

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clyde N. Davis, Special Referee for 11th Judicial Circuit

Appellate Case No. 2016-002298

Melissa J. McDaniel, John F.
McDaniel, III, Tera M.
Dickerson and Brandi M.
Augustine

Respondent,

v.

Jolene J. Marchant and Larry
C. Marchant, Sr.,

Appellant.

RECORD ON APPEAL

Larry C. Marchant, Jr.
3020 Devine Street
Columbia, South Carolina 29205
(803) 771-1507
Attorney for Appellant

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for Respondent

RECEIVED

AUG 07 2017

SC Court of Appeals

INDEX

Orders

Consent Order of Reference of March 27, 2015.....	1-2
Order Denying Motion for Summary Judgment of August 11, 2015.....	3
Order of August 16, 2016	4-11
Order Denying Reconsider of October 13, 2016	12-14

Pleadings and Motions

Summons and Complaint of February 6, 2014	15-21
Answer and Counterclaim of March 23, 2014.....	22-26
Reply to Counterclaim of March 25, 2014.....	27-29
Motion to Reconsider of August 22, 2016.....	30-34
Plaintiff's Response to Motion to Reconsider of September 13, 2016.....	35-45
Notice of Appeal of November 14, 2016.....	46
Motion for Extension of Time to File Appellant's Initial Brief of January 12, 2017.....	47-49

Transcripts and Exhibits

Transcript of Hearing and Exhibits of March 1, 2016.....	50-185
--	--------

Certificate of Appellant.....	ii
-------------------------------	----

40

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) **FILED** IN THE COURT OF COMMON PLEAS

Melissa J. McDaniel, 2015 MAR 27 A 8:03
John F. McDaniel, III, Tara M. Dickerson) CIVIL ACTION NO.: 2014-CP-32-00461
and Brandi M. Augustine,)
BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC
Plaintiffs,)

vs.) **CONSENT ORDER OF REFERENCE**

Jolene J. Marchant and)
Larry C. Marchant, Sr.,)
Defendants.)

This matter is an action involving a prescriptive access easement located in the County of Lexington, State of South Carolina.

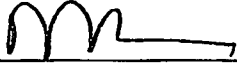
NOW, THEREFORE, upon Motion of James Randall Davis, attorney for the Plaintiffs and Ronald R. Hall, attorney for Defendant;

IT IS SO ORDERED THAT the above-captioned case be and the same is referred to The Honorable Clyde N. Davis, Jr., Special Referee for Lexington County, to take testimony, determine the issues involved and report his findings of fact and conclusions of law with all convenient dispatch, with leave to make findings of facts and conclusions of law as to any special matter, with authority to enter final judgment herein, with appeal, if any directly to the South Carolina Court of Appeals.

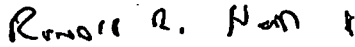
Date: March 18, 2015
Lexington, South Carolina
William P. Woodruff
Presiding Judge for the
Eleventh Judicial Circuit

<Consent on following page>

I SO MOVE AND CONSENT:



James Randall Davis, Esquire
Davis Frawley, LLC
Post Office Box 489
Lexington, SC 29071
803-359-2512



Ronald R. Hall
Hall & Hall Attorneys at Law
1055 Sunset Blvd.
West Columbia, SC 29169
Attorney for Defendants

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-32- 00461

PLAINTIFF(S) McDaniel, et al.

DEFENDANT(S) MARCHANT

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.
- ☐ **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:

Plaintiff's Motion for Summary Judgment is denied.

Dated at Lexington, South Carolina, this 30th day of July, 2015.

Cecelia W. [Signature]
PRESIDING JUDGE Special Referee

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Melissa J. McDaniel,
John F. McDaniel, III, Tara M. Dickerson
and Brandi M. Augustine,

Plaintiffs,

vs.

Jolene J. Marchant and
Larry C. Marchant, Sr.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-32-00461

ORDER

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2016 AUG 16 P 3:41

FILED

This matter came before me pursuant to an Order of Reference signed by The Honorable William P. Keesley dated March 18, 2015 and filed March 27, 2015. Plaintiffs are represented by James Randall Davis and the Defendants are represented by Ronald R. Hall.

PROCEDURAL BACKGROUND

The Summons and Complaint in this matter were filed on February 6, 2014 and was served on the Defendants by their attorney, Ronald R. Hall, accepting service on February 11, 2014. The causes of action in the Complaint are a Declaratory Judgment requesting an easement by prescription in favor of the Plaintiffs on the Defendants' property as well as a second cause of action for Denial of Plaintiffs' Property Rights by the Defendants. On March 23, 2014, Defendants answered and counterclaimed which included a general denial and other affirmative defenses and a counterclaim by the Defendants against the Plaintiffs for denial of Defendants' lawful right to peaceful and quiet enjoyment of their property. A Reply to the Answer and Counterclaim of Defendants was filed by the Plaintiffs on March 25, 2014 which included certain affirmative defenses by the Plaintiffs as to Defendants' Counterclaim. A hearing was held in this matter on March 1, 2016, attended by the

CWD

Plaintiff Melissa J. McDaniel, John F. McDaniel, Jr., Defendants, and various witnesses for the Plaintiffs.

FINDINGS OF FACT

I FIND AS FOLLOWS:

1. Plaintiffs own the property located at 1700 Riviera Drive, West Columbia, South Carolina and Defendants own the property located at 1706 Riviera Drive, West Columbia, South Carolina. These properties are located in the Saluda Hills area of West Columbia, South Carolina.
2. Plaintiffs' and Defendants' properties are residential lots with their primary residence located on each lot. Their lots are contiguous to each other.
3. Plaintiffs' property was originally owned by their grandfather, J. Fulton McDaniel, and was purchased by him in 1966. After the death of J. Fulton McDaniel in 1991, Plaintiffs' property was conveyed to John F. McDaniel, Jr. in 1993. Thereafter, the property was conveyed to John F. McDaniel, Jr.'s wife, Joann Odom McDaniel in 1998. Thereafter, the property was conveyed to the Plaintiffs in this action by deed in 2011. This property has been in the McDaniel family for at least 50 years.
4. Defendants' property was owned by Sara B. Crumpton and she conveyed it to Carol L. Arehart and Gail D. Arehart in 1976. Thereafter, Carol L. Arehart conveyed his interest in the property to his wife, Gail D. Arehart, by deed in 1979. Thereafter, Gail D. Arehart conveyed the Defendants property to Shoi Yean Hwang and Mary S. P. Hwang by deed in 1981. Finally, Shoi Yean Hwang and Mary S. P. Hwang conveyed the property to the Defendants in 2005.
5. Plaintiffs' Exhibit "2" is a photograph of Plaintiffs' primary residence lot with their home located on it, showing a gravel drive area on the Eastern side of the Plaintiffs' property (Defendants' home is next door on the eastern side).
6. The gravel drive area shown on Plaintiffs' Exhibit "2" commences on Riviera Drive (which Plaintiffs' and Defendants' homes front) and runs South to North on the Eastern side of the Plaintiffs' property where it terminates in the rear of the Plaintiffs' property.
7. The gravel drive area referenced in Finding 5, has been used for the following purposes: (a) J. Fulton McDaniel, Plaintiffs' grandfather, from 1967 through 1991 to access the rear of the property over this gravel drive area to get to his horses and bird dogs which were his hobbies; (b) J. Fulton McDaniel's use of the gravel drive area extended to using the gravel drive area as a parking area for hunting jeep, trucks, and horse trailers related to his hobbies; (c) after the death of J. Fulton McDaniel's wife, Ted McDaniel, brother of of J. Fulton McDaniel, stayed with his brother for some years and used the gravel drive area

as a parking area for motor home; (d) John F. McDaniel, Jr. used the gravel drive area when he lived with his father, J. Fulton McDaniel, as a means of access over the family property to get to the Saluda River; (e) John F. McDaniel, Jr. used the same gravel drive area after he moved from the family property in 1982 to park his trucks and trailers related to his roofing business and this activity continued until 1992; (f) in 1992, John F. McDaniel moved back to the family residence and has used the driveway to access the back of this property for vehicular and pedestrian purposes to get access to the shop which he had built in the rear of the residence in 1992 for his rental maintenance business; (g) Melissa McDaniel, one of the Plaintiffs, testified she and her siblings have used the gravel drive area as a convenience access to the family residence which she and her brothers and sisters were in high school; and (h) Patrick L. West, Marvin E. Martin, Jr., and Jimmy R. Dillon, either friend and/or co-worker or neighbor, testified, collectively, as to the McDaniel family's use of the gravel drive area since the mid 1970's for vehicular traffic.

8. The gravel portion of the drive area has been in existence as early as J. Fulton McDaniel's use of the driveway area where gravel, rock, mortar, bricks, etc. were placed in the driveway area and the driveway area has been renourished with the gravel, rocks, mortar, bricks, etc. over the years, including a major renourishment in 1992.
9. Plaintiffs' Exhibit "5", a survey by Bob Collingwood, a Registered Land Surveyor, shows that portion of the gravel drive area which is located on the Defendants' property. This area is approximately four and two tenths (4.2') feet by ninety (90') feet (299 sq.ft. having 0.0068 acre). Said survey is dated November 6, 2012.
10. Plaintiffs' and their predecessors-in-title since 1967, have had continuous and uninterrupted use of the gravel drive area, including that which is shown on Plaintiffs' Exhibit "5", until Defendants placed wooden and metal stakes and a fence in the driveway area which was in Summer of 2013.
11. No one in the chain-of-title of Defendants' property, from 1967 until 2005, objected to Plaintiffs and their predecessors-in-title using the area shown on Plaintiffs' Exhibit "5".
12. Defendants never took any affirmative steps to prevent the use of the area shown on Plaintiffs' Exhibit "5" until they placed the wooden and/or metal stakes and the fence in the gravel drive area in Summer of 2013.
13. Defendants have placed a fence which is located in the area shown on Plaintiffs' Exhibit "5" and it is impeding the Plaintiffs' use of the gravel drive area, including that which was within Plaintiffs' Exhibit "5".
14. Defendants knew of the gravel drive area on the Plaintiffs' property prior to their purchase and also knew at the time of their purchase in 2005 that an old fence had been established showing the property line of the Defendants' property and the Plaintiffs' property (property line crossed through Exhibit "5").

C.D

LAW

An easement is a right given to a person to use the land of another for a specific purpose. Murrells Inlet Corp. v. Ward, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008). An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription. Frieron v. Watson, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006). "A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner." Boyd v. BellSouth Tel. Tel. Co., 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006). To establish a prescriptive easement, the party asserting the right must show: (1) continued and uninterrupted use of the right for twenty years; (2) the identity of the thing enjoyed; and (3) use which is either adverse or under a claim of right. Horry Cnty. v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). "To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use." Jones v. Daley, 363 S.C. 310, 316, 609 S.E.2d 597, 600 (Ct. App. 2005) (emphasis added). There is no requirement of exclusivity of use to establish a prescriptive easement. Id. at 317, 609 S.E.2d at 600. The party claiming a prescriptive easement bears the burden of proving all of the elements by clear and convincing evidence. Bundy v. Shirley, 412 S.C. 292, 772 S.E.2d 163; Morrow v. Dyches, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997).

"[I]n order to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant." Jones, 363 S.C. at 318, 609 S.E.2d at 601. "When the claimant has established that the use was open, notorious, continuous, and uninterrupted, the use will be presumed to have been adverse." Boyd, 369 S.C. at 419, 633 S.E.2d at 141.

CWD

A party claiming a prescriptive easement under a claim of right "must demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of the circumstances surrounding his use." Jones, 363 S.C. at 318, 609 S.E.2d at 601.

"The law granting a prescriptive easement under claim of right does not mandate a party to believe that he holds actual title or that he intends to acquire it." Hartley, 355 S.C. at 151, 584 S.E.2d at 389.

"[a] party may 'tack' the period of use of prior owners in order to satisfy the 20-year requirement." Morrow, 328 S.C. at 527, 492 S.E.2d at 423 (citing 25 Am. Jur. 2d Easements and Licenses § 70 (1996)). "[T]he time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the 20-year period." Getsinger v. Midlands Orthopaedic Profit Sharing Plan, 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct. App. 1997).

"When the claimant has established that the use was open, notorious, continuous, and ~~uninterrupted, the use will be presumed to have been adverse.~~" Boyd, 369 S.C. at 419, 633 S.E.2d at 141. Then, the burden shifts to the title owner of the servient tenement (Kelley) to rebut the presumption that the use was adverse. Sanitary & Aseptic Package Co. v. Shealy, 205 S.C. 198, 203, 31 S.E.2d 253, 255 (1944). An "intent to claim adversely may be inferred from the acts and conduct" of the dominant users. Matthews, 365 S.C. at 250 n.10, 616 S.E.2d at 440 n.10 (quoting 25 Am. Jur. 2d Easements & Licenses § 57, at 552 (2004)).

cnd

LAW ANALYSIS

The use of the gravel drive area, including that which is shown on Plaintiffs' Exhibit 5, was continuous. The use of the gravel drive area must be of a reasonable frequency as determined from the nature and needs of the Plaintiffs and their predecessors-in-title. The gravel drive area has been used for various needs by the parties and reasonable frequency has been shown for each of these needs. This is evidenced by the Court's findings in paragraph 7.

The prescriptive easement use has been uninterrupted. The prescriptive easement area has been used by the McDaniel family since 1967 up until 2013 when a wooden and/or metal stakes and a fence was installed in the gravel drive area. There have been no overt acts such as a physical barrier or verbal threats that gave the impression that Defendants, or any predecessor-in-title, was opposing the use. The testimony is that no adjoining neighbor complained about the use of the this gravel drive area by the Plaintiffs over the years claimed and the present Defendants did not take any overt action or verbal impressions that they were opposing use until eight (8) years after they were conveyed their property in 2005. The Defendants also had knowledge of where their property line was based on the testimony of Mrs. Marchant that she walked the property line at the time of purchase and she also knew the old fence ran the property line from years back.

The Plaintiffs have demonstrated that they can claim the prescriptive easement by claim of right in that the Plaintiffs and their predecessors-in-title have used the gravel drive area, including that which is shown on Plaintiffs' Exhibit "5", since 1967. Under the claim of right theory, they do not have to prove they own the title or they intended to acquire it. Hartley v. John Wesley United Methodist Church, 355 S.C. 145, 151, 584 S.E.2d 386, 389 (Ct. App. 2003). Plaintiffs and their predecessors-in-title have used the access and have shown that they have maintained the access over an approximate fifty (50) year period.

CWD

The use by the Plaintiffs has been open, notorious, continuous and uninterrupted over twenty (20) years. Once that is shown, the burden to rebut the presumption of being held adversely shifts to the Defendants when it can be shown that the use has continued to present date. In this case, that has been shown or at least until the impedements were installed and evidence is that the Plaintiffs, through their attorney, wrote the Defendants regarding removing the impedements and a lawsuit was shortly filed thereafter.

Tacking is allowed between ancestors and/or those in privity, which we have in this case, and Plaintiffs have satisfied the Court that the Plaintiffs, as well as their predecessors-in-title, use was continuous and uninterrupted, either under claim of right or adverse use, over that fifty (50) year period. No one has stopped their use of this area on Plaintiffs' Exhibit "5" until the impedements that were installed in the Summer of 2013. Defendants could not present an testimony as to any action by them to interrupt the prescriptive easement period until the impedements were installed in the Summer of 2013.

The Plaintiffs have proven that the requested prescriptive easement has been continuous and uninterrupted for more than twenty (20) years and can claim it under the theory of claim of right or adverse use by parties who have a right to tack time periods of ownership by clear and convincing evidence.

NOW, THEREFORE, based on the evidence before this Court through the testimony and exhibits, the Court finds and Orders that the Plaintiffs are granted a prescriptive easement appurtenant to Plaintiffs' property under the theory of claim of right as well as adverse use for more than twenty (20) years for the area shown on Plaintiffs' Exhibit "5", identified as a four and two tenths (4.2') feet by ninety (90') feet (299 sq.ft. having 0.0068 acre). This prescriptive easement runs with the Plaintiffs' property and is binding on the Defendants, their heirs,

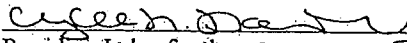
successors and assigns. The Defendants are ordered to remove, within ten (10) days from the date of this Order, the fence area or any other impediment in this area referred to above. The plat showing the prescriptive easement area is identified herein is attached as Exhibit "A" to this Order.

IT IS ALSO ORDERED that a copy of this Order shall be filed in the Lexington County Register of Deeds Office indexed under Defendants as Grantors and Plaintiffs as Grantees.

IT IS SO ORDERED.

Date August 12, 2016

Lexington, South Carolina


~~Presiding Judge for the~~ *Special Referee*
Eleventh Judicial Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Melissa J. McDaniel,)
John F. McDaniel, III, Tara M. Dickerson)
and Brandi M. Augustine,)

Plaintiffs,)

vs.)

Jolene J. Marchant and)
Larry C. Marchant, Sr.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-32-00461

ORDER

RECEIVED

NOV 14 2016

SC Court of Appeals

BETTY A. CAMPBELL
CLERK OF COURT
LEXINGTON SC

2016 OCT 13 AM 10:25

FILED
JP

This Order is being entered in response to Defendants' Motion to Reconsider dated August 22, 2016 and filed August 22, 2016. This Court has reviewed the Defendants' Motion as well as Plaintiffs' Response to Defendants' Motion to Reconsider. I have also considered my notes from the trial, exhibits admitted into evidence and arguments of counsel in this matter and I find that the Motion to Reconsider should be denied.

Defendants', in their Motion, raised an issue that the granted prescriptive easement will prohibit Defendants from having vehicular access to the rear of their property and that not being equitable as to the parties in this action. I find that there is not substantial evidence supporting this position. The offered testimony by Mrs. Marchant on this issue was that the City of West Columbia or Lexington County required a five (5') foot setback area on one side of the house and a ten (10') foot setback area on the other side of the house. She then indicated that the east side of the house did not have five (5') feet lying between the house and the property line but there was ten (10') feet between the house and the McDaniel property line and that because the four and nine-tenths (4.9') foot prescriptive easement area was granted, she could not get legal

access to the back of her property unless it was on the McDaniel side. Defendants' Exhibit 2 shows that the Marchants house on the subject property and shows an area of ten and one-half (10.5') foot on the eastern side instead of five (5') feet and on the McDaniel side, a twenty (20') foot to twenty-five (25') foot width between the McDaniel and Marchant properties. No testimony was presented by the Defendants as to the necessary width of the proposed driveway to the rear of the property. Furthermore, Defendants presented no ordinance or statute indicating such regulation by the City or County. Also, the Defendants have owned the property since 2005 and presented no evidence that they attempted to establish a driveway on the McDaniels' side of their property. Plaintiffs' Exhibits 7 and 8 shows a steep slope on the McDaniels' side of the Marchant property and the Plaintiffs would ask the Court to make judicial notice of the slope which shows the difficulties in creating a driveway on the McDaniel side because of the slope.

Defendants further argue in the Motion to Reconsider that Mrs. Marchant did not testify that she knew of the gravel driveway prior to the Marchants purchase of the property in 2005. I find that the evidence in the case indicates otherwise in that Mrs. Marchant testified that prior to the purchase of the property, she did see "a gravel and brick driveway there; it may have been a path where cars went by back through there; and I could see that it could possibly be one next to their house; I have seen vehicles back there at the back door; this is before we bought the house." She acknowledged there was a fence on the property line between McDaniel and Marchant and she knew at the time she walked the property with the person from whom they bought the property.

Defendants further argue in their Motion that there was not evidence supporting the use and location of the driveway by the Plaintiffs or their predecessors-in-title for time period of 1998-2011 and that there was expressed or implied permission only as to the use of the property by the Plaintiffs, where the prescriptive easement was located. The Order ending this case established, by

clear and convincing evidence, that the easement in question had been used since the late 1960's until 2013 and there had not been any overt action by the Defendants or their predecessors-in-title showing their disagreement with the use of the driveway by the Plaintiffs; this being a period of approximately 44 years.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Reconsider is hereby denied and reaffirming the original Order, a copy of this Order with Exhibit "A" attached shall be filed with the Register of Deeds Office for Lexington County.

IT IS SO ORDERED

wd October 5
Date: November, 2016

Lexington, South Carolina

Clyde N. Davis
The Honorable Clyde N. Davis
Special Referee Judge for the
Eleventh Judicial Circuit

BETH A. CARRING
CLERK OF COURT
LEXINGTON SC

2016 OCT 13 AM 10:25

FILED

CC

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Melissa J. McDaniel,)
John F. McDaniel, III, Tara M. Dickerson)
and Brandi M. Augustine,)

Plaintiffs,)

vs.)

Jolene J. Marchant and)
Larry C. Marchant, Sr.,)

Defendants.)

IN THE COURT OF COMMON PLEAS -6 P 3:14

BETH A. CARRISS
CLERK OF COURT
LEXINGTON, SC

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

2014CP3200461

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 140 East Main Street, Lexington, South Carolina, WITHIN THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVIS FRAWLEY, LLC
140 East Main Street, P. O. Box 489
Lexington, South Carolina 29071
Phone No.: (803) 359-2512

Lexington, South Carolina

J. M. M.

2014

BY: [Signature]

James Randall Davis

ATTORNEYS FOR PLAINTIFFS

COPY

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Melissa J. McDaniel,)
John F. McDaniel, III, Tara M. Dickerson)
and Brandi M. Augustine,)

Plaintiffs,)

vs.)

Jolene J. Marchant and)
Larry C. Marchant, Sr.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

2014 FEB-6 P 3:14

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

COMPLAINT

2014CP3200461

Plaintiff, complaining of defendants, alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiffs Melissa J. McDaniel, John F. McDaniel, III and Tara M. Dickerson are citizens and residents of Lexington County, South Carolina
2. Plaintiff Brandi M. Augustine is a citizen and resident of Richland County, South Carolina.
3. Defendants, upon information and belief, are citizens and residents of the County of Lexington, State of South Carolina.
4. This Court has jurisdiction over this matter because the real estate which is the subject of this action is located in Lexington County, South Carolina.
5. Plaintiffs are the owners of property in Lexington County described as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the northern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot 11, Block "L" as shown on plat of portion of Saluda Terrace Annex No. 1 by McMillan Engineering Company, dated November 20, 1964 and recorded in the Office of the Register of Deeds for Lexington

County in Plat Book 80-G at Page 89, and being bounded and measuring as follows: On the North by portions of Lots Nos. 11 and 12, Block "N" Saluda Hills No.1 and measuring thereon eighty (80') feet; on the East by Lot No. 12, Block "L" Saluda Terrace Annex No. 1 and measuring thereon two hundred fifty-five and eight-tenths (255.8') feet; on the South by Riviera Drive and fronting and measuring thereon one hundred twenty-five (125') feet and on the West by Lot No. 10, Block "L" Saluda Terrace No. 1 and measuring thereon two hundred sixty-eight and five-tenths (268.5') feet.

TMS# 003717-08-002 and #003717-08-003

6. Defendants are the owners of property in Lexington County described as follows:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, located, lying, and being in the County of Lexington, State of South Carolina, the same being shown and delineated as Lot 12, Block "L" on a Plat of Saluda Terrace Annex No. 1, prepared by McMillan Engineering Company, RLS, dated November 20, 1964, recorded in the Office of Deed for Lexington County in Plat Book 80-G at Page 89; and having such boundaries and measurements as shown thereon, more or less.

TMS# 003717-08-004

7. The Plaintiffs' and Defendants' properties, referred to in paragraphs 4 and 5 above, abut each other.

8. The Plaintiffs' grandfather, John Fulton McDaniel, purchased the subject property pursuant to a deed recorded on November 7, 1967 with the Lexington County Register of Deeds Office in Book 16-M at page 217.

9. On or about March 28, 1991, John Fulton McDaniel died leaving the subject property to John F. McDaniel, Jr., shown by Deed of Distribution recorded on May 26, 1993 in the Lexington County Register of Deeds Office in Book 2556 at Page 216.

10. On or about January 21, 1998, John F. McDaniel, Jr. conveyed his interest in the subject proeprty to his wife, Joann Odom McDaniel, by deed recorded with the Lexington County Register of Deeds Office in Book 4488 at Page 183.

11. On or about June 17, 2010, Jo Ann Odom McDaniel died devising the subject property to the Plaintiffs in this action recorded on May 3, 2011 in the Lexington County Register of Deeds Office in Book 14753 at Page 209.

12. The Defendants were conveyed their property by deed from Shoi Yean Hwang and Mary S.P. Hwang recorded on May 26, 2005 in the Register of Deeds Office in Lexington County in Book 10163 at Page 26.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)
(Easement by Prescription)

13. The allegations contained in Paragraphs 1 through 12 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this First Cause of Action.

14. The plat attached hereto as Exhibit "A" shows an area on the Defendants' property that the Plaintiffs and their ancestors have utilized since 1967 as an area for ingress/egress for moving vehicles, boats, trucks from the back of their property for purposes relating to the use of their property to Riviera Drive and have had continuous uninterrupted use of said area without objection from any title holder to Lot 12 since 1967 up until the fall of 2012.

15. The Plaintiffs are informed and believe that they have a prescriptive easement over the subject property based their family's use of the property since 1967 and also based on adversely utilizing the area for access for ingress/egress for the benefit of Lot 11 in an open, notorious, continuous, and uninterrupted period running from 1967 to the fall of 2012.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence/Intentional Act)
(Denial of Property Rights)

16. The allegations contained in Paragraphs 1 through 15 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second Cause of Action.

17. Defendants, in the fall of 2012, have impeded the use of said access by placing stakes in the access area and other barriers preventing the Plaintiffs' use of the property which has deprived the Plaintiffs of the convenient use of their property and interfering with their property rights.

18. The Defendants owe the Plaintiffs a duty based on the servient nature of the property they purchased not to take any actions or authorize any actions that would in any way block, or disturb in any fashion, the Plaintiffs' rights of access across the easement premises by vehicle or on foot to gain access the Plaintiffs' property.

19. The Defendants breached its duties by negligently, gross negligently and/or intentionally taking or authorizing the following actions:

- a. In failing and refusing to allow the Plaintiffs quiet enjoyment of their property rights by denying him access to their easement rights and real property;

20. Said actions by the Defendants were negligent, reckless, willful, wanton, intentional and in blatant disregard of the rights of the Plaintiffs, and therefore the Plaintiffs seek a judgment against the Defendants for actual and punitive damages proximately caused there from as well as attorneys' fees and costs of this action.

WHEREFORE, Plaintiffs pray for the following:

A. The Court enter a judgment establishing their right to use said area for access, ingress/egress, to and from their property and grant the Plaintiffs a prescriptive easement appurtenant to the Plaintiffs property which shall run with the land now owned by the Plaintiffs;

B. A judgment requiring the Defendants to remove all present impediments to their use of the access and enjoin the Defendants from installing any future impediments in access area to prevent the Plaintiffs' use;

C. Judgment against the Defendant for a sum sufficient to adequately compensate the Plaintiff for actual damages, punitive damages, attorneys' fees and costs of this action; and

D. For such other and further relief as this Court may deem just and proper.

DAVIS FRAWLEY, LLC

By: 

James Randall Davis
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512

Lexington, South Carolina
February 3, 2014

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley ◊
Carey M. Ayer Δ
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith Δ ‡
Ryan M. Wingard
A. Jewitte Dooley
W. Joseph Maye

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Davis | Frawley ^{LLC}

Attorneys at Law

Francis C. Jones
(1919 – 1968)

Hubert E. Long
(1921 – 2000)

Since 1961

◊ American Board of Trial Advocates
Δ Certified Circuit Court Mediator
‡ Certified Circuit Court Arbitrator

February 10, 2014

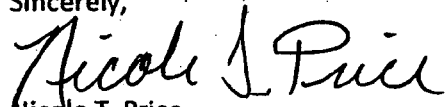
Ronald R. Hall, Esquire
1055 Sunset Boulevard
West Columbia, South Carolina 29169

RE: Melissa J. McDaniel, John F. McDaniel, III, Tara M. Dickerson and Brandi M. Augustine v.
Jolene J. Marchant and Larry C. Marchant, Sr.
Our File No. 29207

Dear Mr. Hall:

Enclosed, please find the Summons and Complaint in regards to the above referenced matter which, by e-mail, you indicated you would accept on behalf of the Defendants. Also enclosed is an Acceptance of Service I would appreciate your signing and returning to me. Please do not hesitate to contact Randy Davis or me if you have any question or concerns.

Sincerely,



Nicole T. Price
Paralegal

cc: John F. McDaniel, III

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

MELISSA J McDANIEL, JOHN F)
McDANIEL , III, TARA M DICKERSON)
and BRANDI M AUGUSTINE,)

CASE NO: 2014-CP-32-00461

PLAINTIFFS,)

V)

ANSWER AND
COUNTERCLAIM

JOLENE J MARCHANT and LARRY)
C MARCHANT, SR,)

DEFENDANTS.)
_____)

THE DEFENDANTS, answering and counterclaiming to the Summons and Complaint,
would show unto this Honorable Court, that:

FIRST DEFENSE

1. Each and every allegation of the Summons and Complaint not specifically admitted herein is denied and strict proof demanded thereof.
2. Paragraph 1, 2, 3, and 4 are admitted.
3. So much of Paragraph 5 is admitted as alleges the Plaintiff's own Lot 11, Block "L", Saluda Annex. Further, Defendant's would show Plaintiff's also own Lot 10, Block "L", which abuts Lot 11, Block "L", as evidenced by the fact TMS Numbers for both Lots are included in the property description in the Complaint.
4. Paragraph 6 through and including 12 is admitted.
5. Paragraph 13 is denied and strict proof demanded thereof.

6. Paragraph 14 and 15 are denied and strict proof demanded thereof.
7. Paragraph 16 is denied and strict proof demanded thereof.
- 8., As to Paragraph 17, Defendant's admit they have placed marker's on their property identifying the line between the Plaintiff's property and that of the Defendants
9. Paragraph 18 is denied and strict proof demanded thereof. Further, Defendant's would show there is no easement across their property, nor has there ever been an easement which can be claimed by Plaintiff's.
10. Answering Paragraph 19, Defendants would show there is not, nor has there ever been, an easement across their property to which Plaintiff's can claim an interest in; and Defendants owe no "duty " to Plaintiffs as alleged.
11. As to Paragraph 20, Defendants would show there is not, nor has there ever been, an easement across their property to which Plaintiff's can claim an interest in. Further, any actions taken by Defendants on their property was for the purpose of defining the property line between the two properties.

FOR A SECOND DEFENSE

12. Each and every allegation set forth above is realleged as fully as if repeated word for word.
13. Plaintiff's, nor Plaintiff's successors in title have ever had an easement over, through, or across property of the Defendants.
14. Plaintiff's successors in title never had, nor claimed to have, an easement over through or across Defendant's property.
15. The Paragraph 14 response is evidenced by the fact Plaintiff's successors purchased Lot

10, Block "L", which abuts their property for the sole purpose of providing an ingress/egress to their property.

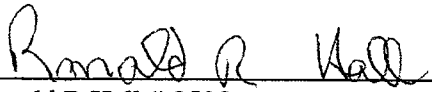
16. The claim of an easement over, through and across Defendant's property is frivolous and for the sole purpose of harassment and trespass across Defendant's property.

FOR A THIRD DEFENSE AND COUNTERCLAIM

17. Each and every allegation set forth above is realleged as fully as if repeated word for word.
18. Plaintiff's have engaged in a course of action designed to harass, torment and aggravate the Defendants by their frivolous claim of an easement.
19. The action by the Plaintiff's has denied Defendants their lawful right to peaceful and quiet enjoyment of their property.
20. Defendants have had to expend money to erect a fence between their property and that of the Plaintiffs to keep Plaintiff's from trespassing on their property.
21. Defendants are informed and believe they are entitled to judgement and damages against the Plaintiffs jointly and severally in such an amount as the trier of the fact shall deem just and equitable.

WHEREFORE, having fully set forth their Answer and Counterclaim, Defendants pray this Honorable Court will inquire into the matters set forth herein and issue Its Order:

- a. Dismissing the Complaint, with costs; and
- b. Granting Defendants judgement against the Plaintiffs jointly and severally in an amount as the trier of the fact shall deem just and equitable; and
- c. For such other and further relief as the Court shall deem just and equitable.



Ronald R Hall # 2598

Attorney for Defendants

1055 Sunset Blvd

West Columbia, SC 29169

TEL: 803-791-3196

FAX: 803-791-8754

E-MAIL: ronh311@ix.netcom.com

March 3, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

MELISSA J McDANIEL, JOHN F)
McDANIEL , III, TARA M DICKERSON)
and BRANDI M AUGUSTINE,)

CASE NO: 2014-CP-32-00461

PLAINTIFFS,)

CERTIFICATE OF SERVICE

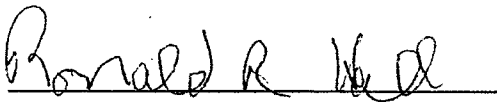
V)

JOLENE J MARCHANT and LARRY)
C MARCHANT, SR,)

DEFENDANTS.)
_____)

THE UNDERSIGNED herewith certifies he did on the 3 Day of March, 2014, deliver the Answer and Counterclaim of the Defendants to the Plaintiff's by depositing a copy of the same in the U S Mail, postage prepaid, return address clearly shown upon the outside of the envelope addressed to counsel for the Plaintiff's, to wit:

James Randall Davis
Attorney at Law
P O Box 489
Lexington, SC 29072



Ronald R Hall
Attorney for Defendants

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Melissa J. McDaniel,
John F. McDaniel, III, Tara M. Dickerson
and Brandi M. Augustine,

CIVIL ACTION NO.: 2014-CP-32-00461

Plaintiffs,

vs.

REPLY TO COUNTERCLAIM

Jolene J. Marchant and
Larry C. Marchant, Sr.,

Defendants.

Plaintiffs, replying to Counterclaim of Defendants, alleges as follows:

1. Plaintiffs are informed and believe paragraph 17 of the Counterclaim requires no response.
2. Plaintiffs deny the allegations contained in paragraphs 18, 19, 20, and 21 of the Counterclaim.

FOR A FIRST DEFENSE

3. Plaintiffs plead "unclean hands" as a defense in this matter.

FOR A SECOND DEFENSE

4. Plaintiffs assert the Statute of Limitations as a defense and from recovery against Plaintiffs in this matter.

FOR A THIRD DEFENSE

5. Plaintiffs plead the doctrine of Laches as a defense in this matter.

FOR A FOURTH DEFENSE

6. Plaintiffs plead Stale Demand as a defense in this matter.

FOR A FIFTH DEFENSE

7. Plaintiffs plead Estoppel as defense in this matter.

WHEREFORE, Plaintiffs pray that this Court dismiss the Counterclaims of the Defendants, grant the relief requested in the Complaint and in this Reply, and for such other and further relief as this Court may deem just and proper.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY: _____

James Randall Davis

ATTORNEYS FOR PLAINTIFFS

Lexington, South Carolina
March 25, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Melissa J. McDaniel,
John F. McDaniel, III, Tara M. Dickerson
and Brandi M. Augustine,

Plaintiffs,

vs.

Jolene J. Marchant and
Larry C. Marchant, Sr.,

Defendants.

IN THE COURT OF COMMON PLEAS

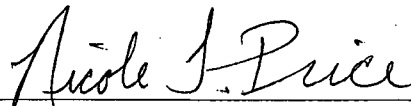
CIVIL ACTION NO.: 2014-CP-32-00461

CERTIFICATE OF SERVICE BY MAIL

I, Nicole T. Price, a paralegal with Davis Frawley, LLC, hereby certify that I have served Ronald R. Hall, Esquire, attorney for the Defendants, with the foregoing **Reply to Counterclaim**, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to him at the following address:

Ronald R. Hall, Esquire
1055 Sunset Boulevard
West Columbia, South Carolina 29169

on this 26th day of March, 2014, all in accordance with Rule 5(b)(1) of the South Carolina Rules of Civil Procedure.



Nicole T. Price, Paralegal
DAVIS FRAWLEY, LLC
140 East Main Street, P. O. Box 489
Lexington, South Carolina 29071
(803) 359-2512
ATTORNEY FOR DEFENDANTS

Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COPY

IN THE COURT OF COMMON PLEAS
11TH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-32-00461

Melissa McDaniel, John McDaniel, et.al,

Plaintiff,

vs.

Jolene J Marchant and Larry C Marchant, Sr.

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

2016 AUG 22 P 4:4
BETHEL CARRIGG
CLERK OF COURT
LEXINGTON SC

FILED

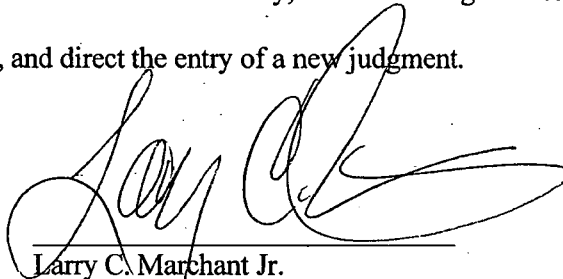
Plaintiff's Attorney: <u>Larry C. Marchant, Jr., Bar No. 102071</u> Address: <u>3020 Devine Street Columbia, SC 29205</u> Phone: <u>803-771-1507</u> Fax <u>803-771-9752</u> E-mail: <u>larrycmarchant@gmail.com</u> Other: _____		Defendant's Attorney: <u>James Randall Davis, Bar No. _____</u> Address: <u>140 East Main Street Lexington SC 29072</u> Phone: <u>803-359-2512</u> Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted <u>Aug 22, 2016</u>	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

S.C. 292, 772 S.E.2d 163, 170 (S.C., 2015). Plaintiffs' prescriptive easement will prohibit the Defendants from having vehicular access to the rear of their property and not equitable as to the parties of this action. Testimony was presented by Defendant Jolene Marchant, a licensed real estate broker, and knowledgeable in real estate matters, testified that the four and two tenths (4.2) x ninety (90) foot taking of property by the Plaintiffs would deny the Marchant family the ability to construct a driveway to the rear of their property. See Bundy v. Shirley, at 170, quoting Daniel J. Smith, *Establishment of Private Prescriptive Easement*, 2 Am. Jur Proof of Facts 3d 125 § 3 (1998 & Supp 2105). Prescriptive easements are not favored in law since they result in corresponding losses or forfeitures of rights of other persons. Id. Here, the prescriptive easement, no matter how small, will likely result in the loss of Defendants' property rights as to ability to access their back yard, and a substantial loss of value to their property, while giving the Plaintiffs' a second access to their backyard.

A claimant seeking a prescriptive easement must be held to a strict standard of proof. See Bundy v. Shirley at 170. The Plaintiffs offered just scant testimony as to the use of and to the actual location of the proposed easement (driveway) during the period from 1998 through 2011. (The period of time in which the property was owned by Plaintiff John McDaniel's wife and Plaintiff Mellissa McDaniel's mother). However, Defendant Jolene Marchant presented testimony and evidence that showed during this period there was no easement shown on any official document or record on file or in possession, nor did the Plaintiffs offer any rebuttal as to why. Moreover, Defendant Marchant testified that there was no gravel on a driveway at the property line at the time she purchased the home. Furthermore, a

driveway by Fulton McDaniel was implied and did not ripen, and therefore Plaintiffs' failed to establish the required twenty (20) years of adverse usage. On the other hand, evidence is clear that a professional surveyor, at the time of the purchase of property by the Defendants, did not show any easements or any references to any driveway, which is now in dispute. Even if the driveway was used in the past, it was no longer used, or used so infrequently as not noticeable, as evidenced that the professional surveyor did not ascertain such driveway in his survey performed just prior to the Defendant's closing on the sale of the property. The Prescriptive easement will unjustly hurt the Defendants, and it not needed by the Plaintiffs to access their back yard. Moreover, the easement will prevent the Plaintiffs from accessing their backyard by vehicle, causing loss of right of use, and greatly diminishing the value of the Defendants property.

WHEREFORE, the Defendants pray that this honorable Court reconsider its order granting the prescriptive easement, take additional testimony, amend finding of fact and law, or make new findings and conclusions, and direct the entry of a new judgment.



Larry C. Marchant Jr.
3020 Devine Street
Columbia, SC 29205
Phone: (803) 771-1507
Fax: (803) 771-9752
larrycmarchant@gmail.com
ATTORNEY FOR THE DEFENDANTS

Aug 22, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Melissa J. McDaniel,	)	
John F. McDaniel, III, Tara M. Dickerson	)	CIVIL ACTION NO.: 2014-CP-32-00461
and Brandi M. Augustine,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' RESPONSE TO
	)	DEFENDANTS' MOTION
Jolene J. Marchant and	)	TO RECONSIDER
Larry C. Marchant, Sr.,	)	
	)	
Defendants.	)	
	)	

This is a response by the Plaintiffs as to Defendants' Motion to Reconsider dated August 22, 2016 and filed on August 22, 2016.

Defendants first contend Plaintiffs' granted prescriptive easement will prohibit the Defendants from having vehicular access to the rear of the property and not equitable as to the parties in this action. The offered testimony by Mrs. Marchant on this issue was that the City of West Columbia or Lexington County required a five (5') foot area on one side of the house and a ten (10') foot area on the other side of the house. She then indicated that the East side of the house did not have five (5') feet lying between the house and the property line but there was ten (10') feet between the house and the McDaniel property line and that because the four and nine-tenths (4.9') foot prescriptive easement area was granted, she could not get legal access to the back of her property unless it was on the McDaniel side. Defendants' Exhibit 2 shows that the Marchants house on the subject property and shows an area of ten and one-half (10.5') foot on the Eastern side instead of five (5') feet and on the McDaniel side, a twenty (20') foot to twenty-

five (25') foot width between the McDaniel and Marchant properties. No testimony was presented by the Defendants as to the necessary width of the proposed driveway to the rear of the property. Furthermore, Defendants presented no ordinance or statute indicating such regulation by the City or County. Also, the Defendants have owned the property since 2005 and presented no evidence that they attempted to establish a driveway on the McDaniels' side of their property. Plaintiffs' Exhibits 7 and 8 shows a steep slope on the McDaniels' side of the Marchant property and the Plaintiffs would ask the Court to make judicial notice of the slope which shows the difficulties in creating a driveway on the McDaniel side because of the slope. The preponderance of evidence does not prove that the granted prescriptive easement legally interferes with the Marchants obtaining access to the rear of their property. Furthermore, the Defendants were offered a joint access over the four and nine-tenths (4.9') foot prescriptive easement area but refused the offer.

Defendants' next position was that there was scant evidence of the use and location of the driveway area during the timeframe that John McDaniels' wife, Joann McDaniel, owned the property which was between 1998 through 2011. Paragraph 7 of the Findings of Facts of the Order sets forth the various uses and time frames of the gravel driveway since 1968. Defendants are claiming that there is not sufficient evidence to support continuous and uninterrupted use of said driveway between 1998 and 2011. However, the evidence proves otherwise for this time frame. McDaniel testified that the driveway area had been used since he was a child and it provided access the rear of the McDaniel property (Tr. p. 12). John McDaniel testified that when he moved back to the residence on the McDaniel property in 1992 and he built a shop in the back of the property and kept his rental maintenance business equipment there and he had used the driveway for access to the shop since 1992 to present date (Tr. pp. 23-24). Melissa McDaniel

testified that she and her siblings had used the driveway since the mid 1990's to present date (Tr. pp. 54-55). Jimmy R. Dillon testified that the family had used the driveway since the late 1960's and there was brick or mortar there and/or gravel since the 1980's (Tr. p. 62).

Defendants next contend that Mrs. Marchant did not testify that she knew of the gravel driveway prior to the Marchants' purchase of the property in 2005. Mr. Marchant testified that prior to the purchase of the property, she did see "a gravel and brick driveway there; it may have been a path where cars went by back through there; and I could see that it could possibly be one next to their house; I have seen vehicles back there at the back door; this is before we bought the house." She acknowledged there was a fence on the property line between McDaniel and Marchant and she knew at the time she walked the property with the person she bought the property from (Tr. pp. 84-85).

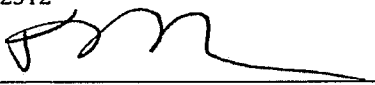
Defendants next content that there was express or implied permission to use the area in question and therefore there could not be a prescriptive easement by adverse use or claim of right. Defendants have presented no verbal or written evidence or actions that shows expressed or implied permission. The use of the gravel drive area, including that which is shown on Plaintiffs' Exhibit 5, was continuous. The use of the gravel drive area must be of a reasonable frequency as determined from the nature and needs of the Plaintiffs and their predecessors-in-title. The gravel drive area has been used for various needs by the parties and reasonable frequency has been shown for each of these needs. This is evidenced by the Court's findings in paragraph 7. The prescriptive easement use has been uninterrupted. The prescriptive easement area has been used by the McDaniel family since 1967 up until 2013 when a wooden and/or metal stakes and a fence was installed in the gravel drive area. There have been no overt acts such as a physical barrier or verbal threats that gave the impression that Defendants, or any predecessor-in-title, was opposing the use.

The testimony is that no adjoining neighbor complained about the use of the this gravel drive area by the Plaintiffs over the years claimed and the present Defendants did not take any overt action or verbal impressions that they were opposing use until eight (8) years after they were conveyed their property in 2005. The Defendants also had knowledge of where their property line was based on the testimony of Mrs. Marchant that she walked the property line at the time of purchase and she also knew the old fence ran the property line from years back. Furthermore, once a right-of-way by prescription has been established by 20 years of continuous use, which is the Plaintiffs' contention, and the use has been open, notorious, continuous and uninterrupted for a period of twenty (20) years, the use will be presumed to have been adverse. *Boyd v. Bellsouth Telephone*, 369 S.C. 419, 633 S.E.2d 141. The burden then shift to the title owner of the servient estate (Marchant) to rebut presumption that the use was adverse. *Sanitary Aseptic Package Co. v. Shealy*, 205 S.C. 198, 31 S.E.2d 253. There has been no testimony by the Defendants to rebut the presumption of adverse use which has been in existence since 1967 until they installed metal stakes and a fence in 2013.

Therefore, Plaintiffs believe that Defendants have failed the burden under SCRPC Rule 52 and 59 to set aside the original decision of this Court and the Plaintiffs are granted a prescriptive easement appurentant to Plaintiffs' property under the theory of claim of right as well as adverse use for more than twenty (20) years for the area shown on Plaintiffs' Exhibit "5", identified as a four and two tenths (4.2') feet by ninety (90') feet (299 sq.ft. having 0.0068 acre).

This prescriptive easement runs with the Plaintiffs' property and is binding on the Defendants, their heirs, successors and assigns. The plat showing the prescriptive easement area is identified herein is attached as Exhibit "A".

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

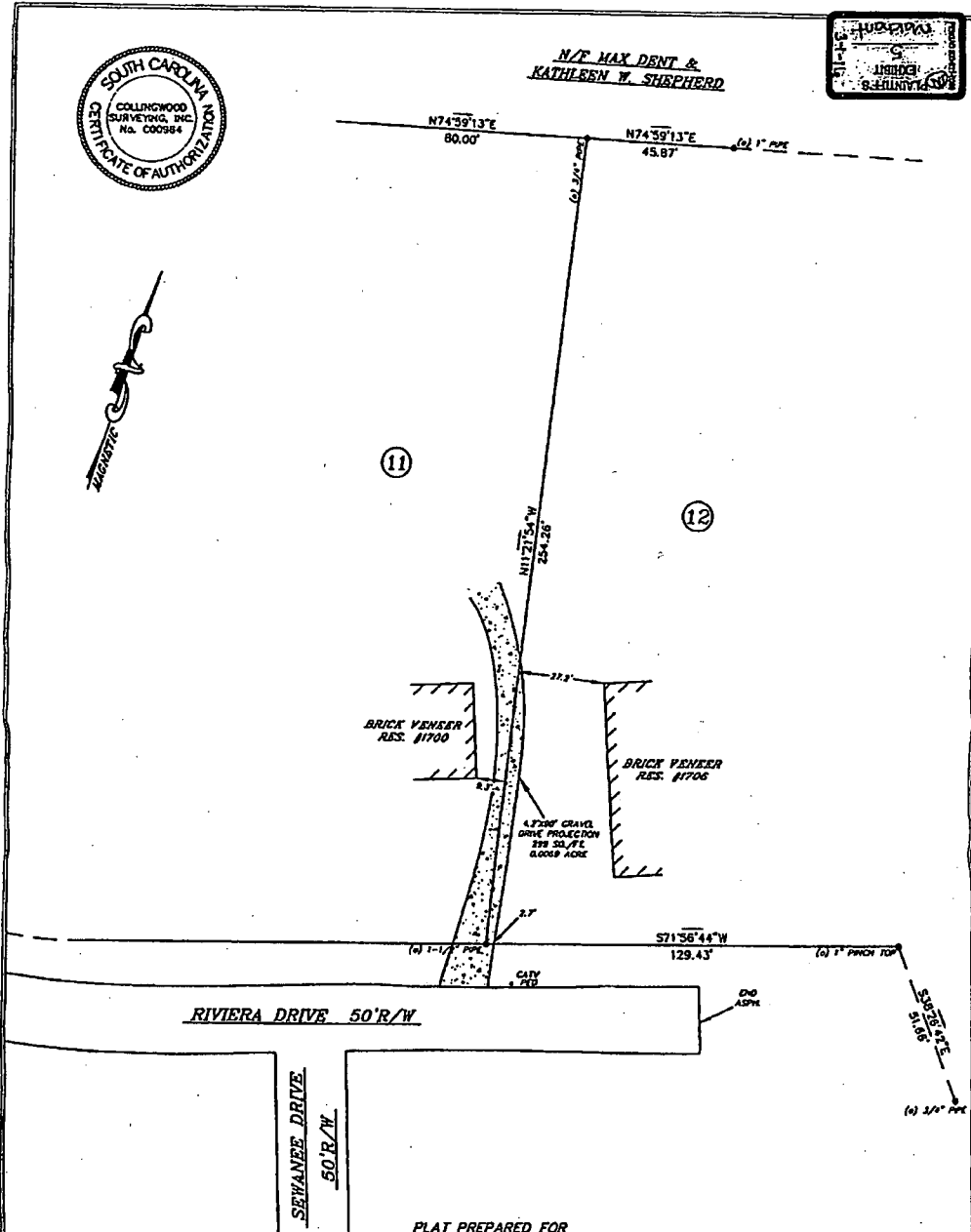
BY: 

James Randall Davis
ATTORNEYS FOR PLAINTIFFS

Lexington, South Carolina
September 12, 2016



N/T MAX DENT &
KATHLEEN W. SHEPHERD



PLAT PREPARED FOR
JOHN McDANIEL

THE SAME BEING SHOWN AS THE PROPERTY LINE BETWEEN LOTS 11 & 12 ON A PLAT OF PORTION OF SALUDA TERRACE ANNEX No. 1 BY McJILLAN ENGINEERING COMPANY DATED NOVEMBER 20, 1964 AND RECORDED IN THE OFFICE OF THE R.O.D. FOR LEXINGTON COUNTY IN PLAT BOOK "80-C" AT PAGE 69. ALSO SEE: PLAT BOOK "184-C" AT PAGE 345 & RECORD BOOK "5975" AT PAGE 22.

SURVEYED BY:
COLLINGWOOD SURVEYING, INC.

TWS 003717-08-003 & 004

NEAR WEST COLUMBIA, S.C.
IN LEXINGTON COUNTY

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

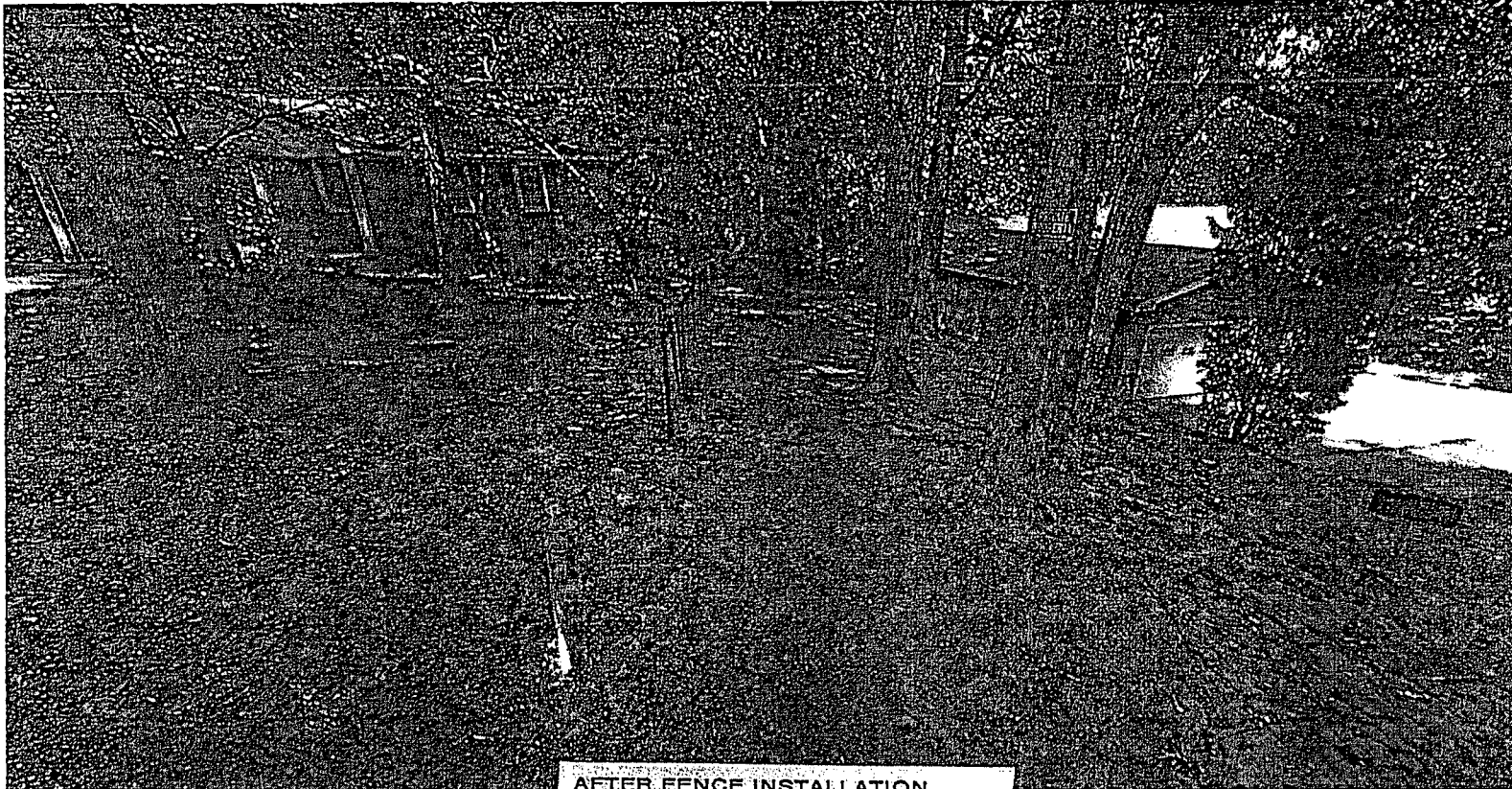


DWG: A. LEWIS
CHK: R.E.C.
JOB: 27101

SCALE: 1" = 30'
NOVEMBER 6, 2012

Robert Collins
S.C. REGISTERED SURVEYOR No. 2318
P.O. BOX 3053 W. COLUMBIA, S.C. 29171
TELE. No. (803) 796-3916 / SCSURVEYOR2318@SCRR.COM

AUGUST 2015 Riviera Dr



AFTER FENCE INSTALLATION
NEW FENCE TIES INTO OLD FENCE



SLOPE OF MARCHANT PROPERTY

APRIL 2013

FILED
MAY 4 11 03 AM '81
JOANNE B. TRIBBLE
RING COUNTY
LEXINGTON

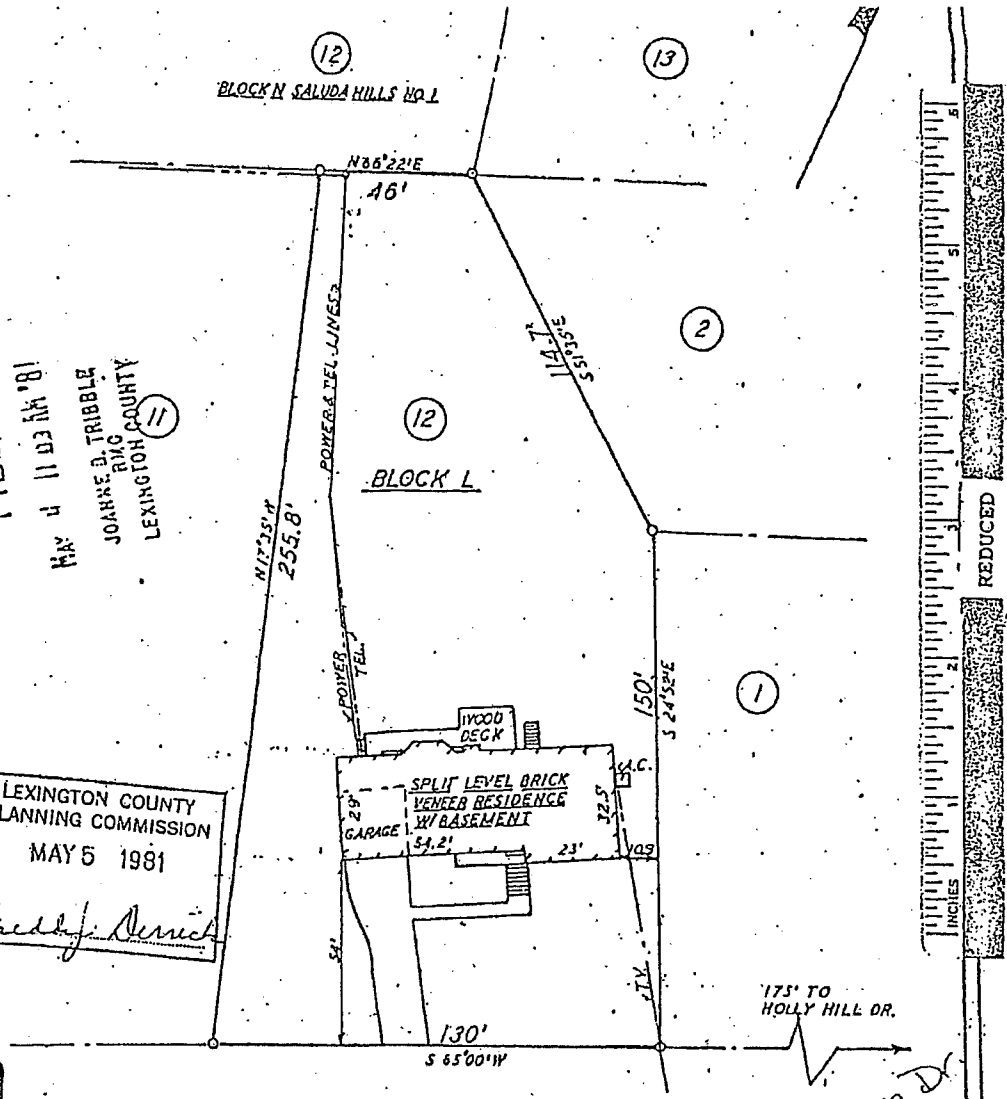
LEXINGTON COUNTY
PLANNING COMMISSION
MAY 5 1981
Fredrick Service

DEPENDANTS
EXHIBIT
2
Mardock

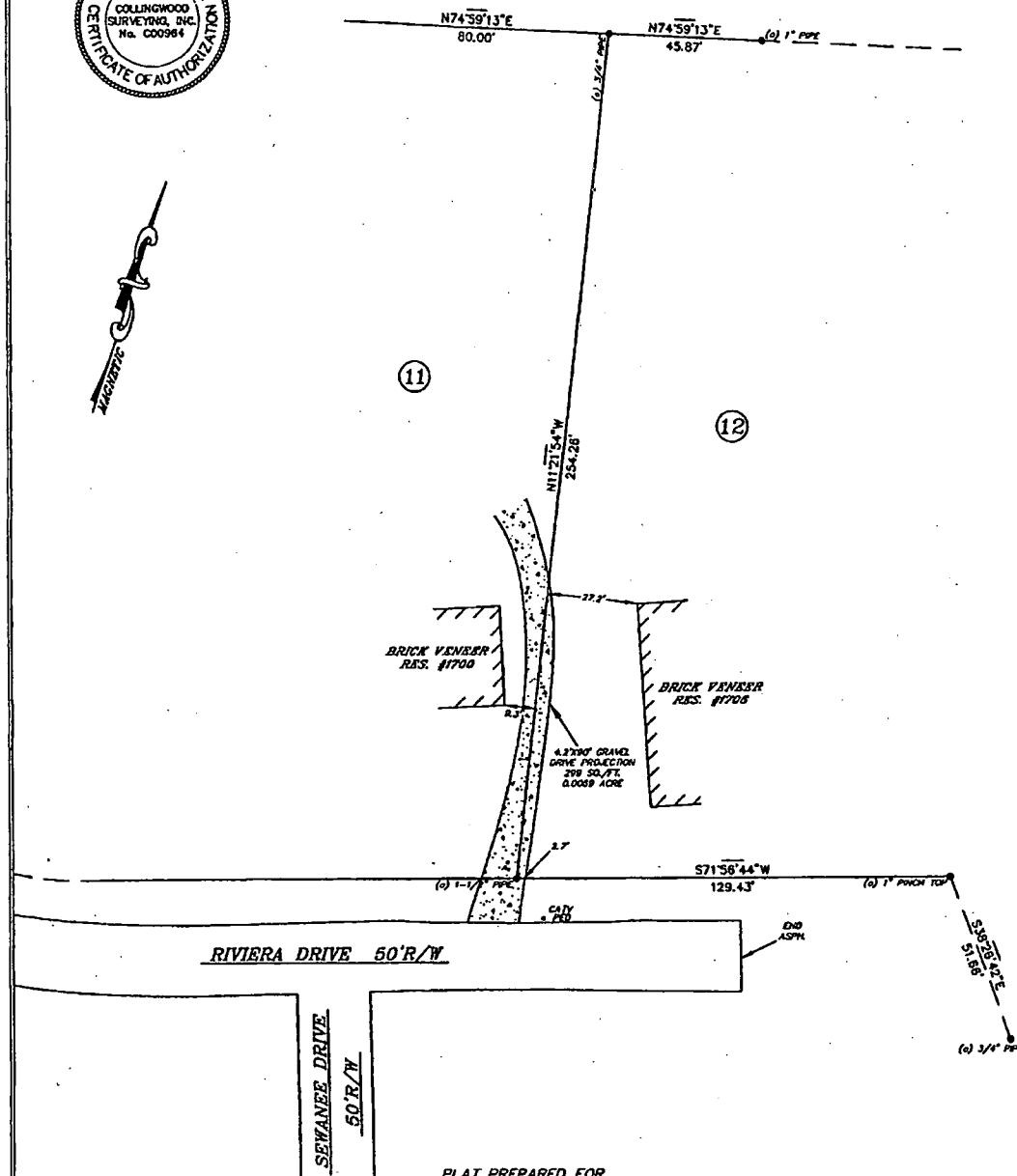
Recorded this 4th day of May, A.D., 1981 at 11:03 AM
JOANNE B. TRIBBLE, R. M. C.

PLAT PREPARED FOR
SHOI YEAN HWANG & MARY S. P. HWANG
NEAR WEST COLUMBIA, S. C.

THE SAME BEING SHOWN AS LOT 12 BLOCK L ON PLAT OF PORTION OF
SALUDA TERRACE ANNEX NO. 1 BY MCMILLAN ENGINEERING COMPANY
DATED NOVEMBER 29, 1964 AND RECORDED IN THE OFFICE OF THE REGISTER OF MESNE
CONVEYANCE FOR LEXINGTON COUNTY IN PLAT BOOK 80-GAT PAGE 89
APRIL 23, 1981
SCALE: 1"=40'
GRAPHIC SCALE
0 5' 10' 20' 40' 60' 80' 100' 120' 140' 160' 180' 200'
IRON CORNERS
I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ON THIS PLAT ARE CORRECT



N/F MAX DENT &
KATHLEEN W. SHEPHERD



PLAT PREPARED FOR
JOHN McDANIEL

THE SAME BEING SHOWN AS THE PROPERTY LINE BETWEEN LOTS 11 & 12 ON A PLAT OF PORTION OF SALUDA TERRACE ANNEX No. 1 BY McMILLAN ENGINEERING COMPANY DATED NOVEMBER 20, 1984 AND RECORDED IN THE OFFICE OF THE R.O.D. FOR LEXINGTON COUNTY IN PLAT BOOK "80-G" AT PAGE 89. ALSO SEE: PLAT BOOK "184-G" AT PAGE 345 & RECORD BOOK "5975" AT PAGE 22.

SURVEYED BY:
COLLINGWOOD SURVEYING, INC.

TMS 003717-08-003 & 004

NEAR WEST COLUMBIA, S.C.
IN LEXINGTON COUNTY

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



DWG: A. LEWIS	SCALE: 1" = 30'
CHKD: R.E.C.	
JOB: 27101	

NOVEMBER 6, 2012

S.C. REGISTERED SURVEYOR NO. 2318
P.O. BOX 3053 W. COLUMBIA, S.C. 29171
TELE. No. (803) 798-3916/SCSURVEYOR2318@SC. RR.COM

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Melissa J. McDaniel,	)	
John F. McDaniel, III, Tara M. Dickerson	)	CIVIL ACTION NO.: 2014-CP-32-00461
and Brandi M. Augustine,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Jolene J. Marchant and	)	
Larry C. Marchant, Sr.,	)	
	)	
Defendants.	)	
	)	

I, Nicole T. Price, a paralegal with Davis Frawley, LLC, hereby certify that I have served Larry C. Marchant, Esquire, attorney for the Defendants, with the foregoing Plaintiffs' Response to Defendants' Motion to Reconsider, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to him at the following address:

Larry C. Marchant, Esquire
3020 Devine Street, Suite 2-C
Columbia, South Carolina 29205

on this 12th day of September, 2016, all in accordance with Rule 5(b)(1) of the South Carolina Rules of Civil Procedure.



Nicole T. Price, Paralegal
DAVIS FRAWLEY, LLC
140 East Main Street, P. O. Box 489
Lexington, South Carolina 29071
(803) 359-2512
ATTORNEY FOR PLAINTIFFS

Lexington, South Carolina

RECEIVED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

NOV 14 2016

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clyde N. Davis, Special Referee for 11th Judicial Circuit

Case No.: 2014-CP-32-00461

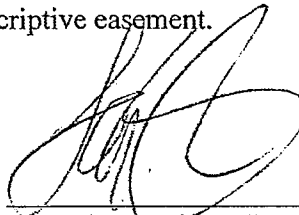
Jolene J Marchant and Larry C. Marchant, Sr., ... Appellants,

v.

Melissa J. McDaniel, John F. McDaniel III,
Tara Dickerson, and Brandi M Augustine, ... Respondents.

NOTICE OF APPEAL

Defendants/Appellants file this Notice of Appeal in regard to the attached Order filed with the Lexington County Clerk of Court on October 13, 2016, and in which Defendants received from the Court on October 17, 2016, and from Plaintiff's Counsel on October 19, 2016. The attached Orders are the ruling of Judge Clyde N. Davis, Special Referee, on Defendant's Motion to Reconsider, and Judge Clyde N. Davis, Special Referee, Order granting prescriptive easement.



Larry C. Marchant, Jr.
3020 Devine Street
Columbia, South Carolina 29205
Telephone: 803-771-1507
Facsimile: 803-771-9752
Email: larrycmarchant@gmail.com
ATTORNEY FOR APPELLANTS

November 14, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 12 2017

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clyde N. Davis, Special Referee for 11th Judicial Circuit

Appellate Case No.: 2016-002298

Jolene J Marchant and Larry C. Marchant, Sr., ... Appellants,

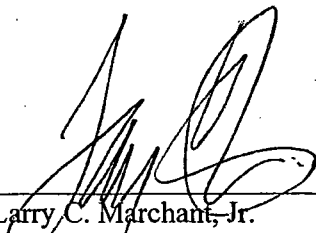
v.

Melissa J. McDaniel, John F. McDaniel III,
Tara Dickerson, and Brandi M Augustine, ... Respondents.

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON
APPEAL

The undersigned would respectfully request an additional 30 days to file Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in this matter. Appellant's Initial Brief and Designation was due on December 15, 2016, and an extension of time was granted for an additional 30 days until January 13, 2017. This request for an additional 30 days will make the Appellant's Initial Brief due on or about February 13, 2017. Appellant understands that no further extensions will be granted absent extraordinary circumstances. This request is not intended to delay the case proceedings but is due to the heavy workload of the undersigned attorney.

(Signature Page to Follow)



Larry C. Marchant, Jr.
3020 Devine Street
Columbia, South Carolina 29205
Telephone: 803-771-1507
Facsimile: 803-771-9752
Email: larrycmarchant@gmail.com
ATTORNEY FOR APPELLANTS

January 12, 2017
Columbia, South Carolina

RECEIVED

JAN 12 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clyde N. Davis, Special Referee for 11th Judicial Circuit

Appellate Case No.: 2016-002298

Jolene J Marchant and Larry C. Marchant, Sr., ... Appellants,

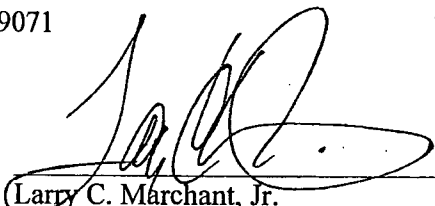
v.

Melissa J. McDaniel, John F. McDaniel III,
Tara Dickerson, and Brandi M Augustine, ... Respondents.

PROOF OF SERVICE

I certify that I served the Motion for Extension of Time to File Appellant's Initial Brief and Designation of Matter to be Included in the Record, by depositing a copy of it in the United States Mail, postage prepaid, on January 12, 2017, addressed to its attorney of record as follows:

James Randall Davis, Esquire
Post Office Box 489
Lexington, South Carolina 29071



Larry C. Marchant, Jr.
3020 Devine Street
Columbia, South Carolina 29205
Telephone: 803-771-1507
Facsimile: 803-771-9752
Email: larrycmarchant@gmail.com
ATTORNEY FOR APPELLANTS

January 12, 2017
Columbia, South Carolina

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF LEXINGTON) CASE NO.: 2014-CP-32-00461
3
4 Melissa J. McDaniel, John F.)
5 McDaniel, III, Tara M.) HEARING
6 Dickerson and Brandi M.) TRANSCRIPT
7 Augustine,)
8 Plaintiffs,)
9 vs.)
10 Jolene J. Marchant and Larry)
11 C. Marchant, Sr.,)
12 Defendants.)
13 _____)
14

15 The hearing before the Honorable Clyde Davis, Special
16 Referee for Lexington County, was taken at Lexington
17 County Courthouse, 205 East Main Street, Lexington, South
18 Carolina on Tuesday, the 1st day of March, 2016, scheduled
19 for 10:00 a.m. and commencing at the hour of 10:00 a.m.,
20 before Jaime D. Newton, Court Reporter and Notary Public
21 in and for the State of South Carolina; pursuant to Rule
22 30 of the South Carolina Rules of Civil Procedure.
23
24
25

APPEARANCES:

Plaintiffs: JAMES RANDALL DAVIS, ESQUIRE
Davis Frawley, LLC
140 East Main Street
Lexington, South Carolina 29072

Defendants: RONALD R. HALL, ESQUIRE
Hall & Hall, Attorneys at Law
1055 Sunset Boulevard
West Columbia, South Carolina 29169

PROCEEDINGS

Page 3

1	CONTENTS,	
2	(Hearing)	
3		PAGE
4	JOHN F. McDANIEL, III	
5	Direct Examination by Mr. Davis	6
6	Cross Examination by Mr. Hall	41
7	Re-Direct Examination by Mr. Davis	47
8	Re-Cross Examination by Mr. Hall	50
9	MELISSA McDANIEL	
10	Direct Examination by Mr. Davis	53
11	Cross Examination by Mr. Hall	57
12	Re-Direct Examination by Mr. Davis	57
13	JIMMY R. DILLON	
14	Direct Examination by Mr. Davis	58
15	Cross Examination by Mr. Hall	63
16	MARVIN E. MARTIN, JR.	
17	Direct Examination by Mr. Davis	63
18	Cross Examination by Mr. Hall	67
19	PATRICK L. WEST, JR.	
20	Direct Examination by Mr. Davis	69
21	Cross Examination by Mr. Hall	72
22	JOLENE MARCHANT	
23	Direct Examination by Mr. Hall	73
24	Cross Examination by Mr. Davis	80
25	CLOSING ARGUMENT	

GARBER REPORTING SERVICE
803-256-4500

PROCEEDINGS

Page 4

1	By Mr. Davis	93
2	By Mr. Hall	95
3	Certificate of Reporter	99

* * * * *

EXHIBIT INDEX

7	Exhibits:	Marked at Page
9	(Copy of exhibits attached to	
10	each copy of transcript.)	
11	1 Chain-of-Title to Property	9
12	2 Photo - Driveway April 2013	13
13	3 Plat	22
14	4 Photo - Buildings Behind McDaniel	25
15	Fence	
16	5 Plat - Dated November 6, 2012	30
17	6 Letter - Dated November 16, 2012	31
18	7 Photo - After Fence Installation	33
19	August 2015	
20	8 Photo - Slope of Marchant Property	39
21	April 2013	
22	9 Chain-of-Title on the Marchant Property	41
23		
24	Defendant's Exhibits:	
25	1 Photo	43

2 Plat - Dated 1981

44

* * * * *

Court Reporter's note:

-- indicates interruption; incomplete phrases; unfinished sentences

1 This hearing is taken in accordance with the
2 South Carolina Rules of Civil Procedure.
3 THE COURT: All right. This is the case of McDaniel v.
4 Marchant. I believe it's an easement case.
5 MR. DAVIS: That's correct.
6 THE COURT: Mr. Davis, you represent the Plaintiff's?
7 MR. DAVIS: Correct.
8 THE COURT: So, I'll hear from you first.
9 MR. DAVIS: Testimony now?
10 THE COURT: Yes. That will be fine unless you all want to
11 make an opening statement.
12 MR. HALL: No. I mean, the Defendant doesn't care.
13 MR. DAVIS: Okay. All right. We'll call our first
14 witness then.
15 THE COURT: All right.
16 MR. DAVIS: John McDaniel.
17 JOHN F. McDANIEL, III, being duly sworn and
18 cautioned to speak the truth, the whole truth and nothing
19 but the truth, testifies as follows:
20 DIRECT EXAMINATION BY MR. DAVIS:
21 Q: **Mr. McDaniel, please state your full name.**
22 A: John F. McDaniel, Jr.
23 Q: **All right. And your present home address is**
24 **what?**
25 A: 1700 Riviera Drive, West Columbia.

- 1 Q: What part of West Columbia is that, Mr. McDaniel?
- 2 A: Saluda Hill.
- 3 Q: Okay. That's off Hwy 378 in West Columbia, is
- 4 that correct?
- 5 A: Part of Westover Acres.
- 6 Q: Okay. And where are you employed?
- 7 A: I'm self-employed. I'm a broker in real estate,
- 8 and um, McDaniel Construction.
- 9 Q: Okay. And how long have you been doing that
- 10 business basically?
- 11 A: Thirty-five, 40 years.
- 12 Q: Okay. And do you have children?
- 13 A: I do.
- 14 Q: Your wife is deceased, I believe?
- 15 A: That's correct.
- 16 Q: And how many children do you have?
- 17 A: I have four.
- 18 Q: And the children are named as the Plaintiff's in
- 19 this case; is that correct?
- 20 A: That is correct.
- 21 Q: Okay. Now, where do you presently reside?
- 22 A: Well, my legal residence is in Charleston, South
- 23 Carolina, but more than half the time I spend --
- 24 my business is in Columbia.
- 25 Q: All right.

1 A: So I transfer back and forth.

2 Q: And so, when you're in Columbia, you reside

3 where?

4 A: 1700 Riviera Drive.

5 Q: Okay. The Defendants in this case -- Jolene, I

6 believe that's how it's pronounced, Marchant and

7 Larry Marchant are your neighbors --

8 A: Yes, sir.

9 Q: -- is that correct? Okay. And the properties --

10 property owned by your children and the

11 Marchant's property, they abut up to each other;

12 is that correct?

13 A: They do.

14 Q: All right. What road do they front?

15 A: I believe we both front Riviera Drive.

16 Q: So, if you're standing in Riviera Drive looking

17 toward the houses, the house that is owned by

18 children where you reside is on the left; is that

19 correct?

20 A: Yes.

21 Q: And the Marchant's house?

22 A: Be on the right.

23 Q: Would be on the right. Okay. Let me show you --

24 let me mark this for identification.

25 (Plaintiff's Exhibit Number One was marked for

1 identification purposes.)

2 MR. DAVIS: Ron, I'm going to give you a copy of that.

3 It's the chain of title to the property is what it is.

4 MR. HALL: We'll stipulate to that.

5 MR. DAVIS: Okay. Then without objection -- then I take

6 it this will be Plaintiff's Number One.

7 THE COURT: Number one.

8 MR. DAVIS: Okay.

9 (Plaintiff's Exhibit Number One was admitted into
10 evidence.)

11 Q: Mr. McDaniel, I've handed you a document which is
12 marked as Plaintiff's Number One and what I
13 believe to be the chain of title to the property
14 at 1700 Riviera Drive. Who was the initial
15 family member in your family that would have
16 owned 1700 Riviera Drive?

17 A: My father.

18 Q: And his name is what?

19 A: He went by Fulton McDaniel, J. Fulton.

20 Q: And he would have obtained that property, 1700
21 Riviera Drive about when?

22 A: Sixty-six I believe.

23 Q: Sixty-six, okay. And how long did he reside
24 there?

25 A: Until he passed away in '92.

1 Q: Okay. And at that time who did the property pass
2 to?

3 A: To me.

4 Q: Okay. And that would have been in '92?

5 A: Well, '93, after probate.

6 Q: Okay. And were there any other owners of the
7 property after you received it from your dad's
8 estate?

9 A: No. Well, I mean, my wife. I gave it to her, I
10 believe in '98.

11 Q: Ninety-eight. And I believe you indicated
12 earlier that she is deceased now?

13 A: She is deceased. She died six years ago.

14 Q: And eventually the property came into ownership
15 of your children.

16 A: Due to her death.

17 Q: Okay. And again they are the Plaintiff's in this
18 case.

19 A: Right.

20 Q: And the ownership has been in their name since
21 February, 2011, is that correct?

22 A: That would be.

23 Q: But you are presently residing there; is that
24 correct?

25 A: I do reside there.

1 Q: Okay.

2 A: All of my clothes and my equipment and what it

3 takes to maintain my business is there.

4 Q: Okay. All right. Again, so the Court will be

5 clear, your father, J. Fulton McDaniel, owned it

6 since '66 to '67 up until what year?

7 A: Until it passed to me in '93.

8 Q: All right. And he passed away what year?

9 A: Ninety-two.

10 Q: Ninety-two, okay. And then from '92 who lived in

11 the residence after '92?

12 A: Me and my family.

13 Q: Okay. And when you say that, you mean your now

14 deceased wife --

15 A: Right. And my four children.

16 Q: -- and your children --

17 A: Four children.

18 Q: -- have been the parties who have been living

19 there since then?

20 A: Continuously.

21 Q: Okay.

22 MR. HALL: When did it pass to the children?

23 MR. DAVIS: When did -- what was that Ron, I'm sorry?

24 MR. HALL: When did it -- oh, I see. It passed to the

25 children in 2011?

1 MR. DAVIS: Yes.

2 THE WITNESS: Yes, sir.

3 MR. DAVIS: That would be that last entry.

4 MR. HALL: Okay. Go ahead.

5 Q: Mr. McDaniel, let me show you this.

6 (Plaintiff's Exhibit Number Two was marked for

7 identification purposes.)

8 Q: Mr. McDaniel, if you will look at this

9 Plaintiff's Number Two and tell the Court what

10 that reflects.

11 A: Well, that's the property in dispute. It's a

12 drive that's been used since I was a child to

13 access the rear of the property.

14 Q: And as to the improvements in the property, what

15 would be shown there?

16 A: Well, gravel being placed there. It's over the

17 natural lay of the land and ...

18 Q: Your home is shown on Plaintiff's Number Two?

19 A: Yeah, my home is the primary home you see in the

20 picture.

21 Q: Okay.

22 A: Mr. Marchant's is the one you see on the right

23 hand side.

24 Q: In this lawsuit there is a -- the request that

25 your making to the Court is to award your family

1 a prescriptive easement, which is on the Marchant
2 property; is that correct?

3 A: Yes.

4 Q: Okay.

5 A: Part of this driveway encroaches on their
6 property.

7 Q: Okay. And that Plaintiff's Number Two, would it
8 show the location of that access easement that
9 we're talking about?

10 A: Yes, sir.

11 Q: Okay. And generally where would it be on that
12 property?

13 A: Well, it would be from Riviera Drive up to the
14 rear of the house and then beyond.

15 Q: Okay. And it would lie between the Marchant --
16 between the McDaniel property and the Marchant
17 property; is that correct?

18 A: Yes, it does.

19 MR. DAVIS: Okay. I move to introduce that as Plaintiff's
20 Number Two.

21 THE COURT: Any objection?

22 MR. HALL: Yeah. Sure. No objection.

23 (Plaintiff's Exhibit Number Two was admitted into
24 evidence.)

25 Q: Mr. McDaniel, on Plaintiff's Number Two, there's

1 kind of a drive -- what I call a driveway area,
2 located on the property. Is that where you're
3 talking about where the access is?

4 A: Yes, sir.

5 Q: Okay. Now, the beginning point of that access is
6 where?

7 A: Riviera Drive.

8 Q: Okay. And where does it terminate?

9 A: About 100, 150 feet to the rear of the house,
10 where it all totally becomes on my property.

11 Q: Okay. So is it fair to say it runs paralleling
12 the right side of your house until it goes into
13 your back yard; is that correct?

14 A: Along the property, yes, sir.

15 Q: And on the left side of it would be your home and
16 on the right side would property owned by the
17 Marchant's.

18 A: Correct.

19 Q: And part of that driveway is on the -- what the
20 Marchant's claim to be their property; is that
21 correct?

22 A: Yes, sir.

23 Q: Okay.

24 A: Or as it became known to me at a later date. I
25 mean, I've always known the driveway to be there

1 since I was a resident there in the third grade.

2 Q: All right. So you're identifying the driveway as
3 that driveway that's shown on Plaintiff's Number
4 Two?

5 A: That's what's in dispute, yes, sir.

6 Q: Okay. What is the origin of that driveway?

7 MR. COURT: Can I look at the original right quick.

8 MR. DAVIS: Sure. Yeah, here. I'm sorry.

9 THE COURT: Want a little clearer --

10 A: Well, my dad --

11 MR. DAVIS: Hold on a second.

12 THE COURT: Okay.

13 MR. DAVIS: All right.

14 THE COURT: Yeah.

15 Q: The origin of that driveway area shown on
16 Plaintiff's Number Two is what?

17 A: In, I guess, somewhere in the 60s or early 70s,
18 my father's hobbies were horses and bird dogs.
19 And we had a large fenced in area behind the
20 house. And there were -- at that time, Riviera
21 Drive basically ended right at basically -- you
22 see the couple of big pine trees there, just
23 beyond that was a barricade and that was the end
24 of the pavement. And we had always used that to
25 access the horses and the dogs. Dad had a

1 hunting jeep, horse trailers, those kinds of
2 things. And that's where all those were stored
3 and used. Like I said, as far back as I can
4 remember in the third grade it always been there.

5 Q: All right. And you were living there during the
6 time that your father was using that driveway
7 area.

8 A: I got married in 1980 and moved away in 1980.

9 Q: Okay. The horses you talked about were kept
10 where?

11 A: Behind the house.

12 Q: Okay. And he used this driveway to get to the
13 horses.

14 A: He used that to bring in their feed. Like I
15 said, he had bird dogs, kennels back there.
16 That's where the animals were housed and kept
17 for.

18 Q: What kind of vehicles did he use to get to the
19 back of the property where the horses and dogs
20 were?

21 A: Several different pick-ups through the years. A
22 couple of different horse trailers. Willis Jeep.
23 Occasionally -- I mean, we walked a Tennessee
24 Walker show horse fan there one time. Just a
25 variety of vehicles or equipment.

- 1 Q: Okay. And how would you describe his use of that
2 driveway area from '67 or '68 up until the time
3 of his death.
- 4 A: Well, he --
- 5 Q: How often was it used?
- 6 A: It may be used five times one day and none the
7 next depending on what needed to be done. I
8 mean, the typical use of this driveway, what
9 causes configuration of the roadway. You've got
10 Suwanee Drive comes in and makes a 90 degree
11 right hand turn and then you have a very abrupt
12 hill going down Riviera toward Cofield. Any type
13 of equipment, truck with a trailer, or just to
14 access that to -- the simple way it's always been
15 used is you drove in this driveway and drove out
16 the other driveway.
- 17 Q: Okay. So when you say you drove in this
18 driveway, you are referring to the driveway which
19 is on Plaintiff's Number Two?
- 20 A: That's correct.
- 21 Q: And then you would drive out on the other side of
22 the house?
- 23 A: Other side of the house. Basically circle the
24 house.
- 25 Q: Okay. And over those years while your dad was

1 there, was it a continuous use of the driveway
2 for the purposes that you mentioned?

3 A: Yes, sir. That and I had an uncle who stayed
4 with my dad after my mom deceased,
5 intermittently. He had a motor home he parked it
6 there. I parked some of my work trailers there
7 both in front and behind the house, you know, as
8 needed.

9 Q: Okay. When you say you parked -- your uncle
10 parked a motor home, parked it where?

11 A: Basically, exactly what you're looking at in this
12 picture.

13 Q: Okay.

14 A: He parked it right beside those pine trees. The
15 sewer clean out is right there on the road. That
16 was the proper place to park.

17 Q: Okay. How about your dad's vehicles. You
18 indicated he --

19 A: He would leave his pick-up trucks. He drove a
20 car generally during the day. He was a
21 pharmacist. And then his pick-up trucks were
22 used for hunting and horses and those types of
23 things.

24 Q: All right. Let me show you --

25 MR. DAVIS: Did we put this into evidence, Number Two?

1 Okay. It's in. Okay. Hold onto that. I move to
2 introduce that as Number Three.

3 (Plaintiff's Exhibit Number Three was marked for
4 identification purposes.)

5 Q: Let me show you, Mr. McDaniel, Number Three here,
6 Plaintiff's Number Three, and ask you to identify
7 what this is.

8 A: This is a plat for Jolene and Larry Marchant,
9 prepared on their behalf.

10 Q: All right. Let's place things so the Court can
11 see what we're -- what the purpose of this is.

12 A: Okay.

13 Q: Number Three, does show the Riviera Drive; is
14 that correct?

15 A: Yes, sir.

16 Q: You see on the right hand side where it says .55
17 acres; you see that?

18 A: I see it.

19 Q: Okay. To the left of that there's a lot that has
20 a name on it and the last name is H-W-A-N-G. Do
21 you understand that to be the Marchant's property
22 now?

23 A: Yes, sir.

24 Q: Okay. And the lot to the left of that would be
25 your house lot, is that correct?

1 A: That's correct.

2 Q: Now, the road fronting the house lot and the

3 Hwang lot is, again, Riviera Drive; is that

4 correct?

5 A: Yes, sir.

6 Q: Okay. And at the time this plat was done in

7 2000, it looks like, and you correct me that --

8 on Riviera Drive it looked like the pavement went

9 down a certain distance. At the intersection of

10 Suwanee and Riviera it went down a certain

11 distance; is that correct?

12 A: That's correct.

13 Q: Okay. And you testified earlier about your dad

14 used the driveway which is on the right side of

15 your property. How would he tie into Riviera

16 drive there? What would he do?

17 A: Well, if you were coming down Suwanee you would

18 just make a right --

19 Q: Yeah.

20 A: -- and then a abrupt left into the driveway.

21 Q: Okay. And you testified to a barricade. Where

22 was that barricade on this Plaintiff's Number

23 Three that you're talking about?

24 A: Within proximity to where it says, "pavement

25 ends."

1 Q: Yes, that's where the barricade was.

2 A: That's correct.

3 Q: Okay. But even --

4 A: At that point there was no more pavement, it was

5 just -- the road in that section of the

6 subdivision had never been completed.

7 Q: Okay. If you're going down Suwanee, you turn

8 left onto Riviera Drive -- if you turn left and

9 go that direction, what is over in that direction

10 elevation-wise?

11 A: You make an immediate right into the concrete

12 driveway to my residence.

13 Q: Okay. And what's the elevation on that side as

14 to any traffic issues over there?

15 A: Well, the elevation going into my driveway is not

16 particularly bad but once you pass my driveway it

17 starts a pretty steep, or actually a very steep

18 hill.

19 Q: Okay.

20 A: And a curve.

21 Q: Okay.

22 A: There have been many a wreck, or run off the

23 road, whatever you want to call it, of people

24 coming up Riviera Drive with my property being on

25 your left and just going straight on and running

1 off the road. Prior to -- actually I believe
2 when the Hwang's had it, it was still in that
3 condition. I believe Mr. Marchant and part of his
4 family improved all of that section.

5 Q: When you say coming up Riviera Drive, on
6 Plaintiff's Number Three, you're saying -- when
7 you say coming up, that would be where Riviera
8 Drive is coming in to Suwanee Drive in that
9 direction, correct?

10 A: From the left.

11 Q: Okay.

12 A: If you're seeing Suwanee -- the intersection of
13 Suwanee Drive and Riviera Drive, if you will be
14 coming up Riviera you'll be coming up a steep
15 hill, around a curve. And if you went straight
16 on you'd go to the Marchant's property.

17 MR. DAVIS: Okay. Move to introduce Number Three.

18 MR. HALL: No Objection.

19 (Plaintiff's Exhibit Number Three was admitted into
20 evidence.)

21 Q: All right. During the time that your father
22 owned the property, what use did you or your
23 family make of that same driveway area?

24 A: Well, after -- I mean, certainly dad's use was
25 primarily for his hobbies, his horses and dogs.

1 And of course I got older, I would use that drive
2 -- I had a buggy path road down to the river and
3 me and my buddies would go fishing that I used
4 for some number of years. And as I got older and
5 finished school, started working, after the major
6 hail storm there in the early 80s, I parked
7 truck, trailer, whatever we needed to facilitate
8 the roofing business, there on the -- probably
9 four to five day a week basis.

10 **Q:** **Parked where?**

11 **A:** In the gravel drive.

12 **Q:** **On Plaintiff's Number Two?**

13 **A:** I mean, right there in the front yard, in the
14 driveway.

15 **Q:** **Okay. How long have those uses of the driveway**
16 **area been done by you?**

17 **A:** Well, up until I moved back to the residence. At
18 that point, which would have been '92, I cleared
19 a bigger portion and took down horse stables and
20 fenced area, dog kennels, and built a shop in the
21 back. And graded the whole area, connected
22 everything in the back to the front with parking
23 area and all for my equipment.

24 **Q:** **Okay. And when you refer to building a shop,**
25 **you're talking about behind the property; is that**

1 **correct?**

2 A: Behind the house, correct.

3 Q: **Okay.**

4 A: I guess 200 feet or so, 300 feet.

5 MR. DAVIS: Mark that one.

6 (Plaintiff's Exhibit Number Four was marked for

7 identification purposes.)

8 A: And it's a 24 by 70 at one point and I

9 added some more to it, about four or 500.

10 Q: **Let me show you Plaintiff's Number Four. Does**

11 **that photo show the building that you built?**

12 A: Yes, sir.

13 Q: **Okay. And that building was built when?**

14 A: Ninety-two.

15 Q: **Ninety-two. And what purpose you use it for?**

16 A: Well, I have a fair amount of rental property so

17 I have to maintain that. Also, I rehabilitate

18 homes as well as my construction business.

19 Q: **Okay. And has that use continued?**

20 A: Till today.

21 Q: **Till today. Okay. How about your children using**

22 **the driveway?**

23 A: Well, when my kids were in high school, of course

24 -- with four children -- with four in diapers at

25 one time, four in college at one time, four

1 automobiles at one time. So we had a pretty
2 crowded driveway. It was very simply who parked
3 where when. Many days they would drive around
4 the house and go out and go to school or wherever
5 they were going. I mean, we've used it to try to
6 hide some surprises from the kids, Christmas
7 gifts and different things. Like I said, it's
8 kind of who parked where and when. If you
9 couldn't get out one drive, you'd go around the
10 other.

11 **Q:** Okay. Let me show you --

12 MR. DAVIS: Mark this one. What's that, four?

13 COURT REPORTER: Five.

14 (Plaintiff's Exhibit Number Five was marked for
15 identification purposes.)

16 MR. DAVIS: Okay. Your honor, we move to introduce Number
17 Four, which shows the buildings. Any objection?

18 MR. HALL: No objection.

19 MR. DAVIS: Okay.

20 THE COURT: All right. It's without objection.

21 (Plaintiff's Exhibit Number Four was admitted into
22 evidence.)

23 MR. HALL: Which one is four? Oh, that was four? Okay.

24 MR. DAVIS: This is five, correct? Okay.

25 **Q:** Plaintiff's Number Five, what is that?

1 A: This is a plat that I had prepared to basically
2 show the location of the drive as it lies across
3 the property lines.

4 Q: Okay. And when was that done?

5 A: November 6, 2012.

6 Q: Okay. And does that plat show the area where
7 you're claiming a prescriptive easement on the
8 Marchant's property?

9 A: Yes, sir.

10 Q: Now, in reference to your testimony so far today
11 -- in regards to the use of that driveway, has
12 the driveway been used over the years, that
13 you've talked about, in that area that's shown on
14 that plat Number Five?

15 A: Yes, sir. And as the picture showed. I was
16 never aware of an issue until the property was
17 sold to the Marchant's. The Hwang's never said
18 anything. I'd always assumed the property line
19 to be very close to the pine tree. That's where
20 the telephone pedestal was. I always maintained
21 it. If, you know, got up leaves, we got them up
22 all the way to there, whatever the case, but ...

23 Q: Okay. And up until the time the Marchant's
24 bought the property next door, which was 2005; is
25 that correct?

1 A: I believe. Going on the chain of title, yes,
2 sir.

3 Q: Okay. Did any of the neighbors who owned the
4 Marchant property before they bought it in 2005
5 ever question the family's use of that driveway
6 area, including the area shown on Plaintiff's
7 Number Five?

8 A: No, sir.

9 Q: Okay. No one ever interrupted that use that you
10 -- uses that you testified to?

11 A: Nothing was ever said about it.

12 Q: Okay. The area that's shown on this Plaintiff's
13 Number Five, is approximately a 300 square foot
14 area; is that correct?

15 A: Four hundred, I believe.

16 Q: Okay. Now, the driveway area on that Plaintiff's
17 Number Five, has it been a graveled area is the
18 way it's been over the years or what?

19 A: It's been -- I mean, even back when my dad was
20 using it, you can see that it, you know, the road
21 or the elevation drops off going to the rear. So
22 of course there were wet times or whatever, if
23 you use it on any type of basis you would have
24 rut it up -- come slick you couldn't get in and
25 out. I know my uncle put in brick or mortar or

1 whatever from a demolition or whenever he got a
2 hold of it. Through the years I would, as I come
3 about aggregate, we'd put it in there. Like I
4 said, in '92, I put more than probably four
5 inches on that side all the way around and
6 completely in front of my shop. So that you
7 know, from that point it's just been refreshed
8 as it either we got a hold of some aggregate off
9 of a job or if it needed it, you know, we'd
10 refresh it.

11 **Q:** **Okay. So your testimony is that none of the**
12 **neighbors ever questioned the use?**

13 **A:** Well, the only one that I've got -- I mean, I'm
14 not aware --

15 **Q:** **My question is prior to 2005. None of the**
16 **neighbors --**

17 **A:** None, that I'm aware of. Of course, the original
18 owners of the home, I was a young child, third
19 grade or whatever --

20 **Q:** **Sure.**

21 **A:** -- so I wouldn't have known that. But I knew the
22 Hwang's and they actually planted their shrubbery
23 as to where the drive was and nothing was ever
24 said until basically the sale was going to be
25 generated between them, and -- I was -- what had

1 me to have this done was when Mr. Marchant
 2 surveyed his piece.

3 Q: All right. Let's discuss from 2000 forward. And
 4 I understand the Marchant's bought the property
 5 in 2005; is that your understanding?

6 A: Right.

7 Q: Okay. When were you stopped from using that
 8 driveway area, by the Marchant's, if you were?

9 A: Well, I'd have to look back to get the exact
 10 dates. But shortly before I hired you, Larry had
 11 the survey done and then one afternoon he come
 12 over and said that --

13 Q: Larry, being Mr. Marchant.

14 A: Mr. Marchant. I don't want you using the
 15 driveway.

16 Q: Okay.

17 A: You know, at that time he drove a couple of
 18 staubes down from his survey.

19 Q: Where?

20 A: Well, basically where the fence is now.

21 Q: All right. But let's -- I mean, before we get to
 22 the fence, he put staubes down, fence not there
 23 yet, but he put the staubes down when?
 24 Approximately when -- that was the first that
 25 went down -- the question is, where did they go?

1 A: Well, he'd had his survey done. And he drove
2 staubes down the line based upon the survey he
3 had done.

4 Q: And those staubes would have been where?

5 A: Well --

6 Q: Meaning in the driveway?

7 A: In the drive as the fence is depicted today.

8 Q: All right. Now, let me --

9 MR. DAVIS: I want to move to introduce that Number Five,
10 by the way. I don't think we have. Any objection to
11 that?

12 MR. HALL: No.

13 MR. DAVIS: Okay.

14 (Plaintiff's Exhibit Number Five was admitted into
15 evidence.)

16 MR. DAVIS: Let's mark this as Number Six.

17 (Plaintiff's Exhibit Number Six was marked for
18 identification purposes.)

19 THE COURT: So, I looked at this.

20 MR. DAVIS: Yes, sir.

21 THE COURT: Mr. Davis, your asking for an easement
22 basically 4.2 feet by nine feet?

23 MR. DAVIS: That's correct. That's correct.

24 Q: Let me show you Plaintiff's Number Six and ask
25 you Mr. McDaniel to identify that. Excuse me one

1 second.

2 MR. DAVIS: Did I give that to you? Excuse me, have I

3 shown you --

4 COURT REPORTER: Yes.

5 MR. DAVIS: Yes, I have. Very good. I apologize. I

6 can't keep up with myself.

7 A: I believe this is a letter that I had you to

8 send to Mr. and Mrs. Marchant, in reference to a

9 letter they sent me.

10 Q: Okay. Now, would -- let's hold one second and

11 let the Judge read this thing. Just hold one

12 second. Okay. Up until this time, did you have

13 use of that driveway area?

14 A: Yes, sir.

15 Q: Okay. Now, that letter was sent to the

16 Marchant's?

17 A: Yes, sir.

18 MR. DAVIS: Okay. Let's move to introduce that as Number

19 Six.

20 A: I've had use of --

21 Q: Whoa, whoa.

22 MR. DAVIS: Any objection to that?

23 MR. HALL: No, no objection.

24 MR. DAVIS: Okay.

25 (Plaintiff's Exhibit Number Six was admitted into

1 evidence.)

2 Q: Now, you were testifying earlier that stakes were

3 put in the driveway area.

4 A: Yes, sir.

5 Q: What happened after that?

6 A: Well, they got ran across. A couple of my

7 friends inadvertently, had no idea, drove out

8 that way and knocked them down. At that point, I

9 tried to talk to Larry and Jolene about let's try

10 to work this thing out. I offered to purchase

11 part of the property. I offered to do conjoined

12 easement for both of our uses and he basically

13 just said no, it's his property and he didn't

14 want to do anything.

15 Q: All right. Did he put anything else in the

16 driveway area?

17 A: Well, he put up a couple of metal stakes after

18 that. And I continued to use it and -- he sent

19 me a letter and, of course, he put a fence up

20 which impeded my use.

21 Q: Okay. Just one second, let me find something.

22 Still looking for one more plat. Let's look at -

23 - may I borrow that right there? Okay. Here we

24 go. I got what I need.

25 MR. DAVIS: Mark this one.

1 (Plaintiff's Exhibit Number Seven was marked for
2 identification purposes.)

3 Q: Let me show you what's marked as Plaintiff's
4 Number Seven. Is that the fence that's been
5 installed by Mr. Marchant in the driveway area?

6 A: Yes, sir.

7 Q: Okay. And that went up after the metal stakes
8 were there --

9 A: Yes.

10 Q: -- is that correct?

11 A: That's right.

12 Q: Okay. And does this fence obstruct your use of
13 the driveway?

14 A: Yes, sir.

15 Q: Okay. And this is what you've asked him to move;
16 is that correct?

17 A: That's correct.

18 Q: Okay. Let me ask you this and --

19 MR. DAVIS: Let me move to introduce that as Plaintiff's
20 Number Seven.

21 MR. HALL: Yeah.

22 MR. DAVIS: Okay.

23 THE COURT: Without objection.

24 (Plaintiff's Exhibit Number Seven was admitted into
25 evidence.)

1 Q: On Plaintiff's Number Seven, Mr. McDaniel, what
2 is that metal pipe, or whatever that is?
3 A: Well, actually that's a telephone pedestal.
4 Q: Okay.
5 A: That's where their wires come up that they can
6 make the conjunctions and so forth.
7 Q: All right. Has it always been in that location?
8 A: No, sir.
9 Q: Where was it before?
10 A: If you go back to Exhibit Number Two, you can see
11 that it was certainly, probably, he had it moved
12 about 15 feet from its original location to the
13 property line.
14 Q: Okay. So on that Number Seven, it was where
15 before? The Judge has the color --
16 A: That's fine. I'm looking.
17 Q: Okay.
18 A: It had always been in the location of Exhibit
19 Number Two. And then --
20 Q: Which was where?
21 A: Almost in front of the pine tree.
22 Q: Okay. So it wasn't in the driveway?
23 A: It was not in the driveway.
24 Q: Okay. And when did it get moved to where it is
25 in that Number Seven?

- 1 A: After Mr. Marchant surveyed his property and
2 sent us the letter and we had already informed
3 them that we felt we had right to use the
4 driveway. And he went on and put the fence up
5 and had the pedestal moved at his expense.
- 6 Q: Okay. Who owns the pedestal?
- 7 A: AT&T.
- 8 Q: And what is it?
- 9 A: It's a telephone conjunction box.
- 10 Q: Why was it located where it was in Exhibit Two?
- 11 A: I'm assuming -- I mean, most utility companies
12 generally try to locate things close to property
13 lines. And I guess they assumed that's where the
14 property line was.
- 15 Q: Okay. Meaning out of the driveway area?
- 16 A: Yeah. They saw the drive and just probably
17 figured that was the property line.
- 18 Q: Okay. The fence Mr. Marchant put up, does it tie
19 into any existing fence?
- 20 A: Well, it comes about 15 feet short of the
21 original fenced in area that my dad had for his
22 dogs and horses.
- 23 Q: All right. Let me make sure we're clear on that.
24 So, what you just testified to, there was a fence
25 up on the property line between what is now the

1 Marchant property and originally your dad's
2 property?

3 A: Yes.

4 Q: In the back of the property?

5 A: That's correct.

6 Q: And it would have come up the property line
7 between the two properties; is that correct?

8 A: That's right.

9 Q: Did it stop at some point?

10 A: It stopped probably 80 feet from where the house
11 is.

12 Q: Yep.

13 A: When the Marchant's had their fence installed,
14 they went but they did not tie on to that fence,
15 they left about a 15 foot gap that's pretty
16 heavily --

17 Q: But is it a straight installation into that --
18 straight line?

19 A: No, sir. No fences line up.

20 Q: Okay. So if someone was looking -- before the
21 new fence went up by Marchant, somebody was
22 looking down the property line between Marchant
23 and McDaniel, they would see that fence; is that
24 correct?

25 A: They would.

1 Q: And they would see where that property line was -
2 - if it's a straight line, they'd see where that
3 property line was from the back to the front of
4 the property where Riviera Drive is; is that
5 correct?

6 A: Yes, sir.

7 Q: And that fence would be cutting through what, the
8 driveway?

9 A: It would have been cut through the driveway.

10 Q: Okay. You continued to use the driveway up until
11 the 2012 or when the letter was written, on
12 Plaintiff's Number Six; is that correct?

13 A: Yes, sir. And after that, until he installed the
14 fence.

15 Q: Okay.

16 A: And I would say that was sometime maybe in June
17 or early July.

18 Q: Okay. Would you say that the use of the driveway
19 -- that the family's use of the driveway has been
20 open to the world to see, that it's been
21 continuous and no one's interrupted that use from
22 '68, say '67, '68 up until 2013 or so?

23 A: Yes, sir.

24 Q: And your father used it and the family used it as
25 early as 1968?

1 A: Yes, sir. My family's been in that property
2 since the house was built.

3 Q: And no one stopped your use of it?

4 A: Not until Larry put the fence up.

5 Q: Whether it was yours or not, nobody stopped your
6 use of it?

7 A: No.

8 Q: Okay. You and the family are asking the Court to
9 grant you the prescriptive easement over that
10 area which is shown on Plaintiff's Number Five?
11 What did we do with that thing? We have all
12 kinds of stuff. Right there. On Plaintiff's
13 Number Five; is that correct?

14 A: I am.

15 Q: Okay. And you're asking the Court, you and your
16 family, to criminally enjoin the defendant's from
17 obstructing that driveway area?

18 A: Correct.

19 Q: That you have a prescriptive easement on.

20 A: It's a convenience issue. Most, probably more
21 important than anything else, it's a major safety
22 issue.

23 Q: And that's tied to the -- on the left side of
24 your property is the -- the Riviera Drive goes up
25 a hill; is that correct?

1 A: Yes, sir. The ingress, egress to the concrete
2 drive on the left hand side of the house is
3 impacted by both a curve and a steep hill. And
4 visibilities there are not as good -- this is a -
5 - not a -- Mr. Marchant and his family are the
6 only two residents there, so it's not a major
7 thoroughfare for one. Certainly it's much easier
8 than navigating any type of trailer or large
9 vehicle from that side.

10 Q: Let me show you --

11 MR. DAVIS: Let me mark this one. This would be, what,
12 Number Eight?

13 COURT REPORTER: Yes, sir.

14 (Plaintiff's Exhibit Number Eight was marked for
15 identification purposes.)

16 Q: Let me show you Number Eight and this would -- on
17 the left be your family home and to the right
18 would be the Marchant?

19 A: Yes, sir.

20 Q: Right. Looking on Number Eight, do the
21 Marchant's have anything in the area which is on
22 their property to the right of the driveway on
23 your property? Besides the trees there?

24 A: Nothing there but trees. There's a very steep
25 gradient.

1 Q: Okay.

2 A: If you pay attention to elevation, there's
3 probably a six foot minimum, maybe eight --

4 Q: Okay.

5 A: -- where it drops down to their property. It's
6 just like I said, the road -- the driveway's
7 probably, you know -- it was put there simply
8 because of topography. And no, it's never been
9 used by anyone other than just yard.

10 Q: Okay.

11 A: Prior to the Marchant's -- I mean, the Marchant's
12 had that carport and big drive and all put in.
13 Prior to that the road end and it was just a
14 little gravel driveway coming into the house, on
15 the Marchant's property. Somewhat similar to the
16 gravel drive in dispute.

17 Q: Okay. All right.

18 MR. DAVIS: Let me put into evidence the chain of title on
19 the Marchant property. A little summary sheet I've got
20 on the top is showing the dates of -- ownership by
21 people but the documents attached to recorded deeds
22 showing ownership of the Marchant property.

23 MR. HALL: Any objection to that Ron?

24 MR. DAVIS: No. No objection.

25 MR. HALL: Okay. All right. That would be, what's that

1 nine or eight? Nine.

2 (Plaintiff's Exhibit Number Nine was marked for
3 identification purposes and admitted into evidence.)

4 MR. DAVIS: I believe that's all I have. Answer any
5 questions that Mr. Hall may have.

6 THE COURT: All right.

7 CROSS EXAMINATION BY MR. HALL:

8 Q: Mr. McDaniel, my name is Ronald Hall and I
9 represent Mr. and Mrs. Marchant. You have
10 introduced one, two, I believe three plats,
11 relative to your property; is that correct? Am I
12 right on that Randy?

13 MR. DAVIS: Let's see.

14 MR. HALL: Three plats.

15 MR. DAVIS: One, two, yes.

16 MR. HALL: All right. It's just the two. No, is it
17 three?

18 MR. DAVIS: I think it's two. Two, at least two. Photos
19 but plats, too.

20 Q: Maybe just two. And only one, Plaintiff's
21 Exhibit Five shows an easement. Can you explain
22 that? None of these other plats show easements
23 across the Marchant's property.

24 A: Yes, I believe I can.

25 Q: All right, how?

- 1 A: Well, first I don't think that -- I was unaware
2 of where the property line was. I knew it was a
3 driveway.
- 4 Q: I know Mr. McDaniel, but you not a surveyor. I'm
5 talking about the surveyor. How did the
6 surveyor's miss that easement? They're not
7 showing it on their plats.
- 8 A: The surveyor's did not, sir. You've got plat
9 number five that is showing the driveway.
- 10 Q: That's the only plat showing the easement.
- 11 A: Okay.
- 12 Q: Nobody else shows it.
- 13 A: So?
- 14 Q: You don't think that's significant?
- 15 A: No, sir.
- 16 Q: All right.
- 17 A: It's not an easement of record, sir.
- 18 Q: No, sir. It doesn't have to be an easement of
19 record. The surveyor's go by what's on the
20 ground. So there was no gravel on that ground
21 when these other plats where made.
- 22 A: Sir, we've got a survey that shows that, sir.
- 23 Q: Now, you realize here we are talking about your
24 drive. That's not the issue. We are talking
25 about as Judge Davis pointed out -- we're talking

1 about your claim to 4.2 feet of the Marchant's
2 property, not your drive, but 4.2 feet of the
3 Marchant's property. You understand that?
4 A: Which is the gravel drive.
5 Q: Now is it your testimony that if you don't have
6 that 4.2 feet, you can't use your drive?
7 A: I cannot use the gravel drive. No, sir.
8 Q: You cannot use the drive on that side of the
9 house?
10 A: No, sir.
11 MR. HALL: Let's have that marked as Defendant Exhibit
12 One. Would you show that to Mr. McDaniel?
13 (Defendant's Exhibit Number One was marked for
14 identification purposes.)
15 Q: Where do you suppose those tire tracks came from
16 Mr. McDaniel?
17 A: From a golf cart, sir.
18 Q: From a golf cart? That's mighty wide for a golf
19 cart.
20 A: Well, it's from a golf cart.
21 Q: I see. So it didn't come from a car.
22 A: A vehicle cannot go through there, sir.
23 Q: A vehicle can't go through there --
24 A: No.
25 Q: -- even though you have 9.3 feet on that side?

1 A: No, sir.

2 Q: All right. When your daddy -- in, I forget what

3 -- the chain of title of your property -- Mr.

4 Davis included also a deed dated or filed

5 November 7, 1967 showing that your father

6 purchased lot ten also. Where is lot ten?

7 That's on the other side of the house.

8 A: I'm assuming it's the other side.

9 Q: The other side of the house.

10 A: Uh-huh.

11 Q: Now, why would your father purchase lot ten?

12 A: For more room.

13 Q: Okay. And a drive, right?

14 A: No, sir. There's no drive on ten.

15 Q: That would give you area for a drive, right?

16 A: No, sir. It's on the steepest part of the hill.

17 Q: Well, I don't see that in any of these photos or

18 anything that we have here.

19 A: We don't have any photos of the left side that

20 I'm aware.

21 MR. HALL: Mark that as Defendant's Exhibit Two, please.

22 (Defendant's Exhibit Number Two was marked for

23 identification purposes.)

24 Q: I'm showing you Defendant's Exhibit Two Mr.

25 McDaniel. That's the survey of the Hwang's lot,

1 which is now owned by the Marchant's. Your lot,
2 of course, is lot 11. Again, this survey is
3 showing no easement across that property line
4 between lot ten and lot 11 -- I mean, between lot
5 12 and lot 11. How do you explain that?

6 A: I don't need to explain it. That is the property
7 line.

8 Q: That's right. And the surveyor's not showing an
9 easement.

10 A: We're not asking them -- there was no easement,
11 sir. We've been using the property for over --

12 Q: There was no easement.

13 A: -- 20 some odd years. This is a prescriptive
14 easement that we're asking for, sir.

15 Q: There was no easement.

16 A: We've been using the property. The driveway's
17 been there since the beginning of ...

18 Q: And nobody's ever said anything.

19 A: No one's ever said anything.

20 Q: So your use of that property -- alleged use of
21 that property has been by permission, right?

22 A: No, sir.

23 Q: They permitted you to use it.

24 A: Well, I never asked anyone to use it.

25 Q: But they never objected to you using it.

1 A: Never been objected until --

2 Q: Never objected to you.

3 A: -- Larry --

4 Q: So it was by permission.

5 MR. DAVIS: Objection.

6 A: If you say so.

7 MR. DAVIS: Just wait -- objection. He's never -- there's

8 been no testimony by anybody as to something being by

9 permission so far.

10 THE COURT: All right. I sustain that objection.

11 Q: Well, let's turn that around. Let's turn that

12 into the negative. Nobody's ever objected to you

13 using it.

14 A: No one's ever objected until Larry Marchant.

15 Q: Okay. All right. And Mr. Marchant put up the

16 fence. And we can see from Defendant's Exhibit

17 Number One that vehicles can go back and forwards

18 between your house and the fence.

19 MR. DAVIS: Objection Your Honor. Our testimony is a golf

20 cart can.

21 A: A vehicle cannot transverse that area.

22 Q: Even though it's 9.3 feet?

23 A: Even though it's 9.3 feet. The angle of it does

24 not allow for it, sir.

25 Q: But your testimony was also that nothing has gone

1 back and you haven't been able to use that drive
 2 since they put up the fence. But here we see the
 3 fence and we see tire tracks.
 4 A: That are from a golf cart sir.
 5 Q: So you can use the drive.
 6 A: With a golf cart.
 7 Q: Good. Thank you.
 8 MR. DAVIS: Is that it?
 9 Q: And other than this plat dated November 6, 2012,
 10 Plaintiff's Exhibit Number Five -- other than
 11 that single document you have no other documents
 12 showing an easement across that property line; is
 13 that correct? Nothing else?
 14 A: I'm not aware of anything else.
 15 Q: Okay. And the fact is that nobody ever objected
 16 to you using it.
 17 A: That's a fact. Until Larry Marchant.
 18 Q: Good.
 19 MR. HALL: No further questions.
 20 THE COURT: All right. Re-direct?
 21 MR. DAVIS: Yes, sir.
 22 RE-DIRECT EXAMINATION BY MR. DAVIS:
 23 Q: Mr. McDaniel, let me show you some --
 24 MR. DAVIS: What is the exhibit number on the Marchant
 25 chain of title?

1 COURT REPORTER: Nine.

2 Q: On Exhibit Number Nine, attached to the chain of
3 title on the Marchant property there's a deed
4 here from Ms. Arehart to Mr. and Mrs. Hwang. Do
5 you understand them to be a previous owner --

6 A: I do.

7 Q: -- of the Marchant property. Looking at that
8 deed which is Book 461 at Page 116, look at the -
9 - that 461 at 116 is the deed into the Hwang's in
10 1981. Look at the second page of that deed on
11 Page 117, read what I mark here.

12 A: Having being conveyed to Gale D. --

13 Q: Oh, not that. The next -- this language here.

14 A: All right. "This conveyance is made subject to
15 easements, conditions and restrictions appearing
16 of record."

17 Q: Okay. And that's in the Hwang deed; is that
18 correct?

19 A: Yes, sir.

20 Q: Okay. Mr. Hall asked you about whether there was
21 any other plats or -- showing what you're
22 claiming as a prescriptive easement. The
23 photographs that you put into evidence which show
24 the area where you're claiming the prescriptive
25 easement; would it not?

1 A: The photographs would.

2 Q: Okay. Now, lot ten that was purchased by your
3 father was purchased about the same time as the
4 other lot.

5 A: Yes, sir.

6 Q: Describe to the Judge the issue as to the
7 elevation and the use of that property so it's
8 clear to him as to ...

9 A: Well, my residence sits on the apex of a hill.
10 And you have a road that dead ends in front of my
11 house, Suwanee Drive. If you go to the left,
12 within 50 feet you start a curve and down a steep
13 gradient. If you go to the right, of course,
14 your turn to the Marchant property, which is not
15 nearly as severe and straight. In the normal use
16 of our -- I mean -- that driveway's been there
17 since I was a kid, since I got my driver's
18 license. I never knew anything existed of it. I
19 was unaware of any survey's ever being put on the
20 ground until the Marchant's -- he didn't even get
21 it surveyed when he bought the place. He saw the
22 driveway there. He known the driveway's been
23 there since the first time he ever looked at the
24 place.

25 Q: But on lot number ten, the elevation of it is

1 what? It's up or down or what?

2 A: I don't know this place by lot numbers, but ...

3 Q: Lot ten is the one the house is not on.

4 A: Yeah.

5 Q: Okay.

6 A: That starts -- it's in the curve. There are four

7 large rocks there that I don't think could be

8 unearthened to start with. And Rick lives on the

9 other side of the road, he should be able to

10 testify as to the severity of the road. It's

11 pretty steep. Pretty steep hill.

12 Q: The shape of the property elevation prevents use

13 of it when you combine it with the way the curve

14 is.

15 A: Yes. It would be just a very borderline area of

16 it. And still -- I mean, you could put a drive

17 there. Just getting in and out of the road is

18 the problem.

19 MR. DAVIS: Okay. That's all I have on re-direct.

20 MR. HALL: All right. Anything else Mr. Hall?

21 RE-CROSS EXAMINATION BY MR. HALL:

22 Q: Mr. McDaniel, just to clarify, this survey that

23 you had done on November 6, 2012 that was done

24 prior to the Marchant's buying their property,

25 right?

1 A: No.

2 Q: 2012. Prior to their buying the property, right?

3 A: No. Didn't they buy that property in 2005?

4 Q: Yes, sir. I meant to say before -- I mean, after

5 they bought their property.

6 A: It was done after Mr. Marchant had his survey

7 done.

8 Q: So it wasn't a survey of record as described in

9 the language you just read from Ms. Davis? It

10 wasn't of record then, right?

11 A: Sir, you need to rephrase that. What I just read

12 -- if I understand what I just read, it basically

13 made reference to anything that would be lying on

14 the ground.

15 Q: No, it says of record. Of record means --

16 A: Or appearing such. Maybe I should read it

17 again.

18 Q: Of record means --

19 A: Can I read that again please?

20 MR. DAVIS: Sure.

21 A: Maybe I should read it again, but -- the way that

22 I would understand that, but maybe I'm wrong.

23 Q: You're supposed to be a real estate broker Mr.

24 McDaniel.

25 A: I am a real estate broker, sir. Ain't no

1 supposed to be. "This conveyance is made subject
2 to the easements, conditions and restrictions
3 appearing of record."
4 **Q:** **Of record means printed.**
5 **A:** Yes, sir. What does appearing mean, sir?
6 **Q:** **Appearing means that you find it in the records.**
7 **Not laying on the ground.**
8 **A:** I would say if it's appearing, it's there. But,
9 you know, that's the way I would take that
10 sentence.
11 **Q:** **I understand Mr. McDaniel. No further**
12 **questions.**
13 **MR. DAVIS:** All right. I call Melissa McDaniel.
14 **THE COURT:** All right. Before she starts to testify, let
15 me ask you lawyers a legal question. The elements of a
16 prescriptive easement. Is necessity one of the
17 elements?
18 **MR. HALL:** Is what?
19 **THE COURT:** Is necessity one of the elements?
20 **MR. HALL:** No, sir.
21 **MR. DAVIS:** No, sir.
22 **THE COURT:** Okay. I didn't think so, but I wanted to be
23 sure you all agree with that.
24 **MR. DAVIS:** All right. We call Melissa McDaniel.
25 **MELISSA McDANIEL, being duly sworn and cautioned**

1 to speak the truth, the whole truth and nothing but the
2 truth, testifies as follows:

3 DIRECT EXAMINATION BY MR. DAVIS:

4 Q: If you'll state your full name again.

5 A: Melissa McDaniel.

6 Q: And your current address is what?

7 A: It's 1700 Riviera Drive.

8 Q: Okay. So you live in the house on the property
9 where the driveway is --

10 A: I do.

11 Q: -- what your testimony is to.

12 A: I do.

13 Q: Okay. And that has been your home for how long?

14 A: We moved there when I was in fourth grade, I
15 guess. And then after I graduated high school, I
16 went to College of Charleston. Graduated from
17 there and then actually, I guess, I moved back
18 for maybe a year and then decided to go back to
19 the Medical University of South Carolina for
20 nursing. Then I guess I moved back, roughly, 2009
21 when my mom got sick to help take care of her.

22 Q: Okay. So you correct me, but what I just heard
23 you say, basically from birth except when you
24 were away at school?

25 A: Yes.

1 Q: Okay.

2 A: Well, not birth because I --

3 Q: Or say the --

4 A: -- guess I was in fourth --

5 Q: -- fourth --

6 A: -- grade. Yes.

7 Q: -- grade. I'm sorry. From fourth grade and that

8 -- so we can get a time period, you take your

9 time -- you would have been in the fourth grade

10 in what year? Take your time.

11 A: I guess roughly -- well, I graduated high school

12 in 2000. So roughly '93, that's a --

13 Q: Mid-90's.

14 A: Yeah.

15 Q: Okay. So, this is for the Court to know how long

16 you've been there.

17 A: All right.

18 Q: Okay. And are you presently employed?

19 A: I'm currently working for my father. I'm an RN

20 but I've been helping out with the business since

21 my mom passed.

22 Q: Okay. And you are one of the present owners of

23 the property at 1700 Riviera Drive?

24 A: I am.

25 Q: And you know the Marchant's that live next door?

1 A: I do.

2 Q: And you and your siblings, your brother -- well,

3 the other children of your mom and dad own the

4 property, correct?

5 A: Yes.

6 Q: Okay. All right. And have you used -- yourself

7 used the driveway area that we're talking about?

8 A: I have. Including growing up as my father

9 mentioned with four teenagers and four cars.

10 Yeah, I've used it quite a bit.

11 Q: And you used it for what purpose; access purpose

12 or what?

13 A: I mean, just to get in and out of the house. It

14 is easier, as he mentioned -- I mean, it's a

15 steep hill coming up so a little less traffic.

16 Q: And that steep hill your referring to, the left

17 side --

18 A: Yes.

19 Q: -- of the property when you're looking from

20 Riviera Drive towards the house; is that correct?

21 A: Yes. The left-hand side.

22 Q: Okay. During the time that you lived there, I'm

23 interested in your testimony as to -- you heard

24 your dad testify as to uses put to that property.

25 Can you confirm whether what he's saying is

1 correct as to the uses put to this driveway
2 area?

3 A: Yes, I can.

4 Q: And you would know that because you've been
5 living there?

6 A: Yes, sir.

7 Q: Okay. All right. Are you asking the Court to
8 grant the prescriptive easement that your dad has
9 testified to so there can be continuous use of
10 that driveway?

11 A: Yes, sir.

12 Q: Have the Marchant's ever say anything to you, as
13 the property owner, as to your use of the
14 driveway?

15 A: I don't know that I've ever spoken to them.

16 Q: So there's been no discussion between the
17 Marchant's and yourself about the driveway?

18 A: No.

19 Q: Okay. But your asking the Court to grant the
20 easement that's been referred to on the plat; is
21 that correct?

22 A: That's correct.

23 Q: The removal of the fence and to enjoin them from
24 using the -- or putting any obstruction or
25 impediment in that driveway area?

1 A: Yes, sir. That's correct.

2 Q: That you're claiming by the prescriptive

3 easement?

4 A: Yes.

5 MR. DAVIS: Okay. Answer any questions Mr. Hall may have.

6 CROSS EXAMINATION BY MR. HALL:

7 Q: Ms. McDaniel, you became ownership of that in the

8 -- possession of ownership of that

9 property in 2011?

10 A: Yes, sir. Me and my siblings.

11 Q: Okay. You haven't owned it for 20 years.

12 A: I have not, no.

13 MR. HALL: Okay. No further questions.

14 RE-DIRECT EXAMINATION BY MR. DAVIS:

15 Q: Before you owned it, your mother had an interest;

16 is that correct?

17 A: She did. And as my father --

18 Q: Your father and --

19 A: -- stated that --

20 Q: -- your grandfather.

21 A: -- and my grandfather since I think 1967.

22 MR. DAVIS: Okay. That's it your Honor, as to this

23 witness.

24 THE COURT: All right. You can be excused.

25 THE WITNESS: Okay.

1 MR. DAVIS: Can we take about a five minute break?

2 THE COURT: Sure. A five minute break.

3 MR. DAVIS: Thank you.

4 (Off the record from 11:07 a.m. to 11:18 a.m.)

5 MR. DAVIS: Okay. We call Mr. Jimmy Dillon.

6 JIMMY R. DILLON, being duly sworn and cautioned
7 to speak the truth, the whole truth and nothing but the
8 truth, testifies as follows:

9 DIRECT EXAMINATION BY MR. DAVIS:

10 Q: Your full name, please?

11 A: Jimmy R. Dillon.

12 Q: And your home address?

13 A: 114 Sausage Lane, West Columbia.

14 Q: Okay. And your occupation?

15 A: Self-employed.

16 Q: And what do you do for a living?

17 A: Construction.

18 Q: What type? Residential, commercial or what?

19 A: Mostly commercial.

20 Q: Okay. You're originally from Lexington County?

21 A: Yes, sir.

22 Q: Graduate of what high school?

23 A: BC.

24 Q: Okay. And you've been in the construction
25 business your whole life, or ...

1 A: No. Nope.

2 Q: Well, how about the last 20 years or 30 years

3 that you've been in business?

4 A: Yeah. I started my own business in '95.

5 Q: Okay. How do you know, or do you know John

6 McDaniel?

7 A: Went to high school with John. Fished, hunt,

8 worked with John; roofing. We've been knowing

9 each other since '72, I guess.

10 Q: In reference to things you just testified to as

11 to your connection with him, have you been on

12 their property located at 1700 Riviera Drive?

13 A: Yes, sir. Many times.

14 Q: And give me a time frame as to when you have been

15 on that property and for what purposes; why you

16 were there?

17 A: Back in the 70s, we would go fishing together,

18 hunt. When Doc was alive, I --

19 Q: Doc being?

20 A: John's daddy.

21 Q: I got you.

22 A: Fulton.

23 Q: Okay. Go ahead.

24 A: We would take a tractor and -- the driveway

25 that's in question, we would take the tractor and

1 pull the john boat up beside that driveway and go
2 down where the road ended and put in at the
3 river, many a times. Back in the 70s.

4 Q: Okay. How about any use of that driveway -- let
5 me show you Plaintiff's Number Two. When you say
6 driveway, are you referring to this driveway
7 right here?

8 A: Yes, sir.

9 Q: Okay. And besides access it to be at their
10 property fishing, have you used for work
11 purposes?

12 A: Yes, sir.

13 Q: About when was that?

14 A: In the 80s -- '84, '85 somewhere around in there,
15 me and John, when that big hail storm come
16 through we kind of partnered up -- me and him,
17 Sammy and --

18 Q: Sammy being?

19 A: Gibbons. I would pull the dump trailer many a
20 times up the side of the house because if you
21 came in the paved driveway --

22 Q: Paved driveway being on what side?

23 A: The left side.

24 Q: Okay.

25 A: You would circle around the house and then come

1 back up that side going out.

2 Q: I got you.

3 A: It was just a lot easier and safer.

4 Q: Come in on the left, go out on the right?

5 A: Yes, sir.

6 Q: And this time, when you all were partners in --

7 what type of construction work were you doing?

8 A: We were doing shingles, roofing.

9 Q: Okay. And to the best you can remember that --

10 that time period would have been about when?

11 A: '83, '84 and '85, somewhere around there.

12 Q: Okay. And Plaintiff's Number Two does show the

13 driveway in question that you're talking about

14 where you've had use --

15 A: Yes, sir.

16 Q: Okay. And that was in the 80s. Have you been on

17 the driveway in other periods of time or --

18 A: Oh, yeah. Yeah. We continued even after we quit

19 that deal, we continued being friends, fishing

20 and hunting and that kind of thing. And I would

21 go and help John. The driveway would get leaves

22 on it real bad. And I remember back when there

23 was busted up bricks and all kind of stuff like

24 that because there's an entrance to the back --

25 if you look --

1 **Q:** **Plaintiff's Number Two.**

2 **A:** If you look right here, there's an entrance to

3 the back of the house and that was real bad muddy

4 spot. Would Ted --

5 **Q:** **Ted being?**

6 **A:** John's uncle. He would put anything he could put

7 in there, basically, for you to drive through.

8 And that is the reason I am here. Is to testify

9 to that driveway has been there, it's always been

10 used ever since I've known him.

11 **Q:** **Okay.**

12 **A:** And other than that ...

13 **Q:** **All right. And the driveway, there is some sort**

14 **of material there where the driveway is; is that**

15 **correct?**

16 **A:** Oh, yeah.

17 **Q:** **Okay. Was it there in the 80s when you were**

18 **there?**

19 **A:** Oh, yeah. But, you know there wasn't as much

20 rock and stuff. John had put that in there until

21 -- most of it that you could physically see in

22 probably '92 or '93 when he rocked all the back

23 when he built the shop back there.

24 **MR. DAVIS:** Okay. Answer any questions Mr. Hall may have.

25 **THE WITNESS:** Yes, sir.

1 CROSS EXAMINATION BY MR. HALL:

2 Q: Mr. Sinclair; is that right?

3 A: Dillon.

4 Q: Dillon?

5 A: Yes, sir.

6 Q: Mr. Dillon, how are the logging trucks getting in

7 and out from back of the house now?

8 A: The logging? No, roofing trucks.

9 Q: No. But they logging trucks going back and forth

10 in and out of there now, right?

11 A: I don't know, sir.

12 Q: When's the last time you been over there?

13 A: It's been about three, four months ago, I guess.

14 Something like that.

15 MR. HALL: Okay. No further questions.

16 MR. DAVIS: Your Honor, may we excuse this witness?

17 MR. HALL: Sure.

18 THE COURT: Yes, sir. Thank you.

19 MR. DAVIS: Thank you, Mr. Dillon. I call Eddie Martin.

20 MARVIN E. MARTIN, JR., being duly sworn and

21 cautioned to speak the truth, the whole truth and nothing

22 but the truth, testifies as follows:

23 DIRECT EXAMINATION BY MR. DAVIS:

24 Q: Full name again.

25 A: Marvin E. Martin, Jr.

- 1 Q: Okay. And your present address is?
- 2 A: It used to be 1524 Suwanee Drive, now its 1050
- 3 Monticello Road.
- 4 Q: Okay. And are you employed?
- 5 A: Yes, sir. Self-employed.
- 6 Q: What do you do?
- 7 A: Yard maintenance or whatever you need done.
- 8 Q: Okay.
- 9 A: Painting, roofing.
- 10 Q: Mr. Versatility?
- 11 A: Yes, sir.
- 12 Q: Okay.
- 13 A: Construction work.
- 14 Q: All right. Do you know John McDaniel?
- 15 A: Yes, sir. I know him.
- 16 Q: How do you know John?
- 17 A: Fishing, working. Mainly fishing. I met him a
- 18 long time ago, it's a funny story. We're down at
- 19
- 20 that little river camping out. Mr. John walked
- 21 up started eating some of my fish, that's when I
- 22 first met him.
- 23 Q: Okay. How many years ago has that been?
- 24 A: Sir?
- 25 Q: How many years ago has that been?

1 A: Oh, God. Oh, probably 45 years ago.

2 Q: Okay. Now, have you been on his property -- or

3 his children's property where he lives at 1700

4 Riviera Drive?

5 A: Yes, sir.

6 Q: Have you been on the property?

7 A: Yes, sir. A lot of times.

8 Q: You're familiar with the property?

9 A: Yes, sir.

10 Q: All right. What all have you done in regards to

11 that piece of property that you can testify to?

12 A: Clean his yard, help put gravel on the driveway.

13 Help dig a basement -- that's one thing nobody

14 else has said about this whole thing yet. On the

15 side of his house where this driveway is --

16 Q: Yes.

17 A: -- is an old basement. It's where his daddy kept

18 his horse saddles and all that.

19 Q: Who kept? Who kept?

20 A: His daddy kept his horse saddles and all under

21 there.

22 Q: Okay.

23 A: That's why we'd use that driveway for, to put the

24 saddles right there on that side of the house was

25 a basement.

1 Q: Okay. In reference to your activity at that
2 home, what time frames are we talking about here
3 that you've done -- you said yard maintenance.
4 What time frame was this?

5 A: I'd say 80s.

6 Q: Okay. And --

7 A: For him doing his yard and all.

8 Q: -- was the driveway there?

9 A: Yes, sir.

10 Q: Have you actually worked on the driveway itself?

11 A: Yes, sir.

12 Q: Okay. And what have you done there?

13 A: Well, clean it up, put rock on it. Help put
14 gravel and all on it and everything.

15 Q: All right. And this is what time --

16 A: Just to maintain the shrubbery and all that's on
17 there.

18 Q: -- frame are we talking about that; as to
19 putting additional gravel in the driveway and so
20 forth?

21 A: Oh, when did we do the drug store?

22 Q: This is -- based on your memory.

23 A: Probably '94.

24 Q: Okay. How early in time -- well, did you do
25 anything for Mr. McDaniel's dad, Ted, there at

1 the property?

2 A: I don't know about the Ted that put the

3 busted up brick and all.

4 Q: Okay.

5 A: We take sledge hammer to brick and bust them

6 Q: All right. Let me show you Plaintiff's Number

7 Two, and is this the driveway that you worked on?

8 A: Yes, sir.

9 Q: Okay. All right.

10 A: If you notice, there's a door back here, that's

11 the easement to the basement right there.

12 Q: A door on the right side of --

13 A: Yes, sir. Right --

14 Q: -- the house --

15 A: -- there.

16 Q: -- in Plaintiff's Number Two?

17 A: Right there. That's their old basement.

18 MR. DAVIS: Okay. All right. Answer any questions Mr.

19 Hall may have.

20 CROSS EXAMINATION BY MR. HALL:

21 Q: Mr. Martin, do you not understand that we're

22 here today about an easement?

23 A: Yes, sir.

24 Q: Do you know what an easement is?

25 A: Yes, sir. A right-of-way. Easement over a

1 right-of-way.

2 **Q:** **A right-of-way for what?**

3 **A:** For uses.

4 **Q:** **A right-of-way across somebody else's property.**

5 **A:** I guess this is what you talking about. But we

6 all just considered it our property until they

7 moved everything and had it re-surveyed because

8 we always --

9 **Q:** **I see.**

10 **A:** -- used it.

11 **Q:** **So it was always --**

12 **A:** Nobody never had nothing but plants and nothing

13 else --

14 **Q:** **It was always considered McDaniel's property.**

15 **A:** Yes, sir. Well, it used to be shrubbery all down

16 through there. It's like, you know, it looked

17 like an original property line.

18 MR. HALL: No further questions.

19 THE COURT: All right.

20 MR. DAVIS: No re-direct. May we excuse this witness?

21 MR. HALL: Sure.

22 THE COURT: Yes, sir.

23 MR. DAVIS: Okay. Thank you Mr. Martin.

24 COURT REPORTER: Mr. Davis, what's his name?

25 MR. DAVIS: It is Eddie -- it's Marvin Martin, M-A-R-T-I-

1 Last witness, Mr. Rick West.

2 PATRICK L. WEST, JR., being duly sworn and
3 cautioned to speak the truth, the whole truth and
4 nothing but the truth, testifies as follows:

5 DIRECT EXAMINATION BY MR. DAVIS:

6 Q: Full name.

7 A: Patrick L. West, Jr.

8 Q: Okay. And your address is what?

9 A: 1612 Riviera Drive.

10 Q: Where is that in relation to the McDaniel
11 property?

12 A: I guess if you're talking his house, I'm kind of
13 caddy-corner across the street.

14 Q: Okay. And how long have you lived there?

15 A: Six years now.

16 Q: Okay. And you're employed?

17 A: Yes.

18 Q: What do you do?

19 A: Self-employed.

20 Q: Self-employed doing what?

21 A: I do aquariums. I used to have a retail store
22 and so I maintain, install and order, personal
23 shop.

24 Q: Commercial aquariums?

25 A: Yes, I do.

1 Q: Okay. You know John McDaniel, your neighbor?

2 A: Yes, sir.

3 Q: Okay. You've been on his property?

4 A: Yes, sir.

5 Q: And when I refer to -- when I say Plaintiff's

6 Number Two, the driveway, you've seen the

7 driveway in question?

8 A: Yes, sir. I have.

9 Q: What is your earliest time that you can testify

10 to as to being in that neighborhood and why you

11 were there?

12 A: Back in the mid-70s my friend's father owned the

13 house next door, which was off Crumptom. We did

14 travel ball together and I have one occasion

15 that I went there to his house.

16 Q: All right. And, Crumptom -- what was the --

17 here we go. Okay. Plaintiff's Number Nine,

18 there was a Sara B. Crumptom that owned the --

19 what is now the Marchant property. They owned it

20 and sold it in 1976. Now, when I say Sara B.,

21 that would be the mother of your friend?

22 A: I guess.

23 Q: And what was your friend's name?

24 A: His name was Ed.

25 Q: Ed. But he lived in the house that the

1 Marchant's now live in?

2 A: Yes, sir.

3 Q: And why was it that you knew Ed?

4 A: Through baseball.

5 Q: Through baseball. So, you were at his property

6 in the 70s?

7 A: Yes.

8 Q: And obviously the McDaniel property is next door?

9 A: Correct.

10 Q: Do you know, from your being at the Crumpton

11 property, whether that driveway in question,

12 which is on Plaintiff's Number Two, was in

13 existence in the 70s?

14 A: Yeah, I recall seeing a driveway where you could

15 tell vehicles went back and forth on it.

16 Q: Okay. And that would be, again, Plaintiff's

17 Number Two, is that -- be a fair representation

18 of the way --

19 A: Yeah.

20 Q: -- it looked at that time?

21 A: Yeah, just a little bit more growth.

22 Q: Okay.

23 A: At that time.

24 Q: Okay. And this would have been when?

25 A: Mid 70s. I guess '75 or '76, somewhere like

1 that.

2 MR. DAVIS: All right. Answer any questions that Mr. Hall

3 might have.

4 CROSS EXAMINATION BY MR. HALL:

5 Q: You have a boat?

6 A: Yes, sir. I do.

7 Q: How big of a boat?

8 A: Excuse me?

9 Q: How big of a boat?

10 A: It's 31 feet.

11 Q: How wide?

12 A: I think the widest it can be legally, I think, is

13 eight, six or something like that?

14 Q: Eight foot, six?

15 A: Yeah.

16 Q: Okay. So you're able to pull it back and forth

17 up and down the driveway?

18 A: Whose driveway?

19 Q: McDaniel's?

20 A: No, I don't use his property at all.

21 Q: You don't use his property?

22 A: No, sir. I don't.

23 MR. HALL: Okay. No further questions.

24 MR. DAVIS: May we excuse this witness?

25 MR. HALL: Sure. Yes, sir.

26 THE COURT: Yes, sir.

1 MR. DAVIS: Thank you.

2 THE WITNESS: Thank you.

3 MR. DAVIS: That's it for the Plaintiff.

4 THE COURT: Okay. Mr. Hall.

5 MR. HALL: All right. I call Mrs. Jolene Marchant.

6 JOLENE MARCHANT, being duly sworn and cautioned
7 to speak the truth, the whole truth and nothing but the
8 truth, testifies as follows:

9 DIRECT EXAMINATION BY MR. HALL:

10 Q: So, Ms. Marchant, we're here -- obviously we're
11 not talking -- we're not, I repeat, not talking
12 about the driveway. Okay. It keeps being
13 referred to as a driveway. But what we're
14 obviously talking about is a 4.2 foot easement
15 across you all's property line. Not the 9.3
16 drive. Now, the drive is still there; is that
17 correct?

18 A: It is.

19 Q: Even though you all have put up the fence?

20 A: Correct.

21 Q: The drive is still there?

22 A: Yes.

23 Q: And is it being used?

24 A: Yes.

25 Q: Okay. You mentioned something to me about

1 logging trucks.

2 A: Yes.

3 Q: How are they getting in and out?

4 A: They are getting in and out from the other side

5 of the house. The driveway over there.

6 Q: In and out to the back yard.

7 A: To the back yard, yes.

8 Q: Of the McDaniel's house.

9 A: Yes, big logging trucks. Big equipment. They

10 are cutting down almost all the trees. It's

11 shaking the whole neighborhood. When they fall,

12 the trees, they're enormous trucks.

13 MR. DAVIS: Objection, your Honor.

14 A: And --

15 MR. DAVIS: Objection, your Honor, as to relevance. As to

16 cutting the trees on the property. What's the

17 relevance?

18 MR. HALL: The relevance is having equipment is able to

19 get in and out behind the house.

20 THE COURT: All right. Well, I -- now that's why I asked

21 about necessity earlier. If necessity is not an

22 element, well, why -- how is that relevant?

23 MR. HALL: No. Necessity is not an element.

24 THE COURT: All right.

25 MR. HALL: Because Mr. McDaniel was indicating he couldn't

1 get in and out to the back of his house.

2 THE COURT: All right. I'm going to sustain the
3 objection. Let's don't go into that any further.

4 MR. HALL: Okay.

5 Q: So, Jolene, I show you Defendant's Exhibit Number
6 Five. It's a -- well, let me ask you first, what
7 do you do?

8 A: I'm licensed with Aflac as an insurance broker.
9 I'm also licensed as a real estate agent with The
10 Knight Company.

11 Q: How long you been in real estate?

12 A: About 20 years.

13 Q: Okay. So, you familiar with surveys and deeds
14 and whatever.

15 A: Yes, I am.

16 Q: So, I show you this survey that's dated November
17 6, 2012, and it looks like it was prepared for
18 John McDaniel by Robert E. Collingwood, Jr. Was
19 this in existence as a matter of record when you
20 and Mr. Marchant purchased your property?

21 A: No, it was not.

22 Q: Okay. So, it didn't come in -- it was unknown to
23 you?

24 A: It didn't exist.

25 Q: Was there any survey in existence that showed an

1 easement across the property line?

2 A: No. No, nothing at all.

3 Q: Nothing showing?

4 A: Nothing. We had title insurance when we bought
5 it. There was no evidence of a driveway there.
6 The person who owned it before us, Dr. Hwang,
7 walked the property with me. He showed me the
8 stakes where the property line was prior to us
9 buying it. He even drew on the back of a
10 checkbook where the stakes were and told me to
11 stand and look at where the old fence was. The
12 old fence starts behind their house and goes back
13 to the end of the property. It was not in
14 existence in the front. Our house sits down from
15 theirs and our house sits -- in West Columbia
16 you're supposed to have at least five feet on one
17 side, ten on the other. Our house sits within
18 five feet of the property line. So, --

19 THE COURT: Wait. Stop and explain what you mean by that,
20 five feet on one side, ten on the other.

21 THE WITNESS: When you put the house on the property, West
22 Columbia requires, and Lexington County I think, too,
23 that you have ten feet on one side of the house as to
24 the property line. Which Mr. McDaniel's house was
25 supposed to sit ten feet from the property line.

1 Actually it sat 9.3 from the property line. And then
2 our property starts -- our house sits down from his.
3 But on the other side of our house, we only have five
4 feet. Our ten feet is between us and Mr. McDaniel's.
5 So, there's no other driveway for that piece of
6 property. We need to put a driveway in to the back of
7 our house. Because if we sell it, which we wanted to
8 do, we can't because of this court case. But to get to
9 the back of the house we have to have that property on
10 Mr. McDaniel's side to put a driveway in. That's why
11 AT&T moved that box, the telephone box. We didn't pay
12 for it, they moved it, put it on the property line so
13 we could put a driveway in to sell the house.

14 THE COURT: All right.

15 THE WITNESS: We need that property to sell the house.

16 Mr. McDaniel has never had an easement on it. It was
17 not showing when Dr. Hwang walked me back there. There
18 is room for a driveway if they cut a dogwood tree.
19 They will have his 9.3 plus the foot that we gave them.
20 That fence doesn't sit on the property line, it sits a
21 foot to the right of the property line. So, they've
22 got room to get in and out but they don't need it to
23 get in and out. They've been using the other driveway
24 the whole time, since the fence went up. They haven't
25 had any problems. And also, there's an incline going

1 down. He talks about the one going up on the other
2 side of his house, there's an incline going down to our
3 house where his driveway, our fence and then the room
4 we need for our driveway. We need to sell our house.
5 We haven't been able to do it because of this.

6 THE COURT: All right. Mr. Hall, any more questions?

7 Q: All right. Have you had discussions with Mr.
8 McDaniel regarding that drive or that easement?

9 A: When we started moving in, we had my daddy's
10 truck parked in the yard, in our yard. I knew
11 where the property line was. My son called me
12 and said, "You better come over here. Daddy
13 Rudy's truck has been pulled out into the road.
14 Has been towed into the road and left in the
15 road." I went out there. Mr. McDaniels came out
16 and -- I guess it was a deputy from Lexington
17 County, I'm not sure. I've got the report. He
18 came and he told Mr. McDaniels, he said, "You
19 know you can't tow a vehicle from somebody else's
20 property" and Mr. McDaniels said, "Well, there's
21 a dispute as to where the property line is." I
22 said, "No, it's not. Right there are the
23 stakes." You could see the stakes then. The old
24 stakes. He wrote a report. Mr. McDaniels asked
25 him to go to the back and talk to him and when

1 they came out he told me, he said, "Well, you
2 need to get a surveyor here." So, I got a
3 surveyor. He put wooden sticks where the
4 property line was. Mr. McDaniel's pulled them up
5 and threw them away. Next we got them to come
6 again and do it and they put metal stakes and
7 they ran over those. He knew where the property
8 line was. I knew where the property line was
9 when I bought the house. And like I say, 2006 is
10 when he towed that truck. When we were trying to
11 move in. He has a dog that is fierce. It's
12 bitten three people. The dog --

13 MR. DAVIS: Objection.

14 A: -- comes to our --

15 MR. DAVIS: Objection, your Honor --

16 A: -- property --

17 MR. DAVIS: -- as to relevance.

18 THE COURT: Sustained.

19 Q: **All right. And so you and Mr. Marchant were**
20 **finally compelled to do what?**

21 A: To put up a fence.

22 Q: **To prevent Mr. --**

23 A: To prevent Mr. McDaniels --

24 Q: **-- McDaniels --**

25 A: Every time the surveyor came he checked with

1 Lexington County and it was the same property
2 line that was on the original plat for the
3 subdivision. It matched it exactly. He said it
4 was no need for him to do another one. It
5 matched the one that Dr. Hwang had done. There
6 was no sign that he was using my property at that
7 time. He had plenty of room on his side of the
8 property to come in and out. And I'm not saying
9 that that's not his driveway over there, but my
10 property is not his driveway and it's never been.

11 Q: All right. And not only did you have the fence
12 put up, but you actually gave McDaniels what?

13 A: A foot.

14 Q: Another foot. In addition to the 9.3 feet, he
15 now has 10.3 feet.

16 A: That's correct.

17 Q: All right.

18 MR. HALL: No further questions from this witness.

19 THE COURT: All right. Mr. Davis.

20 CROSS EXAMINATION BY MR. DAVIS:

21 Q: Mrs. Marchant, do you have any knowledge of the
22 driveway that's on the McDaniel property, or now
23 what is -- you and your husband's property, prior
24 to 2005?

25 A: When I looked at the property when I was thinking

1 about buying it, the driveway -- there was no
2 driveway on the Hwang property. Dr. Hwang walked
3 me the property line and there was no indication
4 that it was being used for a driveway on Dr.
5 Hwang's property. We walked that whole -- all
6 the way down to where that old fence is and there
7 was no indication that it was a driveway. To the
8 left, over by the house, there was, but there was
9 no grass -- I mean, there was no gravel. The
10 gravel only went down after we asked him to stop
11 using it.

12 Q: Okay.

13 A: Now, back at the back by that door, there were
14 some bricks where it was a low part, but there's
15 plenty of room back there for them to access that
16 from anywhere.

17 Q: My question to you though is, prior -- let's just
18 say prior to your purchase of the property in
19 2005, do you have any knowledge of the driveway
20 that was on the McDaniel property and partially
21 on your property?

22 A: It was not partially on that property, but I own
23 --

24 Q: My question -- not to interrupt you but my
25 question, Mrs. Marchant, is --

1 A: Yes, I do.

2 Q: Do you have any knowledge --

3 A: I do.

4 Q: -- and what knowledge would that be?

5 A: I own the property beyond that. My son has a

6 house. We turned in there going down to our

7 property where we were originally going to build

8 a house. And going to my son's house there was

9 no indication that it was -- there was no gravel,

10 there was nothing there to indicate that Mr.

11 McDaniels was using it. The other side it was.

12 But not on that side of the house. There was no

13 way for anybody to think that there was a

14 driveway there.

15 Q: The time frame that you just testified to is --

16 before you and your husband bought --

17 A: Uh-huh.

18 Q: -- your present house?

19 A: Yes, it is.

20 Q: Are you saying that you came onto that property

21 or McDaniel property to see if there was a

22 driveway there --

23 A: No, I --

24 Q: -- excuse me I'm not finished. How would you

25 know there was a driveway there or not there?

1 A: It's a "T" where Riviera and Suwanee come
2 together.

3 Q: Okay.

4 A: Mr. McDaniel's house is at the end of that "T".

5 Q: All right. So --

6 A: To the right it the driveway down to our
7 property.

8 Q: All right. If we're coming down Suwanee drive to
9 intersect with Riviera and we're coming in the
10 intersection, obviously straight ahead would be
11 the McDaniel property and to the right would be
12 now what's the Marchant property. What you just
13 told me, or testified to, is you would turn right
14 to go down further to the right, below where your
15 home is. Are you testifying that when you made --
16 -- whenever time frame you're talking about -- are
17 you testifying that when you made that right turn
18 there at Suwanee and Riviera, that you did not
19 see the driveway that has been testified, which
20 is Plaintiff's Number Two; is that your
21 testimony?

22 A: That's my testimony.

23 Q: Okay.

24 A: I did not see that it was a driveway there.

25 Q: Okay. And how many -- excuse me, how many times

1 did you do that turn?

2 A: Probably once or twice a week for about -- I

3 don't how -- we probably owned that property for

4 about ten years.

5 Q: Okay.

6 A: Plus, I stopped and talked to the Hwang's in

7 their yard.

8 Q: Okay.

9 A: And saw no indication that Mr. McDaniel was

10 using their property as a driveway.

11 Q: Okay. But what you're testifying to was that you

12 did not see any driveway period. As you made the

13 right turn on Riviera Drive, Suwanee Drive, you

14 did not see a driveway and you've been many, many

15 times there; is that correct?

16 A: It was a gravel or brick driveway there.

17 Q: Okay. And what's --

18 A: It may have been a path where cars went back

19 through there.

20 Q: Okay. So, now you're modifying it to the extent

21 there was a pathway, not that it was not there.

22 It's now a pathway is what you saw; is that

23 correct?

24 A: I could see that it could possibly be one next to

25 his house.

1 Q: Okay. All right.

2 A: Yes. Matter of fact --

3 Q: It could possibly be one there.

4 A: Matter of fact --

5 Q: Okay.

6 A: -- I have seen vehicles back there at the back

7 door.

8 Q: Okay. All right.

9 A: Before we bought the house.

10 Q: And was there a fence on the property line

11 between the McDaniel property and what you and

12 your husband bought at the time of the purchase

13 on May 24th of 2005?

14 A: The fence started behind the house. There was no

15 fence at the front of the house.

16 Q: But you knew that fence was there?

17 A: Not riding by you couldn't see that --

18 Q: All right. But you --

19 A: -- because it started at the back. I knew it

20 when Dr. Hwang walked the property with me.

21 Q: This is before the purchase?

22 A: Before the purchase.

23 Q: So you knew the fence was there in the back of

24 the property between what you bought and the

25 McDaniel property?

1 A: Beyond the house.

2 Q: Okay. In fact, when you all put the fence up,

3 did you call McDaniel's and tell him you were

4 putting a fence up?

5 A: I think Mr. McDaniel's approached us several

6 times in the street, very aggressively, and I

7 think at one point we probably mentioned that we

8 were about to put a fence up.

9 Q: That fence went up, you tied it in to the old

10 fence in the back, did you not?

11 A: No, I did not.

12 Q: Let's -- I'll rephrase that. Let's just say you

13 ran a straight line back towards the old fence

14 and stopped ten to 15 feet short of that fence;

15 is that correct?

16 A: No.

17 Q: Okay. What did you do?

18 A: We gave the survey to the fence person.

19 Q: Okay.

20 A: Ask him to put the fence one foot on our side of

21 the property line.

22 Q: Okay.

23 A: We had the surveyor to mark, not just the front

24 line but several feet in between so he would go

25 to it. It's not 15 feet from that, it's about

1 this far that ours stops.

2 Q: Well, --

3 A: Because there's shrubbery there.

4 Q: I'm interested -- what you said was you pulled a

5 foot off the line is what you said.

6 A: Onto our side.

7 Q: Okay. On the new fence. But you ran it

8 toward the back. Towards where the old fence is.

9 A: One foot over from the property.

10 Q: And where would you say that fence is in that

11 driveway?

12 A: It's not in his driveway. It's on our property.

13 Q: No, the new fence. Where is it in regards --

14 where is that fence in that driveway area on

15 Plaintiff's Exhibit?

16 A: It's not on his property, it's on our property.

17 It's not in his driveway.

18 Q: But is that fence in that driveway area?

19 A: No. It's to the right of his driveway. His

20 driveway is to the left of the fence. He has

21 10.3 feet of a driveway there.

22 Q: Just one second. Let's see here.

23 A: He put the gravel --

24 Q: Excuse me. Let me get one thing.

25 MR. DAVIS: All the exhibits, have I got them all, or --

- 1 Q: Let's look at Plaintiff's Number Seven. Is that
- 2 fence in the -- I'm not asking you whose property
- 3 -- it's in the middle of the driveway.
- 4 A: The driveway is to the left of this fence.
- 5 Q: Is the fence in the driveway?
- 6 A: No, it's not. It's on our property.
- 7 Q: Okay.
- 8 A: It's not in his driveway.
- 9 Q: Okay. All right. Then is the driveway on your
- 10 property?
- 11 A: No.. The driveway is not on our property. He put
- 12 gravel on our property after we asked him to quit
- 13 using it.
- 14 Q: Okay.
- 15 A: He dropped all that gravel after we asked him to
- 16 stop --
- 17 Q: And what is your testimony as to when that gravel
- 18 was put there?
- 19 A: I'm not sure. This has been going on for years.
- 20 Q: Sure. Was it -- obviously after you're saying it
- 21 was put there -- oh, excuse me -- obviously it
- 22 was put there only after 2005?
- 23 A: It was put there after the children bought the
- 24 property, after 2011, I think.
- 25 Q: Only then the gravel went in there?

1 A: Yes, I think.

2 Q: Okay. That's your --

3 A: Now, he may have had some before, but the gravel

4 on our property went in then.

5 Q: Okay.

6 A: After 2011.

7 Q: All right. Now, what's the thing with City of

8 West Columbia about you need how many feet on --

9 on the -- what I'm interested in on the side of

10 the -- on your side of the house that faces the

11 McDaniel property, what is City of West Columbia

12 say about how much footage you need there?

13 A: The City, but I think it's County ruling, too,

14 but the City told me, when we were going to

15 build, that we had to have five feet on one side

16 of a house, ten feet on the other. Didn't matter

17 which way you switched it. But the way the

18 Hwang's house, the house that we bought was

19 built, it's five feet to the property line on the

20 river side. On the McDaniel side, it's more than

21 ten feet.

22 Q: Sure.

23 A: And so the only access to the back yard of that

24 house, to that property, is between McDaniels and

25 our house.

- 1 Q: Okay.
- 2 A: And that's where we were going to put a driveway.
- 3 Q: A driveway for what?
- 4 A: To the back yard of our house.
- 5 Q: Okay.
- 6 A: It's the only access to the back --
- 7 Q: Have you got anything from the County of
- 8 Lexington or City of West Columbia saying that?
- 9 A: No. Somewhere in real estate notes I have that.
- 10 Q: Okay. Since 2005, have you used that area for
- 11 any purpose?
- 12 A: Yes.
- 13 Q: For what?
- 14 A: We park boats, golf carts, I had my daddy's truck
- 15 parked there when we were moving furniture in.
- 16 We keep a gator parked there most of the time. I
- 17 wanted to put a driveway, but I can't until this
- 18 is settled, and whoever buys a house has to have
- 19 access to the back yard. They can't get it from
- 20 the other side. There's only five feet and our
- 21 heating and air condition unit sits there.
- 22 Q: What are you going to do about the slope that's
- 23 there between the McDaniel property and your
- 24 house, the slope?
- 25 A: The driveway can go on --

1 Q: On the slope?

2 A: -- a slope.

3 Q: So you're gonna put it on the slope; the slope

4 that's shown in that photograph?

5 A: It's not -- it's a slope on the road. It's a

6 slope on the road --

7 Q: Uh-huh.

8 A: -- where the road goes down.

9 Q: Okay.

10 A: The property is not that big of a slope that it

11 couldn't handle a driveway.

12 Q: Let me ask you this. Up until the metal pins

13 were put in the driveway area, or your property

14 line, or a foot off your property line and the

15 fence; isn't it true that the McDaniels used that

16 driveway area that their claiming, whether it's

17 on your property or not, they used that driveway

18 area up until 2012; at least until then?

19 A: I don't know when they started using it. It's

20 plenty of room over there for a driveway, but

21 they were not using my property.

22 Q: All right. But do you know that that area where

23 the driveway is, are you testifying they didn't

24 use from 2005 forward or they did not; did or did

25 not?

1 A: They were using it some.

2 Q: Okay. What were they using it for?

3 A: The yard man used it.

4 Q: Okay.

5 A: The exterminator used it.

6 Q: How about for boats?

7 A: No, I've never saw a boat.

8 Q: Never saw that.

9 A: I saw the boat parked --

10 Q: Pick-up trucks?

11 A: -- in his front yard. Maybe, yeah.

12 Q: Trailers?

13 A: I don't remember seeing trailers.

14 Q: Okay. Never did stop them?

15 A: Well, they went in the other side. I don't

16 remember seeing --

17 Q: All right. But I'm asking about on the drive --

18 this driveway area. Did you see them use that

19 area?

20 A: I heard them using a truck on Sunday mornings

21 about two o'clock. And I asked Mr. McDaniel why

22 -- because there's a bedroom on that side of the

23 house -- why they were bringing this truck out.

24 And he said they had to bring washing machines

25 out. At two o'clock on Sunday morning. And

1 that's where they chose to bring them out. I
2 don't know -- he had plenty of room to bring that
3 truck in and out on his property.

4 MR. DAVIS: Okay. I believe that's all I have. Thank you
5 . very much.

6 MR. HALL: Nothing further.

7 THE COURT: Do you have another witness?

8 MR. HALL: No, sir.

9 THE COURT: Okay. No other witnesses?

10 MR. HALL: No, sir.

11 THE COURT: All right. I'll be glad to hear closing
12 argument from you.

13 CLOSING ARGUMENT:

14 MR. DAVIS: Okay. Your Honor, may it please the Court.

15 Your Honor, what I -- as I understand the law on
16 prescriptive easement is you -- there are three things
17 you have to show. One is the identity of where you're
18 claiming the easement. You have to show it's been a
19 continuous use for a 20- year period. And also you
20 have to show that it has not been interrupted during
21 that period of time. As to the continuous use, it's
22 obvious from the testimony from Mr. John McDaniel and
23 also the independent witnesses that it's been used for
24 various purposes since -- this driveway area, including
25 the area that we're claiming the prescriptive easement

1 on, based on the testimony, for -- really from '67 or
2 '68 until 2012. And you don't have to show daily use
3 but almost there's been daily use here. And it doesn't
4 make a reference to the uses by multiple people tacking
5 is allowed on prescriptive easement. In this case,
6 it's family tacking and not just grantor or grantee
7 tacking. So that I think it's clear that the use has
8 been continuous. As to any interruption, in this case,
9 I think the Court could issue an Order based on the
10 fact that the prescriptive easement has been in
11 existence without -- continuously with no interruption
12 really into 2012. Before the Marchant's got the
13 property, it had been in existence for 20 years. More
14 than 20 years, from '68 to 2005 and there's no
15 testimony that anybody -- that it was used and no
16 neighbor interrupted the use. And then the Marchant's
17 didn't really interrupt it until they put the stakes in
18 in 2012. So, I can give you the case, but there's a
19 case that says that if the Plaintiff proves it has been
20 openly used and continuous and uninterrupted, then
21 that's -- is being done adversely. And that you can
22 prove it. It's been an adverse case. And then the
23 burden shifts to the Marchant's to prove otherwise.
24 And I don't think they've done that. Furthermore,
25 under claim of right you can get prescriptive easement

1 in claim of right. In this case, since granddad used
2 it, and dad used it and family used it, I think over a
3 33, 43, 45-year period that you don't have to prove
4 that you owned it, it's the fact that you thought you
5 could because of the length of time you used it, so
6 they can prove it by claim of right. So, our position
7 is that it meets the standards as required by
8 prescriptive easement and really no adverse testimony.
9 If you look at it -- that it really existed prior to
10 the Marchant's buying it. There's no adverse testimony
11 as to continuous use, interruption or where it was.
12 And then even after that they didn't legally do
13 anything to interrupt the use until 2012. So we're
14 claiming -- and then at that time, is when -- before
15 they did anything to block that road, we wrote the
16 letter saying we've got a prescriptive easement. And
17 then they took the steps they did and we immediately
18 filed the lawsuit in January 2014. So, that's what we
19 see here.

20 THE COURT: All right, sir. Mr. Hall.

21 MR. HALL: Well, your Honor, we've gotten way, way, way
22 off track in this case because we started talking about
23 a drive. We're not talking about a drive. As your
24 Honor succinctly pointed out, we're talking about a 4.2
25 foot area on the Marchant's property as an easement.

1 We're not talking about their drive, they can have
2 their drive. Whatever. But the word drive got stuck
3 in the testimony and has been there ever since. We're
4 not talking about a drive. Now, I know that they're
5 claiming, oh, well we've been using that easement, and
6 we're only talking about the 4.2 foot for -- ever since
7 your granddaddy used it, you know, before the war of
8 1812. But we've got two survey's here, one from 1981
9 and one from 2002, neither of which show any easement
10 and these are surveys done by qualified, certified
11 surveyors who've been practicing for years in Lexington
12 County. And had there been an easement across that
13 property line, they would have picked up on that. They
14 would have picked up on that. There was no easement.
15 There's never been an easement across the property
16 line. Yeah, there's probably always been a drive
17 there, up and down that side of the house that the
18 McDaniel's have used, but never an easement over across
19 the property line. And after all, that's what this
20 case is all about, is the easement. It hasn't been, of
21 course -- the only testimony, the testimony that's been
22 offered indicates that it's been a permissive use. If
23 it's been an easement, it's been a permissive use. Mr.
24 McDaniel himself said, "Oh, nobody ever said anything
25 to us about it", so they have been permitted to use

1 that. Now, you cannot -- a prescriptive easement
2 cannot come into being through a permissive use.
3 Permissive use prevents a prescriptive easement from
4 vesting. And that's all we have here. In the Morrow
5 case -- finally, in the Morrow case it states
6 succinctly where the issue was the CSX track -- the
7 Court, the Supreme Court states succinctly and says,
8 "evidence establishing the mere fact of use" which is
9 all we've got here, "claiming a fact of use does not
10 necessarily equate with evidence establishing the
11 character of such use." In other words -- yeah, the
12 McDaniel's claim they have had an alleged easement and
13 they have established or may have established the fact
14 of use of the easement, but that doesn't make it a
15 prescriptive easement. And that's our case. Is that
16 if they -- if they have ever used it as a prescriptive
17 easement, it's been with permission. And, of course,
18 that nullifies the establishment of a prescriptive
19 easement. And that's where we stand.

20 THE COURT: All right, sir.

21 MR. DAVIS: There is one brief remark as to the argument
22 is. It's not a permission case. This is not where the
23 previous owners or the Marchant's said, "Hey, you got
24 our permission to use it." This is a case where there
25 was no objection to use by the prior owners and even as

1 to the Marchant's, legally, until 2012. So it's not --

2 MR. HALL: That's permission.

3 MR. DAVIS: That is not permission. That is adverse if
4 you prove 20 years of continuous and uninterrupted use
5 of that property. Then the burden shifts to the
6 Defendant to prove that it was not adverse. And I
7 don't believe -- I think they failed on that. That's
8 where we are.

9 THE COURT: All right, sir. All right. I'm going to take
10 it under advisement.

11 MR. DAVIS: Thank you, your Honor.

12 (There being nothing further, there hearing concluded at
13 12:03 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, JAIME D. NEWTON, COURT REPORTER AND NOTARY PUBLIC IN
3 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE HEARING ON TUESDAY, THE 1ST OF
5 MARCH 2016, AND THAT THE FOREGOING 98 PAGES CONSTITUTE A
6 TRUE AND CORRECT TRANSCRIPTION OF SAID HEARING.

7 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
8 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
9 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
10 INTERESTED IN SAID CAUSE.

11 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
12 WAS THEREAFTER SEALED AND DELIVERED TO JAMES RANDALL
13 DAVIS, ESQUIRE, DAVIS FRAWLEY, LLC, 140 EAST MAIN STREET,
14 LEXINGTON, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT
15 AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT
16 PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A
17 FINAL ORDER ON ANY ISSUE.

18 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
19 20TH DAY OF MAY, 2016.

20
21 _____
22 JAIME D. NEWTON, COURT REPORTER

23 MY COMMISSION EXPIRES MAY 14, 2017
24
25

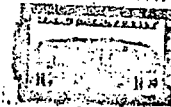
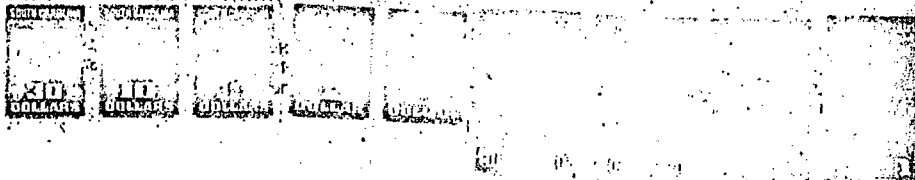
State of South Carolina,
 COUNTY OF LEXINGTON.

KNOW ALL MEN BY THESE PRESENTS, That I, C. E. Williams, Sr.

In the State aforesaid, for and in consideration of the
 sum of Twenty-six Thousand (\$26,000.00) Dollars,
 to me paid by J. Fulton McDaniel
 in the State aforesaid, receipt whereof is hereby acknowledged
 have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

J. FULTON McDANIEL, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being on the northern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot No. 11, Block "L" as shown on plat of portion of Saluda Terrace Annex No. 1, by McMillan Engineering Company, dated November 20, 1964 and recorded in the office of the Clerk of Court for Lexington County in Plat Book 80-G at page 89, and being bounded and measuring as follows: On the North by portions of Lots Nos. 11 and 12, Block "N", Saluda Hills No. 1 and measuring thereon eighty (80') feet; on the East by Lot No. 12, Block "L", Saluda Terrace Annex No. 1 and measuring thereon two hundred fifty-five and eight-tenths (255.8') feet; on the South by Riviera Drive and fronting and measuring thereon one hundred twenty-five (125') feet; and on the West by Lot No. 10, Block "L", Saluda Terrace No. 1 and measuring thereon two hundred sixty-eight and five-tenths (268.5') feet; being the same property conveyed to the grantor herein by T. F. Barker, Sr. by deed dated October 11, 1965 and recorded in said Clerk's Office in Deed Book 14-K at page 101.



141
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

J. Fulton McDaniel, his

Heirs and Assigns forever.

And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

J. Fulton McDaniel, his

Heirs and Assigns, against myself and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 31st day of May
in the year of our Lord one thousand nine hundred and sixty-six
and in the one hundred and ninetieth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF

William H. Townsend (SEAL)

C. E. Williams, Sr. (SEAL)

STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

PERSONALLY appeared before me Elizabeth H. Olson

and made oath that she saw the within-named C. E. Williams, Sr.
sign, seal and deliver his act and deed, deliver the within-written Deed for the uses and purposes therein men-
tioned and that she, with William H. Townsend witnessed the
execution thereof.

William H. Townsend (L.S.)
Notary Public of S. C.

19 66
Elizabeth H. Olson

STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

RENUNCIATION OF DOWER

I, William H. Townsend, Notary Public for South Carolina do hereby certify
unto all whom it may concern, that Mrs. Marie B. Williams
the wife of the within-named C. E. Williams, Sr.

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,
voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and for-
ever relinquish unto the within-named

J. Fulton McDaniel, his

heirs

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises
within mentioned and released.

William H. Townsend (L.S.)
Notary Public of S. C.

19 66
Marie B. Williams

Recorded this 2nd day of June A.D. 1966

CHARLES R. SHEALY, C. C. P. & A.

Attorneys at Law
State of South Carolina
County of LEXINGTON

C. E. WILLIAMS, SR.

TO

J. FULTON MCDANIEL

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for
record in my office at 9:00 A. M. o'clock on
the 2nd day of June
1966, and was immediately entered upon the proper
index and duly recorded in Book 15-A
of Deeds, page 140

Clerk of Court of Common Pleas and General Sessions
for Lexington County, S.C.

I hereby certify that the within Deed has been
this 2nd day of

June A.D. 1966, Recorded in Book 15-A
of Deeds, page 140

Joseph P. Hendrix
Auditor
for Lexington County

State of South Carolina,
COUNTY OF LEXINGTON.

FILED
Nov 7 2 26 PM '67
CHARLES H. SHEALY
CLERK OF COURT
LEXINGTON, S. C.

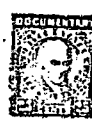
KNOW ALL MEN BY THESE PRESENTS, That I, T. F. Barker, Jr.,

in the State aforesaid, for and in consideration of the
sum of Three Thousand (\$3,000.00) Dollars,
to me paid by John Fulton McDaniel
in the State aforesaid, receipt whereof is hereby acknowledged,
have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

JOHN FULTON McDANIEL, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land situate, lying and being on the north-eastern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot No. 10, Block "L" as shown on plat of Saluda Terrace Annex #1, prepared by McMillan Engineering Co., dated November 20, 1964, recorded in the office of the Clerk of Court for Lexington County in Plat Book 76-G at page 276, and being bounded and measuring as follows: On the North by Lot No. 11, Block "N", Saluda Hills No. 1 Subdivision, and measuring thereon eighty-five (85') feet; on the Southeast by Lot No. 11, Block "L", Saluda Terrace Annex No. 1, and measuring thereon two hundred sixty-eight and five-tenths (268.5') feet; on the Southwest by Riviera Drive and measuring thereon in a broken line for a total distance of one hundred twenty-five (125') feet; and on the Northwest by property undesignated on said plat and measuring thereon two hundred twenty-eight and three-tenths (228.3') feet; being a portion of the property heretofore conveyed to the grantor herein by Barker, Cross & Co., by deed recorded in said Clerk's Office.

This conveyance is made subject to any conditions, restrictions, and easements of record affecting the above described property including any which may appear on a plat of record.



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

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

John Fulton McDaniel, his

Heirs and Assigns forever.

And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

John Fulton McDaniel, his

Heirs and Assigns, against myself and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 2nd day of November in the year of our Lord one thousand nine hundred and sixty-seven and in the one hundred and ninety-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF

Elizabeth H. Olson
William H. Townsend
STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

T. F. Barker, Jr. (SEAL)

(SEAL)

PERSONALLY appeared before me

Elizabeth H. Olson

and made oath that she saw the within-named T. F. Barker, Jr. sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she, with William H. Townsend witnessed the execution thereof.

SWORN to before me this 2nd day of November, 1967.

William H. Townsend
My commission expires Jan. 1, 1971
STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

RENUNCIATION OF DOWER

I, William H. Townsend, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Evelyn S. Barker the wife of the within-named T. F. Barker, Jr. did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

John Fulton McDaniel, his

heirs

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my Hand and Seal this 2nd day of November, 1967.

William H. Townsend
Notary Public of S. C.
My commission expires Jan. 1, 1971.

Recorded this 7th day of November, A.D. 1967, at 2:25 P.M.
CHARLES R. MEALEY, C. O. D. P.

State of South Carolina

County of LEXINGTON

T. F. BARKER, JR.

TO

JOHN FULTON MCDANIEL

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 2:25 P.M. on the 7th day of November 1967, and was immediately entered upon the proper indexes and duly recorded in Book 216-M of Deeds, page 217.

Clerk of Court of Common Pleas and Criminal Sessions for Lexington County, South Carolina.

I hereby certify that the within Deed has been recorded this

day of

A. D. 19

Recorded.

of Deeds, page

Book

for

County

BK2556PG216

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

PROBATE COURT
FILED

IN THE MATTER OF ESTATE OF JOHN FULTON MCDANIEL, JR. May 25 4 19 PM '93

CASE NUMBER 91ES3200255

JOANNE B. TRIBBLE
RMC
LEXINGTON COUNTY

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 28th day of March, 1991;
and,

WHEREAS, the estate of the decedent is being administered in
the Probate Court for Lexington County, South Carolina in File #
91ES3200255; and,

WHEREAS, the grantee herein is either a beneficiary or heir at
law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly
appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of
South Carolina, the Personal Representative has granted, bargained,
sold and released, and by these Presents does grant, bargain, sell
and release to:

Name: John F. McDaniel, Jr.
Address: 1700 Riviera Drive
West Columbia, SC 29169

the following described property:

All that certain piece, parcel or lot of land situate, lying and
being on the northeastern side of Riviera Drive, near the Town of
West Columbia, in the County of Lexington, State of South Carolina,
being composed of and embracing Lot No. 10, Block "L" as shown on
plat of Saluda Terrace Annex #1, prepared by McMillan Engineering
Co., dated November 20, 1964, recorded in the Office of the Clerk
of Court for Lexington County in Plat Book 76-G at page 276, and
being bounded and measuring as follows to wit: On the North by Lot
No. 11, Block "N", Saluda Hills No. 1 Subdivision, measuring
thereon eighty-five (85') feet; on the Southeast by Lot No. 11,
Block "L", Saluda Terrace Annex No. 1, and measuring thereon two
hundred sixty-eight and five-tenths (268.5') feet; on the Southwest
by Riviera Drive and measuring thereon in a broken line for a total
distance of one hundred twenty-five (125') feet; and on the
Northwest by property undesignated on said plat and measuring
thereon two hundred twenty-eight and three-tenths (228.3') feet.

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 1 OF 6

21562

BK2556PG217

This being the same property conveyed to John Fulton McDaniel by deed of T. F. Barker, Jr., dated November 2, 1967 and recorded in the RMC Office for Lexington County on November 7, 1967 in Record Book 16-M at page 217.

TMS # 3717-8-2

ALSO: All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being on the northern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot No. 11, Block "L" as shown on plat of portion of Saluda Terrace Annex No. 1, by McMillan Engineering Company, dated November 20, 1964 and recorded in the office of the Clerk of Court for Lexington County in Plat Book 80-G at Page 89, and being bounded and measuring as follows: On the North by portions of Lots Nos. 11 and 12, Block "N", Saluda Hills No. 1 and measuring thereon eighty (80') feet; on the East by Lot No. 12, Block "L", Saluda Terrace Annex No. 1 and measuring thereon two hundred fifty-five and eight-tenths (255.8') feet; on the South by Riviera Drive and fronting and measuring thereon one hundred twenty-five (125') feet; and on the West by Lot No. 10, Block "L", Saluda Terrace No. 1 and measuring thereon two hundred sixty-eight and five-tenths (268.5') feet.

This being the identical property conveyed to J. Fulton McDaniel by deed of C. E. Williams, Sr., dated May 31, 1966, recorded June 2, 1966, in the office of the RMC for Lexington County in Record Book 15-A at Page 140.

TMS # 3717-8-3

ALSO: An undivided three-fourths (3/4) interest in the following described property: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot Eight (8), Block "Q" on a plat of Quail Hollow, prepared by B. P. Barber & Associates, Inc., Engineers, dated March 10, 1972, recorded in the Office of the RMC for Lexington County in Plat Book 115-G at Page 78; having such boundaries and measurements as shown on the recorded plat.

This being the identical property of which a three-fourths (3/4) interest was conveyed to Fulton McDaniel by deed of Arthur Harvey Whisnant, Jr., dated September 29, 1977, recorded October 4, 1977, in the office of the RMC for Lexington County in Record Book 225 at Page 299.

TMS #3627-3-8

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 2 OF 6

BK2556PG218

ALSO: A one-fourth (1/4) interest in all that certain piece, parcel or tract of land situate, lying and being to the north of U. S. Highway No. 378, in Brookland-Cayce School District No. 2, in the County of Lexington, State of South Carolina, containing Fifty and Twenty-five one-hundredths (50.25) acres, and being shown and delineated as Tract No. Two (2) of the Mary Hook Estate on a plat prepared by John K. Davis, Registered Surveyor, dated August 1-3, 1963. Said tract being bounded as and by property now or formerly of South Carolina Electric & Gas Company, formerly Lexington Water Power Company; on the East by property now or formerly of Manning Development Company, and by property now or formerly of South Carolina Highway Department; on the South by property of Barker, Cross and Company and by property now or formerly of W. E. Godbold; and on the West by property now or formerly of Lillian M. Hulon, by property now or formerly of Dr. T. A. Pitts and by property now or formerly of S. A. Carter; the Southeast corner portion of said tract is subject to the right-of-way for Interstate Highway No. 26. Also conveyed hereby is that portion of the property herein mentioned which is the subject to the easement for the right-of-way for Interstate Highway No. 26.

This is the identical property of which a one-fourth (1/4) interest was conveyed to J. F. McDaniel by deed of Carl R. Grant as Special Referee, dated September 21, 1965, recorded September 22, 1965 in the office of the RMC for Lexington County in Record Book 14-J at Page 267.

TMS # 3699-3-7

ALSO: All that certain piece, parcel or lot of land, situate, lying and being in the Town of West Columbia, County of Lexington, State of South Carolina, as shown on a map of property of Lexington Holding Company and the Guignard Estate made by Barber, Keels & Associates, Engineers, May 1952, recorded in the RMC Office for Lexington county in Plat Book 26-G at page 72; said lot being designated as the southern half of Lot 29 in Block 32, and being bounded as follows to wit: On the North by the northern half of Lot 29, measuring thereon for a distance of One Hundred thirty-seven and five-tenths (137.5') Feet, more or less; on the East by Lot No. 4, measuring thereon for a distance of Thirty (30') Feet, more or less; on the South by Lot 28, measuring thereon One Hundred thirty-seven and five-tenths (137.5') Feet, more or less; and on the West by Twelfth Street, measuring thereon for a distance of Thirty (30') Feet, more or less.

This being the property conveyed to J. F. McDaniel by deed of McDaniel & McDaniel, a Partnership, dated January 27, 1981 and recorded on December 31, 1981 in the RMC Office for Lexington County in Record Book 497 at Page 144.

TMS # 4635-21-16

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 3 OF 6

BK2556PG219

ALSO: A one-fourth (1/4) interest in the following described property: All that certain piece, parcel or tract of land situate, lying and being to the north of U. S. Highway No. 370 at its intersection with Interstate Highway No. 26, in Brookland-Cayce School District No. 2, in the County of Lexington, State of South Carolina, containing approximately 25.42 acres, (shown as a portion of TMS #4597-9-1) and being designated as a portion of Tract No. One (1) on a survey of the Estate of Mary Hook prepared by John K. Davis, Registered Surveyor, dated August 1-3, 1963. Said tract being bounded as follows: On the North by property now or formerly of Mrs. Lillian M. Hulon, property now or formerly of Wilbur G. Shull and property now or formerly of Dr. T. A. Pitts; on the East by property now or formerly of Mrs. Lillian M. Hulon; on the South by property now or formerly of Hook and Senn and by property now or formerly of Rufus Shull; and on the West by property now or formerly of Frank Mathias and by property now or formerly of Lillian M. Hulon. Interstate Highway No. 26 crosses the Southeast portion of said tract and a portion of the above described tract lies on the east side of Interstate Highway No. 26. Also conveyed hereby is that portion of the property herein mentioned which is subject to the easement for the right-of-way of Interstate Highway No. 26.

This is the identical property of which a one-fourth (1/4) interest was conveyed to J. F. McDaniel by Carl R. Grant, Special Referee, by deed dated September 21, 1965, recorded October 8, 1965, in the office of the RMC for Lexington County in Record Book 14-J at Page 267.

TMS #4597-9-1 (portion of)

ALSO: A three-eighths (3/8) interest in and to the following property: All that certain piece, parcel or tract of lot located north of U. S. Highway No. 378, in the Brookland-Cayce School District No. 2, in the County of Lexington, State of South Carolina, containing 1.92 acres as shown on a plat prepared for U. T. McDaniel and J. F. McDaniel by Robert E. Collingwood, Jr., which plat is recorded in the office of the RMC for Lexington County, South Carolina in Plat Book 1834 at Page 49, and having the following boundaries and measurements as shown on said plat, to-wit: On the North by land now or formerly of U. T. McDaniel and J. F. McDaniel measuring for a distance of 261.73 feet; on the West by Interstate I-26, whereon it measures for a cumulative distance of 480.47 feet; on the South by Lexington County Health Services District, Inc., whereon it measures for a distance of 203.07 feet; and on the West by Lexington County Health Services District, Inc., whereon it measures for a distance of 341.30 feet; be all measurements a little more or less.

This is a portion of the property of which a one-fourth interest was conveyed to J. F. McDaniel by deed of Carl R. Grant, Special

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 4 OF 6

BK2556PG220

Referee, dated September 21, 1965, recorded in the RMC for Lexington County in Record Book 14-J at Page 267; a one-eighth interest was subsequently conveyed to J. F. McDaniel by Ted O. McGee by a deed recorded in Record Book 707, at page 223.

TMS # 4597-9-38

ALSO: A one-half (1/2) interest in all that certain piece, parcel or tract of land, containing approximately 2.02 acres, situate, lying and being the County of Lexington, State of South Carolina, and being shown as an approximate 100-foot wide strip of land on the western side of I-26, near U.S. Route 378, on sheets No. 16 and 17 of the South Carolina Department of Highways and Public Transportation plans, File 32.398. Said property being more particularly described as follows to-wit: BEGINNING at a point on the present right-of-way for I-26 right of approximate survey station 63+00; thence running along the right-of-way in a southwesterly direction for 880 feet, more or less, to a point; thence turning and running in a northwesterly direction for 137 feet, more or less, to a point; thence turning and running in a northeasterly direction for 855 feet, more or less, to a point; thence turning and running in a southeasterly direction for 115 feet, more or less, to the point of beginning; being bound on the south by lands now or formerly of Ted McGee, et al, on the west by lands now or formerly of Mrs. Lillian M. Hulon, on the north by lands now or formerly of W. E. Godbold and on the east by I-26.

This is the identical property of which a one-half interest was conveyed to J. F. McDaniel by deed of South Carolina Department of Highways and Public Transportation, dated October 19, 1989 in the RMC Office for Lexington County in Record Book 1448 at Page 181.

TMS # 4597-9-1 (portion of)

ALSO: A one-fourth (1/4) interest in 2.28 acres in the County of Lexington, State of South Carolina, located on the eastern side of Interstate 26, being designated as TMS #4597-01-004. Said property being the remaining portion of a 2.64 acre tract of which .36 acres were conveyed to D. W. M., Incorporated, being more particularly shown on a plat prepared for U. T. McDaniel, J. F. McDaniel, and T. O. McGee by Douglas E. Platt, Sr., RLS #4041, dated January 22, 1974.

This is a portion of property of which a one-fourth interest was conveyed to J. F. McDaniel by deed of Carl. R. Grant, Special Referee, dated September 21, 1965, recorded October 8, 1965, in the office of the RMC for Lexington County, South Carolina in Record Book 14-J at Page 267.

TMS #4597-01-004

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 5 OF 6

BK2556PG221

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Grantee, his heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 21st day of May, 1993.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

W. S. L. Johnson
Billie L. McMahon

Estate of John F. McDaniel

By: John F. McDaniel Jr. P.R.
John F. McDaniel, Jr.
Personal Representative

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Billie L. McMahon and made oath that (s)he saw the within named Personal Representative sign, seal, and as his act and deed, deliver the within written Deed, and that (s)he with W. Steven Johnson witnessed the execution thereof.

SWORN to before me this 21st
day of May, 1993.

Witness Signature:

Billie L. McMahon

W. S. L. Johnson
Notary Public for South Carolina
My Commission Expires: 6-5-93

Form #400PC (1/89)
62-3-907, 62-3-908

PAGE 6 OF 6

BK4488PG183

FILED

State of South Carolina

County of Lexington

JAN 21 1 33 PM '98

TITLE TO REAL ESTATE

DEPT. OF REVENUE
LEXINGTON COUNTY

KNOW ALL MEN BY THESE PRESENTS, that John F. McDaniel, Jr. in the state aforesaid, for and in consideration of Five Dollars and no /100 (\$5.00), love and affection, to me given by my wife, Joann Odom McDaniel in the State aforesaid, the receipt of which is acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

Joann Odom McDaniel
her heirs and assigns

See Attached Exhibit "A"

This conveyance is made subject to any easements, conditions and restrictions of record, including those shown upon any recorded plats, affecting the premises hereinabove described and conveyed.

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

To have and to hold all and singular the premises before mentioned unto the Grantee, her heirs and assigns forever.

And the Grantor does thereby bind himself and his heirs and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, and her heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

02670

BK4488PG184

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

DATE: January 12, 1998

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Stacey Burns
WITNESS
Dennis Wayne Catoe
WITNESS

John F. McDaniel, Jr.
John F. McDaniel, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT OF PROBATE

PERSONALLY APPEARED before me Stacey P. Burns, witness, and make oath that (s)he saw the within named John F. McDaniel, Jr. as his act and deed, sign, seal, and deliver the within written DEED; and that (s)he with the other signed Dennis Wayne Catoe witness, witnessed the execution thereof.

Stacey Burns
Witness

SWORN TO BEFORE ME THIS
12th day of January, 1998

Dennis Wayne Catoe
Notary Public for South Carolina
My Commission Expires: 01/2/07

BK 4488 PG 185

Exhibit A

All that certain piece, parcel or lot of land situate, lying and being on the northeastern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot No. 10, Block "L" as shown on plat of Saluda Terrace Annex #1, prepared by McMillan Engineering Co., dated November 20, 1984, recorded in the Office of the Clerk of Court for Lexington County in Plat Book 78-G at Page 276, and being bounded and measuring as follows to wit: On the North by Lot No. 11, Block "N" Saluda Hills No. 1 and measuring thereon two hundred sixty-eight and five-tenths (268.55) feet on the Southwest by Riviera Drive and measuring thereon in a broken line for a total distance of one hundred twenty-five (125) feet; and on the northwest by property undesignated on said plat and measuring thereon two hundred twenty eight and three tenths (228.3) feet.

Derivation: This being the same property conveyed to John F. McDaniel, Jr. by deed of John F. McDaniel as Personal Representative of the Estate of J. Fulton McDaniel, Sr. dated May 21, 1993 and recorded in the RMC Office for Lexington County on May 28, 1993 in Record Book 2556 at Page 218.

TMS 3717-8-2

Grantee's Address: 1700 Riviera Drive, West Columbia, South Carolina 29169

ALSO:

All that certain piece, parcel or lot of land with the improvements thereon, situate lying and being on the northern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot 11, Block "L" as shown on plat of portion of Saluda Terrace Annex No 1, by McMillan Engineering Company, dated November 20, 1984 and recorded in the office of the Clerk of Court for Lexington County in Plat Book 80-G at Page 89, and being bounded and measuring as follows: On the North by portions of Lots Nos. 11 and 12, Block "N" Saluda Hills No.1 and measuring thereon eighty (80) feet; on the East by Lot No. 12, Block "L" Saluda Terrace Annex No. 1 and measuring thereon two hundred fifty-five and eight tenths (255.8) feet; on the South by Riviera Drive and fronting and measuring thereon one hundred twenty-five (125) feet and on the West by Lot No. 10, Block "L" Saluda Terrace No. 1 and measuring thereon two hundred sixty eight and five tenths (268.5) feet.

Derivation: This being the same property conveyed to John F. McDaniel, Jr. by deed of John F. McDaniel as Personal Representative of the Estate of J. Fulton McDaniel, Sr. dated May 21, 1993 and recorded in the RMC Office for Lexington County on May 28, 1993 in Record Book 2556 at Page 218.

TMS 3717-3-3

Grantee's Address: 1700 Riviera Drive, West Columbia, South Carolina 29169

2011008761 FILED, RECORDED, INDEXED
2011-03-03 14:55:56:800
SEC FEE: \$10.00 ST FEE: \$0.00
CO FEE: \$0.00 Exempt Pages: 3
Lexington County R.O.D. Debra M. Gunter
DEED Bk:Pg 14753:209

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE MATTER OF THE ESTATE OF JO ANN ODOM MCDANIEL

CASE NUMBER 2010ES32000972

DEED OF DISTRIBUTION

WHEREAS, the decedent died on June 17, 2010; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Lexington County, South Carolina in File# 2010ES32000972; and,

WHEREAS, pursuant to a qualified disclaimer filed in the Probate Court for Lexington County, South Carolina by John F. McDaniel, Jr., the spouse of the decedent, the grantees herein are the heirs at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: Melissa J. McDaniel, John F. McDaniel, III,
Tara M. Dickerson and Brandi M. Augustine
Address: c/o 1700 Riviera Drive
West Columbia, SC 29169

the following described properties:

All of its interest, being a two-thirds (2/3) undivided interest in and to the following: All that certain piece, parcel, lot or tract of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, located in School District No. 2, near Gaston, and located approximately 1.4 miles West of Gaston and being more particularly shown and delineated as 23.57 acres on a plat prepared by B. P. Barber & Associates, Inc., Engineers, and recorded in the Office of the Clerk of Court for Lexington County in Plat Book _____, at Page _____. Said property being bounded on the North by property n/f of Shivers whereon it measures 806.1 feet; East by property n/f of Sharpe, whereon it measures 457 feet; South and Southeast by S. C. Highway S-32-100, whereon it measures 1526.3 feet along the right-of-way of said roadway; on the West by property n/f of Goodwin for a total distance of 1401.8 feet and also on the West by property n/f of Laird, whereon it measures 461.2 feet.

This is the same property of which a one-third interest was conveyed by Fulton McDaniel to Jo Ann McDaniel by deed dated December 29, 1989 recorded December 29, 1989 in Book 1494 at Page 20, and subsequently, a one-third interest was conveyed by Fulton McDaniel to Jo Ann McDaniel by deed dated January 5, 1990, recorded January 10, 1990 in Book 1500 at Page 220, in the office of the Register of Deeds for Lexington County, South Carolina.

TMS #011000-01-032

ALSO: All that certain piece, parcel or lot of land situate, lying and being on the northeastern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina. Being composed of and embracing Lot No. 10, Block "L" as shown on plat of Saluda Terrace Annex #1, prepared by McMillan Engineering Co., dated November 20, 1964, recorded in the Office of the Clerk of Court for Lexington County in Plat Book 76-G at Page 276, and being bounded and measuring as follow, to-wit: On the North by Lot No. 11, Block "N", Saluda Hills No. 1 Subdivision, measuring thereon eighty-five (85') feet; on the Southeast by Lot No. 11, Block "L", Saluda Terrace Annex No. 1, and measuring thereon two hundred sixty-eight and five-tenths (268.5') feet; on the Southwest by Riviera Drive and measuring thereon in a broken line for a total distance of one hundred twenty-five (125') feet; and on the northwest by property undesignated on said plat and measuring thereon two hundred twenty-eight and three-tenths (228.3') feet.

ALSO: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on the northern side of Riviera Drive, near the Town of West Columbia, in the County of Lexington, State of South Carolina, being composed of and embracing Lot 11, Block "L" as shown on plat of portion of Saluda Terrace Annex No. 1, by McMillan Engineering Company, dated November 20, 1964 and recorded in the office of the Clerk of Court for Lexington County in Plat Book 80-G at Page 89, and being bounded and measuring as follows: On the North by portions of Lots Nos. 11 and 12, Block "N" Saluda Hills No. 1 and measuring thereon eight (80') feet; on the East by Lot No. 12, Block "L" Saluda Terrace Annex No. 1 and measuring thereon two hundred fifty-five and eight-tenths (255.8') feet; on the South by Riviera Drive and fronting and measuring thereon one hundred twenty-five (125') feet and on the West by Lot No. 10, Block "L" Saluda Terrace No. 1 and measuring thereon two hundred sixty eight and five-tenths (268.5') feet.

These are the identical properties which were conveyed to Jo Ann Odom McDaniel by deed of John F. McDaniel, Jr., dated January 12, 1998 recorded January 21, 1998 in Book 4488 at Page 183, in the office of the Register of Deeds for Lexington County, South Carolina.

TMS #003717-08-002 and #003717-08-003

ALSO: All of its interest, being a one-half (½) undivided interest in and to the following: All that certain piece, parcel or lot of land, situate, lying and being in

Platt Springs Township, County of Lexington, State of South Carolina, containing Seven and one-half (7 ½) acres, more or less. Said Seven and one-half (7 ½) acres, more or less, is bounded as follows: On the North by now or formerly of John F. McDaniel, Jr., Trustee; on the West now or formerly of Northwood Limited Partnership; on the South now or formerly of John F. McDaniel, Jr., Trustee; and on the East now or formerly of John F. McDaniel, Jr., Trustee.

This is the identical property of which a one-half interest was conveyed to Joann Odom McDaniel by deed of C. D. Dukes and Marietta M. Dukes dated August 16, 1996, recorded August 23, 1996 in Book 3851 at Page 161 in the office of the Register of Deeds for Lexington County, South Carolina.

TMS #008900-02-030

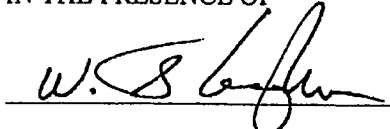
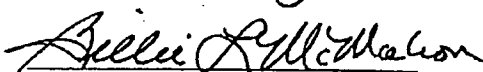
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

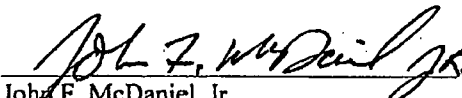
TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Grantees, their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, on this 16th day of February, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

ESTATE OF JO ANN ODOM MCDANIEL

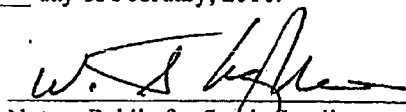



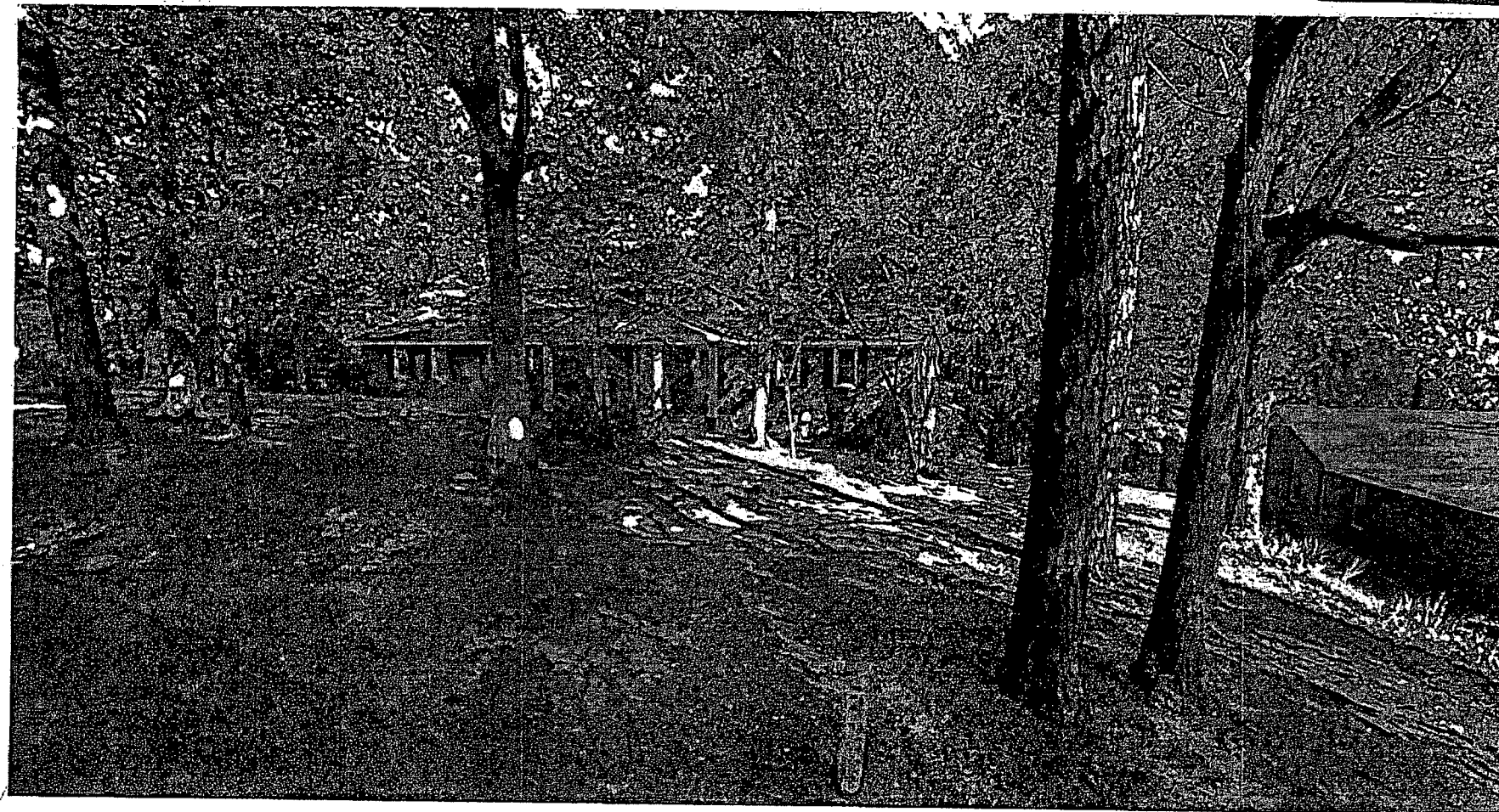

John F. McDaniel, Jr.
Personal Representative

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, a Notary Public for South Carolina, do hereby certify that John F. McDaniel, Jr., Personal Representative of the Estate of the Estate of Jo Ann Odom McDaniel personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

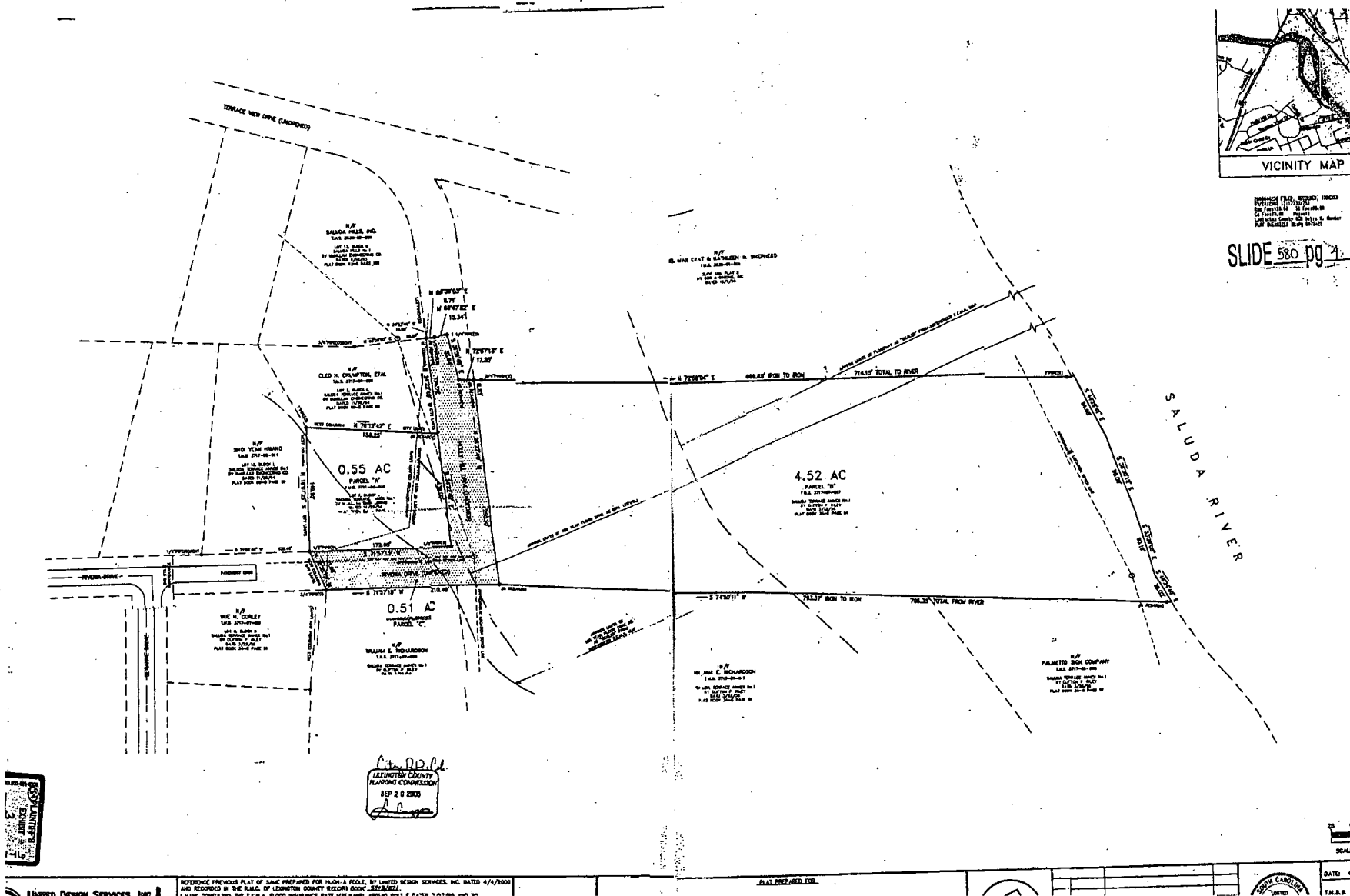
Witness my hand and seal this 16th day of February, 2011.


Notary Public for South Carolina
My Commission Expires: 2/24/2013



DRIVEWAY
AT&T UNDERGROUND CABLE MARKER

APRIL 2013

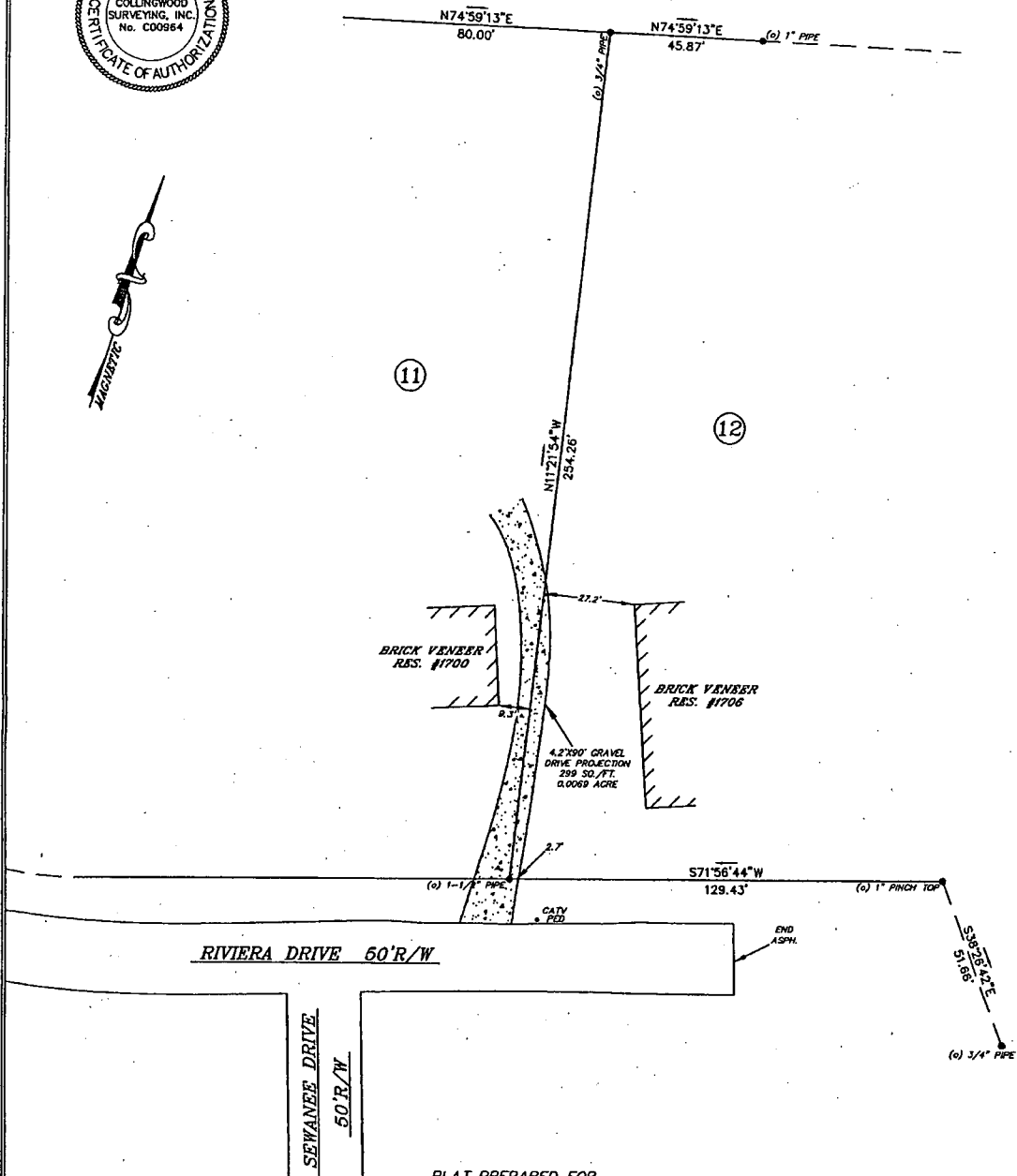


BUILDINGS BEHIND
MCDANIEL HOUSE





N/F MAX DENT &
KATHLEEN W. SHEPHERD



PLAT PREPARED FOR
JOHN McDANIEL

THE SAME BEING SHOWN AS THE PROPERTY LINE BETWEEN LOTS 11 & 12 ON A PLAT OF PORTION OF SALUDA TERRACE ANNEX No. 1 BY McMILLAN ENGINEERING COMPANY DATED NOVEMBER 20, 1984 AND RECORDED IN THE OFFICE OF THE R.O.D. FOR LEXINGTON COUNTY IN PLAT BOOK "80-G" AT PAGE 89. ALSO SEE: PLAT BOOK "184-G" AT PAGE 345 & RECORD BOOK "5975" AT PAGE 22.

SURVEYED BY:
COLLINGWOOD SURVEYING, INC.

TMS 003717-08-003 & 004

NEAR WEST COLUMBIA, S.C.
IN LEXINGTON COUNTY

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



DWG: A. LEWIS
CKD: R.E.C.
JOB: 27101

SCALE: 1" = 30'
NOVEMBER 6, 2012

Robert Collingwood
S.C. REGISTERED SURVEYOR No. 2318
P.O. BOX 3053 W. COLUMBIA, S.C. 29171
TELE. No. (803) 796-3916 / SCSURVEYOR2318@SC.RR.COM

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley *
Carey M. Ayer †
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith ††
Ryan M. Wingard
A. Jewette Dooley
Erica M. Parker

*American Board of Trial Advocates
† Certified Circuit Court Mediator
‡ Certified Circuit Court Arbitrator



DAVIS, FRAWLEY, ANDERSON,
MCCAULEY, AYER,
FISHER & SMITH, LLC

ATTORNEYS AND COUNSELORS AT LAW

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Francis C. Jones
(1919 - 1968)
Hubert E. Long
(1921 - 2000)

Since 1961

November 16, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jolene and Larry Marchant
1706 Riviera Drive
West Columbia, South Carolina 29169

Re: Access Easement

Dear Mr. & Mrs. Marchant:

This law firm represents John F. McDaniel, Jr. and his family. Mr. McDaniel has forwarded to me your letter of October 26, 2012.

In response to your letter, enclosed is a copy of a plat recently prepared by Mr. McDaniel which indicates a Gravel Driveway which crosses your lot (Lot No. 12) and Mr. McDaniel's family's lot (Lot No. 11). This Gravel Driveway was established by the McDaniel family and has been consistently used by them for more than 20 years, without objection from anyone in your chain-of-title to your property, as an access to Riviera Drive by the McDaniels. Because of these facts, the McDaniel family has a Prescriptive Easement over the gravel driveway, as shown on the plat, for the uses that they have used the driveway. An obstruction of their use by you or your family would be a violation of their Prescriptive Easement rights.

We would be glad to discuss this matter with you or your attorney. In the meantime, Mr. McDaniel and his family intend to use the gravel driveway as they have used it.

Yours very truly,

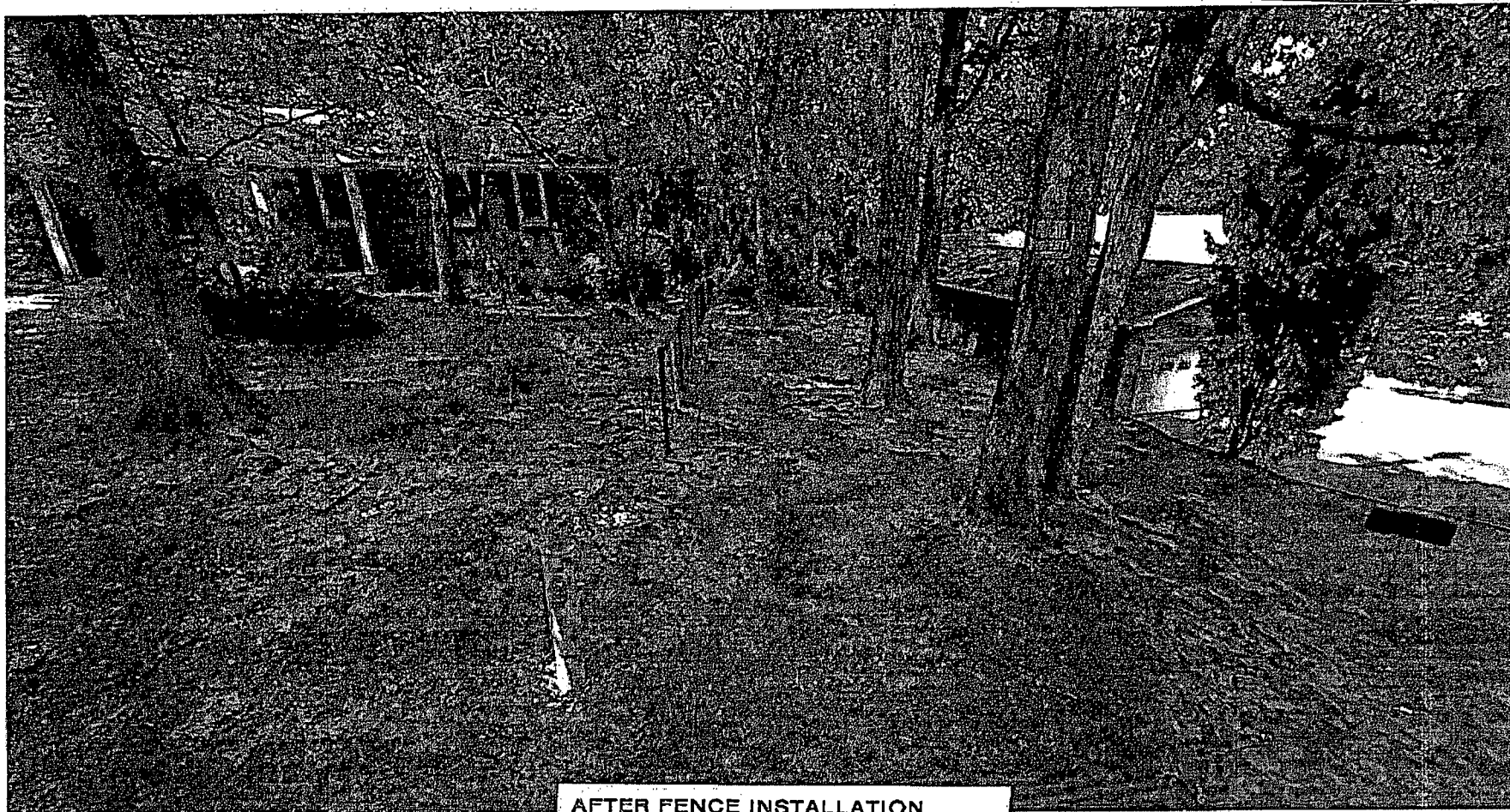
James Randall Davis

Enclosure

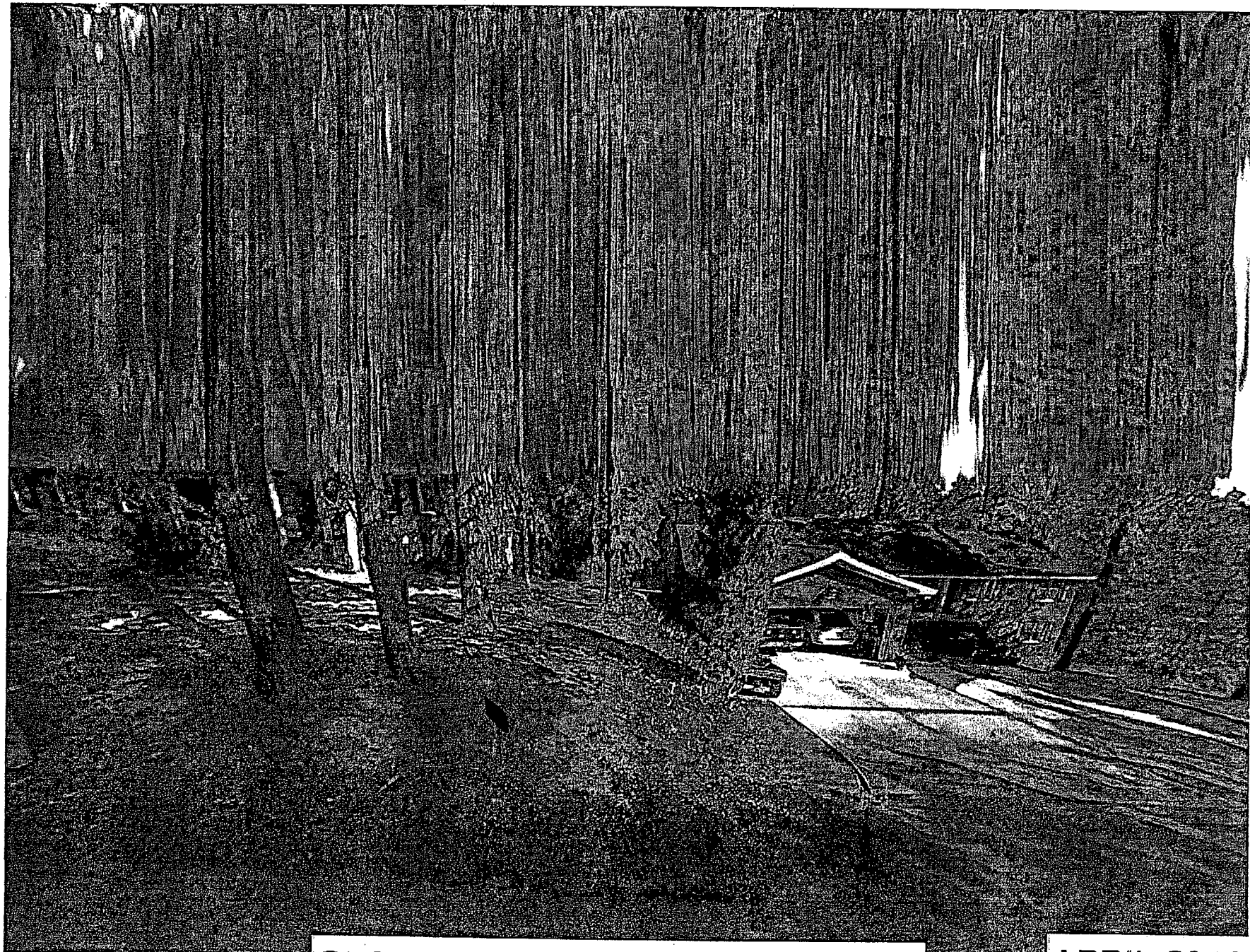
cc: John F. McDaniel, Jr.
(via e-mail)



AUGUST 2015 Riviera Dr



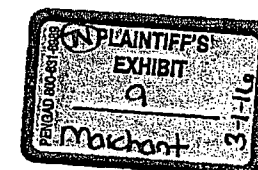
AFTER FENCE INSTALLATION
NEW FENCE TIES INTO OLD FENCE



SLOPE OF MARCHANT PROPERTY

APRIL 2013

GRANTOR	GRANTEE	EXECUTION DATE	RECORDING DATE	BOOK	PAGE
Sara B. Crumpton	Carroll L. Areheart and Gale D. Areheart	October 29, 1976	November 4, 1976	165	59
Carroll L. Areheart	Gale D. Areheart	August 16, 1979	September 11, 1979	360	125
Gale A. Kinard, formerly known as Gale D. Arehart	Shoi Yean Hwang and Mary S. P. Hwang	April 20, 1981	May 4, 1981	461	116
Shoi Yean Hwang And Mary S. P. Hwang	Jolene J. Marchant and Larry C. Marchant, Sr.	May 24, 2005	May 26, 2005	10163	26



State of South Carolina
COUNTY OF LEXINGTON

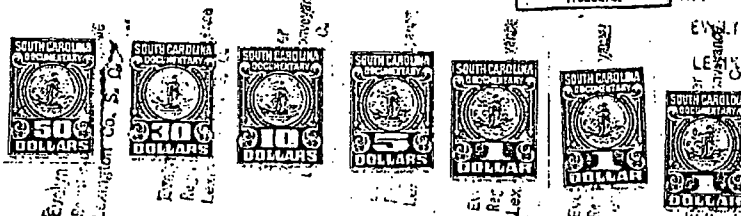
DEED
(Individual)

LEXINGTON COUNTY
DOCUMENTARY TAX
PAID \$53.90
MARJORIE H. SHARPE
Treasurer

151⁴⁰ BOOK 165 PAGE 59
FILED

Nov 4 12 11 PM '76

EV. L. H. KYZER
P.C.
LEXINGTON COUNTY



KNOW ALL MEN BY THESE PRESENTS, That SARA B. CRUMPTON

(hereinafter called "Grantor"), in the State aforesaid, for and in consideration of the sum of

Forty-eight Thousand Six Hundred and no/100 (\$48,600.00)----- Dollars

to the Grantor in hand paid at and before the sealing of these presents, by CARROLL L. AREHEART and
GALE D. AREHEART of 1706 Riviera Drive, West Columbia, SC 29169

(hereinafter called "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 Grantee, his heirs, successors and assigns:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, School District No. 2, State of South Carolina, being shown and delineated as LOT TWELVE (12), BLOCK "L", on a plat of portion of SALUDA TERRACE ANNEX NO. 1, by McMillan Engineering Company, dated November 20, 1964, and recorded in the office of the R.M.C. for Lexington County in PLAT BOOK 80-G PAGE 89, and having the following boundaries and measurements, to-wit: North by Lot 12, Forty-six (46) feet; Northeast by Lot 2, One Hundred Fourteen and seven-tenths (114.7) feet; East by Lot 1, One Hundred Fifty (150) feet; South by Riviera Drive, One Hundred Thirty (130) feet; and West by Lot 11, Two Hundred Fifty-five and eight-tenths (255.8) feet; be all measurements a little more or less.

This being the property conveyed to Grantor by Charles E. Crumpton, Sr. by deed dated September 2, 1976, recorded September 2, 1976, in Deed Book 153 Page 108, in the office of the R.M.C. for Lexington County.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, his Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

BOOK 165 PAGE 59

20401588

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: October 29, 1976.

Signed, Sealed and Delivered

In Presence of:

Robert M. Marlowe
Greta M. Gatus

Sara B. Crumpton (Seal)
SARA B. CRUMPTON (Seal)

State of South Carolina }
COUNTY OF LEXINGTON } PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s) he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s) he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me (date) October 29, 1976.

Robert M. Marlowe (Seal)

Greta M. Gatus (Witness)

Notary Public for South Carolina

My Commission expires: 11-15-77

State of South Carolina }
COUNTY OF } NORENUNCIATION OF DOWER
GRANTOR A WOMAN

I, the undersigned Notary Public, do hereby certify unto all whom it may concern that the undersigned wife of the within named Grantor did this day appear before me and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce release and forever relinquish unto the within named Grantee his heirs, successors and assigns, all her interest and estate and also her right and claim of dower in or to all and singular the premises described herein.

SWORN to before me (date) _____ Recorded this 4th day of November A.D. 1976 at 12:11 P.M.
EVELYN FAYE KYZER, R.M.G.

(Wife of Grantor)

(Seal)

Notary Public for South Carolina

My Commission expires: _____

RETURN TO 2-04-1528
SECURITY FEDERAL SAVINGS ASSESSMENT

BURNSIDE, ROOF & BRADBERRY
Attorneys at Law
P. O. Box 1516
Columbia, SC 29202
State of South Carolina
COUNTY OF LEXINGTON

Sara B. Crumpton

Grantor
TO
Carroll L. Areheart and
Gale D. Areheart
1706 Riviera Drive
West Columbia, SC 29169
Grantee
(include mailing address)

DEED
(Individual)

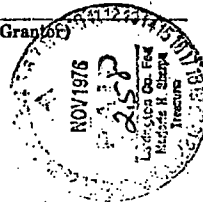
Filed this 4th day of November 1976 at 12:11 o'clock P.M. and recorded in Deed Book 165 at page 59

R.M.C. XXXXXXXXXX
for Lexington County, S.C.

Recorded this day of 1976

in Page

Auditor County



TITLE TO REAL ESTATE - FORM 15-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.State of South Carolina,
COUNTY OF LEXINGTON

AFFIDAVIT

Know All Men By These Presents, That I, CARROLL L. AREHEART

FILED

SEP 11 4 24 PM '79

EVELYN PAGE KYZER

R.M.C.

LEXINGTON COUNTY

In the State aforesaid Pursuant to and

In consideration of the

writ of the Order of the Family Court for the Eleventh Judicial Circuit,
signed June 27, 1979 and recorded in Judgment Roll at #5991
paid by

In the State aforesaid,

the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release
unto the said Gale D. Areheart, her heirs and assigns:

ALL his interest in that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington School District No. 2, State of South Carolina, being shown and delineated as LOT TWELVE (12), BLOCK "L", on a plat of a portion of SALUDA TERRACE ANNEX NO. 1, by McMillan Engineering Company, dated November 26, 1964, and recorded in the office of the R.M.C. for Lexington County in PLAT BOOK 80-G PAGE 89, and having the following boundaries and measurements, to wit: North by Lot 12, Forty-six (46) feet; Northeast by Lot 2, One Hundred Fourteen and seven-tenths (114.7) feet; East by Lot 1, One Hundred Fifty (150) feet; South by Riviera Drive, One Hundred Thirty (130) feet; and West by Lot 11, Two Hundred Fifty-five and eight-tenths (255.8) feet; be all measurements a little more or less.

This being the property conveyed to Grantor by Sara B. Crumton by deed dated November 4, 1976, recorded November 4, 1976, in Deed Book 165 Page 59, in the office of the R.M.C. for Lexington County.

MAILING ADDRESS OF GRANTEE: 1706 Riviera Drive
West Columbia, South Carolina 29169

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

To Have and to Hold all and singular the premises before mentioned unto the said Gale D. Areheart, her

Heirs and Assigns forever

And I do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Gale D. Areheart, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS Hand and Seal this 18th day of August

In the year of our Lord one thousand nine hundred and seventy-nine

and in the two hundred and third year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

George Allen Sharp, Jr.
Christa M. Thorpe

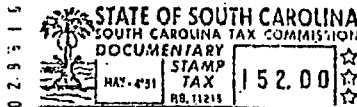
Carroll L. Areheart (SEAL)
CARROLL L. AREHEART
(SEAL)

State of South Carolina,

County of Lexington

LEXINGTON COUNTY
DOCUMENTARY TAX
PAID \$ 83.60
MARJORIE H. SHARPE
Treasurer

Know All Men by These Presents, That I, Gale A. Kinard, formerly known as Gale D. Areheart,

FILED
MAY 1 11 03 AM '81
JOHN C. TRIBBLE
CLERK
LEXINGTON COUNTY

in the State aforesaid, for and in consideration of the
sum of Seventy-five Thousand Eight Hundred and Sixty-one Hundredths Dollars
(\$75,800.61)
to me paid by Shoi Yean Hwang and Mary S. P. Hwang
in the State aforesaid (the receipt whereof is hereby acknowledged)
have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

SHOI YEAN HWANG and MARY S. P. HWANG, Their
Heirs and Assigns:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina; the same being shown as Lot 12, Block L, of Saluda Terrace Annex No. 1, on a plat prepared by McMillan Engineering Company, dated November 20, 1964, and recorded in the office of the Register of Mesne Conveyances for Lexington County in Plat Book 80-G at page 89, and also shown on plat prepared for Shoi Yean Hwang and Mary S. P. Hwang by Claude R. McMillan, Jr., P.E. & R.L.S., dated April 23, 1981, to be recorded; said property being bounded and measuring as follows, to wit:

Commencing at a point at the northwesterly corner of Lot 12, Block L, running N 66° 22' E along a portion of Lot 12 in Block N for a distance of Forty-six (46) feet to an iron; thence turning and running S 51° 35' E along Lot 2 in Block L for a distance of One Hundred Fourteen and Seven Tenths (114.7) feet to an iron; thence turning and running S 24° 52' E along Lot 1 in Block L for a distance of One Hundred Fifty (150) feet to an iron; thence turning and running S 65° 00' W along Riviera Drive whereon it fronts and measures One Hundred Thirty (130) feet to an iron; thence turning and running N 17° 35' W along Lot 11 in Block L for a distance of Two Hundred Fifty-five and Eight Tenths (255.8) feet to the point of commencement, be all measurements a little more or less.

This being the same property heretofore conveyed to Carroll L. Areheart and Gale D. Areheart by Sara B. Crompton by deed dated October 29, 1976, recorded November 4, 1976, in Deed Book 165 at page 59; the interest of Carroll L. Areheart

having been conveyed to Gale D. Areheart by deed dated August 16, 1979, recorded September 11, 1979, in Deed Book 360 at page 125 in the office of the RMC for Lexington County.

This conveyance is made subject to easements, conditions and restrictions appearing of record.

TMS #3717-08-04

Grantee's Address: 1706 Riviera Drive
West Columbia, SC 29169

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

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Shoi Yean Hwang and Mary S. P. Hwang, their

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Shoi Yean Hwang and Mary S. P. Hwang, their

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30th day of April
in the year of our Lord one thousand nine hundred and eighty-one (1981)
and in the ~~one thousand nine hundred and~~ two hundred fifth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

[Signature]
[Signature]

Gale A. Kinard (SEAL)
GALE A. KINARD, formerly known as
Gale D. Areheart (SEAL)
GALE D. AREHEART

STATE OF SOUTH CAROLINA,
Richland COUNTY.

PERSONALLY appeared before me Michael Tighe
and made oath that he saw the within-named Gale A. Kinard, formerly known
sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein men-
tioned and that he, with Patricia M. Pickens witnessed the
execution thereof.

SWORN to before me this 30th
day of April, 1981

Patricia M. Pickens (L.S.)

Notary Public of S. C.

My Commission Expires: October 24, 1990

STATE OF SOUTH CAROLINA,
COUNTY.

NO RENUNCIATION OF DOWER
(GRANTOR A WOMAN)

I, _____, do hereby certify
unto all whom it may concern, that Mrs.
the wife of the within-named _____
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,
voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and for-
ever relinquish unto the within-named _____

Recorded this 4th day of May, A.D. 1981 11:23 AM
JOANNE B. TRIBBLE, R. M. C.

heirs
and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises
within mentioned and released.

Given under my Hand and Seal, this

day of

Anno Domini 19

(L.S.)
Notary Public of S. C.

2005027517 FILED, RECORDED, INDEXED
02/25/2005 08:25:35:288
Rec Fee: \$18.88 St Fee: \$325.00
Co Fee: \$137.50 Pages: 3
Lexington County ROD Debra N. Gunter
DEED #: Pg 10163:26

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) **GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, That

SHOI YEAN HWANG and MARY S. P. HWANG (hereinafter referred to as "Grantor"),

For and in consideration of the sum of One Hundred Twenty-Five Thousand and 00/100 (\$125,000.00) Dollars to the Grantor in hand paid at and before the sealing of these presents, by

JOLENE J. MARCHANT and LARRY C. MARCHANT, SR.
1706 Riviera Drive
West Columbia, SC 29169

(hereinafter referred to as "Grantee"),

in the State aforesaid (the receipt of which is herewith acknowledged) has granted, bargained, sold, and released and by these Presents does grant, bargain, sell, convey, and release unto the Grantee, his/her heirs, successors and assigns, the following described property:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, located, lying, and being in the County of Lexington, State of South Carolina, the same being shown and delineated as Lot 12, Block "L" on a Plat of Saluda Terrace Annex No. 1, prepared by McMillan Engineering Company, R.L.S. dated November 20, 1964, recorded in the Office of Deeds for Lexington County in Plat Book 80-G at Page 89; and having such boundaries and measurements as shown thereon, more or less.

TMS NO: 003717-08-004

DERIVATION: Being the same property conveyed to Shoi Yean Hwang and Mary S. P. Hwang by Deed from Gale A. Kinard, f/k/a Gale D. Archert, dated April 30, 1981, recorded May 4, 1981 in the Office of Deeds for Lexington County in Deed Book 461 at Page 116.

This conveyance is made subject to easements and restrictions of record or otherwise affecting the property.

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging or in anywise incident or appertaining.

To have and to hold all and singular the said premises herein granted unto the Grantee, his/her heirs, successors and assigns forever.

And the Grantor does hereby bind him/herself, and his/her heirs, successors, and assigns, to warrant and forever defend all and singular the premises unto the Grantee, his/her heirs, successors and assigns against him/herself and his/her heirs, successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Any reference in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has set his/her hand and seal this 24th Day of ~~May~~
~~April~~, 2005.

Ronald R. Hall
Alison H. Taylor

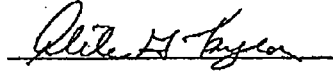
Shor Yean Hwang
Shor Yean Hwang

Ronald R. Hall
Alison H. Taylor

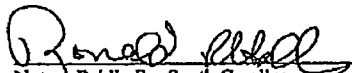
Mary S. P. Hwang
Mary S. P. Hwang

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF LEXINGTON)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, doth depose and state that (s)he saw the within named Shol Yean Hwang and Mary S. P. Hwang sign, seal and deliver the within Deed; and that (s)he with the other witnesses whose signatures appear above witnessed the execution thereof.



Sworn To Before Me This 24th Day of May, 2005.

 (L.S.)
Notary Public For South Carolina

My Commission Expires: 6-30-05

Deed Prepared By:
Ronald R. Hall
Attorney at Law
1055 Sunset Blvd.
West Columbia, SC 29169
TEL: 803-791-3196
FAX: 803-791-8754
E-Mail: ronh311@ix.netcom.com



FILED
MAY 4 11 03 AM '81
JOANNE D. TRIBBLE
RMC
LEXINGTON COUNTY

LEXINGTON COUNTY
PLANNING COMMISSION
MAY 6 1981
Fredrick Service

BLOCK N SALUDA HILLS NO. 1

N 88° 22' E

46'

POWER & TEL. LINES

N 17° 25' W
255.8'

BLOCK L

S 55° 35' E
114.7'

S 24° 52' E
150'

POWER
TEL.

29' GARAGE

SPLIT LEVEL BRICK
VENEER RESIDENCE
W/ BASEMENT

WOOD
DECK

130'
S 65° 00' W

175' TO
HOLLY HILL DR.

RIVIERA

DRIVE

1706 Riviera Dr

Recorded this 4th day of May, A.D., 1981 at 11:03 AM
JOANNE B. TRIBBLE, R. M. C.

PLAT PREPARED FOR
SHOI YEAN HWANG & MARY S. P. HWANG
NEAR WEST COLUMBIA, S. C.

THE SAME BEING SHOWN AS LOT 12 BLOCK L ON PLAT OF PORTION OF
SALUDA TERRACE ANNEX NO. 1 BY MCMILLAN ENGINEERING COMPANY
DATED NOVEMBER 20, 1964 AND RECORDED IN THE OFFICE OF THE REGISTER OF MESNE
CONVEYANCE FOR LEXINGTON COUNTY IN PLAT BOOK 80-GAT PAGE 89.

APRIL 23, 1981

SCALE: 1"=40'

GRAPHIC SCALE

IRON CORNERS

I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ON THIS PLAT ARE CORRECT.

RECEIVED

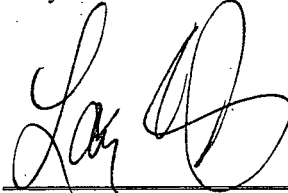
AUG 07 2017

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 7, 2017



Larry C. Marchant Jr.
3020 Devine Street
Columbia, South Carolina 29205
(803) 771-1507
Attorney for Appellant