Exhibits to Complaint

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.



WILLIAM W. JONES, JR.
MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND (SC & OH)
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
KATHRYN A. SNELGROVE
JAMES M. HERRING (OF COUNSEL)
DAVID P. GEIS (OF COUNSEL) (SC & NY)

HILTON HEAD OFFICES
18 POPE AVENUE (29928)
P.O. DRAWER 7049
HILTON HEAD ISLAND, SC 29938
TELEPHONE (843) 842-6111
FAX (843) 686-1219
E-MAIL jsplaw@jsplaw.net

BLUFFTON OFFICES
7 PLANTATION PARK DRIVE, SUITE 3
P.O. BOX 1938
BLUFFTON, SC 29910
TELEPHONE (843) 706-6111
FAX (843) 706-5667
E-MAIL jsplaw@jsplaw.net

THIS CORRESPONDENCE ORIGINATED AT THE HILTON HEAD ISLAND OFFICE

E-mail: wborden@jsplaw.net

June 20, 2014

Via Certified and Regular U.S. Mail

Stephen H. Wall and Maria
P. Snyder Wall
48 Planters Wood Drive
Hilton Head Island, SC 29928

Re: Short term leasing of part(s) of your residence at 48 Planters Wood Drive

Dear Mr. and Mrs. Wall:

I am writing to you on behalf of Community Services Associates, Inc. ("CSA") concerning the above-referenced matter. It is my understanding that you have previously been contacted on this matter, and replied with a substantial analysis of the activities you are undertaking.

Please be advised that CSA regards the short-term leasing of *part* of your 48 Planters Wood Drive residence (sometimes hereinafter the "Residence") to violate the Class "A" Covenants for Sea Pines land use. You acquired the Residence by deed dated April 17, 1998, and recorded in the office of the Beaufort County Register of Deeds on April 23, 1998 in Book 1035 at Page 2268. The legal description of the Residence in your deed describes it as Lot Number Thirty-One (31) Planters Woods Subdivision of Sea Pines Plantation. It further states that said property is conveyed subject to obligations, limitations, covenants, etc. applicable to Class A Limited Residential Areas of Sea Pines Plantation. The Residence is classified as residential by the Town of Hilton Head Island.

Sections 5 and 6 of the Class "A" land use restrictions state, in relevant part, the following:

"5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small story accessory building which may include a

Mr. and Mrs. Wall

June 20, 2014

Page Two

detached private garage and/or servant's quarters, provided ... that such building is not used for an activity normally conducted as a business. ...

"6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling and provided, however, that such guest suite would not result in over-crowding of the site." Class "A" Covenants, §§ 5 and 6 (emphasis added).

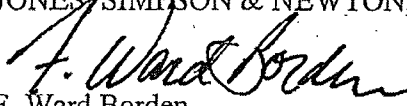
It is the information of CSA that one or two rooms at your dwelling are being rented, short term, while 48 Planters Wood Drive remains your primary residence. Whether you term what is occurring at the Residence to be a "Bed and Breakfast," or a variant of it, CSA regards it as a business operation violating §5 of the Class "A" Covenants. In addition to being a business enterprise violating §5, the activity is a violation of §6 of the Class "A" Covenants.

The Class "A" Covenants do not permit an owner separately to rent individual rooms, rent an accessory building, or rent parts of the main dwelling or accessory building. Individual rooms, when rented separately, can be classified as a "guest suite or like facility" and §6 of the Class "A" Covenants provides that such room or rooms may not be separately rented or leased; only the entire premises may be rented. Even if you were to cease operating a "Bed and Breakfast," your rental of one or two rooms in your dwelling instead of renting out the entire dwelling violates the Covenants.

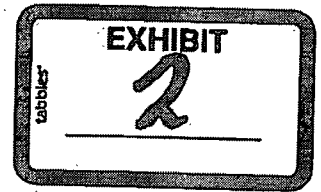
Notice on behalf of CSA is hereby given [again] that your referenced acts violate the Class "A" Covenants, and that you must cease and desist the activities within thirty (30) days from the date of this letter. Continued violation by you of the covenants, as described, shall result in CSA utilizing any and all available remedies, including legal action, to cause cessation of the violations, and award of all costs and expenses incurred in enforcement.

Very truly yours,

JONES, SIMPSON & NEWTON, P.A.


F. Ward Borden

cc: Charles Ryan, President



LAUGHLIN & BOWEN, P.C.
ATTORNEYS AT LAW
92A Main Street
P. O. Drawer 21119
HILTON HEAD ISLAND, SOUTH CAROLINA 29925-1119

DREW A. LAUGHLIN
JOHN R. C. BOWEN

TELEPHONE
(843) 689-5700
FACSIMILE
(843) 689-9300
E MAIL ADDRESS
drew.laughlin
@laughlinandbowen.com

July 18, 2014

F. Ward Borden, Esq.
Jones, Simpson & Newton, P.A.
P.O. Drawer 7049
Hilton Head Island, SC 29938

Re: Stephen H. Wall and Maria P. Snyder Wall
48 Planters Wood Drive

Dear Ward:

I represent Mr. and Mrs. Wall. They have asked me to respond to your letter to them of June 20, 2014.

The Walls' property includes a two-story residence with an attached carport. There is a second-floor bedroom with a separate outside entrance. The home has one kitchen, located on the first floor. This is the same configuration that existed when the Walls purchased the property.

The Walls' use of the property does not violate Section 5 of the Covenants. The home is the Walls' primary residence. No detached accessory building is used for business activity.

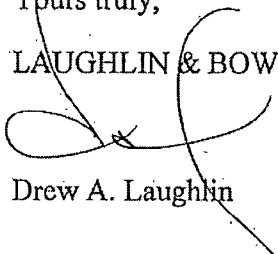
Nor is there any violation of Section 6 of the Covenants. The Walls do not rent individual rooms or guest suites without kitchens. The second floor "guest suite" is their full-time bedroom. It is not separately rented or leased. The site is not over-crowded.

The Covenants do not prohibit rentals, whether short or long term. Nor do the Covenants prohibit owners from remaining in their home while it is occupied by renters or guests.

The Walls ask that CSA reconsider its position. If CSA requires any additional information, or would like to visit the property, please let me know.

Yours truly,

LAUGHLIN & BOWEN, P.C.


Drew A. Laughlin

cc: Mr. and Mrs. Wall

LAW OFFICES
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WILLIAM W. JONES, JR.
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WM. WESTON JONES NEWTON
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BLUFFTON, SC 29910
TELEPHONE (843) 706-6111
FAX (843) 706-5667
E-MAIL jsplaw@jsplaw.net

THIS CORRESPONDENCE ORIGINATED AT THE HILTON HEAD ISLAND OFFICE

E-mail: wborden@jsplaw.net

August 8, 2014

Via E-mail and U.S. Mail

Drew A. Laughlin, Esquire
LAUGHLIN & BOWEN, P.C.
92A Main Street
P.O. Drawer 21119
Hilton Head Island, SC 29925-1119



Re: Stephen H. Wall and Maria P. Snyder Wall; 48 Planters Wood Drive

Dear Drew:

Thank you for your response of July 18, 2014 to my June 20, 2014 letter identifying the Walls as being in violation of the Class "A" land use restrictions for Sea Pines Plantation. I have reviewed the matter with representatives of CSA and they strongly believe that CSA should continue its efforts to enforce the Sea Pines Covenants and the local ordinances.

Therefore, I am writing to demand one final time that the Walls cease their "bed and breakfast" activities which entail, at a minimum, leasing *individual rooms* in their primary residence, and preparing food for their customers, for income. The operating of the "bed and breakfast" is also a violation by the Walls of an applicable Town of Hilton Head Island ordinance prohibiting "bed and breakfast" operation in an established residential subdivision.

CSA does not desire conflict with the Walls, but simply seeks compliance with applicable covenants, which it is mandated to uphold and enforce, and the law. If the Walls do not cease the activities complained of, and provide us written notice of same within ten (10) days of the date of this letter, we shall pursue judicial remedies for violation of the Class "A" land use covenants and applicable laws of the Town of Hilton Head Island.

Sincerely,

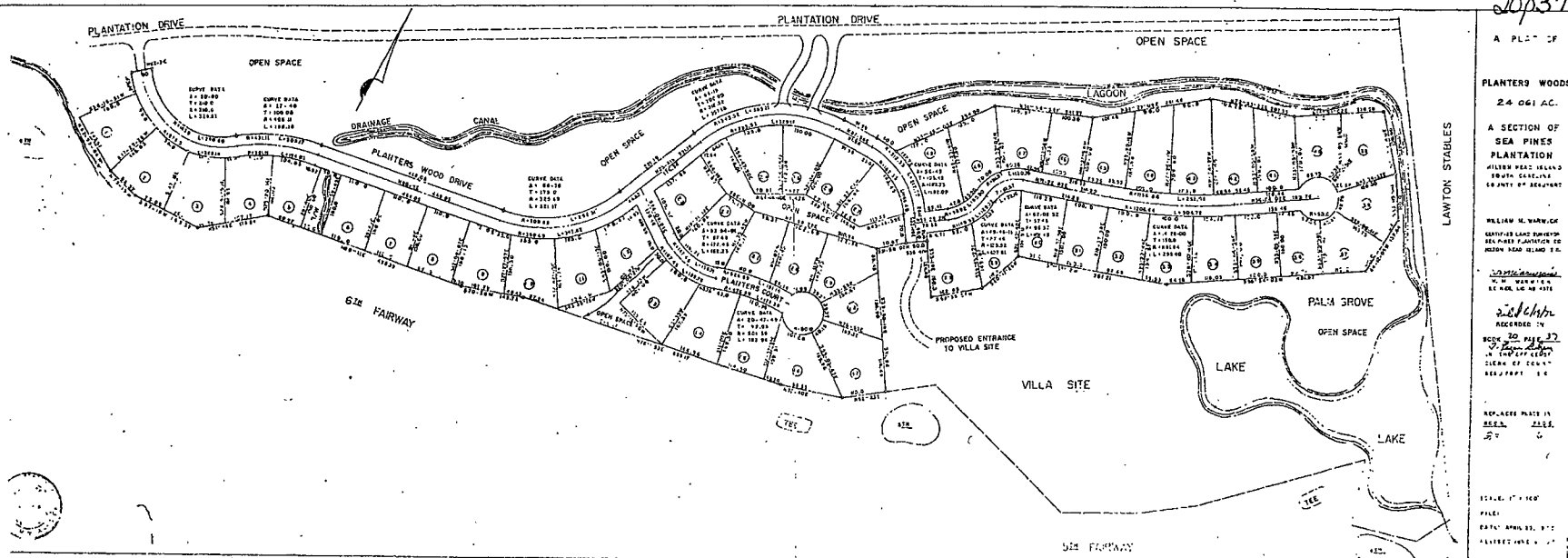
JONES, SIMPSON & NEWTON, P.A.

A handwritten signature in dark ink, appearing to read "F. Ward Borden".
F. Ward Borden

cc: Community Services Associates, Inc.

EXHIBIT

4



LG PLAT FILE
PB-20 PG 37

Exhibits to Plaintiff's Trial Brief

Exhibit 1

Deed of April 17, 1998

(see Plaintiff's Trial Exhibit 1, R.p.316)

Exhibit 2
Covenants & Amendments
of April 1, 1970
(see Plaintiff's Trial Exhibit 2, R.p.319)



SEA PINES PLANTATION
ARCHITECTURAL REVIEW BOARD
OFFICE (843) 671-5533 • FAX (843) 671-5368



November 13, 2014

SCANNED INTO FILE
NOV 14 2014

Mr. Stephen H. Wall
48 Planters Wood Drive
Hilton Head Island, SC 29928

Re: LOT 31 PLANTERS WOODS
(48 PLANTERS WOOD DRIVE)

Dear Mr. Wall:

The Sea Pines Architectural Review Board approved the application submitted for repairs at the above referenced address.

It will not be necessary to pay an escrow deposit for compliance and clean up but please call me when the project is complete so I can do a final inspection.

You may call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Ken Rabon'.

Ken Rabon
Administrator

SEA PINES ARB
175 Greenwood Drive
Hilton Head Island, SC 29928

REQUEST FOR REPAIRS
WITHOUT EXTERIOR CHANGES

Owner's Name: STEPHEN H. WALL

Property Address: 48 PLANTERS WOOD DR.

Lot # & Subdivision: 31 Planter Wood

Please give a brief description of the repairs: SIDING REPAIR

CONTRACTOR'S NAME: STEPHEN WALL

MAILING ADDRESS: 48 PLANTERS WOOD DR.

Telephone #: [REDACTED] Fee Paid: \$75. — Date: 11/12/2014

Stephen H. Wall
Owner's Signature

Telephone #: [REDACTED]

Revised 2/10/2011

Creative Structures, Inc.

30-B Hunter Road
Hilton Head Island, SC 29926
Office: 689-9273 Mobile: 247-2562
Fax: 681-8096
E-Mail: csibuilderhatgray.com

April 27, 2004

To: Sea Pines ARB

From: John Ballenger

Ref: Wall Residence
48 Planters Woods Dr.

Dear Ken and Suzanne

31 Planters Woods

This letter is to inform you that Creative Structures, Inc. (CSI) will be implementing the repairs to the Wall residence. As you are aware the Wall's house had a chimney fire earlier this year. The chimney exiting the roof and the roof itself were burned. These areas of the structure are being replaced. There is a small area on the front of the garage where the fascia was also damaged when the fire department removed the chimney from the roof. These are the only exterior areas affected by the fire and associated repairs. CSI will be returning the structure back to the original design. If any deviation from the original design to the exterior is considered we will submit these changes to the review board for approval before their implementation. If you should have any questions or need any further information please call me and I will assist you in any way.

Very Truly Yours,

John Ballenger



1362
(no original plans)

Sea Pines Plantation Company

Hilton Head Island, S.C. 29928 (803) 785-3333

2-18-81

R. Arnold Ellison
48 Planters Woods Drive
Hilton Head, S.C. 29928

SUBJECT: Owner R. Arnold Ellison

Lot No. 4831 Street Planters Woods Drive

File 1362A Sea Pines Building Permit 621

The Architectural Review Board has received and approved your final plans, application and stake-out for the subject project. This approval is limited to design criteria by the Architectural Review Board as provided by the Restrictive Covenants and should not be interpreted as approval of any variation from restrictions or conditions imposed on the property owner by contract or other provisions of the recorded restrictions unless so noted herein. The owner is responsible for being within the restrictive covenants.

No changes in exterior appearance, materials or colors are to be made until prior approval has been secured by you from the Architectural Review Board.

Sea Pines Building Permit is enclosed and is to be posted in a clearly visible spot during construction. Advise me of name of contractor when known and write contractor's name on building permit. Sea Pines Building Permit has been posted at the site by the Sea Pines Plantation Company.

Yours truly,

Dan Johnston
Edwin M. Johnson
Administrator
Architectural Review Board

COMMUNITY SERVICES MANAGEMENT

P. O. BOX 6029
HILTON HEAD ISLAND, SOUTH CAROLINA 29928

February 11, 1981

FEB 13 REC'D

RECEIVED

FEB 13 1981

Mr. Edwin M. Johnson, Administrator
Architectural Review Board
Sea Pines Plantation Company
HHI, SC 29928

ARCHITECTURAL REVIEW BOARD

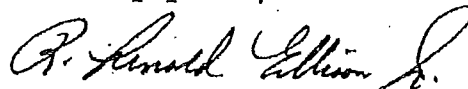
Re: Ellison Residence Additions
48 Planters Woods Drive

Dear Mr. Johnson:

This is to request further consideration to the plans submitted by Kermit Huggins for the completion of a second-floor attic room to my house. Every effort was made to provide access to the attic from inside, but the only way possible is through a very small closet as shown in our plans. Such an access is not adequate for installing the building materials nor the necessary furniture; therefore, an exterior entrance must be provided.

This room will be used solely as a play room for our two sons, ages 9 and 11. The house has only two bathrooms; therefore, the third bathroom is desirable. I believe that the Architectural Review Board should have confidence in the Restrictive Covenants that absolutely prohibit a house to be used for more than one family; therefore, I respectfully request that you reconsider and approve the plans as submitted.

Very truly yours,



R. Arnold Ellison, Jr., P.E.

RAE/apm

cc: Kermit Huggins

January 20, 1981

Kermit Huggins
5 Office Park, Suite 109
Hilton Head Island, S.C. 29928

Subject: Ellison Residence Additions, 48 Planters Wood Drive

Dear Mr. Huggins:

In reply to your application dated January 16, 1981 and plans submitted therewith, the Architectural Review Board is very concerned with an outside stairway, since at some future date it could cause an owner to consider the use for a two family setup.

Please put stairway for the second floor addition on the inside of your residence.

Yours truly,

Edwin M. Johnson
~~Administrator~~
Architectural Review Board

EMH/lwp

SEA PINES PLANTATION

Date Jan. 16, 1981

Submit to:

Architectural Review Board
Sea Pines Plantation Company
Hilton Head Island, S. C. 29948
Phone (803) 785-3333 - Ext. 109

☐ Preliminary Approval Requested

Prelim. Stake-Out Ready

☒ Final Approval Requested

Required before consideration:

Final Stake-Out Ready yes

All Exterior Materials and Colors

☐ Structure has been previously built from these plans in Sea Pines, if so give address

☐ New Construction

☒ Addition, Renovation or Change

☐ Septic System ☐ On Sewer

FOR REVIEW BOARD USE ONLY

Job No. _____ Location _____

Preliminary Approval:

Stake-Out _____ Action _____ Date _____

Final Approval:

Stake-Out _____

Sea Pines Building Permit Issued:

Date _____ Number _____

RECEIVED

JAN 16 1981

ARCHITECTURAL REVIEW BOARD

Address of Construction

Lot No. _____ Street _____
(Use Old Plot Lot Number)
48 Planters Wood Drive
New House Number if avail _____

Owner:

Name Mr. and Mrs. R. Arnold Ellison

Address 48 Planters Wood Drive

H. H. Is. S. C.

Phone No. _____

Architect or Designer:

Name Kermit Huggins/Residential Designer

Address 5 Office Park, Suite 109

H. H. Is. S. C.

Phone No. 785-2710

Contractor or Builder:

Name Unknown at this time.

Address _____

Phone No. _____

Submitted By: Kermit Huggins

Number of Drawings Submitted 3

First Floor Elevation _____ above MSL.

Plot Plan to show Prof. Line
and Distances to Line and
neighboring houses, if any

Concerned with outside
stairway -

WLS - H.

Page 1 of 2
Turn Over -

Enclosed Dwelling Area (square footage)*:

				Min. Areas Required
First Floor	(Heated)	+	(Screened Porch)	=
Second Floor	454 addition			
	(Heated)		(Screened Porch)	=
				454 addition
				454 heated addition
Total Dwelling Area*				

Note *: The term "enclosed dwelling area" means the total area enclosed in a dwelling and includes areas of screen porches, if the roof of such porches forms an integral part of the roof line of the main dwelling or if they are on the ground floor of a two-story dwelling. Areas of garages, boat sheds, patios, terraces, decks, open porches and shed type porches even though attached to the dwelling are specifically excluded.

Exterior Materials and Colors:

<u>Item</u>	<u>Material</u>	<u>Color</u>	<u>Description Manufacturer or Model</u>
Siding (Wood)	All colors and materials to match existing.		
Siding (Masonry)			
Roofing			
Fascia, Trim			
Shutters			
Front Door			
Exterior Doors			
Garage Door			
Windows			
Chimney			
Drive Paving			
Walks Paving			
Other			

Pool: Size _____ Type _____ Enclosure _____

Remarks:

To: Vauv
3-11-74 1362

APPLICATION NO. (1362 Rev)
To be filled in by the
Sea Pines Plantation Co.
(7543-01-031)

APPROVAL OF CONSTRUCTION AND/OR IMPROVEMENT PLANS

7 RILE LANE
R. ARNOLD ELLISON JR HILTON HEAD IS., S.C.
Name of Property Owner Mailing Address of Property Owner
~~111 PINEWOODS WOODS~~
R. ARNOLD ELLISON JR 2/27/74
Submitted By Date
JACK PENDER SAVANNAH, GA.
Name of Architect (or source of plans) Address of Architect
JACK PENDER SAVANNAH, GA.
Name of Contractor Address of Contractor

ITEMS TO BE SUBMITTED FOR REVIEW
(All applicable items must have final approval prior to initiation of construction.)

1. SITE PLAN, with location of structure, setbacks, septic tank and drain field location (where applicable), water and sanitary sewer laterals, topographic survey by Surveyor (spot elevations at each corner and center of the property to be improved and a spot elevation at the center of the adjacent street), finished grading, rough location of specimen trees, walks, drives, landscaping and property lines on Plat.

☐	☐
Preliminary Approval	Final Approval
Date	Date

2. ARCHITECTURAL WORKING DRAWINGS AND SPECIFICATIONS.

RECEIVED

24 1974

☐	☐
Preliminary Approval	Final Approval
Date	Date

3. EXTERIOR MATERIALS (Indicate below applicable specific materials and colors and/or submit samples.)

BRICK	<u>NONE</u>	
	Manufacturer	Color
SIDING	<u>CYPRESS</u>	<u>OLYMPIA # 9016</u>
	Material	Color
STUCCO	<u>FIRE PLACE ONLY</u>	
	Composition & Texture	Color

3. EXTERIOR MATERIALS (Continued)

ROOFING	<u>GAF TIMBERLINE</u>	<u>BROWN TONE</u>
	Material	Color
FASCIA, TRIM	<u>CYPRESS</u>	<u>OLYMPIC H 911</u>
	Material	Color
SHUTTERS	<u>NONE</u>	<u>NONE</u>
	Material	Color
EXTERIOR DOORS	<u>SOLID WOOD</u>	<u>RUSSET</u>
	Material	Color
OTHER		
	Material	Color

☐
Final
Approval
Date

Items 4, 5, and 6 are to be determined by the Surveyor.

4. Elevation of finished floor: 9.5 ft. above MSL.
5. Minimum elevation of discharge from distribution chamber of septic tank:
N/A ft. above MSL. (Where applicable.)
6. Water table: N/A ft. above MSL.
7. Heated Area of Proposed Structure: 2047.
8. Type of Dwelling (Single Family Detached, etc.): SINGLE FAMILY.
9. STAKE OUT APPROVAL (All trees to be cleared
must be marked with tape.)
By _____
Date _____

Final approval is hereby granted for the construction of the improvements
detailed in the plans and specifications submitted with this application.

This approval is limited to design criteria established by the Architectural
Review Board as provided by the Restrictive Covenants and should not be
interpreted as approval of any variation from restrictions or conditions
imposed on the property owner by contract or other provisions of the recorded
restrictions. All revisions or additions to the exterior plan must be re-
submitted for approval.

SEA PINES PLANTATION COMPANY

BY _____
Architectural Review Board

10. APPROVAL NOTIFICATION TO:

R. ARNOLD ELLISON, JR
7 RICE LANE
11
Date



Sea Pines Plantation Company

Hilton Head Island, S. C. 29928, 803 785-3333
Hilton Head Island

March 7, 1974

Mr. R. Arnold Ellison, Jr.
7 Rice Lane
Hilton Head Island, South Carolina 29928

Reference: Lot 31 Planters Woods
Case #1362 Rev.

Dear Mr. Ellison:

The Architectural Review Board has examined and approved the stake-out of your residence on the above reference lot. Your Sea Pines Plantation Property Improvement Permit is enclosed.

Should you have any questions regarding this matter, please call me at extension 566.

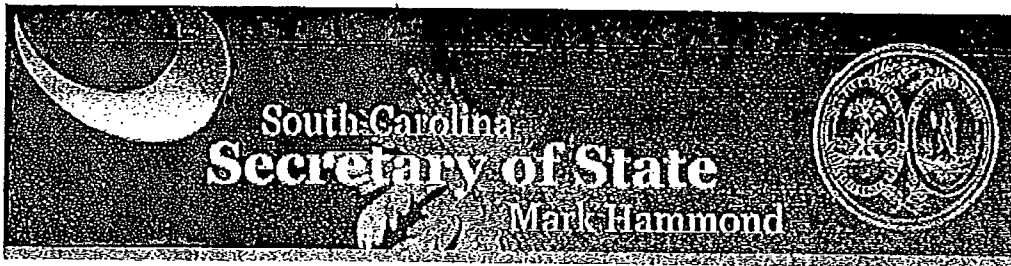
Sincerely,

Richard N. Anderson
Administrator
Architectural Review Board

RNA:dor

Enclosure: (1) Permit

Exhibits to Motion to Reconsider

**COMMUNITY SERVICES ASSOCIATES, INC.**

Note: This online database was last updated on 5/8/2015 3:05:56 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Non Profit

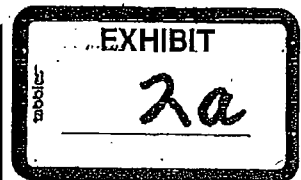
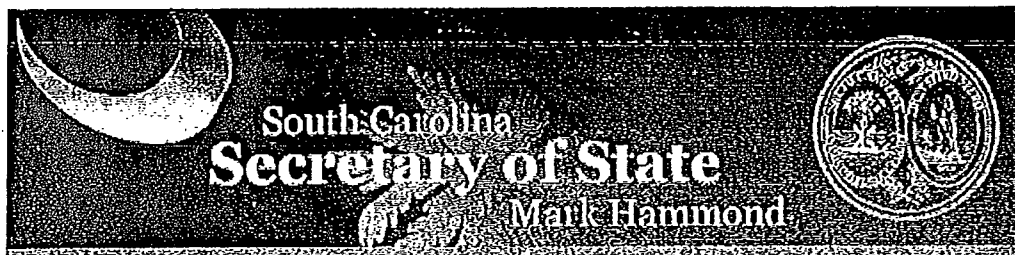
REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	BRET MARTIN
ADDRESS:	175 GREENWOOD DR
CITY:	HILTON HEAD ISLAND
STATE:	SC
ZIP:	29928
SECOND ADDRESS:	
FILE DATE:	09/23/1987
EFFECTIVE DATE:	09/23/1987
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	10/27/2014	CHANGED AGENT FROM CARY KELLEY	
Agent	01/22/2007	CHG OF REG AGT FROM WARD KIRBY	
Eleemosynary Amendment	11/12/1999	NOTIFICATION/ADD AGT/ADD	Image
Amendment	02/29/1988	NM CH AMD BK 87 PG 50	Film
Incorporation	09/23/1987	Chtr [23295] ELE	Film

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

**HILTON HEAD LIQUIDATION CORP.**

*Note: This online database was last updated on 5/8/2015 3:05:56 AM.
See our Disclaimer.*

DOMESTIC / FOREIGN: Domestic
STATUS: Forfeiture
STATE OF INCORPORATION: SC
/ ORGANIZATION: Profit

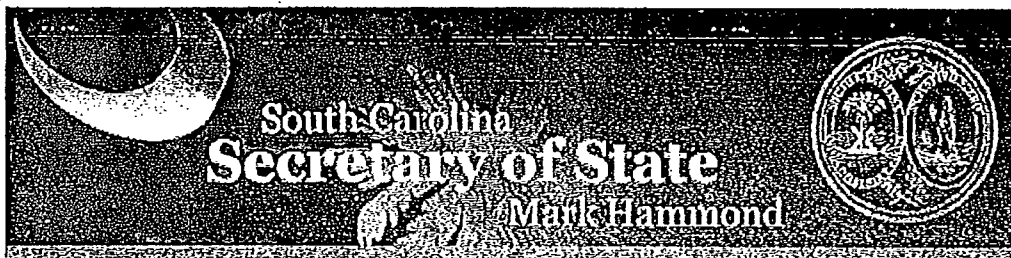
REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME: JOHN F CURRY
ADDRESS: HWY 278 WEXFORD PLANTATION ENTRANCE HHI SC
CITY:
STATE:
ZIP:
SECOND ADDRESS:
FILE DATE: 06/20/1957
EFFECTIVE DATE: 06/20/1957
DISSOLVED DATE: //

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Dissolution	12/05/1991	DIS BY FOR #2	Film
Amendment	11/02/1987	CH FR SEA PINES PLANTATION COMPANY	Film
Amendment	02/13/1987	CH AG/ADD	Film
Agent	10/17/1986	CH AGT/ADD	Film
Amendment	02/24/1978	STOCK AMEND	Film
Amendment	12/28/1977	STOCK AMEND	Film
Amendment	02/14/1975	AMEND PER DIR AUTHORITY	Film
Amendment	04/25/1961	STOCK AMEND	Film
Amendment	01/07/1958	STOCK AMEND	Film
Incorporation	06/20/1957	ART	Film

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.



SEA PINES COMPANY, INC.

Note: This online database was last updated on 5/8/2015 3:05:56 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	MER
STATE OF INCORPORATION	SC
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	AGENT RESIGNED
ADDRESS:	
CITY:	
STATE:	SC
ZIP:	
SECOND ADDRESS:	

FILE DATE:	11/02/1987
EFFECTIVE DATE:	11/02/1987
DISSOLVED DATE:	03/14/2006

Corporation History Records

CODE	FILE DATE	COMMENT	Document
No Agent	06/16/2009	AGT RESIGNED	
Merger	03/14/2006	MERGED INTO-SEA PINES ASSOCIATES, INC.	
Amendment	01/15/1992	CH FR/SEA PINES PLANTATION COMPANY	Film
Amendment	08/31/1990	DIS BY FOR #2/IN ERROR BY TC	Film
Amendment	03/13/1990	STATUTORY CLOSE CORP AMD	Film
Amendment	08/18/1989	DISS BY FOR #2/IN ERROR TC	Film
Amendment	06/15/1988	ASM NM SEA PINES RESORTS	Film
Incorporation	11/02/1987	ART	Film

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Exhibit 3

Stipulations

(see Court's Exhibit 1, R.p.345)

Exhibit 4
Subject Premises
(see Exhibit 3 to Plaintiff's Trial Brief,
R.p.355)

Exhibit 5
Deed of April 17, 1998
(see Plaintiff's Trial Exhibit 1, R.p.316)

John Nichols

From: Dukes, Marvin <mdukes@bcgov.net>
Sent: Wednesday, August 05, 2015 8:35 AM
To: Erin Bridges
Cc: Stephen Spitz; drew.laughlin@laughlinandbowen.com; Ward Borden; John Nichols
Subject: RE: Community Service Associates Inc. v. Wall

Thank you for the message,
however, I'm not going to consider matters outside the original record.
Also, the Plaintiff's interpretation of "healthy dialogue" seems a stretch.

Best to all,

Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 212
Post Office Drawer 1228
Beaufort, SC 29901
Office: 843.255.5710
Fax: 843.255.9505

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From: Erin Bridges [<mailto:EBridges@bntdlaw.com>]
Sent: Tuesday, August 04, 2015 4:54 PM
To: Dukes, Marvin
Cc: Stephen Spitz; drew.laughlin@laughlinandbowen.com; Ward Borden; John Nichols
Subject: Community Service Associates Inc. v. Wall

Dear Judge Dukes:

Attached please find correspondence from John Nichols in reference to the above matter.

Thank you for your attention to this matter. If you need any additional information please do not hesitate to contact me.

Sincerely,

ERIN BRIDGES
Paralegal
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor St.
PO Box 7965

Columbia, South Carolina 29202
Tel.: (803) 779-7599, Ext. 122
Fax: (803) 779-8995
ebridges@bntdlaw.com

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BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

August 4, 2015

The Honorable Marvin H. Dukes, III
PO Drawer 1228
Beaufort, SC 29901-1228

RE: Community Services Associates, Inc. v. Stephen H. Wall and
Maria P. Snyder Wall
Case No.: 2014-CP-07-2438

Dear Judge Dukes:

Thank you for the opportunity to appear and argue the motion for reconsideration on Tuesday, June 28. I did want to bring one matter to your attention and ask you to consider it as you deliberate your decision. On August 2, 2015, *The Island Packet* ran a letter to the editor authored by Ms. Wall. I have attached a copy for your consideration. We believe this letter demonstrates Ms. Wall's actual view of the "sustainable business model" as she described it – calling it "a far better solution than a new hotel." She also calls for a town meeting to "engage in healthy dialogue" – an apparent admission that this business model does not comport with the current covenants and restrictions. Please consider Ms. Wall's own words that she expressed in the letter to the editor as you reconsider your ruling in this matter.

Thank you in advance for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

John S. Nichols

BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

JSN/emb
Enclosures

cc: F. Ward Borden, Esquire
Drew A. Laughlin, Esquire
Stephen A. Spitz, Esquire

IslandPacket.com

Letter: Airbnb is an idea whose time has come

By IslandPacket

newsroom@islandpacket.com August 2, 2015

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As a three-year Airbnb host and Airbnb traveler, 25-year Hilton Head Island resident, former hospitality marketing executive and former Accommodations Tax Advisory Committee member, I believe that redeploying existing community assets -- i.e. homes and driveways -- and spreading the wealth among hospitable community members is a far better solution than a new hotel that keeps the bulk of the money in a few hands and does not extend the experience that many of today's travelers want.

Additionally, the environment is preserved, no extra parking is needed, jobs are created and locally owned businesses make money from a new segment of visitors.

Airbnb, like other game-changing ideas, tends to generate negativity at first. Folks dislike what they don't understand or have not experienced and jump on the "fearful bandwagon."

As a community, we should explore the benefits that this sustainable business model brings. We should have a town meeting and engage in healthy dialogue.

It looks like the perfect solution to clean growth without the disruptive and ecological downside, and a no-brainer for some extra revenue for the town.

Tuzy Wall

Hilton Head Island

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438
Appellate Case No. 2015-0001795

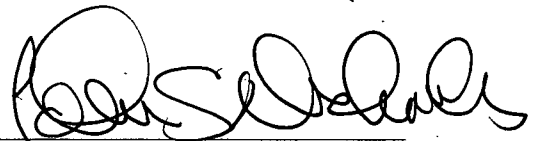
Community Services Associates,..... Appellant,

v.

Stephen H. Wall and Maria P Snyder Wall,. Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



John S. Nichols, SC Bar # 4210
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
jsnichols@bntdlaw.com

Attorney for Appellant

June 9, 2016