

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough, Master in Equity

S.C. SUPREME COURT

Appellate Case No. 2018-000621
Opinion No. 2018-UP-062 (S.C. Court of Appeals)

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor,

successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Briwbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manifault, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc., and Nordic Group, LLC, Intervenors,

Of Which Associated Developers, Inc., is the Respondent,

And of which Nordic Group, LLC, is the Petitioner.

APPENDIX

Michael A. Timbes, Esquire
Thomas J. Rode, Esquire
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401

ATTORNEYS FOR RESPONDENT ASSOCIATED
DEVELOPERS, INC.

James A. Bruorton IV
Timothy J.W. Muller
ROSEN, ROSEN & HAGOOD, LLC
Post Office Box 893
Charleston, S.C. 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

Wallace K. Lightsey
WYCHE, P.A.
44 E. Camperdown Way
Greenville, S.C. 29601
(864) 242-8207
wlightsey@wyche.com

ATTORNEYS FOR PETITIONER NORDIC GROUP, LLC

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough

Appellate Case No. 2018-000621
Opinion No. 27786 (S.C. Court of Appeals)
Trial Court Case No. 2015-CP-10-00939

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O’Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may

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And Associated Developers, Inc. and Nordic Group,
LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Petitioner.

APPENDIX

Michael A. Timbes, Esquire
Thomas J. Rode, Esquire
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401

ATTORNEYS FOR RESPONDENT ASSOCIATED
DEVELOPERS, INC.

James A. Bruorton IV (S.C. Bar No: 71300)
Timothy J.W. Muller (S.C. Bar No. 74601)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

Wallace K. Lightsey (S.C. Bar No: 6476)
WYCHE, P.A.
44 E. Camperdown Way
Greenville, S.C. 29601
(864) 242-8207
wlightsey@wyche.com

ATTORNEYS FOR PETITIONER NORDIC GROUP, LLC

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough

Appellate Case Tracking No. 2016-001298
Trial Court Case No. 2015CP1000939

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake
Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane,

Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor, successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

RECORD ON APPEAL

ROSEN, ROSEN & HAGOOD, LLC
James A. Bruorton, IV
Timothy J.W. Muller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEY FOR APPELLANT

THURMOND KIRCHNER & TIMBES, PA
Michael A. Timbes
Thomas J. Rode
15 Middle Atlantic Wharf
Charleston, SC 29401
(843) 937-8000
ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

VIVIAN B. CROMWELL, SUSAN PRIOLEAU
SIMMONS, RUTH NELSON GADSDEN, ROBERT
BLAKE BRISBANE and MILDRED CHAPMAN,

Plaintiffs,

v.
ALBERTHA BRISBANE, JEANIE GEATHERS,
LEROY BRISBANE, FRANCENA B. LAWTON,
JAMES B. WATSON, HELEN DAVIS, ROSALEE
SIMMONS, LAVERNE HAMILTON, MINERVA
GADSDEN, DANIEL SIMMONS, JR., MARY
MOSELY, HORACE ROBINSON, JR., JAMES
ROBINSON, HENRY ROBINSON, AVIS D.
ROBINSON A/K/A AVIS ROBERTSON, DORA
ROBINSON, JAMIE WILLIAMS, DESIREE
WILLIAMS, MARK WILLIAMS, GRACE
ETTISON, DANNION JORDAN, RONALD
WILLIAMS, WILLIAM DRAYTON, KEITH
DRAYTON, JEROME HOPKINS, JOSEPH
HOPKINS, JR., TRACY HOPKINS,
ALETHIA GILLIAN, SAMUEL BROWN,
JEANNETTE BROWN, ARTHUR BROWN,
ANTONIO BROWN, DWAYNE BROWN,
POLLY BROWN, KEITH BROWN, KENNY
BROWN, DEXTER BROWN, MARIE BROWN,
STARCIA STEWART, JAMES L. BROWN, JR.,
GLEN BROWN, ERNESTINE BROWN,
VERONICA BROWN, CALVIN BROWN, JR.,
HAROLD BROWN, JR., MARY ANN BRISBANE,
HARVEY BRISBANE, JR., DANNY BOLDS,
RAYMOND BOLDS, MICHAEL BOLDS,
DAVID BOLDS, CAROLYN LOGAN, MARY
JANE BROWN, MIRIAM GRANT A/K/A
MURIEL GRANT, EDWARD GRANT, JR.,
GILBERT GRANT, PERRY GRANT,
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE
MARINE, GURTHA FORREST, GLORIA GIBBS,
CHRISTOPHER GATHERS, JOHN D. HEYWARD,
ALLEN MITCHELL, JR., TIFFANY N. DALEY,
MICHAEL S. MITCHELL, ALLEN MITCHELL,
III, FEDERICA COLEMAN, DOROTHY
BOYKIN, LAVINIA BRISBANE, CLARENCE
BRISBANE, JR., BETTY BRISBANE, FRED
BRISBANE, EVELYN PALMER, MARY
BRISBANE, CARL BRISBANE, CARLOTTA
BICKHAM, GEORGE BRISBANE, ELIAS
BRISBANE, MAXINE BRISBANE, EVAN
BRISBANE, JESSE SIMMONS, JR., ODELL
WHITE, CHRISTINA HARTFIELD, SARAH
MITCHELL, ARTHUR ALBERT MITCHELL,
SUZANNE MITCHELL, OLETHIA GADSEN,
WANDA MITCHELL HARLEY, ARTHUR
MITCHELL, JR., BENJAMIN MITCHELL,
BARBARA JOHNSON, DIANE B. SAMUEL,
KATHY L. NELSON, THELMA E. NELSON,
CAROLYN SINGLETON, LAMOTTA NELSON,
RODNEY NELSON, LOTTIE BROWN,
SYLVIA JOHNSON, RAYMON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

CONSENT ORDER OF
REFERENCE

FILED
2015 SEP 25 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

BROWN, RONALD BROWN, BERNARD FRASIER, BARRY FRASIER, KELVIN FRASIER, MARIE RICHARDSON, DELORES RICHARDSON, WILLIAM RICHARDSON, ROBERT HEYWARD, KATINA HEYWARD, VALORIE HEYWARD, KARVIN DOTSON, YOULANDA BRISBANE, KERMIT BRISBANE, MEKA BRISBANE, JERMAINE BRISBANE, PEGGY NELSON, JOSEPH ELLIOTT, CYNTHIA ELLIOTT, JACKIE ELLIOTT, NET ELLIOTT, STEPHANIE ELLIOTT, RODNEY ELLIOTT, NANCY BRISBANE, WILLIAM ALBERT BRISBANE, JR., BERNARD BRISBANE, GARY BRISBANE, BONNIE BRISBANE, JAMETTA BRISBANE HAMILTON, ELIZABETH HAMILTON and ROSETTA B. BROWN, JOHN DOE, adults, and RICHARD ROE, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of JAMES BRISBANE, JAMES BRISBANE, JR., JAMES BRISBANE, III, JIMMY BRISBANE, EMILY BROWN, HARVEY BRISBANE, ROSA ROBINSON, HENRIETTA BRISBANE GEATHERS, LAURA GEATHERS, GENEVA GRANT, VIOLA HEYWARD, HENRIETTA BOLDS, ESTELLE NELSON, SWACKIE BRISBANE, WILHEMENIA YOUNG, ROXANNA PINCKNEY, DANIEL SIMMONS, HORACE ROBINSON, ELIZABETH WILLIAMS, MABEL ROBINSON, JULIAN ROBINSON, PATRICIA WILLIAMS, ALBERTHA GRAHAM, JOSEPH E. HOPKINS, EMILY BROWN, STEVE BROWN, STEVE BROWN, JR., ROGER BROWN, JAMES LEROY BROWN, HAROLD BROWN, THEODORE HEYWARD, THEODORE HEYWARD, JR., MARY E. MITCHELL, JAMES HEYWARD, CLARENCE BRISBANE, SWACKIE BRISBANE, JR., SUSAN RICHARDSON, JANIE SIMMONS a/k/a JANIE RICHARDSON BRISBANE, RUBY MITCHELL, JESSE SIMMONS, WILLIAM NELSON, RUTH HOPKINS, THOMAS BROWN, WILHEMENIA FRASIER, HELEN BROWN ALLEN, ALBERTHA LEE RICHARDSON, LOUISE HEYWARD, HERBERT LEE HEYWARD, LORETTA BRISBANE, GAIL DAVIS, WILLIAM NELSON, JR., EDWARD GRANT, SR., EARTHA LEE ELLIOTT, WILLIAM ALBERT BRISBANE, BETTY MANIGAULT, STEVEN CHRISTOPHER BROWN and ROSETTA BRISBANE all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed,

Defendants.

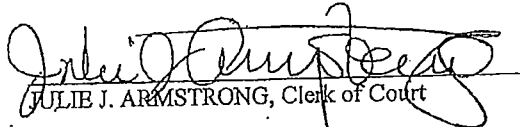
IT APPEARING that the Complaint herein seeks equitable relief, namely, to clear title to certain real property located in Charleston County; and

IT FURTHER APPEARING that all the Defendants, save and excepting those Defendants who have previously filed a Consent to Reference, copies of which are attached, have been adjudged in default; and

IT FURTHER APPEARING that the Plaintiffs are desirous that the within action be referred to the Master-in-Equity for the purpose of taking testimony and making findings of fact and conclusions of law, and to render a final decree with direct appeal to the South Carolina Court of Appeals.

NOW, THEREFORE, on motion of John J. Dodds, III, Attorney for the Plaintiffs, and by and with the consent of all Defendants not adjudged in default, it is hereby

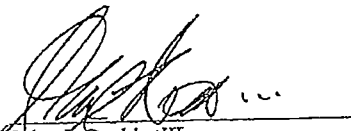
ORDERED, ADJUDGED and DECREED that the within action be referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-085, Code of Laws of South Carolina, 1976, as amended.


JULIE J. ARMSTRONG, Clerk of Court

Charleston, South Carolina

September 24, 2015

I SO MOVE:


John J. Dodds, III
Attorney for Plaintiffs

Date 9/21/15
Amount \$125
PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By: Ass

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU
SIMMONS, RUTH NELSON GADSDEN, ROBERT
BLAKE BRISBANE and MILDRED CHAPMAN,

Plaintiffs,

vs.

ALBERTHA BRISBANE, et al.,

Defendants.

ACKNOWLEDGMENT OF SERVICE
AND
CONSENT TO REFERENCE

FILED
2015 MAR 30 PM 4:10
CLERK OF COURT
J. ARWISTONG

Sheneatha Brisbane

I, MEKA BRISBANE, do hereby acknowledge receipt of a certified copy of the Civil Action Cover Sheet, Certificate of Exemption, Summons, Lis Pendens, Notice and Complaint in the within captioned action this 9 day of March, 2015, and further, do hereby consent to the within captioned action being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, for purposes of having a hearing, taking testimony and making findings of fact and conclusions of law to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-85, Code of Laws of South Carolina, 1976, as amended

Sheneatha Brisbane
MEKA BRISBANE

STATE OF SOUTH CAROLINA.)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ROBERT)
BLAKE BRISBANE and MILDRED CHAPMAN,)

Plaintiffs,)

vs.)

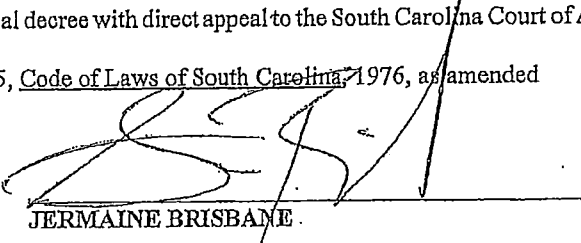
ALBERTHA BRISBANE, et al.,)

Defendants.)

ACKNOWLEDGMENT OF SERVICE
AND
CONSENT TO REFERENCE

FILED
2015 MAR 20 PM 4:10
JULIE ARMSTRONG
CLERK OF COURT

I, JERMAINE BRISBANE, do hereby acknowledge receipt of a certified copy of the Civil Action Cover Sheet, Certificate of Exemption, Summons, Lis Pendens, Notice and Complaint in the within captioned action this 10 day of March, 2015, and further, do hereby consent to the within captioned action being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, for purposes of having a hearing, taking testimony and making findings of fact and conclusions of law to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-85, Code of Laws of South Carolina, 1976, as amended


JERMAINE BRISBANE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ROBERT)
BLAKE BRISBANE and MILDRED CHAPMAN,)

Plaintiffs,

v.

ALBERTHA BRISBANE, JEANIE GEATHERS,)
LEROY BRISBANE, FRANCENA B. LAWTON,)
JAMES B. WATSON, HELEN DAVIS, ROSALEE)
SIMMONS, LAVERNE HAMILTON, MINERVA)
GADSDEN, DANIEL SIMMONS, JR., MARY)
MOSELY, HORACE ROBINSON, JR., JAMES)
ROBINSON, HENRY ROBINSON, AVIS D.)
ROBINSON A/K/A AVIS ROBERTSON, DORA)
ROBINSON, JAMIE WILLIAMS, DESIREE)
WILLIAMS, MARK WILLIAMS, GRACE)
ETTISON, DANNION JORDAN, RONALD)
WILLIAMS, WILLIAM DRAYTON, KEITH)
DRAYTON, JEROME HOPKINS, JOSEPH)
HOPKINS, JR., TRACY HOPKINS,)
ALETHIA GILLIAN, SAMUEL BROWN,)
JEANNETTE BROWN, ARTHUR BROWN,)
ANTONIO BROWN, DWAYNE BROWN,)
POLLY BROWN, KEITH BROWN, KENNY)
BROWN, DEXTER BROWN, MARIE BROWN,)
STARCIA STEWART, JAMES L. BROWN, JR.,)
GLEN BROWN, ERNESTINE BROWN,)
VERONICA BROWN, CALVIN BROWN, JR.,)
HAROLD BROWN, JR., MARY ANN BRISBANE,)
HARVEY BRISBANE, JR., DANNY BOLDS,)
RAYMOND BOLDS, MICHAEL BOLDS,)
DAVID BOLDS, CAROLYN LOGAN, MARY)
JANE BROWN, MIRIAM GRANT A/K/A)
MURIEL GRANT, EDWARD GRANT, JR.,)
GILBERT GRANT, PERRY GRANT,)
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE)
MARINE, GURTHA FORREST, GLORIA GIBBS,)
CHRISTOPHER GATHERS, JOHN D. HEYWARD,)
ALLEN MITCHELL, JR., TIFFANY N. DALEY,)
MICHAEL S. MITCHELL, ALLEN MITCHELL,)
III, FREDERICA COLEMAN, DOROTHY)
BOYKIN, LAVINIA BRISBANE, CLARENCE)
BRISBANE, JR., BETTY BRISBANE, FRED)
BRISBANE, EVELYN PALMER, MARY)
BRISBANE, CARL BRISBANE, CARLOTTA)
BICKHAM, GEORGE BRISBANE, ELIAS)
BRISBANE, MAXINE BRISBANE, EVAN)
BRISBANE, JESSE SIMMONS, JR., ODELL)
WHITE, CHRISTINA HARTFIELD, SARAH)
MITCHELL, ARTHUR ALBERT MITCHELL,)
SUZANNE MITCHELL, OLETHIA GADSEN,)
WANDA MITCHELL HARLEY, ARTHUR)
MITCHELL, JR., BENJAMIN MITCHELL,)
BARBARA JOHNSON, DIANE B. SAMUEL,)
KATHY L. NELSON, THELMA E. NELSON,)
CAROLYN SINGLETON, LAMOTTA NELSON,)
RODNEY NELSON, LOTTIE BROWN,)
SYLVIA JOHNSON, RAYMON)
BROWN, RONALD BROWN, BERNARD)
FRASIER, BARRY FRASIER, KELVIN FRASIER,)
MARIE RICHARDSON, DELORES)

RULE 55(a) ENTRY OF
DEFAULT

FILED
2015 SEP 25 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

RICHARDSON, WILLIAM RICHARDSON,
 ROBERT HEYWARD, KATINA HEYWARD,
 VALORIE HEYWARD, KARVIN DOTSON,
 YOULANDA BRISBANE, KERMIT BRISBANE,
 MEKA BRISBANE, JERMAINE BRISBANE,
 PEGGY NELSON, JOSEPH ELLIOTT, CYNTHIA
 ELLIOTT, JACKIE ELLIOTT, NET ELLIOTT,
 STEPHANIE ELLIOTT, RODNEY ELLIOTT,
 NANCY BRISBANE, WILLIAM ALBERT
 BRISBANE, JR., BERNARD BRISBANE, GARY
 BRISBANE, BONNIE BRISBANE, JAMETTA
 BRISBANE HAMILTON, ELIZABETH
 HAMILTON and ROSETTA B. BROWN, JOHN
 DOE, adults, and RICHARD ROE, infants, insane
 persons, incompetents and persons in the military
 service of The United States of America, being
 fictitious names designating as a class any unknown
 person or persons who may be an heir, distributee,
 devisee, legatee, widower, widow, assign,
 administrator, executor, creditor, successor, personal
 representative, issue or alienee of JAMES
 BRISBANE, JAMES BRISBANE, JR., JAMES
 BRISBANE, III, JIMMY BRISBANE, EMILY
 BROWN, HARVEY BRISBANE, ROSA
 ROBINSON, HENRIETTA BRISBANE
 GEATHERS, LAURA GEATHERS, GENEVA
 GRANT, VIOLA HEYWARD, HENRIETTA
 BOLDS, ESTELLE NELSON, SWACKIE
 BRISBANE, WILHEMENIA YOUNG, ROXANNA
 PINCKNEY, DANIEL SIMMONS, HORACE
 ROBINSON, ELIZABETH WILLIAMS,
 MABEL ROBINSON, JULIAN ROBINSON,
 PATRICIA WILLIAMS, ALBERTHA GRAHAM,
 JOSEPH E. HOPKINS, EMILY BROWN,
 STEVE BROWN, STEVE BROWN, JR.,
 ROGER BROWN, JAMES LEROY BROWN,
 HAROLD BROWN, THEODORE HEYWARD,
 THEODORE HEYWARD, JR., MARY E.
 MITCHELL, JAMES HEYWARD, CLARENCE
 BRISBANE, SWACKIE BRISBANE, JR., SUSAN
 RICHARDSON, JANIE SIMMONS a/k/a
 JANIE RICHARDSON BRISBANE, RUBY
 MITCHELL, JESSE SIMMONS, WILLIAM
 NELSON, RUTH HOPKINS, THOMAS BROWN,
 WILHEMENIA FRASIER, HELEN BROWN
 ALLEN, ALBERTHA LEE RICHARDSON,
 LOUISE HEYWARD, HERBERT LEE HEYWARD,
 LORETTA BRISBANE, GAIL DAVIS, WILLIAM
 NELSON, JR., EDWARD GRANT, SR., EARTHA
 LEE ELLIOTT, WILLIAM ALBERT BRISBANE,
 BETTY MANIGAULT, STEVEN CHRISTOPHER
 BROWN and ROSETTA BRISBANE all of whom
 are deceased, and any or all other persons or legal
 entities, known and unknown, claiming any right, title,
 interest or estate in or lien upon the parcel of real
 estate described in the Lis Pendens and Complaint
 herein filed,

Defendants.

It appearing from the Affidavit of John J. Dodds, III, one (1) of the attorneys for the
 Plaintiffs, as well as the Affidavit of Publication filed herein, that the Defendants, Jeanie Geathers, Grace
 Ettison, Dannon Jordan, Ronald Williams, William Drayton, Joseph Hopkins, Jr., Alethia Gillian, Samuel

Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Ernestine Brown, Carolyn Logan, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Allen Mitchell, III, Sarah Mitchell, Arthur Albert Mitchell, Arthur Mitchell, Jr., Rodney Nelson, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Robert Heyward, Katina Heyward, Karvin Dotson, Kermit Brisbane, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott and Rosetta, as well as the Defendants, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America; being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widow, widower, assign, administrator, executor, creditor, successor, issue and/or alienee of the Defendants, James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James Leroy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane, all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, were duly served with a certified copy of the Civil Action Cover Sheet, Certificate of Exemption, Summons, Lis Pendens, Notice and Complaint more than thirty (30) days ago.

AND it further appearing that no Answer, Notice of Appearance or other pleadings have been served upon the attorneys for the Plaintiff, or filed in this case, by or on behalf of the said Defendants, Jeanie Geathers, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Joseph Hopkins, Jr., Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Ernestine Brown, Carolyn Logan, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Allen Mitchell, III, Sarah Mitchell, Arthur Albert Mitchell, Arthur Mitchell, Jr., Rodney Nelson, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Robert Heyward, Katina Heyward, Karvin Dotson, Kermit Brisbane,

Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott and Rosetta B. Brown, as well as the Defendants, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widow, widower, assign, administrator, executor, creditor, successor, issue and/or alienee of the Defendants, James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James Leroy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane, all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, and that the said Defendants are now in default.

NOW, THEREFORE, default as to the Defendants, Jeanie Geathers, Grace Ettison, Dannon Jordan, Ronald Williams, William Drayton, Joseph Hopkins, Jr., Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Ernestine Brown, Carolyn Logan, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Allen Mitchell, III, Sarah Mitchell, Arthur Albert Mitchell, Arthur Mitchell, Jr., Rodney Nelson, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Robert Heyward, Katina Heyward, Karvin Dotson, Kermit Brisbane, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott and Rosetta B. Brown, as well as the Defendants, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widow, widower, assign, administrator, executor, creditor, successor, issue and/or alienee of the Defendants, James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura

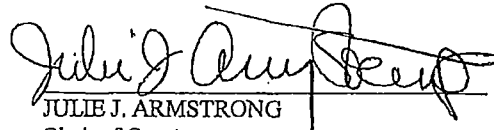
Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James Leroy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane, all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, is hereby entered in the calender (file book) pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure.

Charleston, South Carolina

September 24, 2015.

I SO MOVE:


JOHN J. DODDS, III
Attorney for Plaintiffs


JULIE J. ARMSTRONG
Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU
SIMMONS, RUTH NELSON GADSDEN,
ROBERT BLAKE BRISBANE AND MILDRED
CHAPMAN)

Plaintiffs)

vs.)

ALBERTA BRISBANE, ET AL)

Defendants)

ASSOCIATED DEVELOPERS, INC.)

Intervenor/Defendant)

ORDER GRANTING MOTION
FOR INTERVENTION

2016 APR 27 PM 2:04
CLERK OF COURT
J. ARMSTRONG

FILED

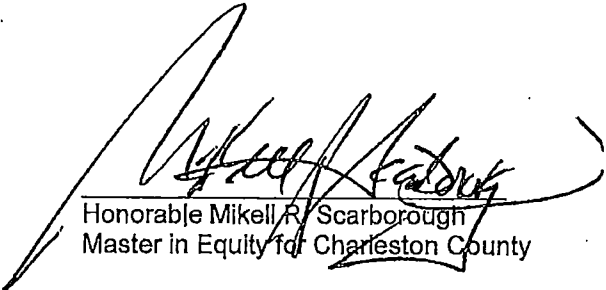
This matter comes before the Court upon a Motion for Intervention filed by Associated Developers, Inc., pursuant to Rule 24 of the South Carolina Rules of Civil Procedure. The Complaint in this action seeks to clear title to certain real property located in Charleston County, determine the owners of the subject property, and effect a partition of the property by private sale to the Intervenor, Associated Developers, Inc.

The South Carolina Uniform Declaratory Judgments Act (Section 15-53-10, et seq.) is the proper procedural statute affording the relief requested in the Complaint. Section 15-53-80 of the Act mandates that all parties who may have a claim or interest which would be effected by the declaration shall be made parties to the proceeding. Associated Developers clearly has a claim and interest which will be affected by the outcome of these proceedings.

The Motion to Intervene is unopposed by all other counsel of record, and I therefore find that Associated Developers, Inc., is entitled to intervention as a matter of right.

ORDERED that Associated Developers, Inc., be, and it is hereby, made a party to this action pursuant to Rule 24(a) of the South Carolina Rules of Civil Procedure; it is further

AND IT IS SO ORDERED!



Honorable Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

March 10, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-939CromwellBrisbane

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Intervenor Nordic Group, LLC's
Motion to Intervene is GRANTED. Rule 24(a)(2) SCRCP

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property. If the judgment should be recorded, if there is no judgment information, indicate N/A in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Entered (List amount(s) below)
		\$
		\$
		\$

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

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

Circuit Court Judge

3062

Judge Code

Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP. 10 - 939

Cromwell

Brisbane

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

The court approves the contract of Associated Developers for \$560,000 as Amended

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

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

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

Circuit Court Judge

3062

Judge Code

Date

5/3/16

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-939

Cromwell

Brisbane

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

Nordic Group, LLC's Motion to Reconsider is respectfully denied.

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

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

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

Circuit Court Judge

3062

Judge Code

Date

5/7/16

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

VIVIAN B. CROMWELL, et al.,

Plaintiffs,

vs.

ALBERTHA BRISBANE, et al.,

Defendants.

ASSOCIATED DEVELOPERS, INC. AND
NORDIC GROUP, LLC,

Intervenors.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

MASTER'S DECREE
(Clearing Title to Real Property and
Approving Partition By Sale)

2016 JUN 16 PM 4:18
FILED
JULIE J. ARISTOTLE
CLERK OF COURT
BY

This action came to be heard by me on December 17, 2015 and May 3, 2016 at Charleston, South Carolina pursuant to a Consent Order of Reference filed herein on September 25, 2015, which said Order authorized the Court to render a Final Decree. Plaintiffs seek a judicial declaration as to who are the owners of two (2) unimproved tracts of land measuring approximately 7.0 acres located in Charleston County, South Carolina (collectively "Subject Property") as the lawful heirs of the late James Brisbane, deceased, a judicial declaration forever quieting title to the Subject Property in the names of the said lawful heirs free and clear of any adverse claims whatsoever, and the partition by sale of the Subject Property to Associated Developers, Inc. ("Associated") which contracted to purchase the Subject Property from the Plaintiffs in August, 2014 for the sum of \$455,000.00.

Present at the December 17, 2015 hearing were the Plaintiffs, Vivian Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Blake Brisbane and Mildred Chapman, their attorney, John J. Dodds, III, Esquire, Arthur C. McFarland, Jr., Esquire, attorney for Defendant, Ernestine Brown, the Defendants, Mary Ann Brisbane, Harvey Brisbane, Jr., Samuel Brown and Germaine Brisbane, all appearing pro se, John Elliot, the realtor listing the Subject Property, Chris Phillips, Jr., of Associated Developers, Inc., and J. Chris Lanning, Esquire, attorney for Nordic Group, LLC ("Nordic"), which presented an unsigned offer to purchase the Subject Property for the sum of \$560,000.00. After receiving testimony and exhibits

concerning who are the lawful heirs of the late James Brisbane, deceased, the Court scheduled a second hearing on May 3, 2016 to determine the value of the Subject Property.

After Associated and Nordic were both allowed to intervene in this action, a second hearing was held May 3, 2016. Present at the May 3, 2016 hearing were the Plaintiffs, Attorney Dodds, Attorney McFarland, Attorney Lanning, Attorney John E. Romanosky, Jr. on behalf of Associated, Chris Phillips, Jr., the Defendants, Clarence Brisbane, Jr., Evelyn Brisbane Palmer, Mary Ann Brisbane, Harvey Brisbane, Jr., Samuel Brown and Germaine Brown, all appearing pro se.

After careful consideration of the testimony and evidence presented, the Court finds and concludes as follows:

ONE: That the Summons, Lis Pendens, Notice and Complaint were filed in the Office of the Clerk of Court for Charleston County on February 13, 2015.

TWO: That by Order filed herein on June 29, 2015, Walter R. Kaufmann, Esquire, was appointed as Guardian Ad Litem for the party Defendants identified as "John Doe", adults, and "Richard Roe", infants, insane persons, incompetents, persons in the military service of The United States of America, and any other unknown persons or entities claiming any interest in the Subject Property. The Guardian has filed an Answer requesting that the Court grant the relief sought by Plaintiffs.

THREE: That pursuant to the Order of Publication filed herein on June 23, 2015, service of process upon the above named Defendants identified as "John Doe", adults, and "Richard Roe", infants, insane persons, incompetents, persons in the military service of The United States of America, and any other persons or entities, known and unknown, claiming any interest in the Subject Property, as well as other named Defendants as set forth in the said Order, was authorized via publication of the Summons and Notice of Filing once per week for three (3) consecutive weeks in The Charleston City Paper, a newspaper of general circulation in Charleston County, South Carolina, where the subject real property is located.

FOUR: That in accordance with the above Order of Publication, the Summons and Notice of Filing were published once per week for three (3) consecutive weeks in The Charleston City Paper, as evidenced

by the Affidavit of Publication filed herein on July 30, 2015. Other than the named parties, no persons or entities claiming any interest in the subject real property have filed any responsible pleadings or otherwise come forward in this matter to claim an interest in the Subject Property.

FIVE: That all Defendants in this matter were properly served with a certified copy of the Summons, Lis Pendens, Notice and Complaint, as evidenced by the Affidavits of Service, Acknowledgments of Service, Certificates of Service and/or Affidavit of Publication filed herein.

SIX: That pursuant to the Consent Order of Reference filed on September 25, 2015, the within action was referred to me as Master-In-Equity for purposes of having a hearing and making findings of fact and conclusions of law and to render a final decree with direct appeal to the South Carolina Court of Appeals.

SEVEN: That all parties were duly notified as to the date, time and place of both Hearings in this matter, as well as timely provided a copy of the Standing Order in Partition Actions setting forth the rights of any non-petitioning joint tenants or tenants in common pursuant to Section 15-61-25, Code of Laws of South Carolina, 1976, as amended, all as evidenced by the Notice of Hearing and Certificate of Mailing filed herein.

EIGHT: That none of the Defendants herein are in the military service of the United States of America and, therefore, the "Soldiers' and Sailors' Civil Relief Act of 1940", as amended, has no application in this action.

NINE: That the parcels of real estate which is the subject matter of this action is situated in the County of Charleston, State of South Carolina, and is more fully described as follows:

ALL that piece, parcel, and tract of land situate, lying and being on James Island, Charleston County, and state aforesaid, measuring and containing five and 28/100 acres more or less, and is fully shown on plat thereof made by Simons and Mayrant Company dated March 5, 1908 same being a portion of the tract of land marked division three (3) on a plat made by Frederick J. Smith, surveyor, dated July 1879 and recorded in the RMC Office for Charleston County in Plat Book C, Page 11. Butting and Bounding North on lands of Stephen Forrest; East on lands of Edward Drayton and AME Church; South on public road, West on lands about to be conveyed by William B. Holmes to Robert Simmons and Nellie Gibbs. Said tract

marked division three (3) on plat of Frederick J. Smith, surveyor, having been conveyed by F. F. Whilden to Martha E. Holmes by deed dated July 29, 1879 and re-recorded in the RMC Office for Charleston County in Book U17, Page 129.

TMS # 340-01-00-050 (3.4 acres, more or less)
TMS # 340-01-00-011 (3.6 acres, more or less)

Note: TMS #'s 340-01-00-050 and 340-01-00-011 are shown as Lot B on a Plat by J. O'Hear Sanders, Jr., surveyor, dated February 14, 1957, entitled "Plat showing a tract of land on James Island. Portion with corners lettered A, B, C, D and A containing 4 acres", which Plat is attached to the Title to Real Estate recorded in the RMC Office for Charleston County on October 27, 1959, in Book S-68, Page 585.

Also: TMS #'s 340-01-00-011 and 340-01-00-050 are further depicted on "A Topical Survey Plan of Parcel 340-01-00-011 and 340-01-00-050 1912 Central Park Road Owned By James Brisbane Estate Located In The Town Of James Island Charleston County, South Carolina" by SWA Surveying LLC, dated October 29, 2014, a copy of which is attached hereto as Exhibit "A" and incorporated herein by express reference.

The above real property referred to herein collectively as the "Subject Property".

TEN: That the Subject Property is the same property owned by the late James Brisbane, deceased, who acquired the property by deed, dated March, 1908, and recorded in the RMC Office for Charleston County, South Carolina in Book Y-24, at Page 194. The said James Brisbane later died intestate on or about 1942 while seized and possessed in fee simple title to the Subject Property and leaving as his sole heirs and distributees-at-law his eight (8) children, James Brisbane, Jr., Rosa Robinson, Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane, Susan Brisbane Richardson, Wilhemenia Young and Roxanna Pinckney.

ELEVEN: James Brisbane, Jr. died intestate on or about 1958 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Ida Brisbane, and six (6) children, James Brisbane, III, Jimmy Brisbane, Albertha Graham, Emily Brown, Harvey Brisbane, and Vivian Cromwell. The said Ida Brown died on or about 1975 leaving as her sole heirs and distributees-at-law her six (6) children.

TWELVE: Rosa Robinson died intestate on or about 1955 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her

siblings, James Brisbane, Jr., Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane, Susan Brisbane Richardson, Wilhemenia Young, and Roxanna Pinckney.

THIRTEEN: Henrietta Brisbane Geathers died intestate on or about 1975 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her three (3) children, Laura Geathers, Geneva Grant, and Vida Heyward.

FOURTEEN: Estelle Brisbane Nelson died intestate in 1996 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her five (5) children, Clarence Brisbane, William Nelson, Frederica Coleman, Ruth Gadsden, and Dorothy Boykins.

FIFTEEN: Swackie Brisbane died intestate in 1987 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his five (5) children, Swackie Brisbane, Jr., Carlotta Bickham, George Brisbane, Robert Blake Brisbane, and Elias Brisbane.

SIXTEEN: Susan Brisbane Richardson died intestate in 1968 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Janie Simmons and Ruby Mitchell.

SEVENTEEN: Wilhemenia Young died intestate in 1985 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her siblings, James Brisbane, Jr., Rosa Robinson, Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane, Susan Brisbane Richardson, and Roxanna Pinckney.

EIGHTEEN: Roxanna Pinckney died intestate in 1967 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her siblings, James Brisbane, Jr., Rosa Robinson, Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane Richardson, and Wilhemenia Young.



NINETEEN: James Brisbane, III died intestate in 1991 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his five (5) children, Betty B. Manigault, Leroy Brisbane, Rosetta Brisbane, Francena B. Lawton, and James B. Watson.

TWENTY: Jimmy Brisbane died intestate on or about 1953 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his four (4) children, Daniel Simmons, Horace Robinson, Helen Davis, and Elizabeth Williams.

TWENTY-ONE: Albertha Graham died intestate in 1994 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her three (3) children, William Albert Brisbane, Joseph E. Hopkins, and Jérôme Hopkins.

TWENTY-TWO: Emily Brown died intestate in 1978 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her husband, Steve Brown, and eleven (11) children, Steve Brown, Jr., Steve Christopher Brown, Alethia Gillian, Roger Brown, James Leroy Brown, Thomas Brown, Harold Brown, Samuel Brown, Jeanette Brown, Wilhemenia Frasier, and Arthur Brown. Steve Brown died in 1978 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his eleven (11) children.

TWENTY-THREE: Harvey Brisbane died intestate in 1973 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Mary Ann Brisbane, and two (2) children, Harvey Brisbane, Jr., and Georgetta Brisbane.

TWENTY-FOUR: Daniel Simmons died intestate in 1996 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Rosalee Simmons, and three (3) children, Laverne Hamilton, Minerva Gadsden, and Daniel Simmons, Jr.

TWENTY-FIVE: Horace Robinson died intestate in 1975 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Mabel Robinson, and seven (7) children, Mary Moseley, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson, Dora Robinson, and Julian Robinson. Mabel Robinson died in 1995, while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her seven (7) children.

TWENTY-SIX: Elizabeth Williams died intestate in 1996 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her eight (8) children, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, Patricia Williams, and William Drayton.

TWENTY-SEVEN: Joseph E. Hopkins died intestate in 1998 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Ruth Hopkins, and his two (2) children, Joseph Hopkins, Jr., and Tracy Hopkins.

TWENTY-EIGHT: Steve Brown, Jr. died intestate in 2000 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Mary Brown, and two (2) children, Antonio Brown, and Dwayne Brown. Mary Brown died intestate in 2002 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Antonio Brown, and Dwayne Brown.

TWENTY-NINE: Roger Brown died intestate in 1997 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his three (3) children, Keith Brown, Kenny Brown, and Dexter Brown.

THIRTY: James Leroy Brown died intestate in 2001 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Laura Marie Brown, and three (3) children, Starcia Stewart, James L. Brown, Jr., and Glen Brown.

THIRTY-ONE: Harold Brown died testate in 1999 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heir and distributee-at-law his wife, Ernestine Brown.

THIRTY-TWO: Julian Robinson died intestate in 1995 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his siblings, Mary Moseley, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson, and Dora Robinson.

THIRTY-THREE: Ronald Williams died intestate in 2002 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his four (4) children, Jimez Williams, Ronell Williams, Nashem Williams, and Raliem Williams.

THIRTY-FOUR: William Drayton died intestate in 1991 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his two (2) children, William Drayton, and Keith Drayton.

THIRTY-FIVE: Georgetta Brisbane died intestate in 2000 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heir and distributee-at-law her mother, Mary Ann Brisbane.

THIRTY-SIX: Laura Geathers died intestate after 1977 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her three (3) children, Albertha Brisbane, Jeanie Geathers, and Henrietta Bolds.

THIRTY-SEVEN: Geneva Grant died intestate in 1994 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her husband, Edward Grant, Sr., and seven (7) children, Carolyn Logan, Mary Jane Brown, Muriel Grant, Edward Grant, Jr., Gilbert Grant, Perry Grant, and Junata O'Kieffe.


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THIRTY-EIGHT: Viola Heyward died intestate in 1977 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her husband, Theodore Heyward, and fifteen (15) children, Helen Brown Allen, Albertha Lee Richardson, Ertha Lee Elliot, Martha Lions, Louise Heyward, Margie Marine, Gertha Forrest, Gloria Gibbs, Susan Prioleau Simmons, Christopher Gathers, John D. Heyward, Theodore Heyward, Jr., Mary H. Mitchell, Herbert Heyward, and James Heyward. Theodore Heyward died intestate in 1996 while having an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his fifteen (15) children.

THIRTY-NINE: Henrietta Bolds died intestate in 1985 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her four (4) children, Danny Bolds, Raymond Bolds, Michael Bolds and David Bolds.

FORTY: Theodore Heyward, Jr., died intestate in 1981 while having an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his siblings, Helen Brown Allen, Albertha Lee Richardson, Ertha Lee Elliot, Martha Lions, Louise Heyward, Margie Marine, Gertha Forrest, Gloria Gibbs, Susan Prioleau Simmons, Christopher Gathers, John D. Heyward, Mary H. Mitchell, Herbert Heyward, and James Heyward.

FORTY-ONE: Mary H. Mitchell died intestate in 1990 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her husband, Allen Mitchell, Jr., and three (3) children, Tiffany Daley, Michael Mitchell, and Allen Mitchell, III.

FORTY-TWO: James Heyward died intestate on or about 1985 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his siblings, Helen Brown Allen, Albertha Lee Richardson, Ertha Lee Elliot, Martha Lions, Louise Heyward,



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Margie Marine, Gertha Forrest, Gloria Gibbs, Susan Prioleau Simmons, Christopher Gathers, John D. Heyward, Mary H. Mitchell, and Herbert Heyward.

FORTY-THREE: Clarence Brisbane died intestate in 2002 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Lavinia Brisbane, and eight (8) children, Clarence Brisbane, Jr., Loretta Brisbane, Betty Brisbane, Fred Brisbane, Gail Davis, Evelyn Palmer, Mary Brisbane, and Carl Brisbane. Lavinia Brisbane died intestate in 2004 while having an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her eight (8) children.

FORTY-FOUR: William Nelson died intestate in 2003 while having an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his eight (8) children, Barbara Johnson, William Nelson, Jr., Diane B. Samuel, Caffie Nelson, Thelma E. Nelson, Carolyn Singleton, Lamont Q. Nelson, and Rodney A. Nelson.

FORTY-FIVE: Swackie Brisbane, Jr., died intestate in 1987 while having an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his two (2) children, Maxine Brisbane and Evan Brisbane.

FORTY-SIX: Janie Simmons died intestate in 1975 while having an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her husband, Jesse Simmons, and four (4) children, Mildred Chapman, Jesse Simmons, Jr., Odell White, and Christine Hatfield. Jesse Simmons died intestate in 1995 while having an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law his four (4) children, Mildred Chapman, Jesse Simmons, Jr., Odell White, and Christine Hatfield.

FORTY-SEVEN: Ruby Mitchell died intestate in 1996 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her six (6) children,

Sarah Mitchell, Suzanne Mitchell, Olethia Gadsden, Annette Harley, Arthur Albert Mitchell, Jr., and Benjamin Mitchell.

FORTY-EIGHT: Wilhemenia Young died intestate in 1985 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her siblings, James Brisbane, Jr., Rosa Robinson, Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane, Susan Brisbane Richardson, and Roxanna Pinckney.

FORTY-NINE: Roxanna Pinckney died intestate in 1967 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her siblings, James Brisbane, Jr., Rosa Robinson, Henrietta Brisbane Geathers, Estelle Brisbane Nelson, Swackie Brisbane, Susan Brisbane Richardson, and Wilhemenia Young.

FIFTY: Betty Manigault died intestate on September 12, 2014 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her five (5) children, Barbara Roper, Chadwick Manigault, Corey Manigault, Alethia Reed, and Herbert Manigault.

FIFTY-ONE: Rosetta Brisbane died intestate sometime after February, 2005 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Rosetta Brisbane Brown and William A. Brisbane.

FIFTY-TWO: William Albert Brisbane died intestate on March 2, 2009 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Nancy Brisbane, and five (5) children, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, and Jametta Brisbane.

FIFTY-THREE: Ruth Hopkins died intestate on November 13, 2009 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her three (3) children, Jerome Hopkins, Joseph Hopkins, Jr., and Tracy Hopkins.

FIFTY-FOUR: Steve Christopher Brown died intestate on November 24, 2013 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his two (2) children, Ronald Washington, and Sandra Michelle Lawrence.

FIFTY-FIVE: Ronald Washington died intestate in 2015 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his five (5) children, Ronald Washington, Jr., LaTanya Gathers, Nichole Washington, Conzales Davis, and Laquan Murphy.

FIFTY-SIX: Dwayne Brown died intestate February, 2005 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heir and distributee-at-law his brother, Antonio Brown.

FIFTY-SEVEN: Thomas Brown died intestate after while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heir and distributee-at-law his wife, Lottie Brown.

FIFTY-EIGHT: Wilhemenia Frasier died intestate while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her six (6) children, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, and Kelvin Frasier.

FIFTY-NINE: Jeannie Geathers died intestate on March 15, 2014 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her five (5) children, Jennet Geathers, Carolyn Pinckney, Sherry Geathers, Vernon Geathers, and Beatrice Geathers.

SIXTY: Edward Grant, Sr., died intestate in 2006 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his seven (7) children, Carolyn Logan, Mary Jane Brown, Muriel Grant, Edward Grant, Jr., Gilbert Grant, and Juanita O'Kieefe.



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SIXTY-ONE: Helen Brown Allen died intestate in 2011 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her siblings; Albertha Lee Richardson; Ertha Lee Elliot, Martha Lions, Louise Heyward, Margie Marine, Gertha Forrest, Gloria Gibbs, Susan Prioleau Simmons, Christopher Gathers, John D. Heyward and Herbert Heyward..

SIXTY-TWO: Albertha Lee Richardson died intestate in 2012 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her three (3) children, Maggie Richardson, Delores Richardson, and William Richardson.

SIXTY-THREE: Ertha Lee Elliot died intestate in 2013 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her eight (8) children, Cynthia Heyward, Jackie Elliot, Patricia Elliot, Joseph Heyward, Rodney Elliot, Debra Elliot, Stephanie Elliot, and Timothy Darryl Elliot.

SIXTY-FOUR: Timothy Darryl Elliot died intestate in 2014 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his three (3) children, Janae Elliot, Porsha Elliot, and Davon Elliot.

SIXTY-FIVE: Louise Heyward died intestate on September 24, 2012 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Robert Heyward and Katina Heyward.

SIXTY-SIX: Herbert Heyward died intestate on September 8, 2012 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his two (2) children, Valerie Heyward and Karvin Dotson.

SIXTY-SEVEN: Loretta Brisbane died intestate in March of 2012 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Youlanda Brisbane, and Kermit Brisbane.



SIXTY-EIGHT: Gail Davis died intestate on September 5, 2012 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her two (2) children, Shoneatha Brisbane, and Germaine Brisbane.

SIXTY-NINE: William Nelson, Jr., died intestate in April of 2011 while seized and possessed of an undivided interest in the Subject Property and leaving as his sole heirs and distributees-at-law his wife, Peggy Nelson and four (4) children, Zeldā Williams, Erikara Nelson, Samuel Nelson, and Elizabeth Richardson.

SEVENTY: Carlotta Bickham died intestate on June 19, 2014 while seized and possessed of an undivided interest in the Subject Property and leaving as her sole heirs and distributees-at-law her five (5) children, Lynette Bickham, Eddie Bickham, Jewel Bickham, Raylene Powell, and Janet Bickham.

SEVENTY-ONE: The lawful heirs of the late James Brisbane, deceased, and lawful owners of the Subject Property, and their respective undivided interest in the Subject Property, are as set forth in the attached Exhibit "B", which said Exhibit "B" is incorporated herein by express reference as though fully set forth herein.

SEVENTY-TWO: On August 11, 2014, Plaintiffs entered into a written Contract to Purchase wherein they agreed to sell the Subject Property to Associated for the sum of \$455,000.00. A written First Amendment To Contract To Purchase was entered into by and between Plaintiffs and Associated on January 5, 2015.

SEVENTY-THREE: The Subject Property is not capable of being partitioned in kind given the size of the Subject Property and the number of persons having an undivided ownership interest therein as set forth in Exhibit "B". It is in the best interests of all the Owners that a partition by sale of the Subject Property occur.

SEVENTY-FOUR: At the Hearing held on December 17, 2015, an unsigned offer to purchase the Subject Property was presented by Nordic at a purchase price of \$560,000.00, contingent upon and

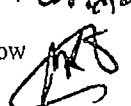
subject to a 15 day right of inspection and a 15 day period to close. As a result of the offer from Nordic, Associated filed a Motion to Intervene as a party defendant in this action, which motion was granted by the Court on March 2, 2016.

SEVENTY-FIVE: Nordic filed a Motion to Intervene on March 24, 2016, which motion was granted by the Court on April 25, 2016. As a result of the competing offers to purchase the Subject Property, a hearing was scheduled for May 3, 2016, to take testimony and to determine the fair market value of the Subject Property as of the date of the initial Hearing on December 17, 2015.

SEVENTY-SIX: Prior to taking testimony at the valuation hearing on May 3, 2016, counsel for all parties to the litigation stipulated that the fair market value of the Subject Property was \$560,000.00 as of December 17, 2015. This value is consistent with an appraisal previously received by the Court. Associated then presented to the Court a signed Second Amendment to its original contract of August 11, 2014, removing all closing contingencies, raising its offer to purchase to the agreed fair market value of \$560,000.00, and agreeing to close the purchase within 30 days of the date of the issuance of a Final Order by the Court. Counsel for Nordic then stated to the Court that he had authority from his client to raise its offer to purchase by as much as \$100,000.00, but that there was no written offer from Nordic to present at that time.

SEVENTY-SEVEN: The Court solicited testimony to help determine which offer was in the best interest of the Brisbane heirs and owners of the Subject Property. Mr. Chris Phillips, Jr., a member of Associated, offered testimony on behalf of Associated and its efforts to secure the Subject Property over the past 24 months. He testified that Associated has spent more than \$35,000.00 to obtain a boundary survey, topographic survey, tree survey, wetlands survey, and jurisdictional wetland determination of the U. S. Army Corps of Engineers. Thereafter, after preliminary land planning and conceptional planning with the City of Charleston, James Island Public Service District, and South Carolina Department of Transportation, Associated successfully obtained annexation of the property into the City

of Charleston and favorable zoning for single family development. Of significant importance to the Plaintiffs and the Brisbane family heirs is a Written Agreement, dated October 14, 2015, in which Associated and the Plaintiffs have agreed to the preservation of numerous family grave-sites on the Subject Property at the sole expense of Associated and with perpetual access afforded to the Brisbane heirs and their families.

SEVENTY-EIGHT: Other than its counsel, no representatives or officers of Nordic appeared at the valuation hearing. Counsel for Nordic was asked whether his client was willing to remove all contingencies and close at a higher price than \$560,000.00, but he was unable to make such a ^{written} commitment on behalf of Nordic at this time. Further, Nordic's counsel indicated that he did not know whether his client had actually visited or inspected the property. 

SEVENTY-NINE: The Court finds that Associated has acted in good faith under its agreement with the Plaintiffs in the original contract, the subsequent amendments, and the Written Agreement to preserve, protect, and maintain the Brisbane family grave sites located upon the Subject Property. Associated has spent substantial sums of money in reliance upon its agreement with the Plaintiffs, and has agreed to purchase the property at its current fair market value. Although counsel for Nordic indicated that his client would be willing to negotiate a higher price, no such binding offer or agreement was presented on Nordic's behalf. It appears to the Court that the contract between the Plaintiffs and Associated is more likely to close at this time. After considering all of the testimony, evidences, and circumstances surrounding both contracts, the Court finds that Associated's contract, as amended at the higher purchase price of \$560,000.00, should be approved. 

EIGHTY: That over the years, certain of the parties have paid real property taxes levied against the Subject Property, while other parties have paid no taxes whatsoever. Attached as Exhibit "C" and incorporated herein by express reference is an itemization of taxes paid and by whom paid. The real property taxes are a common expense of the Subject Property and the parties who've paid the real 

property taxes as set forth in Exhibit "C" are entitled to be reimbursed from the sale proceeds prior to the distribution of any funds to any of the Owners set forth in Exhibit "B".

EIGHTY-ONE: That in accordance with Section 15-61-110, Code of Laws of South Carolina, 1976, as amended, the Court may fix attorney fees in all partition proceedings and, as may be equitable, assess such fees against any or all of the parties in interest. Further, Rule 71(d)(3), SCRCP, provides that attorney fees and costs may be awarded the attorney for any party(s) from any common fund generated by the partition to the extent that attorney's efforts benefitted all parties; otherwise his fee shall be paid by the party(s) he represents or from the proceeds of sale of the common property or may equitably assess the costs against shares of the party. The Court specifically finds that Plaintiffs' counsel has been the "driving force" in this action and that his considerable efforts have clearly benefitted all parties. Plaintiffs' counsel has expended 47.5 hours prosecuting this action and has incurred costs totaling \$1,796.36. The amount of time expended by Plaintiffs' counsel is consistent with the services which have been rendered and the hourly rate is reasonable and consistent with the hourly rate charged by other attorneys performing similar services. It is just and proper that Plaintiffs' counsel be paid the sum of \$9,500.00, less \$5,000.00 advanced by Associated, together with costs in the total amount of \$1,796.36, from the sale proceeds prior to the distribution of any funds to any of the Owners set forth in Exhibit "B", saving and excepting funds to reimburse certain parties for real property taxes paid as set forth in Exhibit "C".

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

ONE: That fee simple title to the Subject Property shall be, and is hereby, declared to be in the names of those persons set forth in the attached Exhibit "B", which said persons have an undivided interest in the Subject Property in the percentage set forth in Exhibit "B", free and clear of all liens and encumbrances whatsoever, saving and excepting outstanding real property taxes;



TWO: That the Contract from Associated, as amended, to purchase the Subject Property for the sum of \$560,000.00 is hereby approved. Upon payment of the full purchase price of \$560,000.00, this Court shall issue a Master's Deed to Associated conveying the Subject Property. Any judgment or other lien or encumbrance against any of the Owners of the Subject Property as set forth in the attached Exhibit "B" shall not attach to the title to the Subject Property, but shall attach only to that Owner's share of the net sale proceeds;

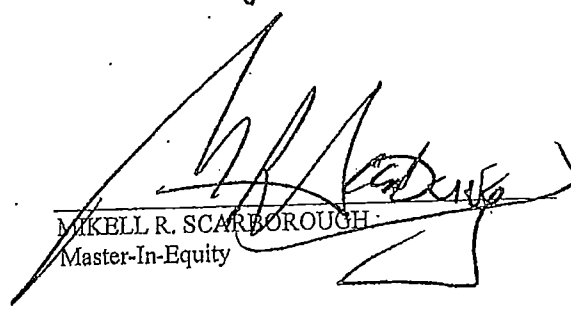
THREE: That the parties who've paid the real property taxes levied against the Subject Property as set forth in Exhibit "C" attached hereto shall be reimbursed from the sale proceeds prior to the distribution of any funds to any of the Owners set forth in Exhibit "B";

FOUR: That Plaintiffs' counsel, John J. Dodds, III, shall be paid the sum of \$6,296.36 from the sale proceeds prior to the distribution of any funds to any of the Owners set forth in Exhibit "B"; and

FIVE: The Court shall reserve jurisdiction to issue such other Orders as may be necessary to effectuate the terms hereof.

AND IT IS SO ORDERED this _____ day of ~~May~~ 2016, at Charleston, South Carolina.

May 6/14, 2016.
Charleston, SC.


MIKELL R. SCARBOROUGH
Master-In-Equity

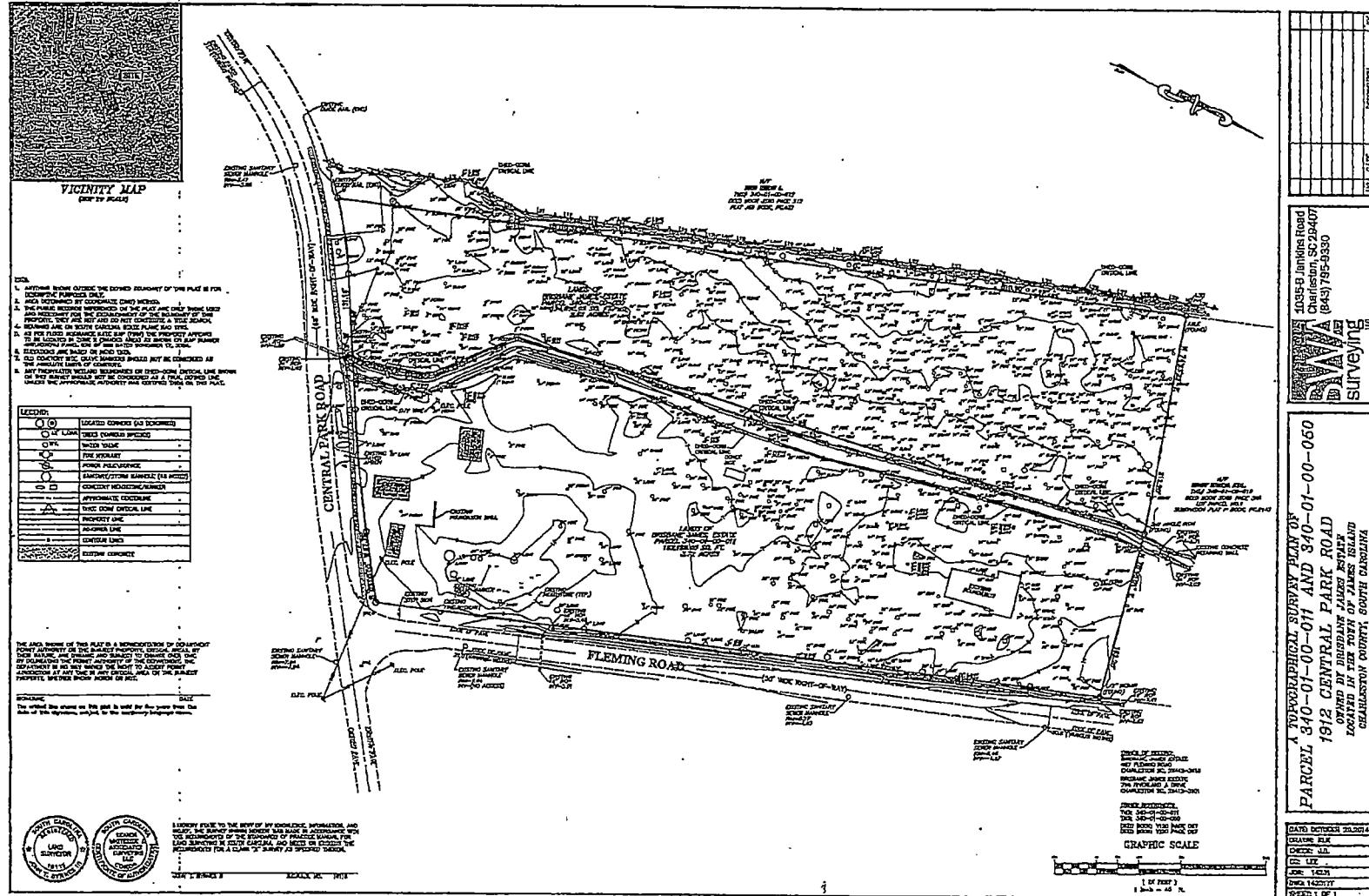


EXHIBIT "B"

Albertha Brisbane	0.0190476
Leroy Brisbane	0.0047619
Francena B. Lawton	0.0047619
James B. Watson	0.0047619
Helen Davis	0.0059523
Rosalee Simmons	0.0029761
Laverne Hamilton	0.000992
Minerva Gadsden	0.000992
Daniel Simmons, Jr.	0.000992
Mary Mosely	0.000992
Horace Robinson, Jr.	0.000992
James Robinson	0.000992
Henry Robinson	0.000992
Avis Robinson	0.000992
Dora Robinson-Johnson	0.000992
Jamie Williams	0.000744
Desiree Williams	0.000744
Mark Williams	0.000744
Grace Ettison	0.000744
Dannion Jordan	0.000744
William Drayton	0.000372
Keith Drayton	0.000372
Jerome Hopkins	0.0079365
Joseph Hopkins, Jr.	0.0019841
Tracy Hopkins	0.0019841

Alethia Gillian	0.0021645
Samuel Brown	0.0021645
Jeannette Brown	0.0021645
Arthur Brown	0.0021645
Antonio Brown	0.0021644
Keith Brown	0.0007215
Kenny Brown	0.0007215
Dexter Brown	0.0007215
Laura Marie Brown	0.0010822
Starcia Stewart	0.0003607
James L. Brown, Jr.	0.0003607
Glen Brown	0.0003607
Ernestine Brown	0.0021645
Mary Ann Brisbane	0.015873
Harvey Brisbane, Jr.	0.0079365
Danny Bolds	0.0047619
Raymond Bolds	0.0047619
Michael Bolds	0.0047619
David Bolds	0.0047619
Carolyn Logan	0.0081632
Mary Jane Brown	0.0081632
Muriel Grant	0.0081632
Edward Grant, Jr.	0.0081632
Gilbert Grant	0.0081632
Perry Grant	0.0081632
Juanita O'Kieffe	0.0081632

Martha Lions	0.0043956
Margie Marine	0.0043956
Gurtha Forrest	0.0043956
Gloria Gibbs	0.0043956
Christopher Gathers	0.0043956
John D. Heyward	0.0043956
Allen Mitchell, Jr.	0.0021978
Tiffany N. Daley	0.0007326
Michael S. Mitchell	0.0007326
Allen Mitchell, III	0.0007326
Frederica Coleman	0.0514285
Dorothy Boykin	0.0514285
Clarence Brisbane, Jr.	0.0064285
Betty Brisbane	0.0064285
Fred Brisbane	0.0064285
Evelyn Palmer	0.0064285
Mary Brisbane	0.0064285
Carl Brisbane	0.0064285
George Brisbane	0.0514285
Elias Brisbane	0.0514285
Maxine Brisbane	0.0257142
Evan Brisbane	0.0257142
Jesse Simmons, Jr.	0.0214285
Odell White	0.0214285
Christina Hartfield	0.0214285
Sarah Mitchell	0.0142857

Arthur Albert Mitchell	0.0142857
Suzanne Mitchell	0.0142857
Olethja Gadsen	0.0142857
Wanda Mitchell Harley	0.0142857
Benjamin Mitchell	0.0142857
Barbara Johnson	0.0064285
Diane B. Samuel	0.0064285
Caffie L. Nelson	0.0064285
Thelma E. Nelson	0.0064285
Carolyn Singleton	0.0064285
Lamotta Q. Nelson	0.0064285
Vivian Cromwell	0.0254639
Patricia Williams	0.000744
Jimez Williams	0.000186
Ronell Williams	0.000186
Nashem Williams	0.000186
Raliem Williams	0.000186
Rodney A. Nelson	0.0064285
Ruth Gadsden	0.0514285
Susan Prioleau Simmons	0.0043956
Robert Blake Brisbane	0.0514285
Mildred Chapman	0.0214285
Jennet Geathers	0.0038095
Carolyn Pinckney	0.0038095
Sherry Geathers	0.0038095
Vernon Geathers	0.0038095

Beatrice Geathers	0.0038095
Margie Richardson	0.0015984
Delores Richardson	0.0015984
William Richardson	0.0015984
Cynthia Heyward	0.0005994
Jackie Elliot	0.0005994
Patricia Elliot	0.0005994
Joseph Heyward	0.0005994
Rodney Elliot	0.0005994
Debra Elliot	0.0005994
Stephanie Elliot	0.0005994
Janae Elliot	0.0001998
Porsha Elliot	0.0001998
Davon Elliot	0.0001998
Robert Heyward	0.0021978
Katina Heyward	0.0021978
Valerie Heyward	0.0021978
Karvin Dotson	0.0021978
Youlanda Brisbane	0.0032142
Kermit Brisbane	0.0032142
Shoneatha Brisbane	0.0032142
Germaine Brisbane	0.0032142
Peggy Nelson	0.0032142
Zelda Williams	0.0008035
Erikara Nelson	0.0008035
Samuel Nelson	0.0008035

Elizabeth Richardson	0.0008035
Lynette Bickham	0.0102857
Eddie Bickham	0.0102857
Jewel Bickham	0.0102857
Raylene Powell	0.0102857
Janet Bickham	0.0102857
Barbara Roper	0.0009523
Chadwick Manigault	0.0009523
Corey Manigault	0.0009523
Alethia Reed	0.0009523
Herbert Manigault	0.0009523
Rosetta Brisbane Brown	0.0023809
William A. Brisbane	0.0023809
Nancy Brisbane	0.0039682
William Albert Brisbane, Jr.	0.0007936
Bernard Brisbane	0.0007936
Gary Brisbane	0.0007936
Bonnie Brisbane	0.0007936
Jametta Brisbane	0.0007936
Jerome Hopkins	0.0013227
Joseph Hopkins, Jr.	0.0013227
Tracy Hopkins	0.0013227
Sandra Michelle Lawrence	0.0010822
Elaine Washington	0.0005411
Ronald Washington, Jr.	0.0001082
LaTanya Gathers	0.0001082

Nichole Washington	0.0001082
Conzaes Davis	0.0001082
Laquan Murphy	- 0.0001082
Lottie Brown	0.0021645
Sylvia Johnson	0.0003607
Raymon Brown	0.0003607
Ronald Brown	0.0003607
Bernard Brown	0.0003607
Barry Frasier	0.0003607
Kelvin Frasier	0.0003607

Exhibit "C"

T.M.S. # 340-01-00-011

Blake Brisbane	\$25,933.27
Ruth N. Gadsden	3,890.00
Gloria Gibbs	400.00
Susan Simmons	300.00
Carlotta Bickham	800.00
Bernice Brisbane	490.00
Mildred Chapman	400.00
Margie Marine	200.00
Nancy Brisbane	80.00
Clarence Brisbane, Jr.	100.00
Mary Brisbane	100.00
Shawn Brisbane	150.00
Barbara Roper	100.00
Martha Lions	100.00
John Heyward	100.00
Patricia Elliot	100.00
Allen Mitchell, III	100.00
Angel Heyward	50.00
Albertha Brisbane	<u>50.00</u>
Total	\$33,443.27

T.M.S. # 340-01-00-050

Arthur Brown	\$ 1,600.00
Horace Robinson	1,600.00
Rosalee Simmons	1,600.00
Mary Ann Brisbane	190.00
Susan Simmons	250.00
Ruthie Gadsden	200.00
Tracey Hopkins	4,138.06
Vivian Cromwell	3,241.71
Nancy G. Brisbane	<u>3,241.71</u>
Total	\$16,061.48

RICHARDSON, JANIE SIMMONS a/k/a)
JANIE RICHARDSON BRISBANE, RUBY)
MITCHELL, JESSE SIMMONS, WILLIAM)
NELSON, RUTH HOPKINS, THOMAS BROWN,)
WILHEMENIA FRASIER, HELEN BROWN)
ALLEN, ALBERTHA LEE RICHARDSON,)
LOUISE HEYWARD, HERBERT LEE HEYWARD,)
LORETTA BRISBANE, GAIL DAVIS, WILLIAM)
NELSON, JR., EDWARD GRANT, SR., EARTHA)
LEE BLIOTT, WILLIAM ALBERT BRISBANE,)
BETTY MANIGAULT, STEVEN CHRISTOPHER)
BROWN and ROSETTA BRISBANE all of whom)
are deceased, and any or all other persons or legal)
entities, known and unknown, claiming any right, title,)
interest or estate in or lien upon the parcel of real)
estate described in the Lis Pendens and Complaint)
herein filed,)

Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their office located at 858 Lowcountry Boulevard, Suite 101, Mount Pleasant, South Carolina 29464, within thirty (30) days after service hereof, exclusive of the date 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.

CISA & DODDS, LLP

By: 

JOHN J. DODDS, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
P: (843) 881-6530
F: (843) 881-5433
SC Bar No.: 1707
john@cisadodds.com
ATTORNEYS FOR PLAINTIFF

Mount Pleasant, South Carolina

February 13, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-10-0939

Vivian B. Cromwell, Susan)
Prioleau Simmons, Ruth Nelson)
Gadsen, Robert Blake Brisbane)
and Mildred Chapman,)

Plaintiffs,)

v.)

Alberta Brisbane, et. al.,)

Defendants,)

Associated Developers, Inc.,)

Intervenor,)

Nordic Group, LLC.,)

Intervenor.)

**ORDER GRANTING
NORDIC GROUP, LLC'S PETITION
FOR SUPERSEDEAS**

FILED
2016 AUG -8 AM 9:59
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on July 12, 2016, for a hearing on Nordic Group, LLC's ("Nordic") motion for preliminary injunction pursuant to Rule 65(a), SCRCP. Further, Associated Developers, Inc. ("Associated") filed a motion to cancel *lis pendens* on July 12, 2016, prior to the scheduled hearing on Nordic's motion, which this Court also takes action on without a hearing. Appearing for Nordic was James A. Bruorton IV, Esquire, of Rosen, Rosen & Hagood, LLC and appearing for Associated was Michael Timbes, Esquire, of Thurmond Kirchner & Timbes, P.A.

BACKGROUND AND PROCEDURAL POSTURE

This quiet title action was filed on February 13, 2015, pursuant to the South Carolina Uniform Declaratory Judgment Act to determine the owners of certain real property described as Charleston County TMS #s 340-01-00-050 and 340-01-00-011 located on James Island, South



Carolina (the "Subject Property") as the lawful heirs of the late James Brisbane. Plaintiffs also sought the partition by sale of the Subject Property to Associated. Both Nordic and Associated were permitted to intervene in the action, each seeking approval to purchase the Subject Property.

On May 3, 2016, a final hearing in this action was held before the Charleston County Master-in-Equity, Mikell R. Scarborough, to determine the value of the Subject Property and, further, to determine whether Associated or Nordic should be approved as the purchaser. The parties stipulated and agreed the Subject Property was worth \$560,000.00. At the May 3, 2016 hearing, and by its May 5, 2016 Order, the Court approved the sale to Associated. Nordic's motion for reconsideration of this ruling was denied on June 9, 2016.

On June 14, 2016, Nordic appealed from this Court's Order approving the sale of the Subject Property to Associated. That same day, Nordic filed its motion for preliminary injunction seeking to enjoin the parties from enforcing this Court's Order during the pendency of its appeal.

At the hearing conducted on July 12, 2016, Nordic requested, and the Parties agreed, that the proper process for Nordic to seek a stay of the enforcement of this Court's May 5, 2016 Order and/or Master's Decree is through a petition for *supersedeas* pursuant to Rule 241, SCACR. Accordingly, this Court recognized Nordic's request and has converted Nordic's motion for injunctive relief to a petition for *supersedeas* pursuant to Rule 241 SCACR.

JURISDICTION AND ANALYSIS

When a matter has been appealed, the lower court retains jurisdiction only in limited circumstances. Rule 241, SCACR, provides that the lower court retains jurisdiction to (1) consider a petition for *supersedeas*; and (2) to address matters not affected by the appeal. *See* Rule 205, SCACR. The Parties agree that this Court's Order directing the sale of the Subject Property to Associated is not automatically stayed by Nordic's appeal. *See* Rule 241(b)(4) SCACR and S.C.

Code Ann. § 18-9-170; *accord Parker v. Shecut*, 349 S.C. 226, 562 S.E.2d 620 (2002). This Court has jurisdiction, however, to consider Nordic's request for a *supersedeas* pursuant to Rule 241, SCACR, while its appeal is pending.

Rule 241(c)(1) states in pertinent part:

In a case subject to an exception, any party may move for an order imposing a *supersedeas* of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a *supersedeas* is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal[.]

Rule 241 instructs this Court as to what considerations are relevant in determining whether to issue a *supersedeas*. Specifically, Rule 241(c)(2) provides:

In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

Nordic argues in support of its motion under Rule 65(a) that if Associated is permitted to close upon the contract to purchase the Subject Property while its appeal is pending, Nordic will suffer irreparable harm if it later prevails on appeal. However, when analyzing Nordic's motion under Rule 241(c), it is unnecessary to consider whether irreparable harm might result. Rather, this Court's focus, as per Rule 241(c), is on whether a *supersedeas* is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

Whether the Subject Property should be sold to Associated or instead sold to Nordic is precisely the contested issue on appeal. "A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court." *S.C. Ret. Syst. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). "[M]oot appeals result when intervening events

prevent a decision on appeal from having an immediate impact on the parties.” 15 S.C. Jur. Appeal and Error § 19 (Supp. 2014).

Accordingly, after considering the arguments of counsel and the memoranda of the parties in relation to Nordic’s request for a *supersedeas*, this Court finds it necessary to issue a stay preventing enforcement of its final Order during the pendency of the appeal in order to prevent a contested issue from becoming moot. *Tillman v. Oakes*, 398. S.C. 245, 728 S.E.2d 45 (Ct. App. 2012) (the purpose of a *supersedeas* issued under Rule 241(c) is to prevent the appealed order from being carried out or enforced during the pendency of the appeal).

As a condition of the stay, this Court finds that Nordic shall be required to post a cash bond as set forth herein. “The granting of *supersedeas* . . . under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court . . . may deem appropriate.” Rule 241(c)(3). This Court finds that in order to perfect the stay of enforcement of the Court’s Order directing the sale of the Subject Property to Associated, Nordic shall be required to post a One Hundred Thousand and 00/100 (\$100,000.00) Dollars *supersedeas* bond pursuant to Rule 241(c)(3) and S.C. Code Ann. § 18-9-170. Nordic’s *supersedeas* bond shall be posted with the Court within fifteen (15) days from the date of the filing of this Order.

In addition to the action being taken on Nordic’s motion described herein, this Court grants Associated’s motion seeking the cancellation of Nordic’s *lis pendens* filed June 14, 2016 on the Subject Property. Given the action taken on Nordic’s motion, the referenced *lis pendens* is unnecessary and is hereby cancelled and dismissed. This Order shall have no effect on the *lis pendens* filed February 13, 2015 on the same Subject Property by the Plaintiffs.



NOW, THEREFORE, after considering the materials and memoranda submitted to the Court in connection with the motions addressed herein, and the arguments made by counsel for parties at the hearing held July 12, 2016, the Court hereby Orders as follows:

1. Nordic's motion for injunctive relief is deemed converted to a Petition for *Supersedeas* under Rule 241, SCACR, and is hereby granted; and

2. The Parties and Associated, and their officers, agents, employees, attorneys, and all those in active concert or participation with the Parties and Associated to the suit *pendente lite* are stayed and/or prevented from purchasing, selling, contracting to purchase, contracting to sell, closing on any contract to sell or contract to purchase, encumbering, collateralizing, pledging,

assigning and/or disposing of the Subject Property until the conclusion of Nordic's appeal; and

AKP 3. The *lis pendens* filed on June 14, 2015 by Nordic is hereby cancelled and discharged from the real property; and

4. Nordic shall post a sufficient *supersedeas* bond in the amount of \$100,000 pursuant to Rule 241(c)(3) and S.C. Code Ann. § 18-9-170 within fifteen (15) days of this Order.

AND IT IS SO ORDERED.

Charleston, South Carolina
8/1, 2016


The Honorable Mike R. Scarborough
Charleston County Master-in-Equity

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ROBERT)
BLAKE BRISBANE and MILDRED CHAPMAN,)

Plaintiffs,)

vs.)

COMPLAINT

(Type of Case: Suit to Clear Title;
Accounting; and Approval of Contract)

Non-Jury

ALBERTHA BRISBANE, JEANIE GEATHERS,)
LEROY BRISBANE, FRANCENA B. LAWTON,)
JAMES B. WATSON, HELEN DAVIS, ROSALEE)
SIMMONS, LAVERNE HAMILTON, MINERVA)
GADSDEN, DANIEL SIMMONS, JR., MARY)
MOSELY, HORACE ROBINSON, JR., JAMES)
ROBINSON, HENRY ROBINSON, AVIS D.)
ROBINSON A/K/A AVIS ROBERTSON, DORA)
ROBINSON, JAMIE WILLIAMS, DESIREE)
WILLIAMS, MARK WILLIAMS, GRACE)
ETTISON, DANNION JORDAN, RONALD)
WILLIAMS, WILLIAM DRAYTON, KEITH)
DRAYTON, JEROME HOPKINS, JOSEPH)
HOPKINS, JR., TRACY HOPKINS,)
ALETHIA GILLIAN, SAMUEL BROWN,)
JEANNETTE BROWN, ARTHUR BROWN,)
ANTONIO BROWN, DWAYNE BROWN,)
POLLY BROWN, KEITH BROWN, KENNY)
BROWN, DEXTER BROWN, MARIE BROWN,)
STARCIA STEWART, JAMES L. BROWN, JR.,)
GLEN BROWN, ERNESTINE BROWN,)
VERONICA BROWN, CALVIN BROWN, JR.,)
HAROLD BROWN, JR., MARY ANN BRISBANE,)
HARVEY BRISBANE, JR., DANNY BOLDS,)
RAYMOND BOLDS, MICHAEL BOLDS,)
DAVID BOLDS, CAROLYN LOGAN, MARY)
JANE BROWN, MIRIAM GRANT A/K/A)
MURIEL GRANT, EDWARD GRANT, JR.,)
GILBERT GRANT, PERRY GRANT,)
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE)
MARINE, GURTHA FORREST, GLORIA GIBBS,)
CHRISTOPHER GATHERS, JOHN D. HEYWARD,)
ALLEN MITCHELL, JR., TIFFANY N. DALEY,)
MICHAEL S. MITCHELL, ALLEN MITCHELL,)
III, FREDERICA COLEMAN, DOROTHY)
BOYKIN, LAVINIA BRISBANE, CLARENCE)
BRISBANE, JR., BETTY BRISBANE, FRED)
BRISBANE, EVELYN PALMER, MARY)
BRISBANE, CARL BRISBANE, CARLOTTA)
BICKHAM, GEORGE BRISBANE, ELIAS)
BRISBANE, MAXINE BRISBANE, EVAN)
BRISBANE, JESSE SIMMONS, JR., ODELL)
WHITE, CHRISTINA HARTFIELD, SARAH)

FILED
2015 FEB 13 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

MITCHELL, ARTHUR ALBERT MITCHELL,)
 SUZANNE MITCHELL, OLETHIA GADSEN,)
 WANDA MITCHELL HARLEY, ARTHUR)
 MITCHELL, JR., BENJAMIN MITCHELL,)
 BARBARA JOHNSON, DIANE B. SAMUEL,)
 KATHY L. NELSON, THELMA E. NELSON,)
 CAROLYN SINGLETON, LAMOTTA NELSON,)
 RODNEY NELSON, JEROME HOPKINS, JOSEPH)
 HOPKINS, JR., TRACY HOPKINS, LOTTIE)
 BROWN, SYLVIA JOHNSON, RAYMON)
 BROWN, RONALD BROWN, BERNARD)
 FRASIER, BARRY FRASIER, KELVIN FRASIER,)
 MARIE RICHARDSON, DELORES)
 RICHARDSON, WILLIAM RICHARDSON,)
 ROBERT HEYWARD, KATINA HEYWARD,)
 VALORIE HEYWARD, KARVIN DOTSON,)
 YOULANDA BRISBANE, KERMIT BRISBANE,)
 MEKA BRISBANE, JERMAINE BRISBANE,)
 PEGGY NELSON, JOSEPH ELLIOTT, CYNTHIA)
 ELLIOTT, JACKIE ELLIOTT, NET ELLIOTT,)
 STEPHANIE ELLIOTT, RODNEY ELLIOTT,)
 NANCY BRISBANE, WILLIAM ALBERT)
 BRISBANE, JR., BERNARD BRISBANE, GARY)
 BRISBANE, BONNIE BRISBANE, JAMETTA)
 BRISBANE HAMILTON, ELIZABETH)
 HAMILTON and ROSETTA B. BROWN, JOHN)
 DOE, adults, and RICHARD ROE, infants, insane)
 persons, incompetents and persons in the military.)
 service of The United States of America, being)
 fictitious names designating as a class any unknown)
 person or persons who may be an heir, distributee,)
 devisee, legatee, widower, widow, assign,)
 administrator, executor, creditor, successor, personal)
 representative, issue or alienee of JAMES)
 BRISBANE, JAMES BRISBANE, JR., JAMES)
 BRISBANE, III, JIMMY BRISBANE, EMILY)
 BROWN, HARVEY BRISBANE, ROSA)
 ROBINSON, HENRIETTA BRISBANE)
 GEATHERS, LAURA GEATHERS, GENEVA)
 GRANT, VIOLA HEYWARD, HENRIETTA)
 BOLDS, ESTELLE NELSON, SWACKIE)
 BRISBANE, WILHEMENIA YOUNG, ROXANNA)
 PINCKNEY, DANIEL SIMMONS, HORACE)
 ROBINSON, ELIZABETH WILLIAMS,)
 MABEL ROBINSON, JULIAN ROBINSON,)
 PATRICIA WILLIAMS, ALBERTHA GRAHAM,)
 JOSEPH E. HOPKINS, EMILY BROWN,)
 STEVE BROWN, STEVE BROWN, JR.,)
 ROGER BROWN, JAMES LEROY BROWN,)
 HAROLD BROWN, THEODORE HEYWARD,)
 THEODORE HEYWARD, JR., MARY E.)
 MITCHELL, JAMES HEYWARD, CLARENCE)
 BRISBANE, SWACKIE BRISBANE, JR., SUSAN)
 RICHARDSON, JANIE SIMMONS a/k/a)
 JANIE RICHARDSON BRISBANE, RUBY)

MITCHELL, JESSE SIMMONS, WILLIAM)
 NELSON, RUTH HOPKINS, THOMAS BROWN,)
 WILHEMENIA FRASIER, HELEN BROWN)
 ALLEN, ALBERTHA LEE RICHARDSON,)
 LOUISE HEYWARD, HERBERT LEE HEYWARD,)
 LORETTA BRISBANE, GAIL DAVIS, WILLIAM)
 NELSON, JR., EDWARD GRANT, SR., EARTHA)
 LEE ELLIOTT, WILLIAM ALBERT BRISBANE,)
 BETTY MANIGAULT, STEVEN CHRISTOPHER)
 BROWN and ROSETTA BRISBANE all of whom)
 are deceased, and any or all other persons or legal)
 entities, known and unknown, claiming any right, title,)
 interest or estate in or lien upon the parcel of real)
 estate described in the Lis Pendens and Complaint)
 herein filed,)

Defendants.)

The Plaintiffs, above named, would allege unto this Honorable Court as follows:

1. That, upon information and belief, the parties hereto are the lawful heirs and distributees at law of the late James Brisbane, deceased, who died on or about 1942 while seized and possessed in fee simple title of certain real property, together with improvements thereon, located off of Central Park Road and Fleming Road on James Island, Charleston County, South Carolina, hereinafter the "subject property", and is more fully described as follows:

ALL that piece, parcel, and tract of land situate, lying and being on James Island, Charleston County, and state aforesaid, measuring and containing five and 28/100 acres more or less, and is fully shown on plat thereof made by Simons and Mayrant Company dated March 5, 1908 same being a portion of the tract of land marked division three (3) on a plat made by Frederick J. Smith, surveyor, dated July 1879 and recorded in the RMC Office for Charleston County in Plat Book C, Page 11. Butting and bounding North on lands of Stephen Forrest; East on lands of Edward Drayton and AME Church; South on public road, West on lands about to be conveyed by William B. Holmes to Robert Simmons and Nellie Gibbs. Said tract marked division three (3) on plat of Frederick J. Smith, surveyor, having been conveyed by F. F. Whilden to Martha E. Holmes by deed dated July 29, 1879 and re-recorded in the RMC Office for Charleston County in Book U17, Page 129.

TMS # 340-01-00-050 (3.4 acres, more or less)
 TMS # 340-01-00-011 (3.6 acres, more or less)

Note: TMS #'s 340-01-00-050 and 340-01-00-011 are shown as Lot B on a Plat by J. O'Hear Sanders, Jr., surveyor, dated February 14, 1958, entitled "Plat showing a tract of land on James Island. Portion with corners lettered A, B, C, D and A containing 4 acres", which Plat is attached to the Title to Real Estate recorded in the RMC Office for Charleston County on October 27, 1959; in Book S-69, Page 585.

2. That the Plaintiffs allege a claim against the above named Defendants, pursuant to the provisions of the "Uniform Declaratory Judgment Act" contained in Title 15, Chapter 53, Code of Laws of South

Carolina, 1976, as amended, for the purposes of obtaining a determination from this Honorable Court as to who are the rightful owners of the subject property, and further, pursuant to the provisions contained in Title 15, Chapter 67, Articles 1 and 2, Code of Laws of South Carolina, 1976, as amended, to determine adverse claims, if any, to the subject property and to quiet title thereto in the names of the lawful heirs of the late James Brisbane.

3. That, upon information and belief, a number of persons who were lawful heirs of the late James Brisbane have died leaving lawful heirs, however, there has never been either a primary or ancillary administration of the estate of such persons and, as such, the Plaintiffs are informed and believe that the privilege of creditors to file and present claims, if any, against any of the said decedents' estates has never been accorded to them. Moreover, upon information and belief, there has never been a determination as to the lawful heirs and distributees at law of the said decedents. Consequently, Plaintiffs have joined herein as Defendants, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of any of the said decedents and any and all persons or legal entities, known and unknown, having or claiming any right, title, interest or estate in or lien upon the subject property, either by, through or under them.

4. That the Plaintiffs are informed and believe that it is just and proper that this Honorable Court enter its Decree adjudging and declaring who are the lawful heirs of the late James Brisbane, deceased, what percentage each of the said lawful heirs have in and to the subject property, that there are no adverse claims whatsoever attaching to the subject property and forever quieting title to the subject property in the names of the heirs of the late James Brisbane, deceased.

5. That, upon information and belief, certain of the parties hereto have paid more than their proportionate share of the common and related expenses associated with the subject property including, but not limited to, real property taxes, and, possibly, the costs of obtaining a survey and appraisal of the subject property.

6. Upon information and belief, the parties hereto should be required to account for any common and related expenses they may have paid, respectively, and further, this Honorable Court should require that the parties who have paid more than their proportionate share of such expenses be reimbursed from the other parties determined to be the lawful heirs of the late James Brisbane, deceased.

7. That the parties hereto are unable to agree on a disposition of the subject property and, upon information and belief, a partition in kind of the subject property is not practical or expedient given the number of persons having an undivided interest in the subject property. That the Plaintiffs are informed and believe that the fair market value of the subject property is Four Hundred Fifty-Five Thousand and No/100 (\$455,000.00) Dollars. Further, Plaintiffs have contracted to sell the subject property for the sum of \$455,000.00, which said sale is in the best interests of all the parties hereto.

8. Upon information and belief, this Honorable Court should effect a partition through sale of the subject property in accordance with the attached Contract to Purchase, as amended by the First Amendment to Contract to Purchase (collectively the "Contract"), which said Contract is attached hereto as Exhibit "A" and incorporated herein by express reference as though fully set forth verbatim.

9. That, upon information and belief, this Honorable Court should further fix attorney's fees and costs incident to the prosecution of the within action and assess such fees and costs against the parties hereto in accordance with Section 15-61-110, Code of Laws of South Carolina, 1976, as amended.

WHEREFORE, Plaintiffs pray unto this Honorable Court as follows:

1. That this Court inquire into the allegations set forth herein and enter its decree adjudging and declaring who are the lawful heirs of the late James Brisbane, deceased, in such percentages as determined by this Honorable Court, that there are no adverse claims whatsoever attaching to the subject property and forever quieting title thereto in the names of the lawful heirs of James Brisbane, deceased;

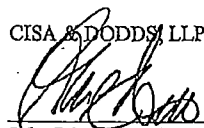
2. That this Honorable Court require an accounting of the various common and related expenses paid by the parties hereto associated with the subject property, and further, any party paying more than their proportionate share of such expenses be reimbursed by the other lawful heirs;

3. That this Honorable Court effect a partition by sale of the subject property in accordance with the attached Contract, and further, that the proceeds from the sale of the subject property be paid as follows, to-wit:

- a. For the costs and expenses associated with the sale including reasonable attorney's fees and costs incident to the within action;
- b. To reimburse any parties who paid more than their proportionate share of the common and related expenses associated with the subject property;
- c. To the lawful heirs the late James Brisbane, deceased, in accordance with their respective ownership interest as determined by this Honorable Court; and

- d. For such other matters as determined by this Honorable Court; and
4. For such other and further relief as to this Honorable Court is fair and proper.

CISA & DODDS, LLP

BY: 

John J. Dodds, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
P: (843)881-6530
F: (843)881-5433
SC Bar No.: 1707
john@cisadodds.com
ATTORNEY FOR PLAINTIFFS

Mount Pleasant, South Carolina

February 13, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU
SIMMONS, RUTH NELSON GADSDEN, ROBERT
BLAKE BRISBANE and MILDRED CHAPMAN,

Plaintiffs,

vs.

ALBERTHA BRISBANE, JEANIE GEATHERS,
LEROY BRISBANE, FRANCENA B. LAWTON,
JAMES B. WATSON, HELEN DAVIS, ROSALEE
SIMMONS, LAVERNE HAMILTON, MINERVA
GADSDEN, DANIEL SIMMONS, JR., MARY
MOSELY, HORACE ROBINSON, JR., JAMES
ROBINSON, HENRY ROBINSON, AVIS D.
ROBINSON A/K/A AVIS ROBERTSON, DORA
ROBINSON, JAMIE WILLIAMS, DESIREE
WILLIAMS, MARK WILLIAMS, GRACE
ETTISON, DANNION JORDAN, RONALD
WILLIAMS, WILLIAM DRAYTON, KEITH
DRAYTON, JEROME HOPKINS, JOSEPH
HOPKINS, JR., TRACY HOPKINS,
ALETHIA GILLIAN, SAMUEL BROWN,
JEANNETTE BROWN, ARTHUR BROWN,
ANTONIO BROWN, DWAYNE BROWN,
POLLY BROWN, KEITH BROWN, KENNY
BROWN, DEXTER BROWN, MARIE BROWN,
STARCIA STEWART, JAMES L. BROWN, JR.,
GLEN BROWN, ERNESTINE BROWN,
VERONICA BROWN, CALVIN BROWN, JR.,
HAROLD BROWN, JR., MARY ANN BRISBANE,
HARVEY BRISBANE, JR., DANNY BOLDS,
RAYMOND BOLDS, MICHAEL BOLDS,
DAVID BOLDS, CAROLYN LOGAN, MARY
JANE BROWN, MIRIAM GRANT A/K/A
MURIEL GRANT, EDWARD GRANT, JR.,
GILBERT GRANT, PERRY GRANT,
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE
MARINE, GURTHA FORREST, GLORIA GIBBS,
CHRISTOPHER GATHERS, JOHN D. HEYWARD,
ALLEN MITCHELL, JR., TIFFANY N. DALEY,
MICHAEL S. MITCHELL, ALLEN MITCHELL,
III, FEDERICA COLEMAN, DOROTHY
BOYKIN, LAVINIA BRISBANE, CLARENCE
BRISBANE, JR., BETTY BRISBANE, FRED
BRISBANE, EVELYN PALMER, MARY
BRISBANE, CARL BRISBANE, CARLOTTA
BICKHAM, GEORGE BRISBANE, ELIAS
BRISBANE, MAXINE BRISBANE, EVAN
BRISBANE, JESSE SIMMONS, JR., ODELL
WHITE, CHRISTINA HARTFIELD, SARAH
MITCHELL, ARTHUR ALBERT MITCHELL,
SUZANNE MITCHELL, OLETHIA GADSEN,
WANDA MITCHELL HARLEY, ARTHUR
MITCHELL, JR., BENJAMIN MITCHELL,
BARBARA JOHNSON, DIANE B. SAMUEL,

ANSWER OF
GUARDIAN AD LITEM NISI

BY

FILED
2015 JUL -7 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT

055

KATHY L. NELSON, THELMA E. NELSON,)
 CAROLYN SINGLETON, LAMOTTA NELSON,)
 RODNEY NELSON, JEROME HOPKINS, JOSEPH)
 HOPKINS, JR., TRACY HOPKINS, LOTTIE)
 BROWN, SYLVIA JOHNSON, RAYMON)
 BROWN, RONALD BROWN, BERNARD)
 FRASIER, BARRY FRASIER, KELVIN FRASIER,)
 MARIE RICHARDSON, DELORES)
 RICHARDSON, WILLIAM RICHARDSON,)
 ROBERT HEYWARD, KATINA HEYWARD,)
 VALORIE HEYWARD, KARVIN DOTSON,)
 YOULANDA BRISBANE, KERMIT BRISBANE,)
 MEKA BRISBANE, JERMAINE BRISBANE,)
 PEGGY NELSON, JOSEPH ELLIOTT, CYNTHIA)
 ELLIOTT, JACKIE ELLIOTT, NET ELLIOTT,)
 STEPHANIE ELLIOTT, RODNEY ELLIOTT,)
 NANCY BRISBANE, WILLIAM ALBERT)
 BRISBANE, JR., BERNARD BRISBANE, GARY)
 BRISBANE, BONNIE BRISBANE, JAMETTA)
 BRISBANE HAMILTON, ELIZABETH)
 HAMILTON and ROSETTA B. BROWN, JOHN)
 DOE, adults, and RICHARD ROE, infants, insane)
 persons, incompetents and persons in the military)
 service of The United States of America, being)
 fictitious names designating as a class any unknown)
 person or persons who may be an heir, distributee,)
 devisee, legatee, widower, widow, assign,)
 administrator, executor, creditor, successor, personal)
 representative, issue or alienee of JAMES)
 BRISBANE, JAMES BRISBANE, JR., JAMES)
 BRISBANE, III, JIMMY BRISBANE, EMILY)
 BROWN, HARVEY BRISBANE, ROSA)
 ROBINSON, HENRIETTA BRISBANE)
 GEATHERS, LAURA GEATHERS, GENEVA)
 GRANT, VIOLA HEYWARD, HENRIETTA)
 BOLDS, ESTELLE NELSON, SWACKIE)
 BRISBANE, WILHEMENIA YOUNG, ROXANNA)
 PINCKNEY, DANIEL SIMMONS, HORACE)
 ROBINSON, ELIZABETH WILLIAMS,)
 MABEL ROBINSON, JULIAN ROBINSON,)
 PATRICIA WILLIAMS, ALBERTHA GRAHAM,)
 JOSEPH E. HOPKINS, EMILY BROWN,)
 STEVE BROWN, STEVE BROWN, JR.,)
 ROGER BROWN, JAMES LEROY BROWN,)
 HAROLD BROWN, THEODORE HEYWARD,)
 THEODORE HEYWARD, JR., MARY E.)
 MITCHELL, JAMES HEYWARD, CLARENCE)
 BRISBANE, SWACKIE BRISBANE, JR., SUSAN)
 RICHARDSON, JANIE SIMMONS a/k/a)
 JANIE RICHARDSON BRISBANE, RUBY)
 MITCHELL, JESSE SIMMONS, WILLIAM)
 NELSON, RUTH HOPKINS, THOMAS BROWN,)
 WILHEMENIA FRASIER, HELEN BROWN)
 ALLEN, ALBERTHA LEE RICHARDSON,)
 LOUISE HEYWARD, HERBERT LEE HEYWARD,)
 LORETTA BRISBANE, GAIL DAVIS, WILLIAM)
 NELSON, JR., EDWARD GRANT, SR., EARTHA)
 LEE ELLIOTT, WILLIAM ALBERT BRISBANE,)
 BETTY MANIGAULT, STEVEN CHRISTOPHER)
 BROWN and ROSETTA BRISBANE all of whom)

are deceased, and any or all other persons or legal)
entities, known and unknown, claiming any right, title,)
interest or estate in or lien upon the parcel of real)
estate described in the Lis Pendens and Complaint)
herein filed,)
)

Defendants.)
)

I, WALTER R. KAUFMANN, as Guardian ad Litem Nisi in the within action, answering the
Complaint herein, would allege unto this Honorable Court as follows:

1. That each and every allegation of the Complaint is admitted upon information and
belief.

WHEREFORE, I, Walter R. Kaufmann, as Guardian ad Litem Nisi, pray unto this Honorable
Court that the relief sought in the Complaint be granted.



WALTER R. KAUFMANN
Guardian ad Litem Nisi.

Mount Pleasant, South Carolina

7-3, 2015.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO.: 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ET AL.)

Plaintiffs,

.vs.

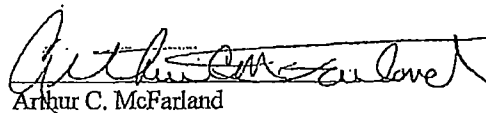
ALBERTHA BRISBANE, JEANIE GEATHERS,
LEROY BRISBANE, ET AL.

Defendants.

NOTICE OF APPEARANCE

FILED
2015 NOV 19 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURT

PLEASE TAKE NOTICE THAT Arthur C. McFarland, Esquire will appear as attorney for the Defendant, Ernestine Brown, in the above-captioned case. Pursuant to Rule 5, SCRPC, all pleadings, notices and other papers should be served upon him at the address indicated below.



Arthur C. McFarland
Attorney for the Defendant,
Ernestine Brown
1847 Ashley River Road, Suite 200
Charleston, S.C. 29407
(843) 763-3900

Charleston, S.C.

November 16, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN,)
ROBERT BLAKE BRISBANE AND MILDRED)
CHAPMAN)

Plaintiffs)

vs.)

ALBERTA BRISBANE, ET AL)

Defendants)

ASSOCIATED DEVELOPERS, INC.)

Intervenor)

NOTICE OF MOTION AND
MOTION FOR INTERVENTION
PURSUANT TO SCRPC 24

FILED
FEB -5 PM 4:38
FILE J. ARMSTRONG
CLERK OF COURT

TO: John J. Dodds, III, Attorney for Plaintiffs; Walker R. Kaufmann, Guardian ad Litem for minors and unknown persons; and Arthur C. McFarland, Attorney for Ernestine Brown

YOU WILL PLEASE TAKE NOTICE that the Intervenor, Associated Developers, Inc., by and through its undersigned attorney hereby moves this Court for an Order of Intervention in the above captioned action pursuant to Rule 24, SCRPC, granting Intervenor the right to intervene as a party in this action. In support of this Motion, the undersigned states as follows:

I. Intervenor is entitled to intervention as a matter of right because:

a. The Plaintiffs have initiated the above captioned litigation seeking, *inter alia*, the approval of a Contract of Purchase between the Intervenor and Plaintiffs.

b. That the relief requested in this action by the Plaintiffs is governed by the South Carolina Declaratory Judgment Act, S. C. Code Ann. § 15-53-80 (2005), which provides in part "all persons shall be made parties who have or claim any interest which would be effected by the declaration"

c. That based on the foregoing, Intervenor is entitled to intervention in this action as a matter of right pursuant to SCRCP 24(a)(1) because the South Carolina Declaratory Judgment Act confers an unconditional right to intervene pursuant to statute.

d. That Intervenor is also entitled to intervention in this action as a matter of right pursuant to SCRCP 24(a)(2) because Intervenor claims an interest in the real property described in the Lis Pendens and Intervenor has an interest relating to the Contract to Purchase which is the subject matter of this action, and Intervenor is so situated that the disposition of this action may, as a practical matter, impair or impede his ability to protect his interests. Furthermore, Intervenor's interest is not and cannot be adequately represented by the existing parties to this action.

II. Intervenor is entitled to Permissive Intervention because:

Intervenor's claim to an interest in the real property described in the Lis Pendens in this action and the claims and defenses of the Plaintiffs and Defendants in this action have questions of law and fact in common. The Intervenor, Plaintiffs, and the overwhelming percentage of Defendants all seek a Declaration and determination that the Contract to Purchase is in the best interests of all parties and should therefore be approved by this Court.

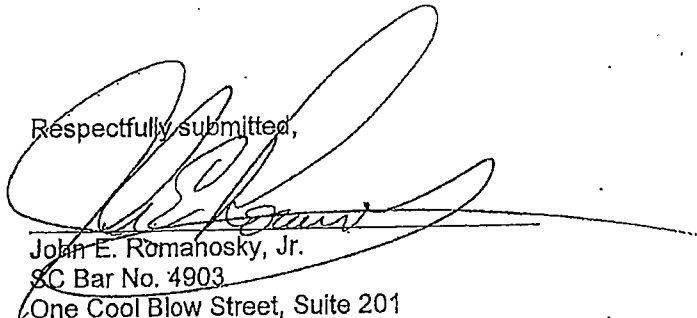
Pursuant to the requirements of Rule 24(c), SCRPC, a pleading setting forth the Intervenor's claim for which intervention is sought is attached hereto as Exhibit "A."

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

RULE 11 CERTIFICATION

I certify that prior to filing this Motion, communication with all counsel of record could not timely be held.

Respectfully submitted,



John E. Romanosky, Jr.

SC Bar No. 4903

One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054

john@jromanlaw.com

Attorney for Intervenor

Charleston, South Carolina
February 5, 2016

EXHIBIT "A"

Answer of Intervenor

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN,)
ROBERT BLAKE BRISBANE AND MILDRED)
CHAPMAN)

Plaintiffs

vs.

ALBERTA BRISBANE, ET AL

Defendants

ASSOCIATED DEVELOPERS, INC.

Intervenor

ANSWER OF INTERVENOR

COMES NOW the Intervenor and by way of Answer to the Complaint alleges and
says as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each allegation of the Complaint is denied unless otherwise admitted,
qualified, or explained.

FOR A SECOND DEFENSE

(Response to Allegations)

2. The preceding paragraphs, not inconsistent herewith, are incorporated herein
by reference.

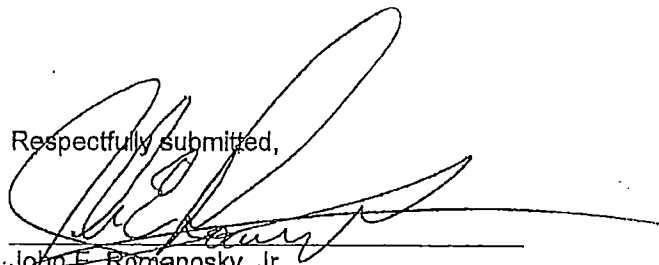
3. The allegations of Paragraphs 1, 2, 3, and 4 are admitted.

4. The allegations of Paragraphs 5 and 6 require no response from the Intervenor.

5. The allegations of Paragraphs 7, 8, and 9 are admitted.

WHEREFORE, Intervenor prays that this Honorable Court issue its Order and Decree finding, *inter alia*, that the Contract to Purchase between Plaintiffs and Intervenor is in the best interests of the parties hereto, and therefore approve the Contract to Purchase and issue its Master's Deed conveying the property to Intervenor for the consideration stated therein, together with such other and further relief as may appear just and proper.

Respectfully submitted,



John E. Romanosky, Jr.
SC Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Intervenor

Charleston, South Carolina
February 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN,)
ROBERT BLAKE BRISBANE AND MILDRED)
CHAPMAN)

Plaintiffs

vs.

ALBERTA BRISBANE, ET AL

Defendants

ASSOCIATED DEVELOPERS, INC.

Intervenor

CERTIFICATE OF MAILING

FILED

FEB - 5 2016

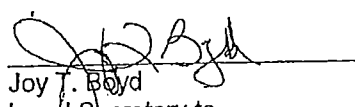
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

I HEREBY CERTIFY THAT I have deposited in the U.S. Mail on February 5, 2016, with sufficient postage, a copy of the Notice of Motion and Motion for Intervention Pursuant to SCRCP 24 to:

John J. Dodds, III, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd, Ste. 101
Mt. Pleasant, SC 29464

Walker R. Kaufmann, Esquire
P. O. Box 459
Mt. Pleasant, SC 29465

Arthur C. McFarland, Esquire
1847 Ashley River Road, Suite 200
Charleston, SC 20407


Joy T. Boyd
Legal Secretary to
John E. Romanosky, Jr., Esquire

065

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Vivian B. Cromwell, Susan Prioleau)
Simmons, Ruth Nelson Gadsden,)
Robert Blake Brisbane and Mildred)
Chapman)

Plaintiff)

vs.)

Alberta Brisbane, et al)

Defendants)

Associated Developers, Inc.)

Intervenor)

Nordic Group, LLC)

Intervenor)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-10-0939

MOTION TO INTERVENE

2016 MAR -4 AM 9:00
JULIE J. ARISTON
CLERK OF COURT

FILED

TO: John J. Dodds, III Attorney for Plaintiffs; Walker R. Kaufmann, Guardian
ad Litem from minors and unknown persons; Arthur C. McFarland, Attorney for
Defendant, Ernestine Brown; and John E. Romanosky, Jr., Attorney for Intervenor,
Associated Developers, Inc.

YOU WILL PLEASE TAKE NOTICE that the Intervenor, Nordic Group, LLC,
by and through its undersigned counsel, will move before the Honorable Mikell R.
Scarborough in the Master-In-Equity Court, County of Charleston, South Carolina for an
Order permitting Nordic Group, LLC to intervene in this action pursuant to South
Carolina Rule of Civil Procedure 24(a)(2). In support of this Motion, the undersigned
states as follows:

I. Intervenor is entitled to intervention as a matter of right.

a. Rule 24(a)(2) of the South Carolina Rules of Civil Procedure allows a third party to join an action so the third party may protect his interest which may be substantially impaired by disposition of the action. The party seeking intervention must show the following four factors which are to be considered by the court: 1) Establish a timely application, 2) Assert an interest relating to the property or transaction which is the subject of the action, 3) Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest, and 4) Demonstrate that its interest is inadequately represented by the other parties. *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503 (Ct. App 2004). By satisfying all four requirements, the party seeking intervention should be allowed to join the action. Intervention should be granted liberally practically where judicial economy will be promoted by declaration of rights of all parties who may be affected. *Berkeley Electric v. Town of Mt. Pleasant*, 302 S.C. 186 (1990).

b. The Intervenor's request is timely because it recently received an executed contract to purchase the property set forth in the Lis Pendens filed in this case, which was signed by one of the Defendants, Ernestine Brown. In addition, the Intervenor has discovered that a hearing to determine the value of the property has been scheduled for May 3, 2016 and this motion is obviously filed well in advance of this hearing.

c. The Intervenor has an interest relating to the property which is the subject of this action because it has recently received an executed contract to purchase the property which was signed by one of the Defendants, Ernestine Brown. In addition, the Intervenor has expended time and money in obtaining an appraisal of the property which

was requested by the court at a previous hearing. The Intervenor has also placed \$100,000.00 in escrow to purchase the property.

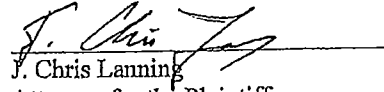
d. If the Intervenor is not allowed to participate in this action its interests in this property will be greatly affected. The Intervenor has a right to participate in the hearing scheduled on May 3, 2016 to present evidence and testimony regarding the appraisal it obtained and why its contract is the more favorable and equitable for the parties.

e. None of the existing parties in this action can adequately represent the Intervenor's interest because none of them are familiar with its appraisal and executed contract.

Based on the arguments set forth above, the Intervenor asserts that its motion to intervene should be granted and that it should be permitted to join in this lawsuit. Its application to intervene is timely. It can establish an interest in the property which is the subject of this action. Its interest in this property will be adversely affected if it is not permitted to intervene and its interests in this property are not adequately protected by the other parties.

Pursuant to the requirements set forth in Rule 24(c), SCRCP, a pleading setting forth Intervenor's claim for which intervention is sought is attached hereto as Exhibit "A".

LANNING LAW FIRM, LLC


J. Chris Lanning

Attorney for the Plaintiff
2036 eWall Street, Suite F
Mt. Pleasant, SC 29464
(843) 284-5551

3/3, 2016
Mt. Pleasant, South Carolina

Exhibit "A"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-0939
	)	
Vivian B. Cromwell, Susan Prioleau	)	
Simmons, Ruth Nelson Gadsden,	)	
Robert Blake Brisbane and Mildred	)	
Chapman	)	
	)	
Plaintiff	)	
	)	
vs.	)	ANSWER OF INTERVENOR,
	)	NORDIC GROUP, LLC
Alberta Brisbane, et al	)	
	)	
Defendants	)	
	)	
Associated Developers, Inc.	)	
	)	
Intervenor	)	
	)	
Nordic Group, LLC	)	
	)	
Intervenor	)	

Intervenor, Nordic Group, LLC, answering the Complaint of the Plaintiff would respectfully show as follows:

FOR A FIRST DEFENSE

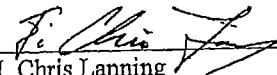
1. Intervenor denies all allegations of the Complaint unless expressly admitted herein.
2. Responding to Paragraphs 1, 2, 3 and 4 of the Complaint, Intervenor admits the allegations contained in these paragraphs.
3. Responding to Paragraphs 5 and 6 of the Complaint, Intervenor lacks sufficient information to form a response and therefore denies the same and demands strict proof thereof.

4. Responding to Paragraphs 7 and 8 of the Complaint, Intervenor denies the allegations contained in these paragraphs and demands strict proof thereof.

5. Responding to Paragraph 9 of the Complaint, Intervenor admits the allegations contained in this paragraph.

WHEREFORE, Intervenor prays that this Honorable Court issue its Order and Decree finding that the Contract to Purchase between Defendant, Ernestine Brown, and Intervenor is in the best interests of the parties and therefore approve this contract and issue a Master-In-Equity Deed conveying the property to the Intervenor. And for such other further relief as the court deems just and proper.

LANNING LAW FIRM, LLC


J. Chris Lanning
Attorney for the Plaintiff
2036 eWall Street, Suite F
Mt. Pleasant, SC 29464
(843) 284-5551

3/3, 2016
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ROBERT)
BLAKE BRISBANE and MILDRED CHAPMAN,)

Plaintiffs,)

v.)
ALBERTHA BRISBANE, JEANIE GEATHERS,)
LEROY BRISBANE, FRANCENA B. LAWTON,)
JAMES B. WATSON, HELEN DAVIS, ROSALEE)
SIMMONS, LAVERNE HAMILTON, MINERVA)
GADSDEN, DANIEL SIMMONS, JR., MARY)
MOSELY, HORACE ROBINSON, JR., JAMES)
ROBINSON, HENRY ROBINSON, AVIS D.)
ROBINSON A/K/A AVIS ROBERTSON, DORA)
ROBINSON, JAMIE WILLIAMS, DESIREE)
WILLIAMS, MARK WILLIAMS, GRACE)
ETTISON, DANNION JORDAN, RONALD)
WILLIAMS, WILLIAM DRAYTON, KEITH)
DRAYTON, JEROME HOPKINS, JOSEPH)
HOPKINS, JR., TRACY HOPKINS,)
ALETHIA GILLIAN, SAMUEL BROWN,)
JEANNETTE BROWN, ARTHUR BROWN,)
ANTONIO BROWN, DWAYNE BROWN,)
POLLY BROWN, KEITH BROWN, KENNY)
BROWN, DEXTER BROWN, MARIE BROWN,)
STARCIA STEWART, JAMES L. BROWN, JR.,)
GLEN BROWN, ERNESTINE BROWN,)
VERONICA BROWN, CALVIN BROWN, JR.,)
HAROLD BROWN, JR., MARY ANN BRISBANE,)
HARVEY BRISBANE, JR., DANNY BOLDS,)
RAYMOND BOLDS, MICHAEL BOLDS,)
DAVID BOLDS, CAROLYN LOGAN, MARY)
JANE BROWN, MIRIAM GRANT A/K/A)
MURIEL GRANT, EDWARD GRANT, JR.,)
GILBERT GRANT, PERRY GRANT,)
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE)
MARINE, GURTHA FORREST, GLORIA GIBBS,)
CHRISTOPHER GATHERS, JOHN D. HEYWARD,)
ALLEN MITCHELL, JR., TIFFANY N. DALEY,)
MICHAEL S. MITCHELL, ALLEN MITCHELL,)
III, FREDERICA COLEMAN, DOROTHY)
BOYKIN, LAVINIA BRISBANE, CLARENCE)
BRISBANE, JR., BETTY BRISBANE, FRED)
BRISBANE, EVELYN PALMER, MARY)
BRISBANE, CARL BRISBANE, CARLOTTA)
BICKHAM, GEORGE BRISBANE, ELIAS)
BRISBANE, MAXINE BRISBANE, EVAN)
BRISBANE, JESSE SIMMONS, JR., ODELL)
WHITE, CHRISTINA HARTFIELD, SARAH)
MITCHELL, ARTHUR ALBERT MITCHELL,)
SUZANNE MITCHELL, OLETHIA GADSEN,)
WANDA MITCHELL HARLEY, ARTHUR)
MITCHELL, JR., BENJAMIN MITCHELL,)
BARBARA JOHNSON, DIANE B. SAMUEL,)
KATHY L. NELSON, THELMA E. NELSON,)
CAROLYN SINGLETON, LAMOTTA NELSON,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

NOTICE OF HEARING

FILED
2016 MAR 24 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT

RODNEY NELSON, LOTTIE BROWN,)
 SYLVIA JOHNSON, RAYMON)
 BROWN, RONALD BROWN, BERNARD)
 FRASIER, BARRY FRASIER, KELVIN FRASIER,)
 MARIE RICHARDSON, DELORES)
 RICHARDSON, WILLIAM RICHARDSON,)
 ROBERT HEYWARD, KATINA HEYWARD,)
 VALORIE HEYWARD, KARVIN DOTSON,)
 YOULANDA BRISBANE, KERMIT BRISBANE,)
 MEKA BRISBANE, JERMAINE BRISBANE,)
 PEGGY NELSON, JOSEPH ELLIOTT, CYNTHIA)
 ELLIOTT, JACKIE ELLIOTT, NET ELLIOTT,)
 STEPHANIE ELLIOTT, RODNEY ELLIOTT,)
 NANCY BRISBANE, WILLIAM ALBERT)
 BRISBANE, JR., BERNARD BRISBANE, GARY)
 BRISBANE, BONNIE BRISBANE, JAMETTA)
 BRISBANE HAMILTON, ELIZABETH)
 HAMILTON and ROSETTA B. BROWN, JOHN)
 DOE, adults, and RICHARD ROE, infants, insane)
 persons, incompetents and persons in the military)
 service of The United States of America, being)
 fictitious names designating as a class any unknown)
 person or persons who may be an heir, distributee,)
 devisee, legatee, widower, widow, assign,)
 administrator, executor, creditor, successor, personal)
 representative, issue or alienee of JAMES)
 BRISBANE, JAMES BRISBANE, JR., JAMES')
 BRISBANE, III, JIMMY BRISBANE, EMILY)
 BROWN, HARVEY BRISBANE, ROSA)
 ROBINSON, HENRIETTA BRISBANE)
 GEATHERS, LAURA GEATHERS, GENEVA)
 GRANT, VIOLA HEYWARD, HENRIETTA)
 BOLDS, ESTELLE NELSON, SWACKIE)
 BRISBANE, WILHEMENIA YOUNG, ROXANNA)
 PINCKNEY, DANIEL SIMMONS, HORACE)
 ROBINSON, ELIZABETH WILLIAMS,)
 MABEL ROBINSON, JULIAN ROBINSON,)
 PATRICIA WILLIAMS, ALBERTHA GRAHAM,)
 JOSEPH E. HOPKINS, EMILY BROWN,)
 STEVE BROWN, STEVE BROWN, JR.,)
 ROGER BROWN, JAMES LEROY BROWN,)
 HAROLD BROWN, THEODORE HEYWARD,)
 THEODORE HEYWARD, JR., MARY E.)
 MITCHELL, JAMES HEYWARD, CLARENCE)
 BRISBANE, SWACKIE BRISBANE, JR., SUSAN)
 RICHARDSON, JANIE SIMMONS a/k/a)
 JANIE RICHARDSON BRISBANE, RUBY)
 MITCHELL, JESSE SIMMONS, WILLIAM)
 NELSON, RUTH HOPKINS, THOMAS BROWN,)
 WILHEMENIA FRASIER, HELEN BROWN)
 ALLEN, ALBERTHA LEE RICHARDSON,)
 LOUISE HEYWARD, HERBERT LEE HEYWARD,)
 LORETTA BRISBANE, GAIL DAVIS, WILLIAM)
 NELSON, JR., EDWARD GRANT, SR., EARTHA)
 LEE ELLIOTT, WILLIAM ALBERT BRISBANE,)
 BETTY MANIGAULT, STEVEN CHRISTOPHER)
 BROWN and ROSETTA BRISBANE all of whom)
 are deceased, and any or all other persons or legal)
 entities, known and unknown, claiming any right, title,)
 interest or estate in or lien upon the parcel of real)
 estate described in the Lis Pendens and Complaint)

herein filed,

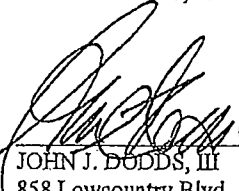
Defendants.

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PLEASE TAKE NOTICE that a hearing will be held on May 3, 2016, at 2:00 o'clock pm.,
before the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, Charleston County
Judicial Center, 100 Broad Street, Courtroom 2A, Second Floor, Charleston, South Carolina, 29401.

CISA & DODDS, LLP

By:


JOHN J. DODDS, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
P: (843) 881-6530
F: (843) 881-5433
SC Bar No.: 1707
john@cisadodds.com
ATTORNEYS FOR PLAINTIFF

Mount Pleasant, South Carolina
March 14, 2016.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN, ROBERT)
BLAKE BRISBANE and MILDRED CHAPMAN,)

Plaintiffs,)

v.)

ALBERTHA BRISBANE, JEANIE GEATHERS,)
LEROY BRISBANE, FRANCENA B. LAWTON,)
JAMES B. WATSON, HELEN DAVIS, ROSALEE)
SIMMONS, LAVERNE HAMILTON, MINERVA)
GADSDEN, DANIEL SIMMONS, JR., MARY)
MOSELY, HORACE ROBINSON, JR., JAMES)
ROBINSON, HENRY ROBINSON, AVIS D.)
ROBINSON A/K/A AVIS ROBERTSON, DORA)
ROBINSON, JAMIE WILLIAMS, DESTREE)
WILLIAMS, MARK WILLIAMS, GRACE)
ETTISON, DANNION JORDAN, RONALD)
WILLIAMS, WILLIAM DRAYTON, KEITH)
DRAYTON, JEROME HOPKINS, JOSEPH)
HOPKINS, JR., TRACY HOPKINS,)
ALETHIA GILLIAN, SAMUEL BROWN,)
JEANNETTE BROWN, ARTHUR BROWN,)
ANTONIO BROWN, DWAYNE BROWN,)
POLLY BROWN, KEITH BROWN, KENNY)
BROWN, DEXTER BROWN, MARIE BROWN,)
STARCIA STEWART, JAMES L. BROWN, JR.,)
GLEN BROWN, ERNESTINE BROWN,)
VERONICA BROWN, CALVIN BROWN, JR.,)
HAROLD BROWN, JR., MARY ANN BRISBANE,)
HARVEY BRISBANE, JR., DANNY BOLDS,)
RAYMOND BOLDS, MICHAEL BOLDS,)
DAVID BOLDS, CAROLYN LOGAN, MARY)
JANE BROWN, MIRIAM GRANT A/K/A)
MURIEL GRANT, EDWARD GRANT, JR.,)
GILBERT GRANT, PERRY GRANT,)
JUNATA O'KIEFFE, MARTHA LIONS, MARGIE)
MARINE, GURTHA FORREST, GLORIA GIBBS,)
CHRISTOPHER GATHERS, JOHN D. HEYWARD,)
ALLEN MITCHELL, JR., TIFFANY N. DALEY,)
MICHAEL S. MITCHELL, ALLEN MITCHELL,)
III, FREDERICA COLEMAN, DOROTHY)
BOYKIN, LAVINIA BRISBANE, CLARENCE)
BRISBANE, JR., BETTY BRISBANE, FRED)
BRISBANE, EVELYN PALMER, MARY)
BRISBANE, CARL BRISBANE, CARLOTTA)
BICKHAM, GEORGE BRISBANE, ELIAS)
BRISBANE, MAXINE BRISBANE, EVAN)
BRISBANE, JESSE SIMMONS, JR., ODELL)
WHITE, CHRISTINA HARTFIELD, SARAH)
MITCHELL, ARTHUR ALBERT MITCHELL,)
SUZANNE MITCHELL, OLETHIA GADSEN,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

CERTIFICATE OF MAILING

FILED
2016 MAR 24 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

WANDA MITCHELL HARLEY, ARTHUR)
 MITCHELL, JR., BENJAMIN MITCHELL,)
 BARBARA JOHNSON, DIANE B. SAMUEL,)
 KATHY L. NELSON, THELMA E. NELSON,)
 CAROLYN SINGLETON, LAMOTTA NELSON,)
 RODNEY NELSON, LOTTIE BROWN,)
 SYLVIA JOHNSON, RAYMON)
 BROWN, RONALD BROWN, BERNARD)
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 MITCHELL, JESSE SIMMONS, WILLIAM)
 NELSON, RUTH HOPKINS, THOMAS BROWN,)

Defendants.

Susan Peterson
Susan Peterson


NOTARY PUBLIC FOR SOUTH CAROLINA

3

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
858 Lowcountry Boulevard, Suite 101
Mt. Pleasant, South Carolina 29464
Telephone (843) 881-6530 Fax (843) 881-5433

FRANK M. CISA
JOHN J. DODDS, III
ROBERT S. DODDS

March 14, 2016

frank@cisadodds.com
john@cisadodds.com
robert@cisadodds.com

Albertha Brisbane
255 Amy Drive
Goose Creek, SC 29445

Mary Mosely
276 Fleming Road, Apt. B or D
Charleston, SC 29412

Dannion Jordan
10940 Bristol Bay Drive, Apt.
401
Bradenton, FL 34209

Jeanie Geathers
1815 Story Avenue, Apt. 7-E
New York, NY 10473

Horace Robinson, Jr.
276 Fleming Road, Apt. C
Charleston, SC 29412

Ronald Williams
200 W. 143rd Street, Apt. 6M
New York, NY 10030

Leroy Brisbane
657 Riley Road
Charleston, SC 29412

James Robinson
1721 LaSalle Avenue
Fayetteville, NC 29303

William Drayton
200 W. 143rd Street, Apt. 6M
New York, NY 10030

Francena B. Lawton
311 Fleming Road, Apt. 72
Charleston, SC 29412

Henry Robinson
1721 LaSalle Avenue
Fayetteville, NC 29303

Keith Drayton
124 Broad Street
Stroudsburg, PA 18360

James B. Watson
311 Fleming Road, Apt. 72
Charleston, SC 29412

Avis Robertson
3420 Redbud Street
Zachary, LA 70791

Jerome Hopkins
Post Office Box 592834
San Antonio, TX 78259

Helen Davis
1371 Linden Blvd., Apt. 1-B
Brooklyn, NY 11212

Dora Robinson Johnson
276 Fleming Road, Apt. D
Charleston, SC 29412

Joseph Hopkins, Jr.
1223 Downer Drive
Charleston, SC 29412

Rosalee Simmons
613 Hughes Road
Johns Island, SC 29455

Jamie Williams
200 West 143rd Street, Apt. 6M
New York, NY 10030

Tracy Hopkins
24642 Rosebay Terrace
Aldie, VA 20105

Laverne Hamilton
613 Hughes Road
Johns Island, SC 29455

Desiree Williams
200 W. 143rd Street, Apt. 6M
New York, NY 10030

Alethia Gillian
1777 Lord Cooper Street
Charleston, SC 29412

Minerva Gadsden
613 Hughes Road
Johns Island, SC 29455

Mark Williams
200 W. 143rd Street, Apt. 6M
New York, NY 10030

Samuel Brown
3736 Tower Drive
Mt. Pleasant, SC 29464

Daniel Simmons, Jr.
613 Hughes Road
Johns Island, SC 29455

Grace Ettison
200 W. 143rd Street, Apt. 6M
New York, NY 10030

Jeannette Brown
P. O. Box 12062
James Island, SC 29422

Arthur Brown
1869 Ferguson Road
Charleston, SC 29412

G. Simms McDowell, III,
Esquire
Attorney for Antonio Brown
P. O. Box 670
Charleston, SC 29402

G. Simms McDowell, III,
Esquire
Attorney for Dwayne Brown
P. O. Box 670
Charleston, SC 29402

Polly Brown
Post Office Box 983
Ladson, SC 29456-0983

Keith Brown
Post Office Box 983
Ladson, SC 29456-0983.

Kenny Brown
6306 Sunstone Drive
Charlotte, NC 28269

Dexter Brown
Post Office Box 983
Ladson, SC 29456-0983

Laura Marie Brown
137-56-233rd Street
Rosedale, NY 11422

Starcia Shuford
137-56-233rd Street
Rosedale, NY 11422

James L. Brown, Jr.
137-56-233rd Street
Rosedale, NY 11422

Glen Brown
137-56-233rd Street
Rosedale, NY 11422

Arthur C. McFarland, Jr.,
Esquire
Attorney for Ernestine Brown
1847 Ashley River Rd., Ste. 200
Charleston, SC 29407

Veronica Brown
1950 River Road
Johns Island, SC 29455

Calvin Brown, Jr.
144-44 225th Street
Laurelton, NY 11413

Harold Brown, Jr.
104 Weeks Avenue
Goose Creek, SC 29445

Mary Ann Brisbane
1917 Forest Lane
Charleston, SC 29412

Harvey Brisbane, Jr.
4801 Van Buren Street
Gary, Indiana 46408

Daniel Bolds
1186 Grenada Pl., Apt. 2-B
Bronx, NY 10466

Raymond Bolds
1186 Grenada Pl., Apt. 2-B
Bronx, NY 10466

Michael Bolds
120 Elgar Pl., Apt #5-H
Bronx, NY 10475

David Bolds
1186 Grenada Pl., Apt. 2-B
Bronx, NY 10466

Carolyn Logan
557 Fleming Road
Charleston, SC 29412

Mary Jane Brown
43 W. Ramapo Road
Garnerville, NY 10923

Muriel Grant
557 Fleming Road
Charleston, SC 29412

Edward Grant, Jr.
1920 Scheffelin Avenue, Apt.
#5C
Bronx, NY 10466

Gilbert Grant
557 Fleming Road
Charleston, SC 29412

Perry Grant
557 Fleming Road
Charleston, SC 29412

Juanita O'Kieffe
187 Hopkins Street
Brooklyn, NY 11206

Martha Lions
159-48 Harlem River Drive,
Apt. 5-C
New York, New York 10039

Margie Marine
3400 Lisa Drive, Apt. 5
Chattanooga, Tennessee 37412

Gurtha Forrest
6564 Rebecca Beach Lane
Awendaw, SC 29429

Gloria Gibbs
Post Office Box 12037
Charleston, SC 29422

Christopher Gathers (or Charles
Gathers)
260 W. 131 Street, Apt. 11-E
New York, NY 10027

John D. Heyward
6564 Rebecca Beach Lane
Awendaw, SC 29412

Allen Mitchell, Jr.
129 Stephanie Circle
Summerville, SC 29483

Tiffney N. Daley
Post Office Box 481033
Charlotte, NC 28269

Michael S. Mitchell
134 Cedar Run Lane
Huntsville, AL 35811

Allen Mitchell, III
812 South West
Renton, WA 98057

Frederica Coleman
70 Lenox Avenue, 14A
New York, New York 10026

Dorothy Boykin
1430 Amersham Avenue, 17F
New York, New York 10026

Lavinia Brisbane
1815 Central Park Road, Apt. I-10
Charleston, SC 29412

Clarence Brisbane, Jr.
1930 E. Central Park Road
Charleston, SC 29412

Betty Brisbane
1930 E. Central Park Road
Charleston, SC 29412

Fred Brisbane
1930 E. Central Park Road
Charleston, SC 29412

Evelyn Palmer
1930 E. Central Park Road
Charleston, SC 29412

Mary Brisbane
1930 E. Central Park Road
Charleston, SC 29412

Carl Brisbane
1930 E. Central Park Road
Charleston, SC 29412

Carlotta Bickham
4308 Angeles Vista Blvd.
Los Angeles, CA 90008

George Brisbane
1905 B Central Park Road
Charleston, SC 29412

Elias Brisbane
1262 Webster Avenue, Apt. 7-B
Bronx, NJ 10456

Maxene Brisbane
Post Office Box 1906
Rialto, CA 92377-1906

Evan Brisbane
4308 Angeles Vista Blvd.
Los Angeles, CA 90008

Jesse Simmons, Jr.
2107 Weber Drive
Forestville, Maryland 20747

Odell White
323 Huger Street
Charleston, SC 29403

Christina Hartfield
Post Office Box 7371
Wesley Chapel, FL 33545

Sarah Mitchell
1222 Davidson Avenue
Charleston, SC 29407

Arthur Albert Mitchell
1222 Davidson Avenue
Charleston, SC 29407

Suzanne Mitchell
12107 Turnstone Court
Silver Springs, MD 20904

Olethia Gadsen
1410 Whistling Duck Drive
Upper Marlboro, Maryland
20774

Wanda Mitchell Harley
3209 Emmaus Road
John's Island, SC 29445

Benjamin Mitchell
513 Logan Street
Frederick, MD 21701

Barbara Johnson
2075 2nd Avenue, 8-C
New York, NY 10029

Dianne B. Samuel
503 Willoughby Avenue
Brooklyn, NY 11206

Caffie L. Nelson
3360 Ashley Phosphate Road,
Apt. B-1
North Charleston, SC 29418-8441

Thelma E. Nelson
1365 5TH Avenue, 5-G
New York, NY 10029

Carolyn Singleton
1054 King Street, Apt. 305
Charleston, SC 29403

Lamott Q. Nelson
8101 Pleasant Ridge Driv
N. Charleston, SC 29420

Rodney A. Nelson
7701 Pinehurst Street
N. Charleston, SC 29420

Sylvia Johnson
1817 Grimal Road
Charleston, SC 29412

Raymon Brown
1817 Grimal Road
Charleston, SC 29412

Ronald Brown
1817 Grimal Road
Charleston, SC 29412

Bernard Frasier
1817 Grimal Road
Charleston, SC 29412

Barry Fraiser
1817 Grimal Road
Charleston, SC 29412

Kelvin Frasier
1817 Grimal Road
Charleston, SC 29412

Margie Richardson
Post Office Box 338
Bronx, NY 10460

Delores Richardson
Post Office Box 338
Bronx, NY 10460

William Richardson #R24246
Union Correctional Institution
7819 Northwest 228th Street
Raidford, Florida 32026 #F2102

Robert Heyward
550 Cauldwell Avenue, Apt. 7-A
Bronx, NY 10455

Katina Heyward
550 Cauldwell Avenue, Apt. 7-A
Bronx, NY 10455

Valorie Heyward
6564 Rebecca Beach Lane
Awendaw, SC 29429

Karvin Dotson
6564 Rebecca Beach Lane
Awendaw, SC 29429

Yolanda Brisbane
1930 Central Park Road
Charleston, SC 29412

Kermit Brisbane
1930 Central Park Road
Charleston, SC 29412

Germaine Brisbane
617 East Bay Street, Apt. D
Charleston, SC 29403

Peggy Nelson
5049 Walker Street
North Charleston, SC 20405

William Albert Brisbane, Jr.
637 Constant Drive
Charleston, SC 29412

Bernard Brisbane
3512 Sheen Drive
Johns Island, SC 29455

Gary Brisbane
3894 Laurel Point Lane
Johns Island, SC 29455

Bonnie T. Brisbane
1458 Cross Bill Trail
Hanahan, SC 29416

Jametta Brisbane Hamilton
1135 Bellwood Road
Charleston, SC 29412

Elizabeth Hamilton
796 Riverland Drive
Charleston, SC 29412

Rosetta B. Brown
141 Dorchester Manor Blvd.
N. Charleston, SC 29420

Sheneatha Brisbane
617 East Bay Street, Apt. D
Charleston, SC 29403

Carolyn Pinckney
1041 Nelson Avenue, Apt. 5-B
Bronx, NY 10452

Sherry Geathers
1815 Story Avenue, #7E
Bronx, NY 10473

Vernon Geathers
1815 Story Avenue, #7E
Bronx, NY 10473

Jennet Geathers
1815 Story Avenue, #7E
Bronx, NY 10473

Beatrice Geathers
1815 Story Avenue, #7E
Bronx, NY 10473

Ronald Washington
2018 Lucky Road
Charleston, SC 29412

Michelle H. Lawrence
3200 Denali Court
Gastonia, NC 28054

Janae Elliott
1416 Nelson Avenue, #2K
Bronx, NY 10452

Porsha Elliott
1416 Nelson Avenue, #2K
Bronx, NY 10452

Davon Elliott
1416 Nelson Avenue, #2K
Bronx, NY 10452

Patricia Elliott
1936 Bussing Avenue
Bronx, NY 10466

Patricia Williams
200 West 143rd Street, #6M
New York, NY 10030

Nancy G. Brisbane
796 Riverland Drive
Charleston, SC 29412

Ruth Nelson Gadsden
714 W. Westchester Drive
Charleston, SC 29414

J. Christopher Lanning, Esquire
Attorney for Nordic Group, LLC
12-A Carriage Lane
Charleston, SC 29407

Mildred Chapman
1304 Hester Street
Charleston, SC 29403

Vivian Cromwell
1819-A South Grimball Road
Charleston, SC 29412

Susan Simmons
6564 Rebecca Beach Lane
Awendaw, SC 29429

Blake Brisbane
469 Fleming Road
Charleston, SC 29412

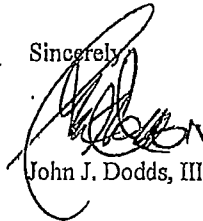
*Re: Vivian B. Cromwell, et al. vs. Albertina Brisbane, et al.
Case No. 2015-CP-10-0939*

Dear Sir or Madam:

Enclosed herewith please find a copy of the Notice of Hearing relative to the above-referenced civil action. Please note that a Hearing has been scheduled before the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, South Carolina, on May 3, 2016, at 2 o'clock pm, Charleston County Judicial Center, 100 Broad Street, Second Floor, Courtroom 2A, Charleston, South Carolina, 29401.

Also enclosed is a copy of my Certificate of Mailing reflecting service upon you of the Notice of Hearing.

Sincerely,



John J. Dodds, III

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU)
SIMMONS, RUTH NELSON GADSDEN,)
ROBERT BLAKE BRISBANE AND MILDRED)
CHAPMAN)

Plaintiffs)

vs.)

ALBERTA BRISBANE, ET AL)

Defendants)

ASSOCIATED DEVELOPERS, INC.)

Intervenor/Defendant)

AMENDED ANSWER,
COUNTERCLAIM AND
CROSS-CLAIM OF
ASSOCIATED DEVELOPERS, INC.

FILED
2016 APR 22 PM 2:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW the Intervenor/Defendant and by way of Amended Answer,
Counterclaim and Cross-Claim to the Complaint alleges and says as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each allegation of the Complaint is denied unless otherwise admitted,
qualified, or explained.

FOR A SECOND DEFENSE

(Response to Allegations)

2. The preceding paragraphs, not inconsistent herewith, are incorporated herein
by reference.

3. The allegations of Paragraphs 1, 2, 3, and 4 are admitted.

4. The allegations of Paragraphs 5 and 6 require no response from the Intervenor.

5. The allegations of Paragraphs 7, 8, and 9 are admitted.

FACTUAL ALLEGATIONS COMMON TO ALL ADDITIONAL DEFENSES.

COUNTERCLAIMS AND CROSS-CLAIMS

6. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

7. On or about June 1, 2014, Intervenor/Defendant, Associated Developers, Inc. (hereinafter "Associated") began discussions and negotiations with the Plaintiffs and others for the purchase of the real property (hereinafter the "Property") which is the subject matter of this action. As a result of these discussions, Associated learned that the title to the Property rested in numerous undetermined heirs and that a quiet title suit would be required to obtain clear title.

8. Further, Plaintiffs advised Associated that they were financially unable to afford the costs required to clear title to the Property. Associated presented a contract proposal by which it would pay the Plaintiff's legal fees/costs to quiet the title.

9. Negotiations between Associated and the Plaintiffs resulted in an executed Contract to Purchase (the "Contract") dated August 11, 2014. Acting in reliance upon the terms and conditions of the Contract, Associated undertook, commenced, and commissioned the following during Feasibility Period to evaluate the Property:

- a. Boundary Survey
- b. Topographic Survey
- c. Tree Survey
- d. Wetland Survey
- e. Jurisdictional Wetland Determination from the US Army Corps

10. The actions above revealed the exact location of a classification of a critical ditch down the middle of the Property, the existence of many large grand trees and numerous grave sites with the cumulative effect of greatly decreasing the development potential of the Property. Associated contemplated termination of the Contract because it deemed the Property to be worth **less** than the agreed upon Purchase Price at that time.

11. In an effort to continue, Associated presented a revised approach to the Plaintiffs that would attempt to reestablish the Contract value of the Property via annexation into the City of Charleston to utilize more flexible development standards than those in Charleston County. Associated and the Plaintiffs entered into that First Amendment to Contract to Purchase (the "First Amendment") on January 5, 2015. Acting in reliance upon the terms and conditions of the Contract and the First Amendment, Associated commenced the following actions:

- a. Annexation and Zoning into the City of Charleston
- b. Preliminary coordination with Charleston Water, JIPSD and SCDOT
- c. Preliminary Land Planning—Concept Plans, City Meetings/Coordination

- d. Preliminary Engineering---Preliminary water, sewer and drainage studies
- e. General Legal Services—Land Contract and Title

12. That in addition to the foregoing and in further reliance upon the Contract, Associated and the Plaintiffs entered into a Written Agreement dated October 14, 2015, wherein Associated and the Plaintiffs agreed upon a proposed concept plan for Brisbane Park (the "Park"). Associated and Plaintiffs agreed that the Brisbane family and heirs would enjoy perpetual access to the Park and that Associated be solely responsible for all design, approval, permitting, construction, and perpetual maintenance costs related to the Park.

13. That beginning with the execution of the Contract on August 11, 2014, and the quiet title hearing in this action on December 19, 2015, acting in reliance upon the terms and conditions of the Contract, Associated incurred fees, costs and expenses of approximately \$34,933.93 to date, and is continuing to incur expenses associated with this litigation and the Property.

14. Notwithstanding any and all of the foregoing, Associated learned at the hearing on December 19, 2015, that Ms. Ernestine Brown, who was determined to own a .001265% undivided interest in the Property, had signed and presented a subsequent contract to purchase the Property at a higher sales price than the Associated Contract.

15. That on March 2, 2016, the Honorable Mikell R. Scarborough found that additional proceedings should go forward to determine the fair market value of the Property, thereby placing Associated's Contract in jeopardy.

FOR A THIRD DEFENSE AND A FIRST COUNTERCLAIM AND CROSS-CLAIM

(Quantum Meruit/Unjust Enrichment)

14. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

15. That the acts, actions, and undertakings by Associated as set forth hereinabove conferred a substantial benefit upon the parties to this action, the owners of the Property and the Property itself.

16. That the parties to this action, the owners of the Property, and the Property itself have realized the benefits so conferred.

17. That the retention of the benefits by the parties to this action, the owners of the Property, and the Property itself is unjust under the circumstances without payment and reimbursement to Associated.

FOR A FOURTH DEFENSE AND A SECOND COUNTERCLAIM AND CROSS-CLAIM

(Section 15-61-110: Attorney's Fees)

18. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

19. Associated has incurred attorney's fees for the initiation and prosecution of the within partition action and additional attorney's fees in protecting its interests in this litigation.

20. Associated requests that its attorney's fees in this action be assessed and reimbursed from the proceeds of any sale of the Property.

FOR A FIFTH DEFENSE AND A THIRD COUNTERCLAIM AND CROSS-CLAIM

(Rule 71, SCRCP)

21. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

22. Associated has incurred attorney's fees and costs which have benefitted all parties to the within partition action.

23. Pursuant to Rule 71(d)(3), Associated requests that its attorney's fees, costs, and expenses incurred in connection with this action and the Property be assessed and reimbursed from the proceeds of any sale of the Property.

WHEREFORE, Intervenor/Defendant prays that this Honorable Court issue its Order and Decree as follows:

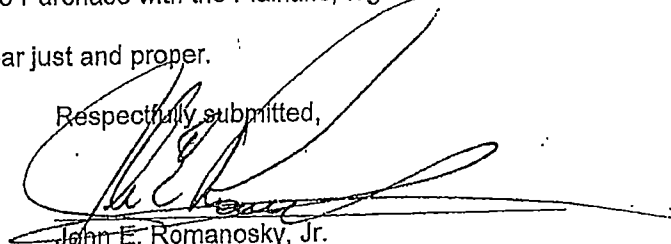
A. Finding, *inter alia*, that the Contract to Purchase between Plaintiffs and Intervenor/Defendant is in the best interests of the parties hereto, and therefore approve the Contract to Purchase and issue its Master's Deed conveying the property to Intervenor for the consideration stated therein, together with such other and further relief as may appear just and proper; **or, in the alternative:**

B. Granting Intervenor/Defendant a right of first refusal to purchase the Property at such price as may be determined to be fair and equitable by this Court, together with such other and further relief as may appear just and proper; **or, in the alternative:**

C. In the event that Intervenor/Defendant is not allowed to purchase the Property or elects not to purchase the Property, then granting and awarding Intervenor/Defendant reimbursement for all attorney's fees, costs, and expenses

incurred in this action and all fees, costs, and expenses incurred in exercising its due diligence rights under the Contract to Purchase with the Plaintiffs, together with such other and further relief as may appear just and proper.

Respectfully submitted,



John E. Romanosky, Jr.
SC Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Intervenor/Defendant,
Associated Developers, Inc.

Charleston, South Carolina
April 22, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-10-0939

Vivian B. Cromwell, Susan)
Prioleau Simmons, Ruth Nelson)
Gadsen, Robert Blake Brisbane)
and Mildred Chapman,)

Plaintiffs,)

v.)

Alberta Brisbane, et. al.,)

Defendants,)

Associated Developers, Inc.,)

Intervenor,)

Nordic Group, LLC,)

Intervenor.)

NORDIC GROUP, LLC'S
MOTION TO RECONSIDER,
ALTER, OR AMEND

FILED
2016 MAY 16 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

PLEASE TAKE NOTICE THAT Intervening Party Nordic Group, LLC ("Nordic"), through its undersigned attorneys, hereby moves the Court for an Order altering or amending the Order of Charleston County Master-in-Equity Mikell R. Scarborough in the above-captioned matter, made on May 5, 2016, directing a sale of the subject property in this action to Associated Developers, Inc. ("Associated") for the amount of \$560,000.00 ("Order"). The Order is attached hereto as "Exhibit A."

Nordic moves this Court to reconsider, alter or amend its Order to find that the sale of the subject property must instead be sold to Nordic pursuant to Nordic's executed contract to purchase the property and Nordic's highest bid for the property in the amount

090

of \$650,000.00, which was presented to the Court during the final hearing in this matter on May 3, 2016.¹

BACKGROUND

This quiet title action was filed on or about February 13, 2015 pursuant to the South Carolina Uniform Declaratory Judgment Act for the purpose of effecting this Court partition a sale of certain real property further described as Charleston County TMS #s 340-01-00-050 and 340-01-00-011 located on James Island, South Carolina (the "Property").

On May 3, 2016, a final hearing was held before Charleston County Master-in-Equity, Mikell R. Scarborough. The parties and the Court agreed to a sale of the Property during the hearing. Testimony and evidence received during the hearing indicated that two contracts to purchase the Property had been received and executed by various landowner-parties. One was a contract to purchase in the amount of \$560,000.00 with Nordic. The other was a contract to purchase in the amount of \$455,000.00 with Associated, which was amended prior to the hearing to the amount of \$560,000.00, thereby identically matching the sales price contained in Nordic's contract to purchase. Thus, two signed pending contracts to purchase the property were considered at the hearing, one with Nordic and one with Associated, both for the sales price of \$560,000.00.

Both Nordic and Associated were permitted to intervene in the action. During the hearing, Nordic, through its counsel, increased the sales price bid for its contract to purchase the Property to the amount \$650,000.00. Associated refused to increase its

¹ Although this motion is timely made under Rule 59(e), SCRCP, Nordic also timely filed this same Motion to Reconsider, Alter, or Amend as to the oral decree made at the hearing under the incorrect caption of 2014-CP-10-4043 on May 13, 2016.

proposed sales price of \$560,000.00, as reflected by the testimony of Christopher Phillips, Jr, principal and/or agent of Associated. Accordingly, at the close of the hearing, two executed contracts to purchase the Property existed with the identical sale price amount of \$560,000.00, with only Nordic offering a higher bid of \$650,000.00 to amend its contract to purchase.

Nevertheless, the Court ordered the sale of the Property to Associated pursuant to its contract to purchase, representing a sales price of \$90,000.00 less than what would be due to Landowners under Nordic's executed contract and increased bid. A copy of Nordic's amended contract to reflect its bid made during the hearing is attached hereto as "Exhibit B."

LEGAL ANALYSIS

This action was brought pursuant to Section 15-53-10 et seq., Code of Laws of South Carolina, 1976, as amended. Under the South Carolina Uniform Declaratory Judgment Act, "[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30. Because the Property is heirs property, this action was brought for the purpose of causing this Court to effect a partition by sale of the Property. Importantly, the landowner-heirs in this matter were not unified in their preference of one contract to purchase the Property.

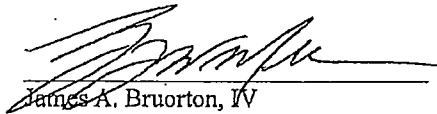
Under South Carolina law, a property partition procedure must be fair and equitable to all parties to the action. Campbell v. Jordan, 382 S.C. 445, 451 (2009). Furthermore equitable considerations such as the length of ownership and sentimental attachment to property may be considered in a partition action, but the pecuniary interest of all the parties is the determining factor in deciding whether to require a judicial sale or to allow a partition by allotment. Id. In judicial sales, the Supreme Court has observed that all sales must be made on free, fair and competitive bidding. Ex parte Keeler, 185 S.C. 283 (1937). Although this action does not involve a public sale, two competing contractual bidders for the property were present as Intervening Parties and the Court, through partition, ultimately made a selection of one contract over the other, similar to a judicial sale. Notably, there is no requirement that a higher bid presented during judicial sales or the hearing in this matter be reduced to writing under South Carolina law. "In the absence of a statute providing otherwise, an oral bid is sufficient." 68 C.J.S. Partition § 177 (citing Holliday v. McFadden, 188 S.C. 187, 198 S.E. 392 (1938)).

Pursuant to Rule 59(e), SCRCP, Nordic respectfully requests that the Court reconsider, alter, or amend the Order directing a sale of the subject property in this action to Associated for the amount of \$560,000.00 and instead find that the sale of the subject property must be sold to Nordic pursuant to Nordic's executed contract to purchase the property and Nordic's highest bid for the property in the amount of \$650,000.00, which was presented to the Court during the final hearing in this matter on May 3, 2016. As Nordic's contract and bid represent the greater sale price owed to Landowners and is in the best pecuniary interest of the landowners, this Court should amend its Order accordingly.

CONCLUSION

For the reasons set forth in this motion, the evidence presented at Court and any further argument of counsel as permitted by the Court, Nordic's motion should be granted and the Court should enter an Order directing the sale of the subject property to Nordic.

ROSEN, ROSEN & HAGOOD, LLC



James A. Bruorton, IV
Timothy J.W. Muller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726

**ATTORNEYS FOR NORDIC
GROUP, LLC**

Charleston, South Carolina

May 16, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-939

Cromwell

Brisbane

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

The court approves the contract of Associated Developers for \$1,560,000 as amended

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

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

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

Circuit Court Judge

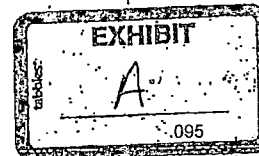
3062

Judge Code

Date

5/3/16

SCRPC Form 4C (10/2011)





AGREEMENT TO BUY AND SELL REAL ESTATE
(FOR GENERAL USE AND LOTS/ACREAGE)

1. PARTIES: This legally binding Agreement entered into on May 11, 2016
between, Buyer(s), NORDIC GROUP LLC, (hereinafter
called "BUYER"), and Seller(s), KENESTINE BROWN ET AL
(hereinafter called "SELLER"). The property shall be deeded in the name(s) of NORDIC GROUP LLC.

THE ☒ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____
Address 1912 CENTRAL PARK RD. AND 0 CENTRAL PARK RD.
Tax Map # 340-01-00-011 AND 340-01-00-050 City CHARLESTON Zip 29412
County of CHARLESTON, State of South Carolina.

3. PURCHASE PRICE shall be \$ 1650,000.00
SIX HUNDRED FIFTY THOUSANT AND 00/100 dollars.

4. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☒ Cash; or ☐ Subject to Financing. Financing to be obtained by ☐ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: _____

5. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 100,000.00
Buyer and Seller authorize BENSA LAM FIRM, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☒ Check, or ☐ Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

6. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum _____ % loan (loan-to-value ratio) within _____ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 22.

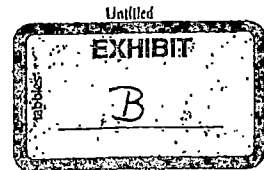
FHA Mortgage Insurance: ☐ will ☐ will not be added to the mortgage. VA funding fee: ☐ will ☐ will not be added to the mortgage.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

Form 330 PAGE 1 OF 6

The Peninsula Company, LLC 17 Princess Street Charleston, SC 29401
Phone: (843) 723-9945 Fax: _____

The Peninsula Co
Produced with ZipForm® by ZipLoops 18070 Fittes Mill Road, Fraser, Michigan 48028 www.ziploops.com



7. CLOSING COSTS: Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

8. OPTION TO TERMINATE AFTER DUE DILIGENCE: (A) Seller grants to Buyer a 15 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following:

1. Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate to evaluate the suitability of Property for Buyer's intended use, including, but not limited to, zoning, governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence");

(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost or expense associated with Buyer's inspection of and entry upon Property.

(C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9. BUILDING PERMIT: This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property. If Buyer notifies Seller in writing within _____ days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

10. REZONING: This Agreement ☐ is ☒ is not contingent upon Property being rezoned to _____ on or before the _____ day of _____ by the appropriate governmental authorities. For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed. The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning, and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty-eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

11. WELL, SEPTIC TANK, SEWER AVAILABILITY: It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property.

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed \$ _____, then in such event, the Buyer shall contract such authority to obtain confirmation that this subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system.

Seller represents that the property is connected to ☒ public sewer system or to ☐ septic tank or to ☒ public water or to ☐ well system or to ☐ other _____

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

Form 330 PAGE 2 OF 6
Unfilled

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12. **SURVEY:** Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER. The surveyor shall set and flag all property lines, showing encroachments and easements. Property must be X or having at least acres. The survey to be approved in writing by Buyer prior to closing. The purchase price is based upon \$ per (acre, sq. ft., or front ft.) and shall be adjusted in accordance with the area set forth in such a survey, if applicable.

13. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 15 DAYS AFTER THE CLOSING, no later than 5:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

14. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

15. **CONDITION OF PROPERTY:** The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement.

16. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5:00 o'clock P M on DECEMBER 30, 2017 unless countered or accepted by Seller in written form prior to such time. Time is of the essence.

17. **SPECIAL STIPULATIONS:** The following stipulations concerning restrictions, and easements affecting desired use, drainage, hazardous waste, availability of water and sewer, soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter, the following stipulations shall control: (See addendum if applicable) SEE CONTRACT ADDENDUM 1

18. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 366 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

19. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20. **ROLLBACK TAXES (IF ANY):** When rollback taxes are subsequently determined and billed to the Buyer, the Seller and Buyer agree that the rollback taxes shall be paid by ☐ Buyer or ☒ Seller.

21. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

23. ACTUAL COST INCURRED shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

24. SURVEY, TITLE EXAMINATION, AND INSURANCE: The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood Insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

25/ APPRAISED VALUE: (check one)

☒ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☐ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price or more; If the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

26. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS: All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the N/A. In the event such studies are wanted or required, the studies must be furnished by the proper parties within 10 days of complete execution of the agreement. The Buyer and Seller must have access to all studies within five (5) days of receipt of the studies. If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem, the Buyer's obligations under this Agreement terminate.

27. COASTAL TIDELANDS & WETLANDS ACT: In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

28. DISCLAIMER BY BROKERS AND AGENTS: The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

29. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud.

Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

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The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an Interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

30. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

31. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

32. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

33. EXTENSION AGREEMENT: If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 60 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

34. MEGAN'S LAW: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

35. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

36. CONTINGENCIES: These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) SEE CONTRACT ADDENDUM 1

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF

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THIS AGREEMENT, BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____
BUYER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____
SELLER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____
SELLER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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Addendum 1

Addendum to contract dated May 11, 2016 between Buyer, Nordic Group LLC. And Seller, Ernestine Brown Et Al., and more fully described as follows:

1. If Buyer is not satisfied with Buyer's inspections of the Property during the Due Dillgence Period, in Buyer's sole discretion, then Buyer may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Buyer and this Agreement shall terminate.
2. Subject property to close 15 (Fifteen) days after the expiration of Due Diligence or after court grants clear, marketable, insurable title whichever comes later.
3. Grave sites located upon 3.6 acre tract. Buyer and Seller agree that there are numerous grave sites located near the corner of Fleming Road and Central Park Road on the 3.6 acre tract. At closing, Buyer and Seller shall enter into a written Agreement regarding the perpetual maintenance of all such grave sites and the right of Sellers and respective heirs to visit such grave sites.
4. Upon successful execution of contract and the quiet title suit action, Seller shall release Five Thousand Dollars (\$5,000.00) out of escrow to Seller's attorney, John Dodds for "Title Work Fee".

WITNESSES:

BUYER:

_____, 2016

Nordic Group, LLC.

SELLERS:

_____, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-10-0939

Vivian B. Cromwell, Susan
Prioleau Simmons, Ruth Nelson
Gadsen, Robert Blake Brisbane
and Mildred Chapman,)

Plaintiffs,)

v.)

Alberta Brisbane, et. al.,)

Defendants,)

Associated Developers, Inc.,)

Intervenor,)

Nordic Group, LLC,)

Intervenor.)

**AFFIDAVIT OF
JAMES A. BRUORTON IV**

FILED
2016 JUN -3 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT

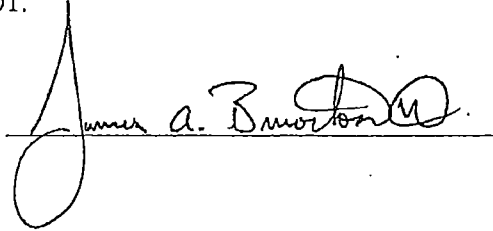
PERSONALLY APPEARED BEFORE ME, James A. Bruorton IV, who after being first
duly sworn, deposes and says as follows:

1. I am an attorney for Nordic Group, LLC who has intervened in the above captioned action.
2. I am a member of the law firm of Rosen, Rosen & Hagood, LLC. and have been a member of the South Carolina Bar since 2003.
3. Attached as Exhibit A to my Affidavit is a true and accurate copy of the fully executed Agreement to Buy and Sell Real Estate entered into between the Nordic Group, L.L.C (Buyer) and Ernestine Brown, et al. (Seller) for the property located at 1912 Central Park Rd. and 0 Central Park Rd, Tax Map #s 340-01-00-011 and 340-01-00-050 located in the City of

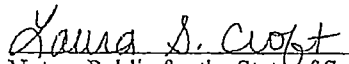
Charleston, County of Charleston, State of South Carolina. The original Agreement can be provided to the Court for review.

4. The Buyer, Nordic Group, LLC, has submitted and the Seller, Ernestine Brown, et al, has accepted a cash offer in the amount of \$650,000.00.

FURTHER AFFIANT SAYETH NOT.

A handwritten signature in black ink, appearing to read "Ernestine Brown", is written over a horizontal line.

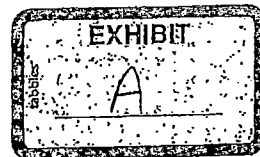
SWORN to before me
this 2nd day of June, 2016


Notary Public for the State of South Carolina

My commission expires: 5/28/18



AGREEMENT TO BUY AND SELL REAL ESTATE
(FOR GENERAL USE AND LOTS/ACREAGE)



1. PARTIES: This legally binding Agreement entered into on May 11, 2016
between, Buyer(s), NORDIC GROUP L.L.C., (hereinafter
called "BUYER"), and Seller(s), BENESTINE BROWN ET AL
(hereinafter called "SELLER"). The property shall be deeded in the name(s) of NORDIC GROUP L.L.C.

THE ☒ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____
Address 1912 CENTRAL PARK RD. AND D CENTRAL PARK RD.
Tax Map # 340-01-00-011 AND 340-01-00-050 City CHARLESTON Zip 29412
County of CHARLESTON, State of South Carolina.

3. PURCHASE PRICE shall be \$ 150,000.00
SIX HUNDRED FIFTY THOUSAND AND 00/100 dollars.

4. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☒ Cash; or ☐ Subject to Financing. Financing to be obtained by ☐ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: _____

5. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 100,000.00
Buyer and Seller authorize BENSA LAW FIRM, as Escrow Agent, to hold and disburse
earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☒ Check, or ☐ Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER
HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES
HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT
JURISDICTION HAS DIRECTED A DISBURSEMENT.

6. ~~LOAN PROCESSING AND APPLICATION:~~ Buyer's obligation under this agreement is contingent on Buyer obtaining
said loan. Buyer shall apply for a maximum _____ % loan (loan-to-value ratio) within _____ consecutive days from the
execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive
days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the
essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the
application, the Seller shall have the option to terminate this Agreement with written notice. Buyer also agrees to provide all
documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that
is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to
disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan
processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer
shall be in default of this agreement subject to the terms of paragraph 22.

FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the
mortgage.

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The Peninsula Company, LLC 17 Princess Street Charleston, SC 29401
Phone: (843) 723-9945 Fax:

The Peninsula Co

Untitled

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7. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

8. **OPTION TO TERMINATE AFTER DUE DILIGENCE:** (A) Seller grants to Buyer a 15 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following:

1. Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing; If any, Buyer deems appropriate to evaluate the suitability of Property for Buyer's intended use, including, but not limited to, zoning, governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence");

(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost or expense associated with Buyer's inspection of and entry upon Property.

(C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9. **BUILDING PERMIT:** This Agreement ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property. If Buyer notifies Seller in writing within _____ days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

10. **REZONING:** This Agreement ☐ is ☒ is not contingent upon Property being rezoned to _____ on or before the _____ day of _____ by the appropriate governmental authorities. For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed. The ☐ Buyer ☐ Seller shall be responsible for pursuing such rezoning, and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty-eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

11. **WELL, SEPTIC TANK, SEWER AVAILABILITY:** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property.

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed \$_____, then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system.

Seller represents that the property is connected to ☒ public sewer system or to ☐ septic tank or to ☒ public water or to ☐ well system or to ☐ other _____

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12. ~~SURVEY:~~ Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the ☐ BUYER ☐ SELLER. The surveyor shall set and flag all property pins, showing encroachments and easements. Property must be x or having at least acres. The survey to be approved in writing by Buyer prior to closing. The purchase price is based upon \$ per (acre, sq. ft. or front ft.) and shall be adjusted in accordance with the area set forth in such a survey, if applicable.

13. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 15 DAYS AFTER THE CLOSING, no later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

14. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

15. **CONDITION OF PROPERTY:** The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement.

16. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5:00 o'clock P M on DECEMBER 30, 2017, unless countered or accepted by Seller in written form prior to such time. Time is of the essence.

17. **SPECIAL STIPULATIONS:** The following stipulations concerning restrictions, and easements affecting desired use, drainage, hazardous waste, availability of water and sewer, soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter, the following stipulations shall control: (See addendum if applicable) SEE CONTRACT ADDENDUM 1

18. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

19. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20. **ROLLBACK TAXES (IF ANY):** When rollback taxes are subsequently determined and billed to the Buyer, the Seller and Buyer agree that the rollback taxes shall be paid by ☐ Buyer or ☒ Seller.

21. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

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23. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

24. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood Insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

25. **APPRAISED VALUE:** (check one)

☒ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☐ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price or more; If the lot or parcel with building and improvements thereon appraises for less than the selling price; the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

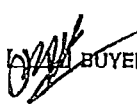
26. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS:** All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the N/A. In the event such studies are wanted or required, the studies must be furnished by the proper parties within 10 days of complete execution of the agreement. The Buyer and Seller must have access to all studies within five (5) days of receipt of the studies. If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem, the Buyer's obligations under this Agreement terminate.

27. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☒ Buyer's ☐ Seller's expense.

28. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

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Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

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Form 330 PAGE 4 OF 6
Untitled

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

30. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

31. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

32. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

33. EXTENSION AGREEMENT: If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

34. MEGAN'S LAW: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

35. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

36. CONTINGENCIES: These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) SEE CONTRACT ADDENDUM 1

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF

☒ BUYER ☐ BUYER ☒ SELLER ☒ SELLER HAVE READ THIS PAGE

Form 330 PAGE 5 OF 6

Untitled

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THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: [Signature] as atty for Buyer Date 6-2-16 Time 3:45pm
WITNESS: [Signature] Date 6-2-16 Time 3:45pm
BUYER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____
SELLER: [Signature] Date 5-31-16 Time 2:10pm
WITNESS: Jonathan Malone Date 5/31/16 Time 2:10
SELLER: Shenecia Bridgman Date 5-31-16 Time 2:12
WITNESS: Jonathan Malone Date 5/31/16 Time 2:12
LISTING AGENT AND COMPANY _____
SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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Form 330 PAGE 6 OF 6

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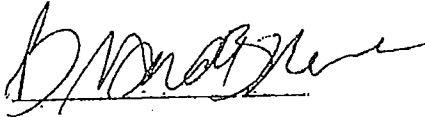
110

Addendum 1

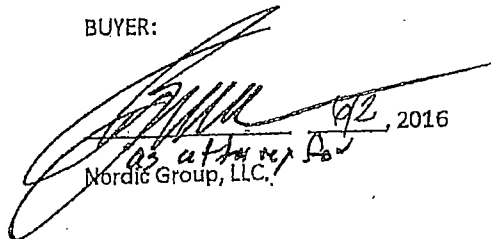
Addendum to contract dated May 11, 2016 between Buyer, Nordic Group LLC. And Seller, Ernestine Brown Et Al., and more fully described as follows:

1. If Buyer is not satisfied with Buyer's inspections of the Property during the Due Diligence Period, in Buyer's sole discretion, then Buyer may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Buyer and this Agreement shall terminate.
2. Subject property to close 15 (Fifteen) days after the expiration of Due Diligence or after court grants clear, marketable, insurable title whichever comes later.
3. Grave sites located upon 3.6 acre tract. Buyer and Seller agree that there are numerous grave sites located near the corner of Fleming Road and Central Park Road on the 3.6 acre tract. At closing, Buyer and Seller shall enter into a written Agreement regarding the perpetual maintenance of all such grave sites and the right of Sellers and respective heirs to visit such grave sites.
4. Upon successful execution of contract and the quiet title suit action, Seller shall release Five Thousand Dollars (\$5,000.00) out of escrow to Seller's attorney, John Dodds for "Title Work Fee".

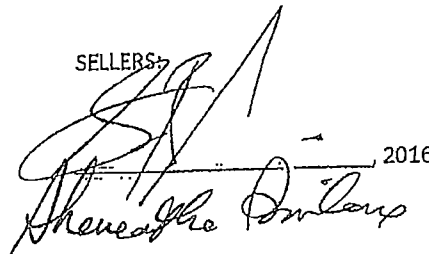
WITNESSES:



BUYER:


92, 2016
as attorney for
Nordic Group, LLC.

SELLERS:


92, 2016
Ernestine Brown

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Vivian B. Cromwell, Susan)
Prioleau Simmons, Ruth Nelson)
Gadsen, Robert Blake Brisbane)
and Mildred Chapman,)

Plaintiffs,)

v.)

Alberta Brisbane, et. al.,)

Defendants,)

Associated Developers, Inc.,)

Intervenor,)

Nordic Group, LLC,)

Intervenor.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-10-0939

AFFIDAVIT IN SUPPORT OF
NORDIC GROUP, LLC'S MOTION
TO RECONSIDER, ALTER OR
AMEND

FILED
2016 JUN -3 AM 10:18
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Sheneatha Brisbane who,

after being first duly sworn, deposes and says as follows:

1. I, Sheneatha Brisbane am over 18 years of age and am fully competent to testify as to the matters stated in this affidavit.

2. I am a Defendant in the above referenced case number and a landowner of the subject property further described as Charleston County TMS #s 340-01-00-050 and 340-01-00-011 located on James Island, South Carolina (the "Property").

3. I am now aware that two contracts to purchase the Property were presented for the Court's consideration and approval in this case, one with Associated Developers, Inc. ("Associated") and one with Nordic Group, LLC ("Nordic").

4. I am now aware that both contracts considered at the time of the hearing were in the amount of \$560,000.00 with the same representations and contingencies, but that Nordic's contract was increased to \$650,000.00 during the hearing and before any ruling in this case.

5. I would like the Court to approve the contract to purchase the Property presented by Nordic in the amount of \$650,000.00 since Nordic's contract represents an amount \$90,000.00 greater than the contract offered by Associated.

6. It is my opinion that approval of Nordic's contract to purchase the Property is in my pecuniary interest as a landowner entitled to a portion of the sales price.

FURTHER AFFIANT SAYETH NOT.

Sheneatha Binkane

SWORN to before me
this 31 day of May, 2016

Janet M. Malone
Notary Public for the State of South Carolina

My commission expires: 7/6/25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-10-0939

Vivian B. Cromwell, Susan)
Prioleau Simmons, Ruth Nelson)
Gadsen, Robert Blake Brisbane)
and Mildred Chapman,)

Plaintiffs,)

v.)

Alberta Brisbane, et. al.,)

Defendants,)

Associated Developers, Inc.,)

Intervenor,)

Nordic Group, LLC,)

Intervenor.)

AFFIDAVIT IN SUPPORT OF
NORDIC GROUP, LLC'S MOTION
TO RECONSIDER, ALTER OR
AMEND

FILED
2016 JUN -3 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Germaine Brisbane who,
after being first duly sworn, deposes and says as follows:

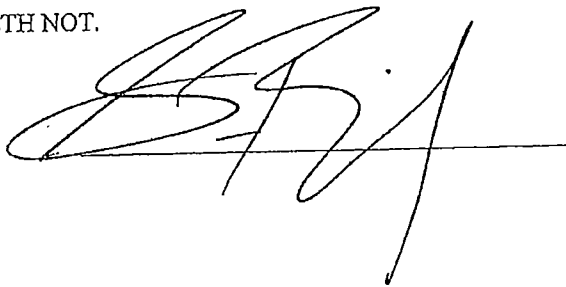
1. I, Germaine Brisbane am over 18 years of age and am fully competent to testify as to the matters stated in this affidavit.
2. I am a Defendant in the above referenced case number and a landowner of the subject property further described as Charleston County TMS #s 340-01-00-050 and 340-01-00-011 located on James Island, South Carolina (the "Property").
3. I am now aware that two contracts to purchase the Property were presented for the Court's consideration and approval in this case, one with Associated Developers, Inc. ("Associated") and one with Nordic Group, LLC ("Nordic").

4. I am now aware that both contracts considered at the time of the hearing were in the amount of \$560,000.00 with the same representations and contingencies, but that Nordic's contract was increased to \$650,000.00 during the hearing and before any ruling in this case.

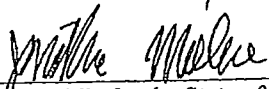
5. I would like the Court to approve the contract to purchase the Property presented by Nordic in the amount of \$650,000.00 since Nordic's contract represents an amount \$90,000.00 greater than the contract offered by Associated.

6. It is my opinion that approval of Nordic's contract to purchase the Property is in my pecuniary interest as a landowner entitled to a portion of the sales price.

FURTHER AFFIANT SAYETH NOT.



SWORN to before me
this 31 day of May, 2016


Notary Public for the State of South Carolina

My commission expires: 7/6/25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0939

Vivian B. Cromwell, Susan Prioleau
Simmons, Ruth Nelson Gadsden,
Robert Blake Brisbane and Mildred
Chapman

Plaintiffs

Vs.

Alberta Brisbane, et Al

Defendants

Associated Developers, Inc.

Intervenor

Nordic Group, LLC

Intervenor

MEMORANDUM IN OPPOSITION TO
MOTION TO RECONSIDER, ALTER,
OR AMEND BY NORDIC GROUP, LLC

FILED
2016 JUN 16 PM 4:13
JULIE J. ARMSTRONG
CLERK OF COURT

Intervenor, Associated Developers, Inc., (hereinafter referred to as "Associated")
by and through its undersigned attorney, respectfully submits the following
Memorandum in Opposition to Intervenor, Nordic Group, LLC's, (hereinafter referred to
as "Nordic") Motion to Reconsider, Alter or Amend.

ADDITIONAL AND SUPPLEMENTAL BACKGROUND INFORMATION

Nordic's background information as set forth in its Motion is incomplete and
misleading in one or more of the following particulars, to-wit:

1. Nordic fails to include the fact that the May 3, 2016, hearing was a
valuation hearing pursuant to Section 15-61-25, and all parties to the action, including

Nordic, stipulated and agreed that the fair market value of the subject Property was \$560,000.00.

2. Nordic's factual background suggests and implies that the Court considered two (2) "matching" contracts from Nordic and Associated with an identical sales price of \$560,000.00. In fact, the contracts were not identical because (i) Associated removed all contingencies to its contract and was prepared to close after confirmation that there were not family graves scattered throughout the whole property as stated by several Brisbane heirs testifying at the hearing, but Nordic's contract was contingent upon a 15 day "Termination Right," (ii) Nordic's contract contained a condition precedent stating that buyer and seller "shall enter into a written agreement regarding the perpetual maintenance of ... grave sites." Associated's contract contained the same language, however, Associated and the sellers had already entered into a Written Agreement for the perpetual maintenance of, and perpetual access to, the family grave sites.

3. Although Nordic's counsel announced to the Court and the Brisbane heirs that it was *prepared* to raise its offer by as much as \$100,000.00, when asked by the Court if Nordic had a written offer to present at a price higher than Associated's contract, counsel for Nordic answered "no." Nordic's counsel was not even sure that anyone from Nordic had even visited the site.

4. Counsel for Associated sought and requested testimony from Nordic concerning its contract and its ability to close, but no officer, member, or representative from Nordic was present to offer testimony or be subject to cross-examination by counsel or the Court.

STANDARD OF REVIEW

Rule 59, SCRPC, affords a losing party the opportunity to convince a court that it has ruled wrongly or has failed to rule upon an issue raised at trial. However, a losing party may not use a Rule 59 motion to present an issue or evidence that could have been raised or presented at trial. *Anonymous v. State Board of Medical Examiners*, 323 S.C. 260, 473 S.E.2d 870, 880 Ct. App. 1996. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 Ct. App. 2003.

ARGUMENT

I. **Nordic's motion to reconsider should be denied because the pecuniary interests of all parties was best served by approval of Associated's contract.**

- Associated presented a written offer removing all of its remaining contractual contingencies and was ready to close at the stipulated fair market value of the property. After testimony from several of the Brisbane heirs that there were as many as 600 graves scattered throughout the Property, Associated's request to verify that testimony was in the best interests of the Brisbane heirs as it would greatly affect the value of the Property and its development potential for any purchaser, not just Associated. Having concluded its re-examination of the grave sites, Associated remains ready, willing, and able to close.
- Nordic was not obligated to close and could have terminated its contract which was not in the pecuniary interest of the Brisbane heirs.
- The pecuniary interest of the Brisbane heirs was further served by the "Written Agreement" wherein Associated had already committed to spend significant

sums to maintain and preserve the family cemetery and graves located on the Property.

II. The May 3, 2016, final hearing was a valuation hearing pursuant to Section 15-16-25 and could not and cannot be equated with a public judicial sale as suggested by Nordic, and therefore, Nordic's attempt to outbid Associated was invalid, void, and of no substance or effect.

- Section 15-16-25(C) states that if there is any question as to the value of the property: "An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted and an order as to the valuation ... shall be issued." (emphasis added)
- In order for the Court to treat the May 3rd hearing as a public judicial sale there would have to have been publication of a Notice of Sale giving all third parties, not just Nordic and Associated, the right to bid.

III. There was no written contract or binding offer higher than Associated's amended contract for \$560,000.00 presented by Nordic at the May 3rd hearing.

- There were only two contracts before the court on May 3, 2016, both at the stipulated fair market value of \$560,000.00. Associated's amended contract was signed and Associated had removed all contingencies; Nordic's contract contained a due diligence period and Termination Right. Accordingly, Associated had committed to purchase the Property for fair market value, while Nordic maintained its right to terminate its contract and receive return of its earnest money.

IV. The contract attached to Nordic's motion cannot be considered by the Court because it was not presented as evidence at the May 3rd hearing and may not be presented now under Rule 59.

- The contract attached to Nordic's motion is dated May 11, 2016 (after the May 3rd hearing date) and is unsigned by any parties.

V. Even if the Court had decided to approve Nordic's "offer/bid" to pay \$100,000.00 more than Associated, a substantial portion of the \$100,000.00 increase would not be realized by the Brisbane heirs.

- After Nordic first appeared in this case at the initial hearing on December 19, 2015, and offered to pay more for the property than the original contract between Associated and the Brisbane heirs, Associated was allowed to Intervene and subsequently filed an Amended Answer and Counterclaim seeking reimbursement for money spent over the previous 18 months in reliance upon its contract. As of the date of filing its Counterclaim, Associated had incurred more than \$35,000.00 in costs and expenses, exclusive of attorney's fees and legal expense, and has contracted for an additional \$25,000.00 in engineering services.
- Had the Court approved Nordic's contract, the litigation would still continue on Associated's counterclaim. Given the inherent equitable power of the Court to grant relief under the South Carolina Declaratory Judgment Act, and the Partition statutes found in Section 15-61-10, et seq., Associated would be entitled to full reimbursement for no less than \$35,000.00 and as much as \$60,000.00 for

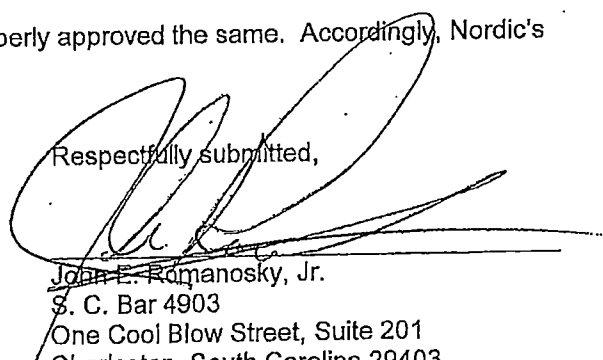
continuing expenses incurred in reliance upon its contract together with legal fees, costs, and expenses.

- Nordic made no mention, offer, or tender to reimburse Associated, so reimbursement must come from the Brisbane heirs substantially reducing the proceeds to the Brisbane heirs and therefore adversely affecting their pecuniary interests.

CONCLUSION

The undersigned respectfully submits that Associated's non-contingent contract for \$560,000.00 and its ability to close immediately best serves the pecuniary interests of all parties, and that the Court properly approved the same. Accordingly, Nordic's motion should be denied.

Respectfully submitted,



John E. Romanosky, Jr.
S. C. Bar 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Intervenor,
Associated Developers, Inc.

June 3, 2016

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity Mikell R. Scarborough

Court of Common Pleas Case No. 2015-CP-10-0939

VIVIAN B. CROMWELL, SUSAN PRIOLEAU SIMMONS, RUTH NELSON GADSEN, ROBERT
BLAKE BRISBANE AND MILDRED CHAPMAN,

Plaintiffs,

v.

ALBERTA BRISBANE, ET. AL.,

Defendants,

ASSOCIATED DEVELOPERS, INC.,

Intervenor,

Of whom

NORDIC GROUP, LLC is the

Intervenor-Appellant.

BY JS

JULIE J. ARMSTRONG
CLERK OF COURT

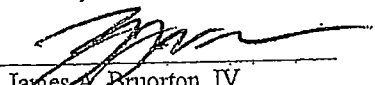
2016 JUN 14 AM 11:23

FILED

NOTICE OF APPEAL

Appellant Nordic Group, LLC appeals the Order of Master-in-Equity Mikell R. Scarborough filed on May 5, 2016 and the corresponding Master's Decree in the above matter. Appellant received notice of the denial of its Motion to Reconsider, Alter or Amend the Order on June 7, 2016. Appellant has not yet received a copy of the signed and filed Master's Decree.

ROSEN, ROSEN & HAGOOD, LLC

By: 

James A. Bruorton, IV
Timothy J. W. Muller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

June 14, 2016

ATTORNEYS FOR APPELLANT

Other attorneys of Record:

John J. Dodds, III, Esquire
858 Lowcountry Blvd. Ste. 101
Mt. Pleasant SC 29464
ATTORNEY FOR PLAINTIFFS

Christopher J. Lanning
2036 Ewall St. Suite F
Mt. Pleasant, SC 29464
ATTORNEY FOR PLAINTIFFS

Walter Richardson Kaufmann
PO Box 459
MT. Pleasant, SC 29465
ATTORNEY FOR DEFENDANT

Arthur C. McFarland
1847 Ashley River Rd. Ste 200
Charleston, SC 29407
ATTORNEY FOR DEFENDANT

John E. Romanosky, Jr.
PO Box 603
Charleston, SC 29402
ATTORNEY FOR INTERVENOR ASSOCIATED DEVELOPERS, INC.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-00939

Vivian Cromwell, et al.,

Plaintiffs,

vs.

Alberta Brisbane, et. al.,

Defendants,

~AND~

Associated Developers, Inc.,

Intervenor,

~AND~

Nordic Group, LLC

Intervenor.

**AFFIDAVIT OF
CHRISTOPHER PHILLIPS, JR.**

PERSONALLY appeared before me, Christopher Phillips, Jr., who, being first duly sworn, deposes and says as follows:

1. I am over the age of 18 years and competent to make this Affidavit.
2. I make this Affidavit, under oath, with the understanding that it will be used in connection with the above-captioned matter.
3. I have personal knowledge of the facts stated herein, unless any fact is stated to be based on information and belief, in which case I believe such facts to be true based upon information that is known to me.
4. I am a duly authorized representative of Associated Developers, Inc. ("Associated"). In that capacity, I am authorized by Associated to give this Affidavit on its behalf.

5. I was present for the May 3, 2016, hearing before the Master-In-Equity in the above matter, and, on behalf of Associated, I duly authorized and approved all terms and commitments of the contract between Associated and the approved heirs of the subject property at issue, which was approved by the Court.

6. The record of the proceedings on May 3, 2016, identifies various and substantial efforts Associated has made over the last two years in connection with the subject property and Associated's desire to purchase it. All of Associated's efforts have been made in good faith in order to ensure the heirs' interests under the agreed upon terms of sale are fully protected and satisfied and the closing occurs as promptly as possible.

7. After the May 3, 2016, hearing, Associated retained a consultant on May 5, 2016, to investigate a claim via testimony from one of the heirs at the May 3, 2016, hearing that approximately 600 gravesites existed on the subject property. Associated received a formal report on May 11, 2016, which refuted this claim and defined the limits of the cemetery. Immediately thereafter, Associated informed its attorney that it desired to close immediately.

8. Since May 3, 2016, Associated has completed: (i) a Phase I Environmental Site Assessment; (ii) a Geotechnical Report; (iii) a Cultural Resources Identification Survey; and (iv) the Cemetery Delineation, all in further expectation of completing the approved contract of sale and making progress toward that end.

9. Associated also has made, since May 3, 2016, additional substantial progress related to the design and engineering plans for the subject property in the both a formal submittal to and subsequent appearance in front of the City of Charleston's Technical Review Committee. Associated has also continued the ongoing process of wetland permitting services in relation to the subject property. Additional appearances before the City's Planning Commission for approval of Associated's project are already scheduled.

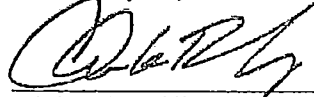
10. Associated has, since May 3, 2016, invested approximately \$22,250.00 in completing these additional efforts in contemplation of the closing. This figure does not include payment for substantial on-going services rendered by professionals and consultants engaged by Associated, which have not yet been billed to Associated, nor does this figure include legal fees and costs necessarily incurred in this action.

11. Having performed and completed, at its cost, this additional due diligence, Associated is fully ready, willing and able to complete the purchase and sale transaction and close immediately and without further delay upon the terms already approved the Court.

12. There are no remaining contingencies or due diligence desired or required by Associated. It is ready to proceed.

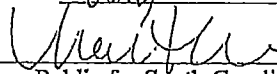
13. It is my belief that any further delay in the closing of the sale to Associated upon the terms approved by the Court is not in the best interest of the heirs and will cause harm to Associated.

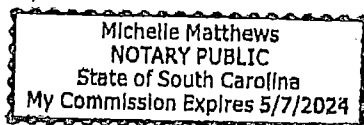
Sworn to by me, the Affiant:



Christopher Phillips, Jr.

SWORN TO BEFORE ME THIS 8th
DAY OF July, 2016



Notary Public for South Carolina
My Commission expires 5/7/2024

1 STATE OF SOUTH CAROLINA 2 COURT OF COMMON PLEAS 3 COUNTY OF CHARLESTON 4 Vivian B. Cromwell, et al., 5 Plaintiffs, 6 vs. CASE NO. 2015-CP-10-00939 7 Alberta Brisbane, et al., 8 Defendants. 9 And 10 Associated Developers, Inc., 11 Intervenor, 12 Nordic Group, LLC, 13 Intervenor. 14 Hearing before the Honorable Nikell R. 15 Scarborough, reported by Christine A. Smith, Court 16 Reporter and Notary Public, at 2:16 p.m. on 17 May 3, 2016 at 100 Broad Street, Charleston, 18 South Carolina. 19 20 21 Christine A. Smith, Court Reporter 22 Notary Public 23 P.O. Box 2094 24 Charleston, South Carolina 29407 25 (41) 63-5011 csmith@charlotesm.com	3 1 (PLF. EXH. #1, Taxes Paid, figures, was marked 2 for identification.) 3 (PLF. EXH. #2, Taxes Paid, figures, was marked 4 for identification.) 5 (PLF. EXH. #3, Contract to Purchase, was 6 marked for identification.) 7 (PLF. EXH. #4, First Amendment to Contract to 8 Purchase, was marked for identification.) 9 (PLF. EXH. #5, Written Agreement, was marked 10 for identification.) 11 (PLF. EXH. #6, Second Amendment, was marked 12 for identification.) 13 14 <u>PROCEEDINGS</u> 15 16 THE COURT: This afternoon we have the case 17 captioned Vivian Cromwell and others as Plaintiff 18 versus Albertha Brisbane and others as Defendants. 19 The case number is 2015-CP-10-939. And present today 20 for the Plaintiff is Mr. Johnnie Dodds, and for some 21 of the Defendants, I believe, is Mr. Arthur 22 McFarland. 23 MR. MCFARLAND: That's correct, Your Honor. 24 THE COURT: Mr. John Romanosky is present on 25 behalf of one of the intervenors, which is the --
2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF: 3 John J. Dodds, III, Esq. 4 Cisa & Dodds, LLP 5 858 Lowcountry Boulevard 6 Suite 101 7 Mt. Pleasant, SC 29464 8 (843) 881-6530 9 John@cisdodds.com 10 11 ATTORNEYS FOR THE DEFENDANT: 12 Arthur C. McFarland 13 Law Office of Arthur McFarland 14 P.O. Box 80609 15 Charleston, SC 29416 16 (843) 730-3900 17 Cecilesq@aol.com 18 19 ATTORNEYS FOR THE INTERVENORS: 20 John E. Romanosky, Jr., Esq. 21 Law Office of John Romanosky 22 P.O. Box 603 23 Charleston, SC 29402 24 (843) 724-1054 25 John@jromanlaw.com 26 27 J. Christopher Lanning, Esq. 28 Lanning Law Firm 29 2036 Ewall Street 30 Suite F 31 Mt. Pleasant, SC 29464 32 (843) 284-5551 33 Chris@lanninglawfirm.com 34 35 (INDEX AT REAR OF TRANSCRIPT)	4 1 MR. ROMANOSKY: Associated Developers. 2 THE COURT: Associated Developers. And then 3 Mr. Chris Lanning is here on behalf of the other 4 intervenor, which is the Nordic Group, LLC; is that 5 correct? 6 MR. LANNING: Yes, sir. 7 THE COURT: All right. Very good. I have it 8 down today for a hearing on valuation; is that 9 correct, Mr. Dodds? 10 MR. DODDS: Yes, Your Honor. 11 THE COURT: Are you prepared to proceed? 12 MR. DODDS: Well, Judge, I was chatting with 13 these lawyers procedurally about how we would move 14 forward. Of course my clients have contracted with 15 Mr. Romanosky's client to sell the property for a sum 16 of money. As you may recall we were before the Court 17 in December when Mr. Lanning's client appeared with a 18 proposed offer at which time you scheduled this 19 hearing. I think you asked him to present an 20 appraisal of the property, which has been done. I 21 believe that appraisal is consistent with the 22 contract proposal, or I should say contract, which 23 has now been entered into between Attorney 24 McFarland's client and Mr. Lanning's client. 25 So I was thinking, Your Honor, that it may be

5 1 that Mr. Lanning goes forward with regard to the 2 issue of value, subject to whatever sort of scrutiny 3 maybe Mr. Romanosky's client has. 4 I do have some testimony, Your Honor, I would 5 like to present with regard to common expenses. A 6 number of my clients have been paying the real 7 property taxes on the two properties in question for 8 a substantial period of time. We have some records 9 in that regard. I hope the Court will allow me to 10 submit an Affidavit of Attorney's Fees, depending on 11 what happens here today, for services rendered 12 incident to this action for partition by sale. 13 THE COURT: Okay. I'm not aware, and somebody 14 may have to educate me otherwise, but it looks like 15 we're heading toward a sale one way or the other? 16 MR. DODDS: I think so, Judge. I don't think 17 this property is capable of being subdivided in kind 18 amongst the various heirs that we have. We did send 19 out, in anticipation of the December hearing, the 20 standard order, standing order of your Court, Your 21 Honor, regarding an opportunity for any of these 22 heirs to purchase the property at the price which was 23 pending at the time, which is of course less than the 24 price that is on the table now. 25 I know that there has been some discussions	7 1 authorized to increase the purchase price. 2 THE COURT: Let me step back for a second, and 3 let's just talk about this. This is a good problem 4 to have for the owners of the property. It's not a 5 good situation for the buyers to be in necessarily. 6 The statute that is currently in fact is this 7 Title 15-61-25, which is the right of first refusal 8 of tenants or tenants in common to purchase property, 9 and that is the notice provision that Mr. Dodds was 10 referencing for the last December hearing. 11 It was at that hearing, if I remember 12 correctly, that Mr. Lanning came in and had an offer, 13 which was much greater. I think what I need to 14 know -- if you-all are at the point where you agreed 15 the price is good then we can sort of skip over the 16 ping-pong ball back and forth as to value unless 17 that's something that's going to go up. 18 Now, there's a procedure put in place by this 19 statute, and the Court wants to follow that procedure 20 as much as possible. I would like you-all to know, 21 if you don't already know this that our partition law 22 has become even more complicated because on April 21 23 of this year the government signed a new partition 24 statute. It doesn't become effective, by its own 25 terms until January 1, 2017, but it does show some --
6 1 with my client and with Mr. Romanosky's client in 2 terms of his client's consideration of a more 3 substantial purchase price, and I believe that 4 Mr. Romanosky's client is prepared to match the 5 proposal that has been made by Mr. Lanning's client. 6 THE COURT: Okay. Let's see. I think 7 procedurally the question would be how then to 8 proceed. Mr. Lanning, do you have a preference one 9 way or the other if you go first? 10 MR. LANNING: I don't have a preference, Your 11 Honor. It doesn't matter to me. I have Mr. David 12 Clark here, who is the appraiser. I can get him up 13 to testify if that's what you want. 14 THE COURT: Okay. Let me ask this question. 15 I'm happy to hear from him, but if you-all have an 16 agreement as to what you think the price is, I think 17 it's just a question of who's got to go forward. Let 18 me just say this -- 19 MR. DODDS: I think that's where we are, 20 Judge. I know the Plaintiffs don't have any 21 objection to the value that has been presented by 22 this gentleman in the form of his appraisal. 23 THE COURT: Okay. 24 MR. LANNING: Your Honor, I've been 25 authorized, if this gets into an auction, I've been	8 1 It certainly shows a statement of what our general 2 assembly thinks the law is and what the law should 3 be, and what I consider these statutes for is public 4 policy considerations. Okay? 5 Again, I think the public policy is that if we 6 can keep family land in the family, if it's heirs' 7 property, it's an even much more detailed and much 8 more complicated procedure to follow starting with a 9 determination of whether or not the property is 10 heirs' property. I can tell from the number of 11 people sitting out here that we have heirs' property. 12 I don't think there's any doubt about that question. 13 Anyway, it's a whole new procedure that's 14 going to take much more time and effort. It's going 15 to be complicated and confusing. So I just wanted 16 you-all to be aware of that. I took it home this 17 weekend and took a look at it. It's just going to be 18 something that we have got to keep in mind. 19 Based upon that, Mr. Dodds, I think what I 20 would like to hear probably is from the Plaintiffs 21 first as to what it is that they seek, when we're 22 doing it. I know you all have been under contract 23 for a while. This action has been pending since, it 24 looks like, relatively early in 2015. We're now in 25 the spring of '16. If you get a buyer you want to go

9

1 on and keep a buyer.

2 So I'm interested to hear what you-all's

3 position is relative to the case because number one,

4 you-all are the Plaintiffs. I expect the Plaintiffs

5 typically to go forward first, and then I'd be glad

6 to hear from Mr. McFarland. If you-all have some --

7 if there's an agreement as to price that suits me

8 fine and well, but we have to get to what it's going

9 to be, and we still have to quiet the title, do we

10 not?

11 MR. DODDS: We've had that hearing, Your

12 Honor.

13 THE COURT: That's done. All right.

14 MR. DODDS: Yes.

15 THE COURT: So it's just a question of when we

16 can move forward -- how much time we're talking

17 about. The details of the contract might become very

18 important. Okay?

19 MR. DODDS: All right, sir.

20 THE COURT: Are you prepared to do that?

21 MR. DODDS: Yes, sir. I can call a witness.

22 THE COURT: All right.

23 MR. DODDS: I call Blake Brisbane to the

24 stand, Judge.

25 THE COURT: Mr. Brisbane, come on up, sir.

10

1 BLAKE BRISBANE.

2 being first duly sworn, testified as follows:

3 THE COURT: Your full name and address for me,

4 Mr. Brisbane?

5 THE WITNESS: Blake Brisbane, 467 Fleming

6 Road.

7 THE COURT: That's James Island.

8 THE WITNESS: James Island, yes, sir.

9 THE COURT: Thank you, sir.

10 EXAMINATION

11 BY MR. DODDS:

12 Q. Mr. Brisbane, are you familiar with the two

13 properties which are the subject of this litigation,

14 namely 3.60 acre tract having TMS No. 3400100011 and

15 a 3.4 acre tract having TMS No. 3400100050?

16 A. I am.

17 Q. And is that property -- did those two

18 properties formerly belong to an ancestor of yours?

19 A. Yes.

20 Q. And all these people in the courtroom are

21 relatives of yours in one way or another?

22 A. Yes.

23 Q. Do you recognize Mr. Phillips over here at

24 Counsel's table?

25 A. Yes.

11

1 Q. And did you and other members of your family

2 have occasion to enter into a contract with

3 Mr. Phillips' company, Associated Developers, Inc.

4 back in August of 2014?

5 A. Yes.

6 Q. Mr. Brisbane, let me show you what's been

7 marked for identification purposes as Plaintiff's

8 Exhibit 3. It appears to be a contract for purchase

9 between a number of your relatives including Blake

10 Brisbane. That's you, right?

11 A. Right.

12 Q. And Associated Developers, Inc? Take a look

13 at it: Is that the contract that you and other

14 members of your family entered into with

15 Mr. Phillips' company, Associated Developers?

16 A. Yes.

17 Q. And is that your signature on the last page of

18 Exhibit 3?

19 A. Yes.

20 Q. All right, sir. And to your knowledge was

21 that contract, marked Exhibit 3, was that extended by

22 an amendment in January of 2015?

23 A. Yes.

24 Q. Let me show you what's been marked Plaintiff's

25 Exhibit 4; do you recognize that document?

12

1 A. Yes.

2 Q. Was that the amendment that extended the

3 contract?

4 A. Yes.

5 Q. Finally, let me show you, what's been marked

6 as Plaintiff's Exhibit 5, which appears to be a

7 written agreement concerning some burial sites that

8 are located on the property which is the subject of

9 this litigation? Do you recognize that document?

10 A. Yes.

11 Q. Take a moment to look through it if you like.

12 A. Okay.

13 Q. And pursuant to the Exhibit marked Plaintiff's

14 Exhibit 5, Mr. Phillips' company Associated

15 Developers agreed to perpetually care for the grave

16 sites that are located on these properties?

17 A. Right.

18 Q. Was that of particular concern to you and

19 other members of your family?

20 A. Yes, it is.

21 Q. Why was that?

22 A. Because there's nothing but our family members

23 there.

24 Q. So the remains are actually there?

25 A. Yes.

13 1 Q. The original contract price with Associated 2 Developers, Inc. was in 455,000, correct? 3 A. Right. 4 Q. And was that contract facilitated through the 5 efforts of Mr. John Elliott, seated in the courtroom, 6 a real estate agent here in Charleston County? 7 A. Yes, sir. 8 Q. All right. And have you since become aware of 9 a proposal from another entity to purchase this 10 property for an additional sum of money, 555,000 (sic)? 11 A. I've heard about it. 12 Q. And is it your wish that you and the other 13 heirs be compensated for this property in an amount 14 which Judge Scarborough believes to be the value of 15 the property? 16 A. Yes. 17 MR. DODDS: Judge, do you want me to question 18 him about taxes or that sort of thing at this point, 19 or are we just going to focus on value? 20 THE COURT: Let's stick to value for today and 21 get to that. I know we have more to do at some 22 subsequent time I'm afraid. Let's stick with that. 23 MR. DODDS: I understand. 24 Q. (BY MR. DODDS) Mr. Brisbane, you're aware 25 that Associated Developers, Inc. has now offered to	15 1 Honor. 2 THE COURT: Mr. Romanosky? 3 MR. ROMANOSKY: Nothing, Your Honor. 4 THE COURT: Mr. Lanning? 5 MR. LANNING: Nothing, Your Honor. 6 EXAMINATION 7 BY THE COURT: 8 Q. Mr. Brisbane, any idea how many people are 9 buried out there? Have you got any idea? 10 A. I have no idea. It's been since the 1800s. I 11 wouldn't know nothing about that. 12 Q. That was my next question. So since the 1800s 13 people have been getting buried out there. Now, are 14 they buried all over, or are they just in one area; 15 do you know? 16 A. All over. 17 Q. On both lots? 18 UNIDENTIFIED SPEAKER 1: In one area. 19 UNIDENTIFIED SPEAKER 2: It's in one area. 20 THE WITNESS: It's one area but it's all over. 21 THE COURT: Okay. Very good. Okay. 22 MR. DODDS: I can put somebody up -- 23 THE COURT: Every time I drive by I see where 24 they are. I can see the gravestones. I had another 25 case where they thought they had 30 bodies buried and
14 1 pay \$555,000 for these two tracts of land? 2 A. Yes. 3 Q. And you're agreeable to that? 4 A. I am agreeable. 5 Q. And are you familiar with the efforts that 6 Mr. Phillips' company has made at the subject 7 properties already in light of the contract that he 8 had back from August of 2014? 9 A. Okay. 10 Q. Have you seen what's been done out there? 11 A. Yes, uh-huh. 12 Q. Has there been a setting aside of the burial 13 lots of your ancestors? 14 A. Well, we're supposed to look after it until we 15 figure out how we're going to put it, because we have 16 graves all over the place. 17 Q. But you understand that Mr. Phillips' company 18 has agreed to perpetually maintain those burial 19 sites? 20 A. Yes. 21 MR. DODDS: I don't have any further questions 22 of Mr. Brisbane, Your Honor. 23 THE COURT: All right. Thank you. Let me 24 start with Mr. McFarland. 25 MR. McFARLAND: I have no questions, Your	16 1 they had 600 bodies. I just want to make sure 2 you-all have something that you can do something 3 with. 4 MS. EVELYN PALMER: There's more than 600 5 bodies in there. 6 THE COURT: More than 600? 7 UNIDENTIFIED SPEAKER: I would say so. 8 MS. EVELYN PALMER: From our great, great 9 grandmother. 10 THE COURT: All right. We might have some 11 other due diligence. I'm going to stop you right 12 there. I'll give you a chance to speak if you need 13 to. All right, Mr. Brisbane. Thank you. You may 14 step down. 15 (Witness excused.) 16 THE COURT: So Mr. Dodds, at this point in 17 time, have you-all got a revised contract in for the 18 555, or is that an offer; what is that? 19 MR. DODDS: We do have an addendum, I believe, 20 Your Honor, that has been executed by Mr. Blake 21 Brisbane for the \$555,000. 560,000, I'm sorry. 22 THE COURT: Anything further on value? 23 MR. DODDS: Mr. Brisbane come on up here real 24 quick. 25 THE COURT: You can just keep him right there.

17 1 You're still under oath. 2 Q. (BY MR. DODDS) Mr. Brisbane, let me show you 3 Plaintiff's Exhibit 6 for Identification, which 4 appears to be a second amendment to the contract to 5 purchase, wherein Associated Developers, Inc. offered 6 the sum of \$560,000 for these two properties; do you 7 recognize this document? 8 A. Yes. 9 Q. Is that your signature on the second page? 10 A. Yes. 11 Q. All right. And are you willing to sell your 12 interest based on this second addendum or second 13 amended contract for a total price of \$560,000? 14 A. Yes. 15 MR. DODDS: Nothing further of Mr. Brisbane, 16 Your Honor. 17 THE COURT: Very good. You mentioned 3, 4, 5, 18 and 6; do you want those in the record? 19 MR. DODDS: I'm sorry, Your Honor? 20 THE COURT: Do you want 3, 4, 5, and 6 in the 21 record? 22 MR. DODDS: Yes, Your Honor. 23 THE COURT: All right. Very good. Without 24 objection. Any follow up on that from anybody? 25 MR. LANNING: No, Your Honor.	19 1 Mr. Lanning, I'll give you the same opportunity. Do 2 we have a stipulation that the appraisal price for 3 the two lots is the 560? Is that the appraised 4 price? 5 MR. LANNING: That's the appraised price. 6 THE COURT: Okay. Is there anything further 7 you would like to present, Mr. Lanning? 8 MR. LANNING: If we stipulate as to that's 9 what the value is then I don't have anything else. 10 THE COURT: Let me hear from you on due 11 diligence and where we stand with that, 12 Mr. Romanosky? 13 MR. ROMANOSKY: Your Honor, the addendum that 14 we have signed and Mr. Dodds has presented up removes 15 all contingencies. We can close in 30 days. 16 THE COURT: It's hard to beat that. 17 MR. ROMANOSKY: And would you like some 18 testimony as to what Mr. Phillips has done on the 19 property? I don't know whether you heard that on 20 December 19th or whether you want to hear that again? 21 THE COURT: I don't recall it, but I think it 22 would be helpful. Mr. Phillips, I think it would be 23 helpful for you to come up. Let's do that. Let's 24 talk about the status of the contract and where you 25 stand and desire to go forward and that kind of
18 1 MR. McFARLAND: No, Your Honor. 2 THE COURT: All right, Mr. Dodds? 3 MR. DODDS: Judge, I could bring up probably 4 six or eight people who could essentially say the 5 same thing. 6 THE COURT: All right. Let's hear about 7 value, and then I'll be looking to people in here 8 about the bodies and that kind of stuff. We'll talk 9 about that. Is that the Plaintiff's case as to 10 value? 11 MR. DODDS: Yes, it is, Your Honor. 12 THE COURT: Mr. Romanosky, I'm going to jump 13 ahead a little bit. Would you like to put any 14 testimony up as to that, or are you comfortable with 15 what's been presented? 16 MR. ROMANOSKY: No, sir. We have no testimony 17 as to value. 18 THE COURT: Very good. Thank you. So 19 Mr. McFarland, let me turn to you first? 20 MR. McFARLAND: We have nothing to offer with 21 respect to value. I think the appraisals are in and 22 the parties -- we've got two parties who are willing 23 to pay the same amount. My client is interested 24 in -- 25 THE COURT: I just want to make sure.	20 1 thing. Okay? 2 MR. PHILLIPS: Yes, sir. 3 THE COURT: Come forward if you would. 4 <u>CHRISTOPHER PHILLIPS.</u> 5 being first duly sworn, testified as follows: 6 THE COURT: Mr. Phillips, give me your name 7 and address for the record again, please, sir. 8 THE WITNESS: Christopher K. Phillips, Junior, 9 2824 Atlantic Avenue, Sullivan's Island, South 10 Carolina. 11 EXAMINATION 12 BY MR. ROMANOSKY: 13 Q. I'm going to call you Chris if that's okay? 14 A. That would be good. 15 Q. Chris, you entered into a contract with the 16 Brisbane family, I believe, sometime in July of '14 17 for the purchase of the property that is the subject 18 matter of this litigation; is that correct? 19 A. Yes, sir, August 11th, 2014. 20 Q. And since that time you've entered into a 21 subsequent amendment to that contract to move the 22 process forward, and you've continued with a 23 substantial amount of due diligence; is that correct? 24 A. Yes, sir. 25 Q. And subsequent to that agreement you entered

21 1 Into a written agreement with the family concerning 2 the preservation of the graves on the site, the 3 maintenance of those graves at no cost to the heirs; 4 is that correct? 5 A. Yes, sir. That was part of the original 6 contract and also an important aspect to the City of 7 Charleston's annexation approval of this property. 8 Q. I would like to turn the floor over to you 9 with the permission of the Court just to explain and 10 enlighten Judge Scarborough of what you and your 11 group have done with respect to the due diligence on 12 this property? 13 A. Sure. 14 THE WITNESS: If you don't mind I may read a 15 little bit off this list? 16 THE COURT: That's fine. 17 THE WITNESS: It's been a long process. We 18 started early on -- I believe I mentioned this in the 19 initial hearing. There on my first site visit I 20 determined very quickly, as anybody would, that there 21 was a major ditch that bifurcated the property and 22 very quickly thereafter realized that it was going to 23 make the site very difficult to develop. 24 We actually considered very seriously moving 25 on from the property, frankly, given the purchase	23 1 diligence process, we spent \$35,000 to date. 2 As of December 17th that amount spent has 3 slowed down. For obvious reasons we would like to 4 get some resolution before we move forward, but the 5 point to all that is that we've gotten enough base 6 information and moved down the road far enough that 7 we're comfortable. We've got so much time in 8 matching the price that we discussed and the 9 appraised value, and more importantly waiving any 10 remaining contingencies in the contract to give some 11 immediate closure, if you will, within the next 12 30 days to this process for the sellers. 13 EXAMINATION 14 BY THE COURT: 15 Q. All right, sir. Where do you stand with your 16 annexation and zoning question? Where does that 17 stand? 18 A. I completed, I believe, into last year, 19 December of 2015. 20 Q. Okay. Is that property now in the City? 21 A. Yes, sir. 22 Q. And approved for some type of cluster zoning 23 development; is that what it is? 24 A. Cluster zoning ordinances apply right -- 25 within the R1 zoning that we brought into the city,
22 1 price at the time, but had decided that via 2 annexation and a certain cluster zoning ordinance 3 within the R1 zoning in the City of Charleston we 4 could hopefully develop the property with single 5 family lots in a way that would make sense. 6 So we proceeded with our typical due diligence 7 path, I guess if you will, to include working on the 8 delineation of the wetlands out there. There was 9 very little base information when we started, so we 10 started with a boundary survey and a topographic 11 survey, a tree survey, and then proceeded as well 12 with the wetlands. When we establish those controls, 13 if you will, we started doing some preliminary 14 planning to include land plans, concept plans, many 15 meetings with the city engineers and consultants and 16 so forth on how we would develop this property 17 efficiently and how we can make it move forward. 18 Truthfully, we were moving forward spending a 19 lot of money, investing time and money in the 20 property, but also aware that this process ultimately 21 had to be approved. We were hopeful we could speed 22 up the overall timeframe to get to a closing for the 23 sellers by doing some stuff in the interim. We 24 certainly did a lot. We spent -- not including soft 25 costs, which is an important part of our typical due	24 1 which was the equivalent zoning on the property in 2 the County, but then the cluster was -- that's why it 3 was necessary to come into the City. 4 Q. So it's been annexed with an R1 zoning? 5 A. Yes, sir. And as I pointed out a few minutes 6 ago, regarding the grave sites, that was -- for 7 several City council members in particular it was a 8 very important point, and they wanted to be very 9 clear on my commitment to protect that site in 10 perpetuity beyond the obligation I eluded to in the 11 contract with the sellers. They actually were very 12 interested in that as well, and I met with a couple 13 of council members prior to the actual vote on this 14 to let them know we had worked the details of that 15 out. 16 Q. So from that standpoint what have you-all done 17 to identify grave sites over and above just walking 18 across the property and counting headstones and 19 whatever like that? 20 A. Right. We've had discussions with the family 21 to try to narrow down the concentration of the 22 headstones and the grave sites. I've walked out with 23 several consultants to try to identify any other 24 potential areas. We have not opened up the ground 25 out there. Admittedly that is still a concern of

25 1 mine and probably should be for anybody that doesn't 2 know anything about the site or hasn't really done 3 any due diligence. 4 I'm comfortable enough at this point that 5 we're going to be okay on that, but we'll certainly 6 go through the process after we close to identify any 7 additional grave sites. 8 Q. Do you have an approximate size, acreage wise, 9 as to what you believe the grave site to be either as 10 a percentage of the total or that you plan to set 11 aside? 12 A. To my knowledge today the grave sites are 13 largely isolated in that area up front of Fleming 14 Road. That's what I've gathered again from 15 conversations with some family members and also 16 through site visits, so obviously I'm hoping that 17 proves to be the case, but we won't know until we 18 truly get in there. 19 Again, I was cognizant of the fact, especially 20 as this has proceeded in the last few months of 21 spending more money on the property until there was 22 some light at the end of the tunnel if you will, some 23 resolution. So it's not a perfect situation, but I 24 can sit here and say that I've done -- not as much as 25 I normally would have done on that aspect at this	27 1 about seven acres, 3.6 and 3.4? 2 A. Yes, sir. 3 Q. Is there a point in time that the amount of 4 graves would keep it from being developable from your 5 standpoint? 6 A. I guess that all depends. It's not just the 7 amount. It would be also at what location they may 8 be. 9 Q. Right. 10 A. But yes, if they were scattered all over the 11 site that would be a problem. 12 UNIDENTIFIED SPEAKER: They're not scattered, 13 Judge. 14 THE COURT: That's the only reason I asked 15 that. 16 Q. (BY THE COURT) In any event you-all are 17 willing to waive the contingencies, go forward, and 18 try and close within 30 days? 19 A. Yes, sir. Again, it's not ideal, but we have 20 done enough to -- I have a high level of certainty at 21 this point that we will be able to work around those 22 and protect those and still execute the plan. 23 Q. All right. So from a business decision 24 standpoint, you've done sufficient due diligence that 25 you're ready to move forward?
26 1 point, but I've done more than nothing. 2 Q. Okay. You don't know whether it's a tenth of 3 an acre, half an acre, an acre, a third of an acre? 4 A. I would guess it's a tenth to two-tenths of an 5 acre. We've done some -- we have an Exhibit, for 6 example, that -- 7 Q. I seem to recall an Exhibit on a preliminary 8 site plan or something for the thing that was maybe a 9 third of an acre or something? 10 A. Maybe so. 11 THE COURT: I think we did use that 12 previously. Do you want to put that in? 13 MR. DODDS: I think that's already in, Judge. 14 It's that written agreement, Judge. 15 THE COURT: Yes. Attached to -- yes. 16 Exhibit B to the written agreement with the diagram. 17 Q. (BY THE COURT) That's what you-all sort of 18 sketched out? 19 A. Yes, sir. 20 Q. It's not really to scale? 21 A. It is to scale. I don't think there's an 22 overall -- I have another Exhibit that shows it as it 23 relates to the overall site, but I don't believe that 24 Exhibit shows that. 25 Q. Okay. All right. The two lots together are	28 1 A. Yes, sir. The last remaining contingency was 2 in the contract prior to today was the approval of 3 the cluster plan, and that's essentially the last 4 contingency we waived. Again, that's a buy right 5 application, and we're willing to waive that and move 6 forward and get that next level approval as the owner 7 of the site versus the contract owner. 8 THE COURT: I've got you. Okay. Very good. 9 Any questions? I'll start with Mr. Dodds. 10 Mr. Dodds? 11 EXAMINATION 12 BY MR. DODDS: 13 Q. As I understand, your agreement with the heirs 14 regarding the burial sites is that you and/or your 15 company and/or the HOA will be organized to operate 16 the various units out there if your contract is 17 approved by Judge Scarborough, and you have agreed to 18 perpetually maintain those burial sites at no cost to 19 the heirs? 20 A. Yes, sir. It will either be -- it is either 21 going to be an HOA-maintained park with perpetual 22 access or a park dedicated to the City with the same 23 perpetual access and maintenance. The City has been 24 back and forth on whether they would want to include 25 a park like that, accept a park like that. We put

29 1 the HOA option in there in case they decided 2 ultimately against that so the heirs are covered so 3 to speak. 4 Q. And you hit the second point which was 5 perpetual access by any of these individuals who wish 6 to visit any of the grave sites out there, that they 7 will have the right to do so? 8 A. Yes, sir. We deferred a system where any of 9 the heirs -- my contracts and my sellers or any of 10 the other heirs for that matter could visit any time. 11 MR. DODDS: Thank you. No further questions, 12 Judge. 13 THE COURT: Mr. McFarland? 14 EXAMINATION 15 BY MR. McFARLAND: 16 Q. Have you and any of the heirs walked the 17 property so that there is an agreement between you 18 and the heirs as to the extent of the burial site 19 there? 20 A. No, sir. 21 Q. You have? 22 A. No, sir. 23 Q. So if the Court approves this agreement are 24 you then leaving open the fact that there has to be 25 an agreement between you and the heirs as to the size	31 1 that you move forward with with the City or with your 2 development, HOA, et cetera? 3 A. Again, I'm prepared to protect the grave sites 4 as represented on the agreement -- the agreement 5 plans, yes, sir. 6 Q. One question. You mentioned a park and the 7 City maintaining the park. Is the park and the grave 8 site one and the same? 9 A. It is one and the same, and that's probably 10 poorly worded. It's not a park in the traditional 11 sense. Frankly, that's one of the issues the City 12 needs to decide. It is not going to be an active 13 park. It is more of a green space to include grave 14 sites with a fence and protection around it, so that 15 is probably poorly worded. It's not going to be a 16 park open to the public. That's not our intention, 17 no. 18 Q. So I just wanted to be clear. The City's 19 interest in this would be as a grave site, not either 20 an active or passive park? 21 A. That's the intent. Again, if we keep it 22 within the HOA that is certainly the intent on our 23 end as well. 24 Q. And in perpetuity the family members whose 25 ancestors are buried there, their relatives that are
30 1 of this burial site? 2 A. That's never been discussed. No. That's not 3 a part of the contract. The written agreement to 4 preserve the park was. We satisfied that. 5 Q. So you are preserving the burial site; is that 6 correct? 7 A. Yes, sir. 8 Q. So whatever the extent of that burial site, is 9 it your position that it will be preserved? 10 A. We will preserve the burial society site. The 11 presumption is we will preserve it as indicated on 12 the Exhibit. If we determine in our further due 13 diligence that there are additional sites, we will 14 deal with that in any appropriate way as required by 15 the governing entities, and I'm happy to discuss with 16 the heirs at that point any existence of additional 17 grave sites. I can't answer that question until we 18 figure out what's out there. 19 Q. From what I understand you waived any 20 contingencies including the burial site contingency? 21 A. We wouldn't have those discussions until I own 22 the property. 23 Q. So at this point you are willing to buy the 24 property for \$560,000 with the caveat that the grave 25 sites that are there will be protected in any plans	32 1 buried there, will have perpetual and unencumbered 2 access to this grave site? 3 A. I'll leave it up to you and Cora on how that 4 is communicated to all the heirs, but yes, that is 5 the commitment on my end. 6 Q. I'm not going to have anything to do with it 7 once you buy this property. I'm just trying to make 8 sure that my client and the heirs are clear on this 9 grave site business since that is for them an 10 important aspect of this contract. 11 A. We worked hard on it, and it's very clear in 12 the agreement, yes, sir. 13 Q. And just in terms of the -- I know you've had 14 an appraisal done on this property; is that correct? 15 A. The property is worth what I can pay for it. 16 That's my appraisal. Okay? We agree with the term 17 appraisal based on our reevaluation at the last 18 hearing. We agreed with the appraisal that has been 19 produced by the Nordic Group. 20 Q. So you're relying on the Nordic Group? 21 A. I'm relying on my ability to pay that amount 22 of money and it still work for our business plan. 23 Q. Can you pay more than \$560,000? 24 A. That is the offer on the table from our 25 standpoint. There's more to a good offer or a poor

33 1 offer than just the purchase price. I'm looking at 2 the terms in total. 3 Q. You understand that my client and the other 4 heirs only have a purchase price to work with. So my 5 question is, are you able to pay more than \$560,000 6 since you say that is what determines what you pay 7 for this property, your ability to pay for it? Are 8 you able to pay more than 560 If the Court determines 9 that that is what must be paid? 10 A. That's our offer on the table right now. 11 MR. McFARLAND: All right, I have nothing 12 further, Your Honor. 13 THE COURT: Mr. Lanning? 14 MR. LANNING: No questions. 15 EXAMINATION 16 BY THE COURT: 17 Q. Mr. Phillips, let me ask this question, 18 because I would like to put some sort of finality to 19 it because it just is going to be helpful, I think, 20 in the long run to everybody. To what extent -- I'm 21 coming at it in a little bit of a different way than 22 Mr. McFarland did. To what extent or what amount of 23 acreage could you foresee setting aside as the park? 24 I just reread the agreement. It talks about the 25 plan, similar to Exhibit B but also into a larger	35 1 anybody is going to testify that it's anything more 2 than single family, I take exception to that based on 3 everything -- all the discussions that I've had. 4 Part of the reason the cluster works is that 5 the ditch, which is a critical ditch that runs down 6 the middle of the property, part of that is allocated 7 toward the open space. 50 percent of the existing 8 waterways. When you create tension ponds, a 9 percentage of those count towards the open space. So 10 if we pull all that together, we have to get to that 11 40 percent threshold. 12 Q. So the ditch would be included and any 13 retention ponds you have to create are included, and 14 of course the set aside for the park and the burial 15 site, right? 16 A. Yes, sir. 17 Q. Is what you envision? 18 A. Yes, sir. 19 Q. But the number of 40 percent comes to -- by 20 math it comes to 2.8-acres, so something just under 21 three acres of the seven-acre site? 22 A. Plus or minus, yes, sir. 23 Q. And you're certainly willing to do that 24 because that's what's going to be required? 25 A. That's the only way. I see no other way to
34 1 public park to be dedicated to the City. To what 2 extent or amount of acreage in this seven-acre site 3 could you see setting aside as a park and still 4 achieve what it is you seek to achieve as the owner 5 and developer of the property? 6 A. Well, I would love to be able to answer that 7 specifically, but all I can sitting here right now is 8 there is a push/pull with this cluster ordinance and 9 the amount of open space that's required, and so 10 depending on the ultimate extent of the grave sites, 11 particularly if they are proven to be in that one 12 area or even if they're not, the protection of those 13 sites qualified for open space in this cluster 14 ordinance. 15 Q. So what is the extent? What is the 16 requirement for open space in the current zoning? Is 17 it a percentage? 18 A. It's a percentage of the property, and it 19 varies. I apologize. For properties over ten acres 20 it's 50 percent; under ten acres is 40 percent. 21 Q. So 40 percent of the land is on this? 22 A. Yes, sir. 23 Q. So that's 2.8 acres; seven acres is 2.8? 24 A. And part of the reason -- this only works 25 under the cluster zoning in my opinion because if	36 1 develop the site and get the density that you need 2 frankly to justify the 560 purchase price. 3 Q. I've got you. 4 A. Perhaps there's another valuation on that. 5 THE COURT: Okay. I'm with you. Thank you, 6 sir. You may step down. 7 (Witness excused.) 8 THE COURT: Mr. McFarland, do you want to be 9 heard on this or make any presentation, or 10 Mr. Lanning? 11 MR. McFARLAND: No. I didn't know whether -- 12 THE COURT: My recollection is your clients 13 had signed a second contract with the Nordic Group; 14 is that right? 15 MR. McFARLAND: Yes. Just to get that figure 16 before the Court. We have no interest other than 17 helping the Court arrive at whatever the ultimate 18 value is. My client's interest, so the Court will 19 know, is .002645 or something like that, which if we 20 calculated it on the \$560,000, Your Honor, is about a 21 little over \$1,000 gross. 22 THE COURT: Well, how are you going to get 23 paid? 24 MR. McFARLAND: Well, to the extent that I 25 have accommodated getting this figure up to \$105,000

37 1 more, I think I've earned my keep in terms of the 2 benefit to the entire party, all of the parties, Your 3 Honor. In any case, I just wanted to say that there 4 are a number of people here whose interest -- and 5 what they will get is dependent upon the ultimate 6 price of this property including my client. 7 THE COURT: It always works that way. I used 8 to tell the Court if a million comes in your 9 pocket -- and time is money and closing is a good 10 thing. 11 All right. I'm willing to hear from somebody. 12 I don't want to hear from everybody. I'm willing to 13 hear from somebody in the family other than 14 Mr. Brisbane, who's got some knowledge about the 15 burial site out there. I know that people have been 16 buried out there even recently. 17 UNIDENTIFIED SPEAKER: I know about some 18 graves. 19 THE COURT: I'm going to have you come up and 20 testify, and we'll put you under oath. I just wanted 21 to hear from somebody about it. I'm happy to do it. 22 Okay? 23 <u>CLARENCE BRISBANE,</u> 24 being first duly sworn, testified as follows: 25 EXAMINATION	39 1 A. 1930 is right down the road. 2 Q. On the way to Riverland? 3 A. Yes. 4 Q. I've got you. So tell me about it. There is 5 a church across the street? 6 A. Yes. 7 Q. I forget the name of the church? 8 A. Which one? Are you talking about the Little 9 Bethel Church right there across from the property? 10 Q. Yes, Little Bethel. And I'm assuming a number 11 of family members go there, and then there's one down 12 Central Park, right? 13 A. That's the new one. 14 Q. So tell me about growing up there. Tell me, 15 was it a grave site then, and has it continued to be 16 a grave site? 17 A. Family grave site. It's maybe about 100 foot 18 long and 40 foot wide. It's right on the edge of the 19 road by Fleming, and right to the ditch. You move 20 across the little ditch and you're right there. 21 Right about there was a horse stable. So I know all 22 the grave sites. 23 Q. Okay. Now, tell me, there is a house on 24 there. I can see that house when I drive by on 25 Central Park. Is that the house you grew up in?
38 1 BY THE COURT: 2 Q. Give me your name, please, sir. 3 A. My name is Clarence Brisbane, Junior. 4 Q. Clarence Brisbane, Junior. And Mr. Brisbane, 5 what is your address? 6 A. My address is 1930 Central Park Road. 7 Q. Central Park. You're right there? 8 A. Yes, sir. 9 Q. Just one second. So let me ask you some 10 personal questions first, so I know something about 11 you, and then I'm going to let you talk to me. 12 Mr. Brisbane, how old are you? 13 A. 66. 14 Q. 66 years of age. Have you always lived right 15 there in the Fleming Road/Central Park Road area? 16 A. Well, you might as well say it. I was born on 17 Central Park Road. I was born right on that 18 property. 19 Q. Have you left for a while and come back? 20 A. Yes. Yes. Yes. 21 Q. Were you in the military or not? 22 A. No, my son is. 23 Q. "My Son is a Marine" -- I see your T-shirt. 24 And so you were born on the property and live -- 25 where is 1930 relative to that? Just down the road?	40 1 A. No. No. No. I grew up in the house -- I 2 grew up in both of the houses. 3 Q. There were two houses? 4 A. Uh-huh. 5 Q. There was one on each lot? 6 A. No. One on -- two houses on the same lot. 7 The houses on the next lot, they tore those down. 8 Q. So the ones on -- 9 A. On the lot by Fleming Road, those two still 10 are there. 11 Q. Is that the lot that you grew up on? 12 A. I grew up on the same lot. I didn't have no 13 house. 14 Q. Was that ditch always there? 15 A. That ditch has always been there. 16 Q. That's tidal, isn't it? 17 A. Yes. That ditch drains all by Maybank 18 Highway. 19 Q. I think that all feeds into James Island 20 Creek, doesn't it? 21 A. Right. 22 Q. Okay. I used to practice law over there, so 23 I'm fairly familiar with that area. When is the last 24 time you've known somebody to be buried out there? 25 A. The last person to be buried there I think was

41 1 my mother. My mother. 2 Q. And when was that? 3 A. 2001. 4 Q. What was her name? You-all need to hold on. 5 Let me get the information out of him. 6 A. Lavinia Brisbane. 7 Q. That's Lavinia, all right. 2001. And did she 8 continue to live in that area until she died or not? 9 A. Well, she lived in the Grant area when she 10 died with her aunt. 11 Q. Okay. So let me just ask this question. You 12 said roughly 40-foot by 100-foot? 13 A. Yes, sir. 14 Q. So 100-foot long along Central Park by 40-foot 15 deep? 16 A. 40-foot wide. 17 Q. All right. 18 A. It's right on the corner of Fleming and 19 Central Park. 20 Q. Every time I take that right turn I see a lot 21 of Brisbanes. I think there are some Cromwells 22 buried in there, too, if I'm not mistaken? 23 A. Yes. 24 Q. You're not opposed to the sale? 25 A. To 560?	43 1 A. The 1800s, yes. 2 Q. So do you know where the first grave is on 3 that 100 by 40? 4 A. Yes. The first grave that I knew was right by 5 the oak tree. That's where the graves started from. 6 There were about two to three oak trees that go back. 7 I've got a first cousin in the corner. His mother is 8 buried by one of the trees. I was a little boy when 9 they buried his mother. I know where all the grave 10 sites are, even my great grandfather, him, too. 11 MR. McFARLAND: Very well. That's all I have, 12 Your Honor. 13 THE COURT: I'll ask Mr. Romanosky, do you 14 have any questions? 15 MR. ROMANOSKY: I have one question for 16 Mr. Brisbane. 17 EXAMINATION 18 BY MR. ROMANOSKY: 19 Q. I thought I heard someone say that there was 20 in excess of 600 graves out there. Is there any -- 21 A. You might have heard that, but there isn't. 22 THE COURT: You don't believe that? 23 THE WITNESS: No. 24 Q. (BY MR. ROMANOSKY) You don't believe that's 25 true?
42 1 Q. Yes, sir. 2 A. Yes, I oppose that. I don't want that. 3 Q. You don't want that? 4 A. No. 5 Q. You want more money, or you don't want to sell 6 it off? 7 A. More money. If they sell it all I want more 8 money. You have a creek there, you have what you 9 could say a duck pond right on the side of the 10 property. That's about five acres, the duck pond. 11 Q. Have you got an appraisal that it's worth more 12 than 560? 13 A. No. 14 THE COURT: Okay. Let me see if they have any 15 questions. Mr. Dodd? 16 MR. DODDS: I don't have any questions, Judge. 17 THE COURT: Mr. McFarland? 18 EXAMINATION 19 BY MR. McFARLAND: 20 Q. Just on the size of the graves, this 100 by 40 21 feet, what do you base that on, Mr. Brisbane? 22 A. The length and the width of the grave site. 23 Q. You said that -- I believe the testimony has 24 been that this grave site has been around since the 25 1800s?	44 1 A. No, not unless they're buried on top of each 2 other before I was born. 3 Q. Do you have any knowledge of any graves that 4 are outside the burial area off of Fleming Road to 5 your knowledge? 6 A. No. 7 MR. ROMANOSKY: Okay. That's all I have. 8 MR. LANNING: No questions. 9 EXAMINATION 10 BY THE COURT: 11 Q. I'm assuming you grew up playing there, too, 12 didn't you? 13 A. Yes, sir. 14 Q. You didn't dig up any bodies, did you? 15 A. Yes, I did. Yes, I did. 16 Q. You put them back I hope? 17 A. Yeah, we put it back. 18 THE COURT: I'm glad you're still with us. 19 Thank you, Mr. Brisbane. You may step down. 20 (Witness excused.) 21 THE COURT: The man in the front row with the 22 orange shirt on, you're the one that said there were 23 600 graves out there. Do you want to be heard? 24 MS. EVELYN PALMER: You called me a man. 25 THE COURT: No, I didn't call you a man. Do

45 1 you want to come forward? 2 MS. EVELYN PALMER: Yes, Your Honor. 3 <u>EVELYN PALMER.</u> 4 being first duly sworn, testified as follows: 5 THE COURT: Your name? 6 THE WITNESS: Evelyn B. Palmer. 7 THE COURT: Evelyn Palmer. I've got it. And 8 Ms. Palmer, you live at 3023 Azalea? 9 THE WITNESS: Yes. 10 THE COURT: That's North Charleston? 11 THE WITNESS: Yes. 12 EXAMINATION 13 BY THE COURT: 14 THE COURT: And you are a Brisbane according 15 to my attendance sheet? 16 A. Yes, my father was a Brisbane. He was from 17 Mariah Brisbane. They raised him as their own. He 18 is buried there. My mother is next to him. My last 19 born is next to them. As a child I played in that 20 graveyard. 21 Q. Did you grow up right there, too? 22 A. Yes. I was born in that house in 1947, and 23 the grave site of the great, great grandparents -- 24 they had like a little small brick-end wall that we 25 would have known was our great, great grandparents.	47 1 started -- they started labeling them back in the 2 '80s? 3 Q. Prior to that there was no headstone, right? 4 A. Correct. 5 Q. And did they mark them with any sort of -- was 6 there any kind of mark that you're aware of that the 7 family used? 8 A. No. They didn't put anything there, because 9 they never knew that this land was going to be 10 divided and separated like this, so they didn't mark 11 it. 12 Q. I'm with you. 13 A. I mean, we've got people from all over 14 Charleston buried near this family. The City of 15 Charleston, there was a lot buried in there. Johns 16 Island, Wadmalaw, they were family. They just would 17 bring them in, and back when my mother died in 2003 18 they said that that was the last -- they couldn't put 19 nobody else in there. 20 Q. Who said that? 21 A. Robert Brisbane and the family. 22 Q. All right. 23 A. They said no one else could go in there 24 because the grave site is full. 25 Q. All right. And your mother went in there in
46 1 So their grave evidently was marked. 2 Q. Is it still there? 3 A. Yes. 4 Q. Last you were there? 5 A. Uh-huh. As a child I played in that graveyard 6 from the back to the front, and going down Fleming 7 all the way to the pigpen there were grave sites 8 coming all the way back up. 9 Q. Okay. 10 A. That's all the way by the Grant house on the 11 opposite side. 12 Q. Across the road? 13 A. Correct. 14 Q. All right. 15 A. And from the time I was a child, you know, 16 there was a group of us that would go there and just 17 count the grave sites until I got older and knew them 18 better and then we stopped. 19 Q. How were those graves marked? How did you 20 know they were graves? 21 A. Some of them had like a small little plaque on 22 it with like a name on it. Some of them had no 23 marks. You just knew that the grave was dug, and you 24 saw when the person got buried there. There is a lot 25 of them with no marks on them. The head stones just	48 1 2008? 2 UNIDENTIFIED SPEAKER: No, 2003, sir. I'm 3 sorry. 4 THE COURT: 2003? 5 UNIDENTIFIED SPEAKER: Yes, sir. 6 Q. (BY THE COURT) And what was her name? 7 A. Lavinia Brisbane. 8 Q. Lavinia. You're the sister of Clarence? 9 A. I'm Clarence's older sister. I'm my mother 10 and father's first born. 11 Q. Okay. 2003, I've got it. That sounds about 12 right. 13 A. They said that someone else got buried in 14 there after her. 15 Q. Okay. So you think its bigger than 100 foot 16 long? 17 A. Yes. 18 Q. How about deep? 40 foot deep? 19 A. Well, I know I fell in one of the grave sites, 20 so I know it's deep. 21 Q. Well, let me restate that. How about wide? 22 It does not go all the way to the ditch, does it? 23 A. No. It doesn't have nothing to do with the 24 ditch, nothing at all. The ditch is in between that 25 property. It had a plank board. We used to run over

49 1 that, and then the lake on the opposite side where I 2 was raised at, we used to swim in that. 3 There was a farm at one time there in the back 4 of it. Everything has changed and time changed and 5 things changed. 6 Q. So the width might be a better term? 7 A. Uh-huh. I know the length is longer than what 8 he said. 9 Q. The length would go to where the pigpen was? 10 The pigpen is across from where the Grants'. 11 Property is across the street, right? 12 A. That's right. 13 THE COURT: All right. I've got it. Any 14 questions for Ms. Palmer? I'll start with Mr. Dodds, 15 and then I'll come around. 16 MR. DODDS: I don't have any questions, 17 Your Honor. 18 THE COURT: Mr. Romanosky? 19 EXAMINATION 20 BY MR. ROMANOSKY: 21 Q. Ms. Palmer, is it your understanding that 22 there are graves on the site that extend beyond the 23 length of Fleming Road back all the way to the end of 24 the marsh, the marshland? The water land? 25 A. It doesn't have nothing to do with the water	51 1 A. It doesn't go in like that. This right here 2 is the great, great grandparents. They're in there. 3 That's them (indicating). 4 THE COURT: Where that brickwork is? 5 THE WITNESS: Right. 6 THE COURT: I've got it. 7 THE WITNESS: Beyond them on this side, there 8 are graves in here, too, by the trees, and from here 9 all the way down to that pigpen -- I remember we 10 played in there (indicating). I fell in one of them 11 things. That's how far, but it doesn't go wide into 12 the property. It's out on that hill. 13 Q. (BY MR. ROMANOSKY) Okay. When you see the 14 area that is proposed, lots which would be residences . 15 In relation to where you believe the graves are, do 16 you have any knowledge as to whether there would be 17 any graves in those proposed lot areas? 18 A. No, I don't think so. 19 Q. You don't believe there would? 20 A. No. 21 Q. And beyond that, anywhere else on the 22 property, do you have any knowledge of any graves? 23 A. No, not a bit. It's all in here (indicating). 24 Q. And was it your belief that there were as many 25 as 600 people buried?
50 1 land. It goes back on the highway side. It was 2 nothing with the water land. 3 Q. Ms. Palmer, let me hand you a document that's 4 called, Site Plan. 5 A. Let me get my glasses. Thank you very much. 6 Q. Okay. Now, I've handed you a document that's 7 got the title called, Site Plan that I've showed to 8 other counsel here today. You'll see on this site 9 plan an area along Fleming Road. It's been marked 10 on, but it's 2.08 acres, and it's sort of a 11 triangular shape which is where Mr. Phillips believes 12 that the graves are concentrated. To your knowledge 13 are the graves concentrated generally within that 14 area, or do you think they go beyond that area 15 farther into the property? 16 A. They don't go farther in. They go father up. 17 It's just longer. 18 MR. CLARENCE BRISBANE: Judge? 19 THE COURT: No, you had your time. You had 20 your time. 21 THE WITNESS: This is the highway. The grave 22 sites come from that first oak tree all the way back 23 across from the Grants. 24 Q. (BY MR. ROMANOSKY) But beyond the area that 25 you see marked, the long triangular area --	52 1 A. As a child we would count the graves. We used 2 to play on the graves. We played and played and we 3 would count everything that we saw. We would count 4 it down and we would go to the next one and we would 5 just keep doing it. 6 Q. Okay. And that was when you were a child? 7 A. Yes. Eight or nine years old. There was a 8 lot of burials in that grave site, and I grew up to 9 be a woman with my baby. I was -- in 1969 I was 10 pregnant with Larry (phonetic), Junior and I walked 11 to my mother's house that day through that graveyard 12 and came back that afternoon and didn't know my 13 cousin had already dug another grave, and I fell 14 right in it. 15 Q. Okay. And you think that there could possibly 16 be as many 600 graves concentrated within that two 17 acres? 18 A. I said that because we used to count, and I 19 believe that there's that many people in there or 20 more. I can't help myself. I'm not going to lie 21 about it. There were a lot of burials out there. 22 THE COURT: I'm familiar with that. All 23 right. Mr. McFarland? 24 MR. McFARLAND: I just have maybe two 25 questions if I can see that?

53 1 THE COURT: Do you want to make that an 2 Exhibit so we can know what we're talking about? 3 MR. ROMANOSKY: Yes, sir. 4 THE COURT: Let's do that. 5 MR. ROMANOSKY: There's some scribbling on it. 6 THE COURT: That's all right. It's still on 7 the Plaintiff's slide, No. 7. 8 (PLF. EXH. #7, Site Plan, was marked for 9 identification.) 10 EXAMINATION 11 BY MR. McFARLAND: 12 Q. I just wanted to make sure. I couldn't see 13 what Mr. Romanosky was asking you about the grave 14 site. Do you see this area on Exhibit 7 that it's 15 marked 100 by 40? 16 A. Uh-huh. 17 Q. Okay. 18 A. Yes. 19 Q. Were you and he talking about grave sites 20 being completely in this area that runs from Central 21 Park Road to where this new street looks like it's 22 cut in here (indicating)? 23 A. Well, we don't go up to the new street that is 24 cut up in there. They're by the oak tree right here 25 in front of this graveyard right around the great	55 1 A. The last person I remember is a person named 2 Duffy? It's a person from the City. They got buried 3 back on that area. 4 Q. So if we find out where Mr. Duffy is, we would 5 be almost -- pretty much at the end of the grave 6 sites? 7 A. Right. 8 Q. And then on the other end at Central Park it 9 would be this oak tree? 10 A. Yes. 11 Q. Where you start there and you go all the way 12 over to where we might -- 13 A. On that site would be Uncle William's 14 grandson. He got buried up by the oak tree. 15 Q. What's his name? 16 A. I have no idea. 17 Q. Okay. Do you remember when Mr. Duffy might 18 have been buried? 19 A. My goodness. Either in the '70s. In the 20 early '70s, I think. 21 Q. So the 2003 burial, which was your mother you 22 said, would have been somewhere before you got to 23 Duffy; is that correct? 24 A. Correct. 25 Q. So her burial would have occurred somewhere in
54 1 grandparents right here (indicating). 2 Q. So you start there. Where do you end on this 3 slide? 4 A. With the Grants. The Grants are on the 5 opposite side of Fleming in the front of that grave 6 site. 7 Q. And would that be in front of what's marked as 8 Lot No. 12 here (indicating)? 9 A. Yes. 10 Q. So the grave site would run from Central Park 11 Road all the way over on Exhibit 7 to a point 12 somewhere in front of proposed Lot No. 12? 13 A. Yes. 14 Q. And those graves go all the way out to Fleming 15 Road? 16 A. This is the tree. The burial site is right 17 there from the beginning of Fleming Road on that 18 little hill. It's hill-like. It used to be higher, 19 but it's not now. They removed one of the trees. 20 From that first tree -- this is the great 21 grandparents right here. It's all of this 22 (indicating), this family. 23 Q. Are you aware of who might be on the northern 24 end in front of Lot 12? Do you know who might be 25 buried on that end?	56 1 between the oak tree and -- 2 A. Momma and daddy are together. They are on 3 that little hill. 4 Q. And your father died, I take it, some years 5 before your mother? 6 A. Of course, 43 years before. 7 Q. Before your mother. So your father and then 8 your mother was buried in 2003 next to him? 9 A. Right. 10 THE COURT: She's got a stone there, doesn't 11 she? 12 THE WITNESS: Yes. We have two stones, and my 13 little son is right next to them. I have one there, 14 too. 15 Q. (BY MR. McFARLAND) And with respect to what 16 the Judge has asked you, are there any markers or 17 anything? 18 A. Some of them don't have no markers. 19 Q. Yes. But near with Duffy. I'm just trying 20 to -- 21 A. Where the Duffy is at, there ain't no marker. 22 All they left was that little plaque with a name on 23 it. 24 Q. Yes. 25 A. But the children playing in there, those

57 1 little things were gone. 2 Q. And by the plaque, do you mean the funeral 3 home plaque that they put in the ground with the 4 little sticker on it saying who's buried there? 5 A. Right. 6 Q. And that's all that would have marked 7 Mr. Duffy? 8 A. Right. 9 MR. McFARLAND: I have nothing further, 10 Your Honor. Thank you. 11 THE COURT: Mr. Lanning, any questions? 12 MR. LANNING: No questions. 13 THE COURT: Ms. Palmer, thank you, ma'am. You 14 may step down. I appreciate your time. 15 (Witness excused.) 16 THE COURT: Mr. Brisbane, was there something 17 else you wanted to tell me? 18 MR. CLIFFORD BRISBANE: She's gone too far 19 with the graves. They don't go back that far. 20 MS. PALMER: Yes, they did. 21 MR. CLIFFORD BRISBANE: No, they didn't. 22 THE COURT: We have a little sibling rivalry 23 going on. Mr. Romanosky, is your client still 24 willing to proceed? 25 MR. ROMANOSKY: Your Honor, I would like to	59 1 Everybody will know where the graves are, 2 where they are, and where they aren't. Assuming that 3 that works out fine we're prepared to go forward at 4 the 560. 5 THE COURT: All right. Mr. Lanning? 6 MR. LANNING: Thank you, Your Honor. The 7 contract that has been submitted for 560 with my 8 client, I'll have the same agreement regarding the 9 grave sites when we come to an agreement about the 10 grave sites and the perpetual maintenance and if 11 everyone can then go out and view the grave sites. 12 It's no different with what they're willing to move 13 forward with on that. We're willing to move forward 14 without the 30-day requirement. They have a 15-day 15 due diligence period and a 15-day close after that. 16 So they're willing to move forward within 30 days 17 just as Associated says. My clients have allowed me 18 to increase the purchase price to 650,000, so they're 19 willing to increase their purchase price with the 20 same contingencies as Associated. 21 THE COURT: 650 with the 15/15, or are you 22 going to 650 with the -- 23 MR. LANNING: 650 with the 15/15 -- 15 due 24 diligence and 15 days to close. 25 THE COURT: All right. I'll tell you what I'm
58 1 get some testimony on who the Nordic Group is if 2 anybody in this room knows who the Nordic Group is 3 and their contractor. 4 MR. LANNING: There's no one here on their 5 behalf, Your Honor. 6 THE COURT: All right. Very good. Well, that 7 will make my decision a lot easier. Don't worry. 8 MR. ROMANOSKY: In light of that may I have a 9 five-minute recess? 10 THE COURT: Sure. Sure. Let's take 11 five minutes and come right back. 12 (A recess transpired.) 13 MR. ROMANOSKY: We're ready, Your Honor. 14 THE COURT: All right, Mr. Romanosky? 15 MR. ROMANOSKY: Thank you, Your Honor. At the 16 break, there is some concern on the issue of the 17 location of the graves since we've had some 18 conflicting testimony, and we've talked to some 19 individuals outside. So we're going to propose in 20 the best interest of everybody here, everybody, that 21 we in our amendment to the contract provide for a 22 30-day period to do an appropriate study on the 23 location of all of those graves, subsurface research 24 which can be done and we can get it done within 25 30 days.	60 1 going to do. Have you got a written offer to that 2 effect or not? 3 MR. LANNING: No, Your Honor, I don't have a 4 written offer, but is anybody here willing to agree 5 to 650? 6 THE COURT: Oh, yes, they all want more money. 7 Here's what I'm going to do. You've got 650 and 8 you-all are going to close in 30 days; is that what 9 you are telling me? 10 MR. LANNING: Yes, Your Honor. 11 THE COURT: Where did we start? 4-what? 12 MR. DODDS: 455, Your Honor. 13 THE COURT: What's the earnest money we've 14 got? Wasn't there a \$100,000 deposit somewhere? 15 MR. LANNING: \$100,000. Yes, Your Honor. 16 THE COURT: All right. Hold on a second. 17 MR. ROMANOSKY: Your Honor, may I address the 18 Court? 19 THE COURT: Just one second. Yes. Go ahead, 20 Mr. Romanosky. 21 MR. ROMANOSKY: Your Honor, if Mr. Phillips 22 would agree to match the earnest money deposit of 23 \$100,000. I would just simply bring to the attention 24 of the Court that his only contingency would be the 25 approval of the grave survey. I think Mr. Lanning's

61 1 clients are a general pre-look provision. We've 2 eliminated the pre-look. The only issue is the 3 graves. You've got a sure thing there. You have an 4 iffy thing there. 5 MR. LANNING: I disagree. They have 100,000 6 they've put aside that they're willing to buy the 7 property. 8 THE COURT: Has anybody from that group been 9 on the site? 10 MR. LANNING: I'm not sure if they have. I 11 believe they have done their research. They feel 12 comfortable with the purchase price. 13 THE COURT: You-all's appraisal was the 560 14 figure, wasn't it? 15 MR. LANNING: That's right. 16 THE COURT: I'll tell you what, I've never 17 seen anything like this. That last time things got 18 like this they went real south real fast. All right? 19 That's my concern. I had a piece of property -- I 20 don't know if you-all were in here or not. I had a 21 piece of property out at Sol Legare that was under 22 contract for \$5 million. It sold for about \$260,000. 23 I have friends on Wall Street that have a 24 saying. Bears make money, bulls make money, and pigs 25 get slaughtered. I'm afraid of where we are.	63 1 the Court's approval, they have represented to the 2 Court that they're willing, able, and ready to close, 3 and then the Court's making the \$100,000 4 nonrefundable, that would certainly work in the 5 interest of the owners as well as Mr. Romanosky's 6 client should these -- a concern about whether these 7 are legitimate folk who might go south, then I think 8 it's allayed by the fact that they're going to lose 9 \$100,000 that is in Tommy Brush's account. The Court 10 can certainly make that amount payable to this Court 11 out of Mr. Brush's account immediately so that that 12 is in the clerk's account. 13 So those conditions, I think, is what might 14 secure for this family at least getting the amount of 15 money that is now on the table. Again, it raises my 16 client's \$1,200 to maybe \$1,500. 17 THE COURT: All right. I'm going to approve 18 the Associated Developer's contract as amended today. 19 I'm using what I think is my best judgment. It's not 20 the highest price that's coming here, but it's the 21 highest price that's coming here pursuant to law. 22 Mr. Lanning, we read the statute as 23 Mr. McFarland was talking, and you-all are supposed 24 to come in here, and we'll have a fight over 25 valuation. That's what this hearing was today. Both
62 1 I want to make sure I understand your offer 2 then, Mr. Romanosky. You-all's price remains at 560. 3 You'll increase your earnest money deposit to 4 \$100,000 and you want a 30-day look/see at the graves 5 and then 30 days to close? 6 MR. ROMANOSKY: No. We'll do everything 7 within the 30 days. 8 THE COURT: Everything is in 30 days? 9 MR. ROMANOSKY: Everything within 30 days. 10 THE COURT: All right. Mr. McFarland, do you 11 want to be heard? 12 MR. McFARLAND: Yes, Your Honor. It appears 13 to me that there's \$100,000 by the Nordic Group, and 14 there's concern about whether they will close in 30 15 days. 16 THE COURT: Right. 17 MR. McFARLAND: The Court certainly has the 18 ability to make that \$100,000 nonrefundable if they 19 do not close within the 30 days. So that's in part 20 security for these folks, my clients, and other 21 heirs. And of course if they do not close, then of 22 course Mr. Romanosky's client could buy it for 560 23 plus the \$100,000, and that still puts us at the 650 24 or 660, actually. 25 So since they are submitting this contract for	64 1 parties agreed the value of the property is \$560,000. 2 Now, you're offering over and above that. I have a 3 problem with how it was done. I just wanted you to 4 know. 5 If you-all were willing to come in here ten 6 days ago and put your 650 on the table I would do it, 7 and I would say that that was clearly pursuant to 8 Statute 15-61-25, which is one of the reasons that I 9 wanted to make sure that I got you in this case prior 10 to today's hearing so you could put the offer in. I 11 don't have anything in writing to that effect. I 12 understand what you're telling me. I understand the 13 benefit of an additional \$90,000. 14 I can tell you, at this stage of the 15 proceeding, because of where we are and because of 16 the due diligence that's been done by the party 17 that's under contract with the Plaintiffs in this 18 case, I think that they're prepared and ready to 19 close. They have one last contingency. 20 Let me just state this for you-all. This is 21 one of the biggest cases I've had since I got a piece 22 over there off of 5th Avenue in Mt. Pleasant. That's 23 the case which I refer to when they thought there 24 were 36 graves. It probably sold in the morning for 25 50,000 and sold that afternoon for \$1 million.

65 1 When something goes up like that -- because 2 the million dollars was going to be this person's 3 dream home, but when they found not 36 grave sites on 4 there and found 600 on there, we were in litigation 5 for about five years. Okay? The money didn't change 6 hands. 7 Eventually what happened was exactly what the 8 Petitioners, Associated Developers, have offered to 9 do here which is to create a grave site for the 10 family to use in perpetuity. So I find that they've 11 acted in good faith. I think it's in their best 12 interest. I think it's in the best interest of the 13 family to move forward. It is not the highest price, 14 but if we end up 60 days down the road and they 15 haven't closed, and we're looking for another buyer 16 -- it might be 650 next time. It might be 250 next 17 time. I just don't know. 18 Mr. Phillips has been diligent. He's stuck 19 with his guns. He still wants to close on the deal. 20 He thinks he can make this work. From what I've seen 21 of what's now in evidence as Exhibit 7, it does not 22 appear based on the testimony of Ms. Palmer that the 23 graves that she's familiar with, and she's familiar 24 with the property, would be on any of those potential 25 lots, those potential lots.	67 1 that would automatically kick in should Mr. Phillips 2 decide that there are too many graves as the Court 3 has just pointed out and makes it not feasible for 4 him, so that then this family doesn't lose another 5 year trying to find a buyer when we have a buyer here 6 who says -- 7 THE COURT: If they're waiting in the wings 8 and they want to close, I have no problem. What's our 9 written contract with with Nordic? 10 MR. LANNING: 560. 11 THE COURT: You want me to approve that as a 12 fall-back in the event that the developers don't go 13 forward? 14 MR. McFARLAND: Actually I want the 650 15 fall-back, but if the Court wants -- at least they 16 can do the 560 fall-back. We have a fall-back so 17 that there is no delay in ending this case. That's 18 all I'm saying. I think you have given priority to 19 Mr. Phillips, and that's fine. He's got that 20 contingency of the grave sites. It could be a 21 problem for him. If it is and he won't go forward 22 because of that contingency then at least we would be 23 able to fall back on what the Court has said is the 24 560 purchase price. 25 THE COURT: Mr. Lanning, are you able to bind
66 1 However, what you need to know is the law in 2 this state is that a graveyard is a graveyard so long 3 as you know it is a graveyard. All right? So what 4 is being done here is the developer is taking the 5 initiative to carve out this graveyard for the 6 benefit of the family in perpetuity. To the extent 7 it becomes a public park, it would be a City park for 8 anybody to go to. 9 Again, it's not the highest price, but I think 10 it's in the best interest of the family, and I'm 11 going to approve it as such and ask that you-all go 12 forward. 13 MR. McFARLAND: Your Honor, on that point, not 14 disturbing the Court's ruling, because this -- there 15 is a contingency for Mr. Phillips to determine the 16 number of graves that may alter his willingness to go 17 forward, then can the Court provide that if he is not 18 willing to go forward, and then approve the 650 from 19 the Nordic Group so that we don't have to revisit 20 this because they don't have the -- 21 THE COURT: If you give me a written contract 22 to look at I'll -- 23 MR. McFARLAND: I think they're -- even if 24 it's at the 560 -- my point is so that we don't have 25 to come back that there's a back-up contract here	68 1 your client to that as a fall-back position? 2 MR. LANNING: Not at this time I can't, Your 3 Honor. 4 THE COURT: I didn't think so. All right. 5 We'll see. Good try, Mr. McFarland. 6 MR. DODDS: Judge, I've got these two exhibits 7 on the taxes that have been paid by the various 8 parties. I don't believe there's any contest. I 9 spoke with Mr. McFarland about it. He said the Court 10 may have some issue with the length of time that 11 we're going back with regard to the 3.4-acre tract. 12 We've got taxes being paid from 1991 to 2015, and 13 with regard to the 3.6-acre tract we've got taxes 14 being paid from 1988 through 2015. 15 THE COURT: What do they tally? 16 MR. DODDS: Your Honor, the 3.6 acres is 17 \$38,958.82. The 3.4 acres, Judge, is about \$16,000. 18 I would have to run a -- 19 THE COURT: 16 roughly? 20 MR. DODDS: Yes, sir, Your Honor, 21 approximately. It's itemized, Exhibits 1 and 2. 22 THE COURT: Roughly 54,500? 23 MR. DODDS: Yes, sir. 24 THE COURT: And we know who's paid it? Is 25 that what this is?

69 1 MR. DODDS: Yes, we do, Your Honor. And then 2 with the Court's permission I'll submit an Affidavit 3 of Attorney's Fees, Your Honor. 4 THE COURT: If there is a blank does that 5 mean -- 6 MR. DODDS: That means they're not seeking 7 them, Your Honor. They couldn't find any tax bill 8 for that, so we did not include it. There were a 9 couple of years where we lost the tax bill. 10 THE COURT: You want to be heard on that, 11 Mr. McFarland? 12 MR. McFARLAND: As I mentioned, Mr. Dodds said 13 the Court's practice is that you go ten years from 14 the filing, and if you look at these numbers it was 15 actually about 2005 when the taxes -- 16 THE COURT: When they went through the roof. 17 MR. McFARLAND: -- went through the roof, so 18 that would basically cover that period where a 19 significant amount of the taxes were in fact paid, 20 and so if the Court follows its traditional practice 21 then that certainly would get these parties 22 reimbursed for the substantial taxes that started to 23 appear starting at about 2005. 24 So we would have no objection, but again, 25 that's up to the Court. That's certainly to the	71 1 UNIDENTIFIED SPEAKER: Is there any way to 2 know whose names are on that because we want to make 3 sure that everybody that contributes has their name 4 on there. 5 THE COURT: Sure. Arthur Brown, Horace 6 Robinson, Rosalee Simmons, Maryann Brisbane, Susan 7 Simmons, Ruthie Gadsden, Tracey Hopkins, Vivian 8 Cromwell, and Nancy Brisbane is who I'm showing. 9 MR. DODDS: That's on the 3 -- 10 THE COURT: That's on the 3.4. And this may 11 be a repeat, but you've got Arthur, Horace, Rosalee, 12 Vivian, Nancy and Maryann. 13 UNIDENTIFIED SPEAKER: I'm sorry, but we've 14 had people who paid towards the taxes whose names 15 weren't called. 16 THE COURT: All right. Well, I can't fix that 17 problem today, but you-all can work on it. Okay? 18 UNIDENTIFIED SPEAKER: It's not on that sheet. 19 It's on the other sheet. 20 THE COURT: Yes, I was just reading off -- 21 MR. DODDS: There are two sheets. 22 THE COURT: I'm not going to take that time 23 right now, but I'll approve those back to 2003 on a 24 larger sum and the 88 on the smaller tract. I'll do 25 that.
70 1 Court's discretion. 2 THE COURT: On the 3.6 you have the supporting 3 documentation, Mr. Dodds, but on the 3.4 you just 4 have sort of a list of who paid what? 5 MR. DODDS: That's all they gave me, Your 6 Honor, yes. But I do have people here that can 7 testify as to that under oath if you would like. 8 THE COURT: Here's what I'm going to do. I'm 9 going to go -- I think that usually the Court goes 10 back about ten years from the time of filing, which 11 gets us right back to that 2005 period. What I'm 12 going to do is I'm going to go back to -- because it 13 is itemized and we can establish it, I'm going to go 14 back to 2003 on the 3.6 acre tract, and that's going 15 to leave you about 5,000 short, but I'm going to 16 go ahead -- because of the way it's presented I'm 17 going to go ahead and approve whatever has been 18 presented as to the 3.4 acres. It's much less. 19 So it's probably -- I came up with 54,500. 20 It's going to be something under about 50,000. Taxes 21 have been substantial since 2005. 22 MR. DODDS: So on the 3.4 you're going to give 23 them everything, Judge? 24 THE COURT: Yes. Yes. I'll give them that. 25 Yes, sir?	72 1 MR. DODDS: That's great, Judge. Thank you. 2 I've got a copy I can give them. 3 THE COURT: You-all should be able to prove 4 that. That's going to be a nightmare for somebody. 5 I'll anticipate proposed attorney's fees from both 6 parties. All right? 7 MR. McFARLAND: Thank you, Your Honor. 8 THE COURT: Mr. McFarland, I will note that 9 you have improved the situation tremendously for the 10 benefit of these people. All right, sir? 11 MR. McFARLAND: Thank you, Your Honor. I 12 appreciate that. 13 THE COURT: It may not be as significantly as 14 we would like, but significantly. Thank you-all. 15 (The proceedings were concluded at 3:54 p.m.) 16 17 18 19 20 21 22 23 24 25

73	75
1 State of South Carolina)	1 EXHIBITS
2 County of Charleston) CERTIFICATE	Page
3	2
4 I, Christine A. Smith, Court Reporter and	3 PLF. EXH. #1, Taxes Paid, figures 3
5 Notary Public for the State of South Carolina at	PLF. EXH. #2, Taxes Paid, figures 3
6 Large, do hereby certify that the foregoing	4 PLF. EXH. #3, Contract to Purchase 3
7 transcript is a true, accurate, and complete record.	PLF. EXH. #4, First Amendment to Contract 3
8 I further certify that I am neither related to	5 to Purchase
9 nor counsel for any party to the cause pending or	PLF. EXH. #5, Written Agreement 3
10 interested in the events thereof.	6 PLF. EXH. #6, Second Amendment 3
11 Witness my hand, I have hereunto affixed my	PLF. EXH. #7, Site Plan 53
12 official seal this 1st day of June, 2016 at	7
13 Charleston, Charleston County, South Carolina.	8
14	9
15	10
16	11
17	12
Christine A. Smith	13
Notary Public	14
My Commission Expires	15
May 12, 2021	16
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1 STATE OF SOUTH CAROLINA 2 COURT OF COMMON PLEAS 3 COUNTY OF CHARLESTON 4 Vivian B. Cromwell, et al., 5 Plaintiffs, 6 vs. CASE NO. 2015-CP-10-00939 7 Alberta Brisbane, et al., 8 Defendants. 9 And 10 Associated Developers, Inc., 11 Intervenor, 12 Nordic Group, LLC, 13 Intervenor. 14 Hearing before the Honorable Mikell R. 15 Scarborough, reported by Christine A. Smith, Court 16 Reporter and Notary Public, at 2:59 p.m. on 17 June 7, 2016 at 100 Broad Street, Charleston, 18 South Carolina. 19 20 21 Christine A. Smith, Court Reporter 22 Notary-In-Equity 23 P.O. Box 20794 24 Charleston, South Carolina, 29417 25 (843) 948-9271 csmith@christianreporting.org	3 1 PROCEEDINGS 2 3 THE COURT: This case is captioned Cromwell 4 versus Brisbane. It is Case No. 2015-CP-10-939. It 5 appears we are here today on a Motion to Reconsider 6 Alter or Amend by the Nordic Group, LLC, which has 7 submitted their proposal to purchase the property in 8 the last hearing we had with Nordic Group and 9 Associated Developers who are, I think, intervenors 10 in the action, and the Court basically decided to go 11 with the original contract that was submitted on 12 behalf of -- I don't know if it was the original 13 contract. 14 Things were moving pretty quick in the 15 courtroom that day to the best I can recall. I'm not 16 sure I got the highest and best offer from the Nordic 17 Group, and so they're not happy with it and we've 18 come back. So let's go down the line and see who is 19 representing who. Mr. Dodds, let me start with you. 20 MR. DODDS: Judge, I represent the Plaintiffs, 21 who had initiated the action to clear title and seek 22 approval of the contract that we had with Associated 23 from August of '14. 24 THE COURT: '14, wasn't it? 25 MR. DODDS: I think so.
2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF: 3 John J. Dodds, III, Esq. 4 Cisa & Dodds, LLP 5 858 Lowcountry Boulevard 6 Suite 101 7 Mt. Pleasant, SC 29464 8 (843) 881-6530 9 John@cisadodds.com 10 ATTORNEYS FOR THE DEFENDANT: 11 Arthur C. McFarland 12 Law Office of Arthur McFarland 13 P.O. Box 80609 14 Charleston, SC 29416 15 (843) 730-3900 16 Cecileesq@aol.com 17 ATTORNEYS FOR THE INTERVENORS: 18 John E. Romanosky, Jr., Esq. 19 Law Office of John Romanosky 20 P.O. Box 603 21 Charleston, SC 29402 22 (843) 724-1054 23 John@jromanlaw.com 24 J. Christopher Lanning, Esq. 25 Lanning Law Firm 2036 Ewall Street Suite F Mt. Pleasant, SC 29464 (843) 284-5551 Chris@lanninglawfirm.com James Atkinson Bruorton, IV, Esq. Rosen, Rosen & Hagood 151 Meeting Street Suite 400 Charleston, SC 29401 (843) 577-6726 Cbruorton@rrhlawfirm.com (INDEX AT REAR OF TRANSCRIPT)	4 1 THE COURT: Very good. Mr. Dodds is the 2 Plaintiff. Let's see. Mr. Lanning, you were here 3 originally for the Nordic Group? 4 MR. LANNING: That's correct, Your Honor. 5 Mr. Bruorton and -- 6 THE COURT: Mr. Bruorton, you're in the case 7 now with them? 8 MR. BRUORTON: That's correct, Your Honor. 9 THE COURT: Very good. And then 10 Mr. Romanosky? 11 MR. ROMANOSKY: For Associated Developers, 12 Your Honor. 13 THE COURT: Associated. 14 MR. McFARLAND: And Ernestine Brown, one of 15 the heirs, Your Honor. 16 THE COURT: Thank you, sir. All right, 17 Mr. McFarland. 18 Mr. Bruorton, you want to make a motion? 19 MR. BRUORTON: Yes, Your Honor. 20 THE COURT: Very good. 21 MR. BRUORTON: I'm going to step over to the 22 podium. 23 THE COURT: That's fine. 24 MR. BRUORTON: Your Honor, as I state'd earlier 25 my name is Chip Bruorton, and I do represent the

5 1 Nordic Group, LLC. I was not at the May 3rd, 2016 2 hearing. Mr. Lanning was here on behalf of the 3 Nordic Group. 4 I've since moved to be an attorney of record 5 for the Nordic Group, LLC, and I've had the benefit 6 of reviewing the transcript from the hearing that 7 day, so I do know what happened. I know that from 8 your standpoint there was a little bit of concern as 9 to who the Nordic Group was. There wasn't a 10 representative from the Nordic Group here. 11 The Nordic Group is a privately-owned real 12 estate investment group with local ties to the area. 13 They're based out of Santa Fe, New Mexico. They also 14 have ties in Atlanta, and they're looking to get into 15 the Charleston real estate market. Sam Owings is one 16 of the principals. The group is committed to 17 purchasing this property and developing this 18 property. 19 Here today is Mr. Kevin Coffey, a civil 20 engineer with Lowcountry Land Development 21 Consultants. He's been hired by the Nordic Group, 22 LLC to do some of the site planning work and 23 protecting these gravesites that I know are a big 24 issue to the owners of this property. 25 The reason that we brought this motion and the	7 1 Group's contract had the same contingencies. 2 Mr. Brisbane, Clarence Brisbane, testified that he 3 wanted more money. I think there were several people 4 in the audience that were here that day that 5 indicated that they wanted more money. 6 We have submitted affidavits to the Court from 7 Jermalne Brisbane and Shereatha Brisbane attaching a 8 fully executed contract for the \$650,000 between the 9 Nordic Group and the Brisbanes for this property. 10 Within that contract there were still some of the 11 contingencies. 12 I can tell you I have an executed contract 13 with me today that removes all of the contingencies, 14 and only has the contingency in the contract of this 15 gravesite subsurface survey. We're on an equal 16 playing field with Associated Developers as it stands 17 for the interest of the owners. We're offering them 18 the same thing. This property will close if the 19 gravesite survey is to the satisfaction of what needs 20 to be done on that property. I believe it was 21 Mr. Phillips -- their position that that could be 22 done in 30 days. 23 We believe it can be done in 15 days and then 24 close within 15 days of that. My group is prepared 25 to do that. I think what was offered at the hearing
6 1 basis for our motion -- again, I wasn't at the 2 hearing, but I have read kind of what happened. We 3 believe it was an error to accept the Associated 4 Developers Group contract and not the Nordic Group 5 contract. I have a little bit of reasoning for that. 6 The contracts, when we came in on May 3rd, the 7 Nordic Group was at 560 with the same contingencies 8 as Associated Developers. Associated Developers was 9 at 455. I believe they amended their contract and 10 brought it up to the same amount of 560. 11 I don't know if that happened in the courtroom 12 before it got started or when that was done. I'm not 13 certain on the timeline of that. Associated 14 Developers removed all the contingencies that they 15 had in their contract as if they were ready to close 16 right then and there. 17 When Mr. Phillips testified, there is a 18 remaining contingency that is in that contract in 19 that they still aren't willing to close until they do 20 this subsurface gravesite survey. So there is still 21 a remaining contingency in that contract. They still 22 have the right to terminate that contract if he is 23 not satisfied with the gravesite survey, which I 24 don't believe has been done yet. 25 The contract still had a contingency. Nordic	8 1 to get to the 650 was a verbal offer, almost like it 2 was a bid. I know it wasn't a judicial sale, but you 3 did have two competing bidders for the same property. 4 I don't believe there's anything in the statute that 5 requires that bid to be in writing. 6 We do have it in writing now at the 650,000 7 mark and believe it should be accepted by the Court. 8 I don't really see any reason why there should be 9 preference for one contract versus another when the 10 contingencies are the same and one is for \$90,000 11 more, which is certainly to the benefit of the 12 landowners. 13 THE COURT: Is that it? 14 MR. BRUORTON: That is. Thank you, 15 Your Honor. 16 THE COURT: Very good. Mr. Romanosky? 17 MR. ROMANOSKY: Your Honor, I've submitted a 18 memorandum in opposition to the motion. I am 19 assuming Co-Counsel has received a copy of my e-mail? 20 MR. BRUORTON: I have not. 21 MR. ROMANOSKY: Did you get it? 22 MR. LANNING: I didn't get it yet. 23 MR. ROMANOSKY: Your Honor, did you get a 24 copy? 25 THE COURT: Yes. I received it June 3rd.

9 1 MR. ROMANOSKY: Do you want to take a minute 2 to look at it? 3 MR. BRUORTON: No. Go ahead. 4 MR. ROMANOSKY: Your Honor, the May 3rd 5 hearing was a valuation hearing pursuant to Statute 6 15-61-25(c), and at that hearing there were two 7 contracts. There weren't three contracts. The 8 purpose of the valuation hearing as stated in the 9 statute is for the Court to determine the value of 10 the property. Every lawyer and every client in this 11 courtroom that day stipulated to the value of the 12 \$560,000 and it was all agreed upon. 13 Essentially, you ruled from the Bench that 14 that's the agreed value of the property. So we had 15 two contracts. We didn't have three. We had one 16 from Associated that was signed by Mr. Dodds' client 17 that had been amended and removed all contingencies 18 when the hearing started. 19 We had a contract from Associated, which was 20 the same one from the prior year which had a 21 contingency, right of termination after a 15-day due 22 diligence. 23 So you had one contract with no contingencies. 24 You had one contract with contingencies. You also 25 had Associated, who at the time of the hearing, had	11 1 noncontingent contract. He's ready to close. In 2 fact, he went out there the week afterwards, and it's 3 done. We've done the grave survey, and there's no 4 issues. They're ready to move on. 5 THE COURT: Did you-all find 600 or less? 6 MR. ROMANOSKY: Much less, Your Honor. It was 7 much less. It was as we had anticipated. The real 8 bottom line here is you can't use Rule 59 to come in 9 here and present a contract after the date of the 10 hearing. They have a contract that's dated May 16th. 11 That's not admissible. That can't come in. Neither 12 can the affidavits be presented. It's limited to 13 what happened that day and -- I don't believe the 14 Court can even consider the contract. It wasn't 15 there on the date of trial. They missed their 16 opportunity. So the motion, I believe, should be 17 denied. 18 As a separate sustaining ground, however, you 19 will remember that you also filed a Counterclaim in 20 the event -- once we were allowed to intervene and 21 Nordic came in. We've spent a lot of money on this 22 property, in excess of \$35,000 as of the date of the 23 hearing and about 20 more since then. 24 So we've got a pending Counterclaim if our 25 contract is not approved to get that money back from
10 1 expended in excess of \$35,000 in reliance on their 2 contract that had been 14 months or more old. 3 Of course that was their opportunity to 4 present a contract, and they didn't have one, and 5 they didn't present one. There were only two. That 6 hearing could not have been turned into a bidding 7 process as Nordic Group basically tried to do, Your 8 Honor. So the choice really was easy. You had a 9 contingent contract and a noncontingent contract at 10 the same price. Nobody appeared on behalf of Nordic. 11 Now, granted, when someone said from the 12 gallery that there were as many as 600 graves on the 13 property, I think everybody's ear in the whole room 14 went up including members of the Brisbane family. 15 There was some debate and bantering back and forth. 16 No, they're all in one corner. No, they're here. 17 The gist of all that was that it was in everybody's 18 best interest. 19 Let's take a deep breath and look at this and 20 see what we've got. In the sense that it was a 21 contingency -- well, if there were 600 graves out 22 there nobody was buying the property. It just wasn't 23 going to happen for anybody. So I don't disagree 24 with the law. The pecuniary interest in the heirs is 25 a factor, but we've got a client that put up a	12 1 somebody, so I haven't heard a tender from Nordic to 2 say, you know, we'll pay you back for everything. If 3 they're not going to do it then it's got to come out 4 of the heirs' pocket. 5 So what seems to be an additional \$90,000 for 6 these heirs then turned out to be a substantial more 7 bit of litigation over how my client's going to get 8 paid back for what he's got in this based on his 9 reliance for almost two years. 10 You know, Your Honor, I think that also is a 11 sustaining ground to confirm that the Court, in fact, 12 made the right decision. We've got a surety on here 13 and these heirs are going to get paid the agreed fair 14 market value. There's no question about it. They're 15 going to get paid. This is an iffy deal. I still 16 don't really know who these people are. Your Honor, 17 I would ask that the motion be denied. 18 THE COURT: Mr. McFarland, do you want to be 19 heard at all? 20 MR. McFARLAND: No, Your Honor. I presented 21 our argument on behalf of Mr. Brown and the heirs at 22 the previous hearing, and I haven't asked for any 23 reconsideration since Your Honor's ruling. 24 THE COURT: Thank you. Mr. Dodds? 25 MR. DODDS: Me as well, Your Honor. We

13 1 contracted with Associated back in August of '14 2 based on the recommendation of someone who had listed 3 the property for a long period of time. At that time 4 it was the best offer which had been given. Everyone 5 was excited to have it, and then we get to the 6 process and come to the hearing in December and this 7 additional offer comes in. 8 We're in kind of an awkward position. 9 Absolutely do we want more money? Sure. But we have 10 contracted to sell to Associated. Associated then 11 stepped up and agreed to amend its contract to 12 essentially match the offer. We have entered into a 13 grave maintenance agreement, if you will, with 14 Associated that all the heirs were -- excuse me -- 15 that my clients were extremely happy about, Judge, to 16 have the opportunity to continue to visit their 17 ancestors' graves, and there would be a provision for 18 perpetual maintenance. 19 So we came to the hearing on May 3rd. We 20 stipulated as to value. We had an agreement in place 21 with regard to the graves. We were satisfied with 22 the Court's ruling. You know, I've pondered this 23 situation since May 3rd. It's kind of a very 24 difficult situation that the Court finds itself in. 25 At some point the Court has to determine the	15 1 If he could have paid more he likely would have been 2 in a position to pay more. Then we would have had a 3 different situation back and forth. 4 The contract was presented to the Court at 5 650,000. It was presented in the form of an oral 6 offer. The contract that has been attached by the 7 affidavits I do believe is admissible. It's purely a 8 memorialization of what was presented to the Court on 9 May 3rd. 10 As for the Counterclaim, quite frankly, I 11 wasn't aware of the Counterclaim coming in here 12 today. It's certainly something I can talk about 13 with my client. I know they're extremely interested 14 in this property. I don't have authority to say that 15 they'll pay it, but I would be surprised if it is -- 16 what prevents them from getting this property -- I 17 don't think the 55,000 or whatever is documented is 18 going to be a deterrent to them. Again, I don't have 19 the authority to say yea or nay, but I certainly can 20 talk to them about that. 21 I think it's an injustice to the landowners to 22 not be given this additional 90 grand that's before 23 the Court. One other alternative proposal that my 24 client has authorized me to present coming in here 25 today is, you know, give us 15 days to do this
14 1 value of the property and what is in the best 2 interest of the heirs. Interestingly, if you 3 remember, we had the appraisal, and you went around 4 and asked the attorneys, and all the attorneys agreed 5 and stipulated, in fact, that this was the value. 6 So then it became a question, I think, from 7 the Court's perspective as to which of the two 8 contracts represented the best interest of the heirs, 9 and the Court issued its ruling, and we were 10 satisfied with the Court's ruling. 11 THE COURT: All right. Thank you. 12 Mr. Bruorton? 13 MR. BRUORTON: Briefly, Your Honor. It is 14 true that the appraisal for the property was 560, and 15 that was what was agreed upon by the attorneys and 16 the people in the courtroom as far as what the value 17 was as set by that appraisal, which the appraisal was 18 Nordic Group's appraisal. Just because an appraisal 19 says something is worth 560 doesn't mean that you 20 can't pay more for it. 21 In Mr. Phillips' questioning, when he was 22 being asked on examination -- he was asked if he was 23 relying on that appraisal. He said, Yes. They asked 24 if he could pay more, and he was saying, Well, the 25 offer is based on what I can pay for the property.	16 1 gravesite analysis. 2 It sounds like Associated Developers is 3 already down that road. My proposal was going to be 4 that they either share the cost to have it done or 5 independently do it. 6 Then we come in this courtroom with no 7 contingencies whatsoever. The property will close, 8 and it goes to the highest bidder. I don't see how 9 that's an injustice to the landowners at all. To me 10 that is purely within their pecuniary interest to 11 obtain the most money that they can possibly get for 12 this property with all contingencies removed. To me 13 that's where we would be. 14 THE COURT: All right. Thank you. Well, I 15 think you make a compelling argument, however, it's 16 not sufficient. I'm sorry. Here's the problem I've 17 got. We had on May 3rd, I think it was -- we had the 18 valuation hearing. Much to my surprise everybody 19 agreed on what the value was. It was stipulated to. 20 It is what it is. Now we continue to fight over 21 whether it's worth more than that. 22 Well, you know, the Nordic Group's got a 23 solution to that. They can go to Associated and buy 24 their contract if that's what they want to do. 25 That's what the market does. That's what happens all

17 1 the time. 2 What it was not, was not bidding day in the 3 courthouse. That was this morning. I do those at 4 11:00 the first Tuesday of every month. If you want 5 to come bid come on down and we'll bid down there. 6 What I was looking for at that time, of 7 course, was the highest and best offer that you're 8 going to make. That's what I was looking for. Okay? 9 When everybody agreed that the price was the same, 10 the value was the same, then I'm left with two 11 options. One option is, do I go with the new group 12 who's new to the game, or do I stick with a group 13 that's been hanging around for almost two years and 14 clearly shown their interest and their desire to 15 pursue it? 16 So then I fall back on some of those little 17 basic rules of real estate law like the Statute of 18 Frauds and if it involves land it needs to be in 19 writing and all those inchoate rules that have to do 20 with real estate. 21 It is and was a concern for me, of course, 22 because I was well aware from the testimony from 23 Mr. Phillips that they did have -- they had expended 24 a considerable amount of money in the meanwhile, and 25 somebody's going to have to pay that money. If the	19 1 MR. BRUORTON: In the Master's Decree that was 2 submitted to you, I submitted a written objection to 3 a couple of the paragraphs that were in that decree 4 that I don't think really correspond with what was 5 said in the courtroom. I just would like to make 6 that noted on the record, and ask that those 7 paragraphs be amended. I believe it was Paragraphs 8 78 and 79 which incorrectly stated that the Nordic 9 Group was not willing to remove all contingencies and 10 close at a higher place than 560,000 because they 11 certainly were. 12 MR. ROMANOSKY: I don't think so. 13 MR. BRUORTON: I have the transcript. 14 MR. ROMANOSKY: Well, I do, too. 15 THE COURT: I'll take a look at it. I don't 16 think that's been executed yet. Paragraphs 78 and 17 79. 18 MR. BRUORTON: 78 and 79. I would be happy to 19 submit a letter with testimony from the transcript 20 that supports the position that I'm taking and those 21 objections as to those two paragraphs. We would like 22 to get that cleared up before the order is entered. 23 THE COURT: 78, other than its Counsel no 24 representatives or officers of Nordic appeared at the 25 hearing. That would be correct.
18 1 property doesn't go to the Associated Group. So 2 really that was my motivation for deciding to do what 3 I did. 4 Had the offer come in in writing at a higher 5 figure at that time I may have decided different. I 6 know there was talk about that, and it concerns me 7 that people get the highest and best value for the 8 property that they can get, however I am well -- 9 having been on this bench since 2003, I'm well, aware 10 of what the real estate market can do. Right now 11 it's real hot, and I'm reminded of what some of my 12 friends in New York always tell me. Bears make 13 money, bulls make money, but hogs get slaughtered. 14 I'm concerned about whether or not that's going to 15 happen in this case. I don't think it's going to 16 right now, but it just needs to move to a conclusion. 17 Again, I think you made good arguments. I think 18 they're interesting arguments. I think under the 19 statutory scheme currently in place I think that the 20 Court has made the right decision, and I'm going to 21 stick by that. I'm going to deny your motion and let 22 you-all go forward and do what you can do about 23 closing the loan. Okay? 24 MR. BRUORTON: One other thing, Your Honor? 25 THE COURT: Yes, sir.	20 1 MR. BRUORTON: That's true. 2 THE COURT: Counsel was asked whether his 3 client was willing to remove all contingencies and 4 close at a higher price than 560. He was unable to 5 make such a commitment on behalf of Nordic at this 6 time. Unable to make a written commitment, I guess 7 is what -- we had an oral -- 8 MR. BRUORTON: Correct. We had an oral 9 commitment. 10 THE COURT: And I don't know -- didn't know if 11 his clients had visited or inspected the property. I 12 can't -- 13 MR. BRUORTON: I'm not going to adjust that. 14 Although Counsel from Nordic Group indicated his 15 client would be willing to negotiate a higher price, 16 and no such binding offer or agreement was presented. 17 We believe it is a binding offer. It was an offer 18 that was presented in Court. 19 THE COURT: Okay. I'll change binding to 20 written then. 21 MR. BRUORTON: Okay. That will take care of 22 those issues. 23 THE COURT: Okay. Thank you. Thanks for 24 bringing that to my attention. Very good. 25 MR. BRUORTON: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. McFARLAND: Your Honor, at the last
3 hearing you authorized me to submit an attorney's fee
4 affidavit, and I would like to hand that to the
5 Court.

6 THE COURT: Very good.

7 (The proceedings were concluded at 3:22 p.m.)
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1 State of South Carolina)

2 County of Charleston) CERTIFICATE

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4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 11th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
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17

18 Christine A. Smith
19 Notary Public
My Commission Expires
May 12, 2021
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CONTRACT TO PURCHASE

This Contract made the 31st day of July 2014 by and between the James Brisbane Estate (collectively the "Seller") and Associated Developers Inc. and/or assigns (the "Buyer").

Recitals:

WHEREAS, Seller represents and warrants that it is the owner of certain property (the "Property") located in Charleston County, South Carolina located off of Central Park and Fleming Roads comprised of approximately 3.6 and 3.4 acres of land respectively and more particularly described as: TMS #'s 340-01-00-011 and 340-01-00-050 as identified on the public records provided by Charleston County, South Carolina (Exhibit A attached).

WHEREAS, Buyer desires to purchase the Property of Seller.

NOW THEREFORE, for and in the consideration of the covenants and undertakings provided herein, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto agree to follows:

Provisions:

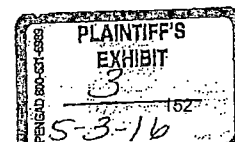
A. **Deposit.** A deposit in the amount of One Hundred and no/100 (\$100.00) dollars (the "Deposit") shall be paid by Buyer within three (3) business days of the execution of this Contract and shall be held by William Bobo Jr. of Nelson Mullins LLP, in a non-interest bearing account until the date of the settlement and then applied to the purchase price or returned to Buyer if the title to the Property is not marketable or the contingencies in this Contract cannot be fulfilled or if Buyer elects to terminate this Contract during the feasibility period. At the end of the feasibility period if Buyer elects to proceed with the purchase of the Property, Buyer shall deposit an additional Four Thousand Nine Hundred and no/100 (\$4,900.00) dollars (the "Additional Deposit"). At the end of the Feasibility Period, all Deposit(s) shall become non-refundable but applicable to the purchase price at closing, or if Buyer defaults hereunder, the Deposit(s) shall be forfeited to and retained by Seller as liquidated damages, and neither party shall have any further liability to the other.

B. **Purchase Price.** The Property shall be purchased in one closing. The purchase price shall be Sixty Five Thousand (\$65,000.00) Dollars per acre to be paid as shown:

\$ 100	Deposit(s) with contract
\$ 4,900	Additional Deposit
<u>\$ 450,000.00</u>	Cash or equivalent funds at settlement.
\$ 455,000	Total Purchase Price

C. **Settlement.** Settlement shall be made at the office of the Buyer's attorney as provided for in paragraph J6.

D. **Settlement Costs.** The cost of preparing the deed and the grantor's tax customarily assessed against Seller shall be paid by Seller and all other conveyancing and recordation charges customarily assessed against Buyer, including the cost of preparing and recording all financing



instruments shall be paid by Buyer. Real estate taxes shall be prorated as of settlement. Seller shall pay all land use or roll back taxes, including any penalties and interest. Buyer shall pay all engineering, survey, subdivision and feasibility study costs necessary pursuant to the terms hereof.

E. **Conveyancing.** Seller agrees that it shall at settlement grant and convey the property to Buyer, its successors and assigns, by Deed of Limited Warranty and that title shall be free and clear of liens and encumbrances and insurable at normal rates by a title company to be selected by Buyer.

F. **Risk of Loss.** All risks of loss, damage or condemnation is assumed and reserved to the Seller prior to settlement. In the event of any substantial loss or damage to the Property before settlement, Buyer shall have the option to either (1) terminate this Contract and receive a refund of the Deposit; or (2) affirm this Contract in which event the Seller shall assign to Buyer all of its rights under any policies of insurance or condemnation rights and proceeds applicable to the Property.

G. **Title Insurance.**

1. Buyer and Seller acknowledge that at the time of execution of this Contract that Seller is not able to convey the Property with clear title.

2. Nothing contained herein shall absolve Seller from the obligation to pay at or before settlement any recorded valid or enforceable liens against the Property including any past due real estate taxes, accrued real estate taxes, roll back taxes, special use taxes, notes, mortgages, and other debts.

H. **Default.**

1. In the event that the Contract is not terminated by Buyer by the end of the feasibility period, and in the further event that Buyer shall thereafter fail to purchase the Property in accordance with the terms and conditions of this Contract of Purchase, or otherwise default in the performance of Buyer's obligations pursuant to this Contract to Purchase for any reason whatsoever other than Seller's default or as otherwise permitted hereunder, Seller shall retain Buyer's Deposit(s) as liquidated damages as Seller's sole and absolute remedy hereunder. Buyer shall be given fourteen (14) days written notice by Seller to cure of any default or non-performance.

2. In the event that Seller shall default in the performance of Seller's obligations hereunder, for any reason whatsoever other than Buyer's default or as otherwise permitted hereunder, then after providing Seller with fourteen (14) days written notice to cure any default Buyer shall have the option to waive the default and purchase the Property pursuant to the remaining terms and conditions of the Contract, terminate the Contract and receive a full refund of the Deposit(s), or bring suit in law or equity seeking any and all remedies available to it including specific performance for delivery of the deed.

I. **Representation.** Seller hereby represents and warrants that:

1. It does not have title to all of the Property but does have the right to enter into this Contract to Purchase. In the event Seller does not have good or complete title to the Property, Seller agrees to acquire such title prior to settlement.

2. If Seller is a corporation, partnership or a limited liability company, then the person signing this contract has the authority to bind Seller to the contract.

3. During the period of its occupancy and to the best of its knowledge and belief that during the period prior to its occupancy that the Property:

i) to the best of its knowledge and belief has not been nor is now in violation of any local, state or federal law as a result of the release, spill, accumulation, storage, generation or presence of oil, hazardous material or other pollutants or contaminants except as noted; and

ii) will be used and maintained by Seller during the period from this date to termination of acceptance by Seller in compliance with all local, state and federal environmental laws and regulations, and if any violation by Seller occurs, Seller shall notify Buyer and will promptly take the necessary action to correct the violation so that the Property can be delivered to Buyer in full compliance of all local, state and federal environmental laws and regulations.

iii) there is no litigation, administrative proceeding or other enforcement action affecting the property other than the aforementioned planned actions to quiet title and Seller has not received any notice of any threatened litigation, administrative proceeding or other enforcement actions against the property of the Seller's ownership of the property.

4. All representations, warranties and/or covenants made pursuant to this paragraph, or made in any of the other certificates or writings delivered in consideration with the purchase, shall survive closing of this transaction and will not be merged into the Deed of Conveyance. Any representations, warranties and/or covenants made in this paragraph, or made in any certificate or other writing delivered in connection with this purchase, shall be deemed to have been relied upon by Buyer (or any assignee or transferee of Buyer), and shall not be affected in any respect by any such investigation or inspection.

J. Feasibility Period and Settlement.

1. Buyer shall have a "Feasibility Period" beginning on the date of execution of this Contract to Purchase, which period shall extend for one hundred twenty (120) days.

2. The Feasibility Period is to provide Buyer with the time to satisfy contingencies and/or determine the economic feasibility of purchasing the Property and/or make any studies of feasibility for use and/or build-out of the Property, to make application to appropriate governmental agencies for use and development of the Property, including zoning, and to enter onto the Property for the purpose of performing boring tests, digging tests, and other engineering tests or other studies upon or of the Property. Buyer shall satisfy all contingencies during the Feasibility Period or any extension thereof with the exception of annexation and zoning. At the end of the Feasibility Period or any extension thereof, Buyer shall notify Seller of its intent to proceed or not. Should Buyer elect to proceed, Seller shall immediately proceed with the necessary actions required to provide clear title as soon as possible and shall use best efforts to complete such action no later than thirteen (13) months from notice from Buyer to proceed or the end of the Feasibility Period whichever occurs sooner. Buyer shall have the right to remove

vegetation at test locations. Upon completion of such test, Buyer shall return the test areas to as near as possible to the prior condition except as to vegetation removed.

3. Buyer, its agent and employees shall enter the Property at their own risk, with no liability to be incurred by Seller, and Buyer shall indemnify and hold Seller harmless from any and all claims, costs, demands or expenses resulting from such entry onto, or Buyer's activities, associated with, the Property.

4. Should Buyer elect to proceed at its sole discretion prior to the end of the Feasibility Period, Buyer shall release the Deposit and the Additional Deposit to the Seller's attorney to be used solely by the Seller's attorney in connection with legal costs directly related to actions to quiet title. The released Deposit(s) shall be non-refundable except in the case of Seller default, or non-performance, Buyer's inability to close solely due to judicial actions as a result of the suit to quiet title, or Seller's inability to convey the Property to Buyer with clear title within thirteen (13) months from the end of the Feasibility Period. Should Seller fail to deliver clear title, Buyer shall have the option to extend the Contract until such time that Seller does deliver clear title or cancel the Contract and receive a full refund of its Deposit(s). Otherwise, all Deposits shall apply to the Purchase Price at closing. Seller agrees to commence the process to clear the title as soon as possible following the Buyer's release of the aforementioned Deposit(s).

5. In the event Buyer determines, in its sole discretion, at any time during the Feasibility Period or any extension thereof that it does not wish to purchase the Property, it shall notify Seller in writing and this Contract to Purchase shall become null and void and of no further effect, and all Deposits shall be forthwith returned to Buyer. If Buyer terminates the Contract, Buyer shall retain all studies, plans, layouts, etc. related to the Property that Buyer has paid for during the Feasibility Period but shall make these documents available to the Seller provided that Buyer is reimbursed its direct costs related to these studies, plans, layouts, etc.

6. In the event Buyer elects to proceed with the purchase of the Property prior to the expiration of the Feasibility Period, Buyer shall notify Seller in writing of Buyer's intent and the settlement shall occur in the office of Buyer's attorney within fifteen (15) days of the later of the end of the Feasibility Period, or Buyer's successful annexation and zoning of the Property into the City of Charleston, South Carolina, or at the time Seller is able to provide Buyer with clear title to the Property. ..

7. Seller shall provide Buyer copies of any topographical surveys, boundary surveys, engineering studies, environmental studies, market studies, and any other information about the Property which Seller or Seller's agents have in their possession within three (3) days of the execution of the Contract.

K. Easements. This conveyance shall include any rights and easements appurtenant to the Property. In addition, Seller agrees upon request to provide at no cost either before or after settlement necessary utility and drainage easements upon adjacent property which Seller owns or controls, if any, and upon the Property to allow for access to utilities and drainage for the development of the Property. Easements will be in locations and of size, scope and terms as mutually agreed between parties, and may be assigned as necessary to government entities, private utility companies or others.

L. Permits and Approvals. This Contract to Purchase shall include and Seller shall assign at closing its rights in any plans, permits, contracts, agreements or approvals for the development of the Property including any reservations or prepaid connections for public water and sewer.

M. **Notices.** All notices to be given by either party to the other shall be in writing, and shall be served by depositing such notice in the United States Mail Service, certified mail, return receipt requested, with certification and postage charges prepaid, properly addressed or by facsimile or email transmission directed to the party to receive same as follows:

1. If to Seller: Blake "Robert" Brisbane
467 Fleming Road
Charleston SC 29412
Telephone: (843) 795-8495
Email: _____
2. Seller's Attorney: John Dodds
858 Lowcountry Blvd., Suite 101
Mt Pleasant SC 29464
Telephone: (843) 881-6530
Email: John@useddodds.com
3. If to Buyer: Associated Developers, Inc.
PO Box 21660
Charleston, SC 29413
Telephone: (843) 568-8487
Email: cphillips@associateddevelopers.com
4. Buyer's Attorney: Bill Bobo
Nelson-Mullins LLP
151 Meeting Street Suite #600
Charleston, SC 29401
Telephone: (843) 720-4328
Email: bill.bobo@nelsonmullins.com

N. **Disclosure of Real Estate.** It is understood that one officer or more of the Buyer is a licensed real estate agent in South Carolina.

O. **Entire Agreement.** This Contract constitutes the entire agreement between the parties, and the parties hereto acknowledge that neither has relied upon any oral representations, or that

any agreements shall, in any way, affect the terms of this written agreement and that this agreement may not be modified or changed except by written instrument executed by all parties.

P. Interpretations. This Contract shall be construed, interpreted and applied according to the laws of the State of South Carolina and shall inure to the successors and assigns of the parties.

Q. Real Estate Agents. Buyer and Seller acknowledge that John Elliott of Howell & Associates shall represent the Seller as a customer but shall be paid a commission by the Buyer at Closing. The commission shall be 4% of the gross purchase price and shall be immediately due and payable if and when Closing occurs. Buyer and Seller acknowledge that no other commissions, fees, etc. are due to anyone other than Elliott. Seller shall have no obligations to pay any real estate fees or commissions related to this transaction.

R. Rezoning/Annexation. Seller agrees to support and cooperate with Buyer should Buyer determine that a rezoning or annexation is necessary at the sole discretion of the Buyer.

S. Zoning Changes. If at any time, any government entity or authority adopts a moratorium, zoning change, permit allocation program or any other ordinance governing the property including impact fees or policies that would have the effect of preventing the development, significantly increasing the cost of development, substantially reducing the current development density or significantly extending the time frame of development and/or lot sales of the Property after the Feasibility Period but before closing, then Buyer shall have the option to cancel the Contract and receive a full refund of its Deposit(s) except those outlined in Paragraph J4.

B.B.
V.B.
R.N. 2.
M.S.
D.D.

5.- 1. Grave Sites Located Upon 3.6 Acre Tract. Buyer and Seller agree that there are numerous grave sites located near the corner of Fleming Road on the 3.6 acre tract, and further, that this Contract is expressly conditioned upon Buyer and Seller entering into a written Agreement regarding the perpetual maintenance of all such gravesites, and the right of Seller, their respective heirs to visit such grave sites.

T. **Contract Acceptance.** This Contract shall remain open for acceptance until 5:00 p.m. on August 6, 2014, 2014 and if not accepted by that time shall expire and be of no further force or effect.

WITNESS the following signatures and seals:

SELLER(s):

By: Blake Brinkman 8-6-14

Print Name: Blake Brinkman Date

By: Vivian B. Cromwell 8-6-14

Print Name: VIVIAN B. Cromwell Date

By: Ruth N. Gadsden 8-6-14

Print Name: Ruth N. Gadsden Date

By: Mildred Chapman 8-6-14

Print Name: Mildred Chapman Date

By: Quana Young 8-11-2014

Print Name: Quana Young Date

Witness to Seller Signatures: [Signature]

8/11/14

Date

BUYER: Associated Developers, Inc.

By: [Signature]
its

Date

8/11/14

Witness: _____

FIRST AMENDMENT TO
CONTRACT TO PURCHASE

THIS FIRST AMENDMENT TO CONTRACT TO PURCHASE (the "First Amendment") is made and entered into as of the 5th day of January, 2015, by and between The James Brisbane Estate ("Seller") and Associated Developers, Inc. and/or its assigns ("Buyer").

WITNESSETH THAT:

WHEREAS, Buyer and Seller entered into that certain Contract to Purchase, having an Effective Date of August 11, 2014, (the "Contract"), with respect to certain parcels of land located in Charleston County, South Carolina off of Central Park and Fleming Roads comprised of approximately 3.6 and 3.4 acres respectively and more particularly described as: TMS #'s 340-01-00-011 and 340-01-00-050 as identified on the public records provided by Charleston County, South Carolina.

WHEREAS, Buyer and Seller desire to amend the Contract to Purchase as hereinafter set forth.

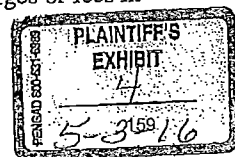
NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Buyer and Seller hereby agree as follows:

1. Capitalized terms used herein and not otherwise defined herein shall have the meanings respectively ascribed to them in the Contract.
2. The Contract is hereby amended in all respects as necessary to give full effect to the following:

(a) Within five (5) business days from the execution of this Amendment, Buyer shall authorize Escrow Agent to release the Deposit to Seller's attorney, John Dodds. In addition, Buyer shall provide Dodds with an additional Four Thousand Nine Hundred (\$4,900.00) Dollars. The collective Five Thousand (\$5,000.00) Dollars ("Title Work Fee") shall be utilized by Dodds exclusively in his efforts to quiet the title related to the Property that will, upon Buyer's satisfaction of all contingencies in the Contract, allow Seller to convey the Property to Buyer with clear marketable title.

(b) Buyer shall not be responsible for any additional costs or fees related to the clear title process in excess of Five Thousand (\$5,000.00) Dollars. Upon delivery of the Title Work Fee, Seller agrees to instruct Dodds to commence the title process immediately and Dodds shall use best efforts to complete the process as soon as possible thereafter. Seller shall promptly cooperate with Dodds to facilitate the effort to successfully clear the title. Any additional charges or fees in

B.B. VBC A.M.E. P.D. M.C.



excess of the Title Work Fee shall be the sole responsibility of the Seller. Seller agrees that additional costs or fees shall not cause the process to be delayed or completed. *Seller acknowledges and agrees that the additional costs or fees shall be approximately \$5,000.00 and shall be paid from the sale proceeds.*

(c) The Title Work Fee shall be non-refundable but applicable to the Purchase Price at Closing. However, in the event that a court-ordered sale to an unrelated third party occurs as a result of the quiet title process, Seller shall reimburse Buyer the Title Work Fee from proceeds at the Closing.

(d) As soon as practically possible, Seller agrees to annex the Property into the City of Charleston, South Carolina. Buyer shall cooperate with Seller and/or its agents to facilitate this process. Seller agrees to cooperate and sign all necessary applications, documents and if necessary, attend public meetings to support the annexation.

(e) After annexation, Buyer and Seller shall cooperate to obtain Cluster Plan Development approval from the City of Charleston, South Carolina (Cluster Plan Approval). Seller agrees to cooperate and sign all necessary applications, documents and if necessary, attend public meetings to support the approval.

(f) Paragraph J 6 is amended such that the closing shall occur within 30 days from the later of the date of (1) completion of the quiet title action, or (2) Cluster Plan Approval.

3. Except as amended hereinabove, the Contract is ratified and confirmed for all purposes and in all respects.

4. This First Amendment may be executed in multiple, telecopied counterparts, all of which shall constitute one and the same instrument.

[Signature page follows]

B.B. VBL R.N.S.2 P.A. me

IN WITNESS WHEREOF, Buyer and Seller have executed this First Amendment as of the day and year first above written.

SELLER:

THE JAMES BRISBANE ESTATE

By: Blake Brisbane
Blake "Robert" Brisbane
heir

By: Dwan Dismore
Susan Simmons
heir

By: Michael Chapman
Michael Chapman
heir

By: Ruth Nelson Gadsden
Ruth Nelson Gadsden
heir

By: Vivian B. Cromwell
Name: Vivian B. Cromwell
Title: heir

BUYER:

ASSOCIATED DEVELOPERS, INC.

By: [Signature]
Name: Chris K. Phillips
Title: VP LAND ACQUISITION

B.B., VBL R.M. L.3 P.P MC

WRITTEN AGREEMENT

THIS WRITTEN AGREEMENT (the "AGREEMENT") is made and entered into as of the 17th day of October 2015, by and between The James Brisbane Estate (collectively the "Seller") and Associated Developers, Inc. and/or its assigns ("Buyer").

WITNESSETH THAT:

WHEREAS, Buyer and Seller entered into that certain Contract to Purchase ("the Contract"), having an Effective Date, August 11, 2014 and a subsequent First Amendment, (the "Amendment"), having an Effective Date, January 5, 2015, with respect certain parcels of land (the "Property") located in Charleston County, South Carolina off of Central Park and Fleming Roads comprised of approximately 3.6 and 3.4 respectively and more particularly described as: TMS #'s 340-01-00-011 and 340-01-00-050 as identified on the public records provided by Charleston County, South Carolina.

WHEREAS, Buyer and Seller desire to satisfy the provisions related the gravesites as outlined in Paragraph S-1 of the Contract via this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Buyer and Seller hereby agree as follows:

1. Buyer and or its designee shall protect, preserve and maintain the immediate areas that surround the gravesites on the Property.
2. Buyer shall incorporate a plan as similar as possible to that which is depicted on Exhibit B (attached) subject only to minor adjustments required to facilitate the final land plan and/or as required by the City of Charleston.
3. Buyer shall incorporate the gravesite area into a larger public park to be dedicated to the City of Charleston (the "City") or deed said area to the Homeowner's Association (the "HOA"). The City or the HOA shall be obligated to maintain the park and gravesite area at its expense.
4. Seller and its heirs shall have no obligation to any maintenance or cost related to the park or gravesite area and shall enjoy perpetual access to the gravesite area subject only to applicable City of Charleston park hours and regulations or HOA covenants and restrictions.
5. In the event that Buyer is unable to incorporate the gravesites into the public realm or into the HOA for any reason whatsoever, Buyer shall have the right to pursue alternative options provided that the intent of this Agreement is adhered to and accomplished.



CVF
10/17/15

6. Upon execution by both Buyer and Seller, this Agreement shall satisfy the contingency as outlined in Paragraph S-1 of the Contract. All other terms of the Contract and First Amendment shall remain unchanged and in full force and effect.

7. This Written Agreement may be executed in multiple, telecopied counterparts, all of which shall constitute one and the same instrument with electronic mail being an acceptable form of delivery.

[Signature page follows]

CW
12/4/15

IN WITNESS WHEREOF, Buyer and Seller have executed this First Amendment as of the day and year first above written.

SELLER:

THE JAMES BRISBANE ESTATE

By: Mildred Chapman
Name: Mildred Chapman
Title: heir — owner

By: Virian B. Crannell
Name: Virian B. Crannell
Title: heir — owner

By: Ruth N. Gotschen
Name: Ruth N. Gotschen
Title: heir — owner

By: Blake Brisbane
Name: Blake Brisbane
Title: heir — owner

By: Juan Jimenez
Name: Juan Jimenez
Title: Heir Owner

BUYER:

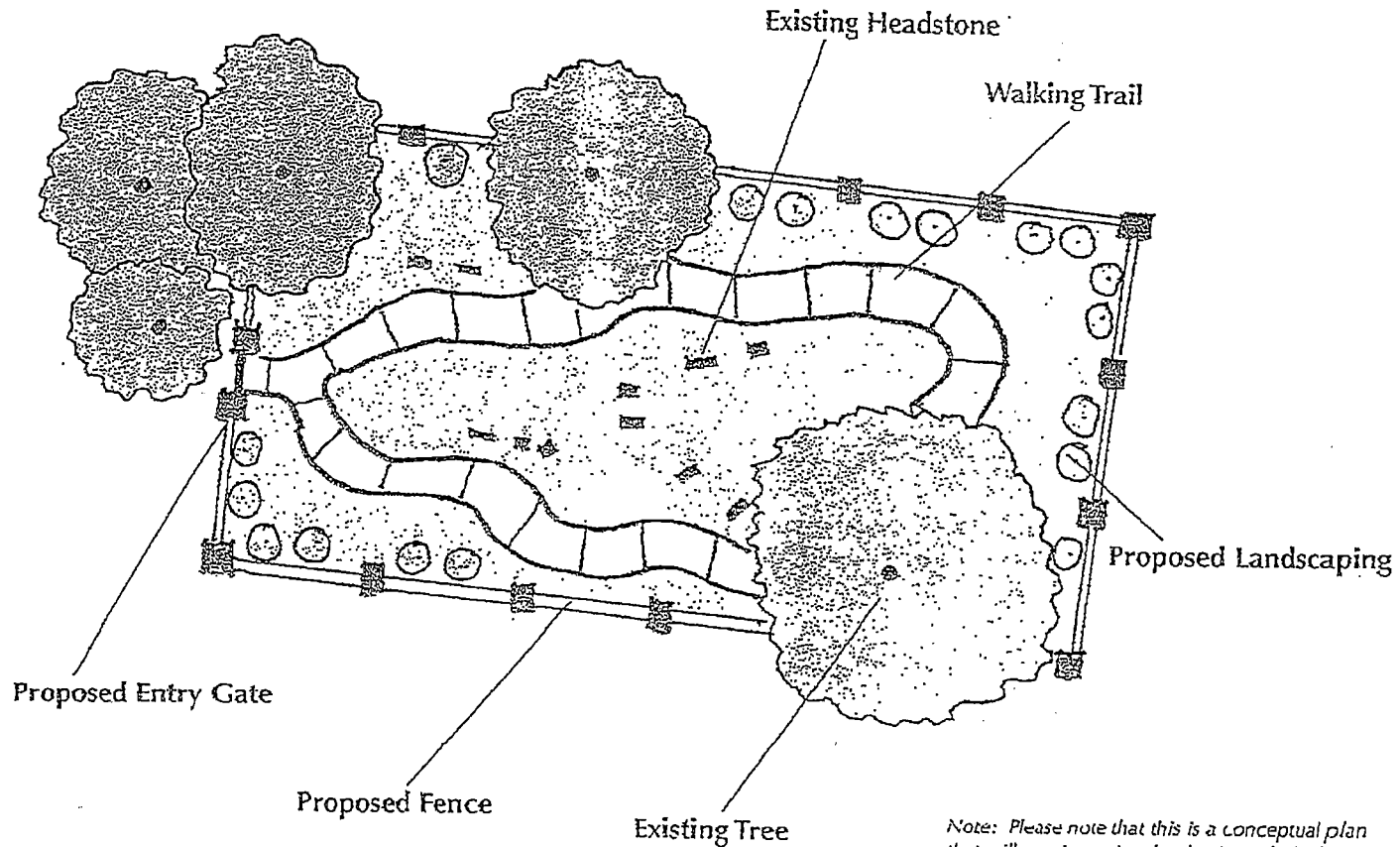
ASSOCIATED DEVELOPERS, INC.

By: [Signature]
Name: Charles F. Miller, Jr.
Title: Manager

EXIST B"

Brisbane Memorial Park

165



Note: Please note that this is a conceptual plan that will require review by the City of Charleston Technical Review Committee. Elements of the plan may change during the detailed design and construction of the park.

[Signature]

SECOND AMENDMENT TO CONTRACT TO PURCHASE

THIS SECOND AMENDMENT TO CONTRACT TO PURCHASE (the "Second Amendment") is made and entered into as of the _____ day of _____, 2016 by and between The James Brisbane Estate (the "Seller") and Associated Developers, Inc. and/or its assigns (the "Buyer").

WITNESSETH THAT:

WHEREAS, Buyer and Seller entered into that certain Contract to Purchase (the "Contract"), having an effective date of August 11, 2014, with respect to certain parcels of land (the "Property") located in Charleston County, South Carolina off of Central Park and Fleming Roads comprised of approximately 3.6 and 3.4 acres respectively and more particularly described as: TMS #'s 340-01-00-011 and 340-01-00-050 as identified on the public records provided by Charleston County, South Carolina,

Whereas, Buyer and Seller agreed to amend certain terms of the Contract with an executed First Amendment to Contract to Purchase (the "First Amendment") having an effective date of January 5, 2015.

Whereas, Buyer and Seller desire to further amend terms of the Contract and the First Amendment as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Buyer and Seller hereby agree as follows:

1. Capitalized terms used herein and not otherwise defined herein shall the meanings respectively ascribed to them in the Contract and First Amendment.
2. The Contract and the First Amendment are hereby amended in all respects as necessary to give full effect to the following:
 - (a) **Purchase Price:** The Purchase Price for the Property shall be Five Hundred Sixty Thousand (\$560,000.00) Dollars.
 - (b) **Contingencies:** All Contingencies in the Contract and First Amendment are hereby removed and/or deemed satisfied.
 - (c) **Closing:** Closing shall occur within thirty (30) days from the Master in Equity's approval of the Contract to Purchase between Buyer and Seller and the completion of the quiet title action that grants clear, marketable and insurable title to the Property.
 - (d) **Attorney Fee:** At Closing, Seller's attorney, John Dodds, shall be paid Five Thousand (\$5,000) Dollars out of Seller's proceeds for work related the quiet title action.

3. Except as specifically amended hereinabove, the terms and conditions of the Contract and the First Amendment shall remain unchanged and in full force and effect.

WITNESS, the following seals and signatures this _____ of _____, 2016.

SELLER: JAMES BRISBANE ESTATE

BUYER: ASSOCIATE DEVELOPERS, INC.

Blake R. Brisbane

Blake "Robert" Brisbane, Heir

Susan Simmons, Heir

Mildred Chapman, Heir

Ruth Nelson Gadsden, Heir

Vivian B. Cromwell, Heir

Chris K. Phillips, Jr.

VP Land Acquisitions

3. Except as specifically amended hereinabove, the terms and conditions of the Contract and the First Amendment shall remain unchanged and in full force and effect.

WITNESS, the following seals and signatures this _____ of _____, 2016.

SELLER: JAMES BRISBANE ESTATE

BUYER: ASSOCIATED DEVELOPERS, INC.

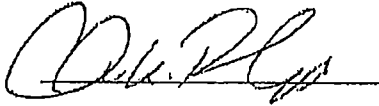
Blake "Robert" Brisbane, Heir

Susan Simmons, Heir

Mildred Chapman, Heir

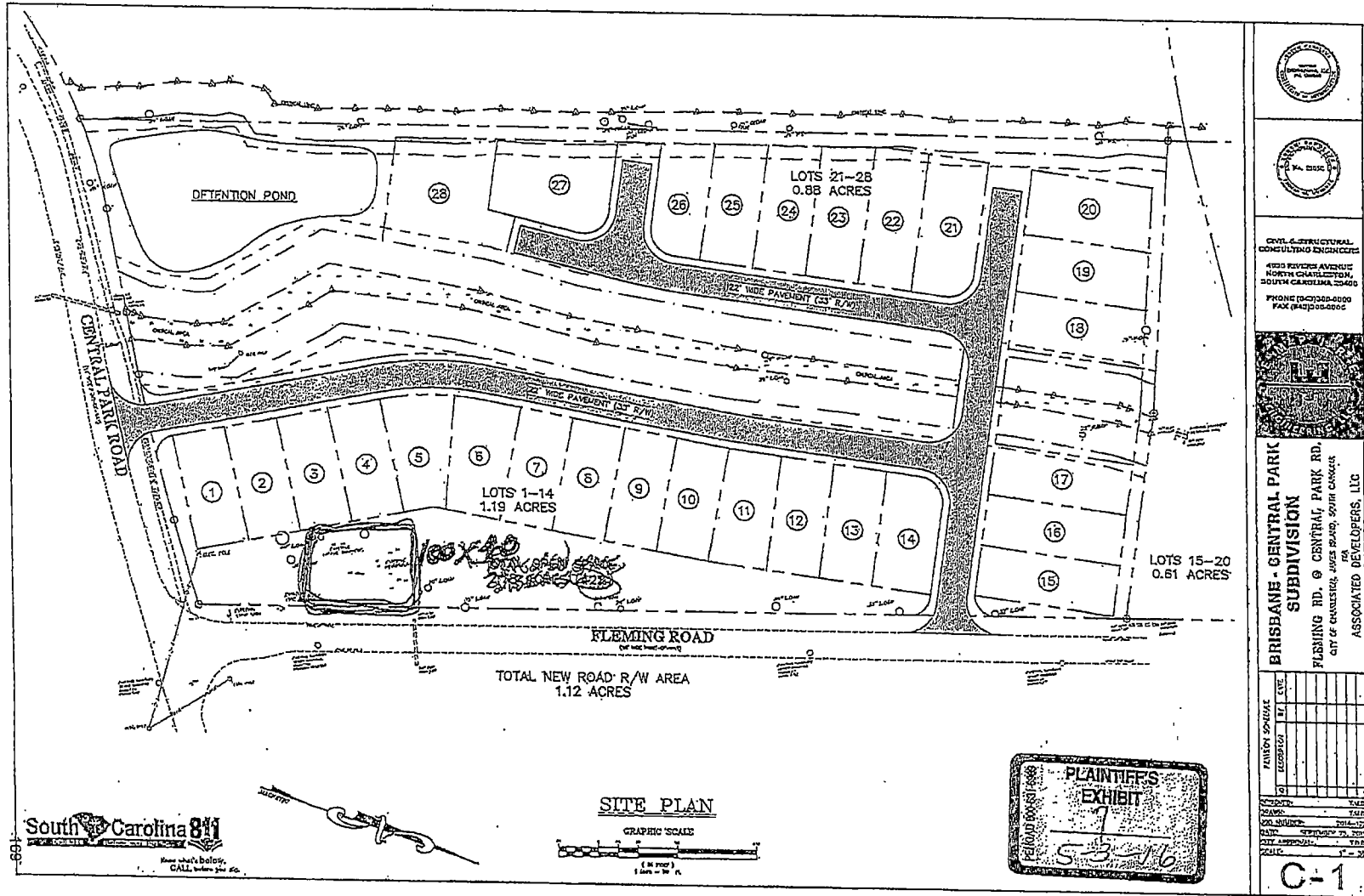
Ruth Nelson Gadsden, Heir

Vivian B. Cromwell, Heir

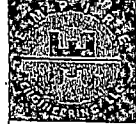


Chris K. Phillips, Jr.

VP Land Acquisitions



CIVIL & STRUCTURAL
CONSULTING ENGINEERS
4100 ROYCE AVENUE
NORTH CHARLESTON,
SOUTH CAROLINA 29405
PHONE (843) 328-6800
FAX (843) 328-6802



BRISBANE - CENTRAL PARK
SUBDIVISION
FLEMING RD. @ CENTRAL PARK RD.
CITY OF CHARLESTON, JONES BLVD, SOUTH CHARLESTON
ASSOCIATED DEVELOPERS, LLC

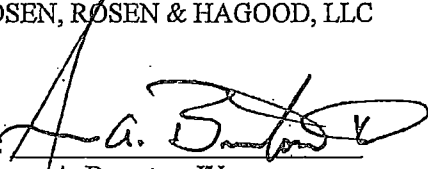
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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ROSEN, ROSEN & HAGOOD, LLC

October 26, 2016

By: 

James A. Bruorton, IV
Timothy J.W. Müller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough

Appellate Case Tracking No. 2016-001298
Trial Court Case No. 2015-CP-10-00939

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden,
Robert Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton,
James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton,
Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr.,
James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson,
Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace
Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton,
Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian,
Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne
Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie
Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown,
Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane,
Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David
Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant,
Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha
Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers,
John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell,
Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane,
Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary
Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane,
Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina
Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia
Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell,
Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson,
Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins,
Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon
Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie
Richardson, Delores Richardson, William Richardson, Robert Heyward,
Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane,

Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor, successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the Master-in-Equity erred in directing the sale of certain heirs property, the subject of a quiet title and partition action, to Intervenor-Respondent Associated Developers, Inc. (“Respondent”) for the amount of \$560,000.00 when the trial court was informed by the parties that Intervenor-Appellant Nordic Group, LLC (“Appellant”) had entered into an agreement with Defendants to purchase the property for the same amount and where Appellant further increased its purchase amount to \$650,000.00 during the hearing and executed its amended agreement prior to the filing of the relevant Master’s Decree.

STATEMENT OF THE CASE

Plaintiffs originally filed a Complaint on or about February 13, 2015 seeking to clear title, an accounting, and approval of a contract to sell the subject property, further identified as Charleston County Tax Map System numbers 340-01-00-050 and 340-01-00-011 located on James Island, South Carolina (the “Property”). In their Complaint, Plaintiffs sought to partition and sell the Property to Respondent for the amount of \$455,000.00 in accordance with a purchase agreement entered into between Plaintiffs and Respondent. See Complaint, p. 5 (R. p. 53). During the initial hearing in December 2015, the parties revealed to the trial court that two purchase agreements were pending to purchase the Property, one from Respondent (\$455,000.00) and one from Appellant (\$560,000.00), and the trial court scheduled a hearing on May 3, 2016 to address valuation of the Property. See Transcript of Hearing dated May 3, 2016, p. 4, ln. 7 – p. 5, ln. 16 (R. pp. 127–128).

Respondent moved to intervene on or about February 5, 2016 and Appellant moved to intervene on or about March 4, 2016. See Respondent's Motion for Intervention filed February 5, 2016 (R. pp. 59-65); Appellant's Motion to Intervene filed March 4, 2016 (R. pp. 66-71). The trial court allowed both Respondent and Appellant to intervene based on the existence of their respective pending offers to purchase the Property. See Order Granting Respondent's Motion for Intervention filed April 27, 2016 (R. pp. 11-12); Order Granting Appellant's Motion to Intervene filed April 27, 2016 (R. 13).

The trial court held a hearing on May 3, 2016 on the issue of valuation. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10 (R. p. 127). At the conclusion of the hearing, Judge Scarborough, by oral decree, directed that the sale of the Property be performed in accordance with an amended purchase agreement between Plaintiffs and Respondent in the amount of \$560,000.00. Transcript of Hearing dated May 3, 2016, p. 63, ln. 17-21 (R. p. 142). The trial court then memorialized this decision through a Form 4 order. See Form 4 Order of Judge Scarborough, filed May 5, 2016 (R. p. 14). In response, Appellant submitted a Motion to Reconsider, Alter or Amend and supporting affidavits of Defendants. See Appellant's Motion to Reconsider, Alter or Amend, filed May 16, 2016 (R. pp. 90-102); Affidavit of Sheneatha Brisbane (R. pp. 112-113); Affidavit of Germaine Brisbane (R. pp. 114-115). Appellant further submitted an affidavit of counsel and a copy of Appellant's executed amended purchase agreement for the Property reflecting an increased purchase amount of \$650,000.00. See Affidavit of James A. Bruorton, IV and Exhibits filed June 3, 2016 (R. pp. 103-111).

The trial court held a hearing on June 7, 2016 to consider Appellant's Motion to Reconsider, Alter or Amend. After hearing counsel's arguments, Judge Scarborough denied Appellant's motion, finding that the trial court was under no obligation to consider Appellant's higher purchase amount offered at the valuation hearing of May 3, 2016 and thereby rejecting Appellant's executed amended purchase agreement for the higher purchase amount of \$650,000.00. See Transcript of Hearing dated June 7, 2016, p. 16 ln. 14- p. 18 ln. 23 (R. pp. 149-150). Appellant thereafter filed its Notice of Appeal appealing the Form 4 Order of Judge Scarborough directing the sale of the Property and the corresponding Master's Decree. Notice of Appeal filed June 16, 2016 (R. pp. 122-123). On the same date, the Master's Decree clearing title to the Property and approving partition by sale was filed. Master's Decree filed June 16, 2016 (R. pp. 16-42). In order to restrain the parties from selling the Property to Respondent during the pendency of this appeal, Appellant filed a Motion for Temporary Restraining Order and Preliminary Injunction. After a hearing on Appellant's motion, the trial court granted the motion by converting it to a petition for *supersedeas*. Order Granting Appellant, LLC's Petition for *Supersedeas* filed August 8, 2016 (R. pp. 44-48).

STATEMENT OF FACTS

Plaintiffs, representing the interests of five landowners, sought to quiet title and sell the heirs Property, subject of this appeal, to Respondent pursuant to a purchase agreement between Respondent and Plaintiffs for the amount of \$455,000.00. Complaint (R. pp. 49-54). At the initial December 2015 hearing, determining the ownership interests of the numerous heirs involved, the trial court was presented with a purchase agreement for the Property from Appellant in the amount of \$560,000.00, representing a

higher amount than contained in Respondent's purchase agreement. See Transcript of Hearing dated May 3, 2016, p. 4, ln. 7 – p. 5, ln. 16; p. 6 ln. 6-17 (R. pp. 127-128). The Court accordingly scheduled a hearing to obtain testimony on the value of the Property for the purpose of partition and ultimately a sale based on S.C. Code Ann. § 15-61-25. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10; p. 6 ln. 6-17 (R. p. 127-128).

On May 3, 2016, the valuation hearing was held before Charleston County Master-in-Equity, Mikell R. Scarborough. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10 (R. p. 127). The trial court and parties accepted and stipulated as to Appellant's appraisal in the amount of \$560,000.00 and received testimony concerning Appellant and Respondent's respective purchase agreements for the Property, both for the amount of \$560,000.00. Transcript of Hearing dated May 3, 2016, p. 18 ln. 12 – p. 19, ln. 5; p. 63 ln. 17 – p. 64 ln. 4 (R. p. 131; p. 142). Prior to the hearing, Respondent had increased its offered purchase amount from \$455,000.00 to \$560,000.00 in order match Appellant's purchase price. See Transcript of Hearing dated May 3, 2016, p. 13 ln. 24 – p. 14 ln. 2 (R. p. 130).

At the hearing, Appellant, through its counsel, agreed to amend its purchase agreement and increase the amount of consideration paid to the landowners to \$650,000.00. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 20-24; p. 59, ln. 5-24 (R. p. 127; p. 141). During examination by Defendant's counsel, Respondent's representative, Christopher K. Phillips, Jr., stated it would not increase its purchase price for the Property above the amount of \$560,000.00. See Transcript of Hearing dated May 3, 2016, p. 32 ln. 13 – 25 (R. p. 134). The trial court further received testimony from Respondent that it had included certain provisions in its amended agreement to protect

graves located on the Property as part of its anticipated development and during the hearing Respondent's counsel stated that it would remove all but one contingency that allowed Respondent 30 days for the identification of the number of gravesites located on the Property following a subsurface survey of the Property. Transcript of Hearing dated May 3, 2016, p. 58, ln. 14 – p. 59, ln. 4 (R. p. 141). In response, Appellant agreed to incorporate the same provisions into its agreement to purchase the Property but further agreed to reduce the due diligence period from 30 to 15 days and incorporating a shorter closing period from 15 days from the completion of the due diligence period. Transcript of Hearing dated May 3, 2016, p. 59, ln. 5 – ln. 24 (R. p. 141).

The trial court also heard from Clarence Brisbane, one of the landowners and Defendants in the case. During questioning from Judge Scarborough, Mr. Brisbane testified that he was opposed to the sale of the Property to Respondent and believed the landowners were entitled to an amount greater than the \$560,000.00 offered by Respondent. Transcript of Hearing dated May 3, 2016, p. 41, ln. 24 – p. 42, ln. 13 (R. p. 137). Despite receiving this testimony and Appellant's higher purchase amount for the Property, Judge Scarborough directed the sale of the Property for the lower amount, \$560,000.00, to Respondent, pursuant to its amended purchase agreement with Plaintiffs. Transcript of Hearing dated May 3, 2016, p. 63, ln. 17 – p. 64, ln. 13 (R. p. 142).

Appellant responded by filing a Motion to Reconsider, Alter or Amend and further filed supporting affidavits of Defendants and counsel in support of its motion. Appellant's Motion to Reconsider, Alter or Amend (R. pp. 90-102). The affidavits of Defendants Germaine Brisbane and Sheneatha Brisbane, timely submitted prior to Appellant's motion hearing, both evidenced their opinion, as landowners, that the trial

court should approve Appellant's contract to purchase the Property for the higher sales price. Affidavit of Sheneatha Brisbane ¶¶ 4-5 (R. pp. 112-113); Affidavit of Germaine Brisbane ¶¶ 4-5 (R. pp. 114-115). Defendants Germaine and Sheneatha Brisbane also opined that the approval of Appellant's purchase agreement for the higher amount was in their pecuniary interests as landowners entitled to a portion of the sales price. *Id.* at ¶ 6. Appellant further timely submitted the affidavit of its counsel, James A. Bruorton, IV. Affidavit of James A. Bruorton, IV (R. pp. 103-111). As an exhibit to Mr. Bruorton's affidavit, Appellant presented the trial court with a copy of the fully executed purchase agreement between Defendants Germaine and Sheneatha Brisbane and Appellant reflecting the amended sales price of \$650,000.00 that was verbally offered by Appellant during the valuation hearing. Affidavit of James A. Bruorton, IV, Exhibit A; *See id.* (R. pp. 96-111). Transcript of Hearing dated June 7, 2016, p. 6 ln. 17- p. 8 ln. 12 (R. p. 147). Further, Respondent brought to the June 7, 2016 hearing, an Amended Purchase Contract that reflected the removal of all contingencies except the gravesite survey, thereby matching Respondent's amended purchase agreement with Plaintiffs, with the exception of the sales price. Transcript of Hearing dated June 7, 2016, p. 7 ln. 12-22 (R. p. 147).

The trial court heard Appellant's Motion to Reconsider, Alter or Amend on June 7, 2016. After hearing from counsel for Defendants, Respondent and Appellant, Judge Scarborough ruled that because the May 3rd hearing addressed valuation and the parties agreed to Appellant's appraised amount of \$560,000.00 for the Property, the trial court was not obligated to consider Appellant's increased purchase amount verbally offered during the hearing and as memorialized and submitted into evidence prior to Appellant's

motion hearing. See Transcript of Hearing dated June 7, 2016, p. 16 ln. 14 – p. 18- ln. 23 (R. pp. 149-150).

STANDARD OF REVIEW

Declaratory judgment actions are neither legal nor equitable, and therefore, the standard of review depends on the nature of the underlying issues. Campbell v. Marion County Hosp. Dist., 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003). Auto-Owners Ins. Co. v. Hamin, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (Ct. App. 2006). A partition action is an equitable action, heard by a judge alone and, as such, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. Wilson v. McGuire, 320 S.C. 137, 140–41, 463 S.E.2d 614, 616 (Ct. App. 1995) (citing Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989)). The Supreme Court recognized in Anderson that the party seeking a partition by sale carries the burden of showing partition in-kind is neither practicable nor expedient. Id.

ARGUMENT

This action was brought pursuant to Section 15-53-10 et seq., Code of Laws of South Carolina, 1976, as amended. Under the South Carolina Uniform Declaratory Judgment Act, “[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30. Because the Property is heirs property, this action was brought by the Plaintiffs for the purpose of causing the trial court to quiet title

and effect a partition by sale of the Property to Respondent pursuant to a purchase agreement between Respondents and Plaintiffs for the amount of \$455,000.00. Complaint (R. pp. 49-54).

Under S.C. Code Ann § 15-61-10,

All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments

S.C. Code Ann. § 15-61-10. S.C. Code Ann. § 15-61-25 sets forth the procedure in partition actions. § 15-61-25 specifically provides that the value of the property subject of the partition action shall be determined through agreement of the parties or through an appraiser. See S.C. Code Ann. § 15-61-25. If there are any disagreements, an evidentiary hearing limited to the proposed valuation of the interests of the petitioning parties shall be conducted. Id. In the event that the non-petitioning joint tenants or tenants in common fail to pay the purchase price as set in this section, the court is allowed to proceed according to the undefined traditional practices in partition sales. S.C. Code Ann. § 15-61-25(E).

It is undisputed that the proper course of action in this matter was a sale by partition of the subject real property. In this action there was a disagreement on the proposed valuation of the interest involved. Thus, an evidentiary hearing was held on May 3, 2016 to establish the value of the Property. The statute does not require any further action at the valuation hearing.

I. THE TRIAL COURT'S APPROVAL OF RESPONDENT'S PURCHASE AGREEMENT WAS IN ERROR.

The May 3, 2016 hearing did not require the trial court to take any action in

awarding a particular contract over another. South Carolina's Partition Statute does not require a sale of the Property at the valuation hearing. See S.C. Code Ann. § 15-61-25. Instead, the hearing's purpose is to simply establish a value for the Property. Although this action did not involve a public sale by auction, two competing developers, Appellant and Respondent, were present in Court as Intervening Parties. Approving one intervening contract over another constituted a judicial sale.

Both Appellant and Respondent stood ready, willing and able to purchase the subject Property with limited contingencies. Both Respondent and Appellant had contracts to purchase the Property. Transcript of Hearing dated May 3, 2016, p. 4, Ln. 12 – 24 (R. p. 127). At the start of the May 3, 2016 hearing, it was represented to the trial court that Respondent was prepared to increase its purchase price to match the purchase price offered by Appellant. Thus, at the start of the valuation hearing, Respondent's contract with the landowners was for \$455,000.00. Respondent, through the course of the valuation hearing, was allowed to enter an amendment to its contract increasing the offered purchase price to \$560,000.00, matching Appellant's contract proposal. The trial court, through partition, ultimately made a selection of one contract over the other, similar to a judicial sale.

In judicial sales, all sales must be made on free, fair and competitive bidding. Ex parte Keeler, 185 S.C. 283 (1937). At the valuation hearing, counsel for the parties stipulated to the value of the Property based upon an appraisal that had been prepared on behalf of the Appellant and presented to the trial court prior to the hearing. See Master's Decree ¶ 76 (R. p. 15). Appellant's appraiser estimated that the Property was worth \$560,000.00. Based upon the appraisal, Respondent proposed to the trial court and was

allowed to submit a Second Amendment to its original contract removing closing contingencies and increasing the offer to purchase to \$560,000.00. See Decree ¶ 76 (R. p. 15). The trial court notes that all contingencies were removed from Respondent's contract; however, Respondent's representative acknowledged that a contingency still remained based upon suitability of the Property after the performance of a gravesite survey.

In response to Respondent's increased contract amount of \$560,000.00, Appellant, through its counsel, increased its proposed purchase price of the Property to \$650,000.00. Rather than recognize the increased value to the landowners presented by Appellant, the trial court failed to approve Appellant's contract. Instead, the trial court approved Respondent's contract because no one from Appellant's firm appeared in Court other than counsel and Respondent's contract was subjectively deemed in the trial court's discretion to be more of a certainty than Appellant's proposed contract offer. The trial court noted that had Appellant's \$650,000.00 contract offer been presented in writing at the May 3, 2016 hearing, it may have decided differently. The \$650,000.00 written offer was before the trial court prior to the issuance of the final Masters Decree. Affidavit of James A. Bruorton IV (R. pp. 103-104); Masters Decree (R. pp. 16-42). Appellant's \$650,000 offer was memorialized and submitted to the trial court prior to Appellant's motion to reconsider hearing, which demonstrated all of the material terms of the agreement between Appellant and the landowners. Affidavit of James A. Bruorton IV (R. p. 103).

At the time Appellant's written contract was presented, the trial court was not foreclosed from accepting the \$650,000.00 contract it claimed it could not accept on May

3, 2016 because it was not in writing. Further, Appellant presented affidavits to the trial court from two separate landowners asking that it approve the sale of the Property to Appellant for the \$650,000.00 sales price. Appellant removed all existing contingencies from its contract, except the same grave site survey contingency that remained in Respondent's purchase agreement. Transcript of Hearing dated June 7, 2016, p. 7, ln. 12-22 (R. p. 147). Thus, at the June 7, 2016 hearing on Appellant's motion to reconsider, Respondent and Appellant's contract terms were on equal playing field, with Appellant's contract representing \$90,000.00 in additional consideration for the landowners. Transcript of Hearing dated June 7, 2016, p. 7, ln. 15-18 (R. p. 147).

The landowner-heirs in this matter were not unified in their preference of one contract to purchase the Property. When asked, Mr. Clarence Brisbane, an heir to the Property, stated that he wanted more money in the contract. Transcript of Hearing dated May 3, 2016, p. 41, ln. 24- p. 42, ln. 13 (R. p. 137). Germaine Brisbane and Sheneatha Brisbane both signed the written \$650,000.00 contract with Appellant. Affidavit of James A. Bruorton IV (R. p. 103-104); Affidavit of Germaine Brisbane (R. p. 114-115); Affidavit of Sheneatha Brisbane (R. p. 112-113). The trial court chose to accept Respondent's contract because it believed Respondent's contract was more of a sure thing and because Respondent had expended money performing due diligence on the Property. Such action by the trial court is an abuse of its discretion and disregards the pecuniary interest of the Parties.

After hearing the arguments of counsel at the June 7, 2016 Motion to Reconsider hearing, the trial court chose to follow its initial ruling based on the premise that it disfavored the manner in which Appellant had gone about the whole process. May 3,

2016 hearing Transcript p. 63 ln. 22 – p. 64 ln. 4 (R. p. 142). Its subjective basis in approving Respondent's purchase agreement rather Appellant's agreement is outside of the factors that should be considered by the trial court in determining whether to approve a contract and has no bearing on the legitimacy of any contract presented.

The trial court went as far as to say that if Appellant wanted to purchase the property from Respondent for the offered \$650,000.00 it certainly could. "[Appellant]'s got a solution ... They can go to Associated and buy their contract if that's what they want to do. That's what the market does. That's what happens all the time." June 7, 2016 Transcript p. 16 ln. 22 – p. 17 ln. 1 (R. pp. 149-150). Suggesting Appellant pursue a purchase of the Property from Respondent after Respondent has purchased the Property from the landowner-heirs for a lesser price, is in complete disregard of the pecuniary interest of the landowner-heirs and applicable principles of law concerning partition actions. The trial court recognized that Respondent had already incurred development costs in the Property and took that into consideration when choosing the contract to approve. Failing to approve the purchase contract which presented \$90,000.00 in additional value to the landowners disregards the pecuniary interest of the parties and is in error. The trial court placed the interest of Respondent ahead of the other parties, including the landowners. In doing so, the trial court abused its discretion.

II. APPELLANT'S VERBAL OFFER OF \$650,000.00 IN COURT IS SUFFICIENT AND BINDING.

The Appellant was penalized by the trial court for failing to provide its \$650,000.00 proposed contract in writing at the time of the valuation hearing. The \$560,000.00 value of the Property was established by the appraisal prepared on behalf of Appellant. However, Appellant increased its proposed purchase price at the valuation

hearing based on its knowledge of the Property. Respondent increased its contract amount just prior to the hearing from \$455,000.00 to the \$560,000.00 contract amount equal to Appellant's written proposed contract. The true value of real property is what a sophisticated buyer is willing to pay for the property. In this case, Appellant was willing to pay \$90,000.00 above the appraised value of the Property. Respondent was not willing to pay any more for the Property than \$560,000.00. May 3, 2016 hearing p. 32 ln. 20 – p. 33 ln. 10 (R. pp. 134-135).

The purpose of the May 3, 2016 hearing was to take testimony and to determine the “fair market value” of the subject property as of the date of the initial hearing on December 17, 2015. “Fair Market Value” is defined as “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect.” VALUE, Black's Law Dictionary (10th ed. 2014); see also <http://www.investopedia.com/terms/f/fairmarketvalue.asp>. (“the price that a person reasonably interested in buying a given asset would pay to a person reasonably interested in selling it for the purchase of the asset or asset would get in the marketplace.”). The “Fair Market Value” in this matter was the \$650,000.00 Appellant offered to purchase the Property for at the May 3, 2016 hearing. While the appraisal presented to the trial court established an estimated value of \$560,000.00, the price that a willing buyer is agreeable to paying a willing seller establishes the fair market value. To establish fair market value, it must be assumed that prospective buyers and sellers are reasonably knowledgeable about the asset, that they are behaving in their own best interest, that they are free of undue pressure to trade, and that a reasonable time period is given for completing the transaction. Appellant and Defendants

in their purchase agreement for the Property satisfy all of these conditions.

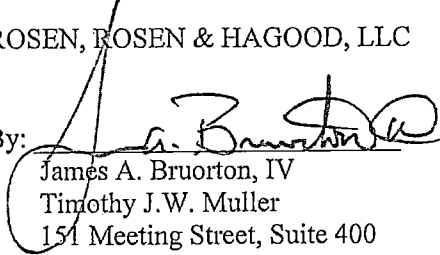
In the absence of a statute providing otherwise, an oral bid is sufficient. 68 C.J.S. Partition § 177 (citing Holliday v. McFadden, 188 S.C. 187, 198 S.E. 392 (1938)). South Carolina's Partition Statute does not provide that an oral bid is insufficient. The actions of the trial court in this partition action mirror a judicial sale of the Property. Notably, there is no requirement that a higher bid presented during judicial sales or the hearing that was conducted in this matter be reduced to writing under South Carolina law. Appellant's \$650,000.00 oral offer should have been given equal consideration by the trial court as it had provided to Respondent's contract. Appellant's memorialized \$650,000.00 contract filed with the trial court on June 3, 2016, was given no consideration, which was in error.

If the trial court had concern over Appellant's ability to perform the proposed contract, it could have given Appellant a timeline to close on the Property. If Appellant failed to comply with the trial court's ordered timeline, then the Property could be sold to Respondent pursuant to Respondent's presented contract. Such action would result in no prejudice to the parties, provided the timeline was consistent with that presented for closing of Respondent's contract. The pecuniary interest of the parties, especially the landowners, would have been protected through such action. Further, the procedure for issuing a partition sale of the Property would have been fair and equitable to all parties to the action. Under South Carolina law, a property partition procedure must be fair and equitable to all parties to the action. Campbell v. Jordan, 382 S.C. 445, 675 S.E.2d 801 (2009).

CONCLUSION

For all the foregoing reasons, this Court should reverse the Master-in-Equity's Form 4 Order dated May 5, 2016 and the Master's Decree dated June 16, 2016 directing the sale of Property to Respondent and instead direct the sale of the Property to Appellant pursuant to its purchase agreement with Defendants.

ROSEN, ROSEN & HAGOOD, LLC

By: 

James A. Bruorton, IV
Timothy J.W. Muller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

ATTORNEYS FOR APPELLANT

November 15, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

Case No. 2016-001298

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake
Brisbane and Mildred Chapman, Plaintiffs,

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton,

Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mithcell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants.

And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

BRIEF OF RESPONDENT ASSOCIATED DEVELOPERS, INC.

THURMOND KIRCHNER & TIMBES, P.A.
Michael A. Timbes, SC Bar No. 69730
Thomas J. Rode, SC Bar No. 77480
15 Middle Atlantic Wharf
Charleston, SC 29401
Phone: 843-937-8000
Fax: 843-937-4200
Email: michael@tktlawyers.com
Email: thomas@tktlawyers.com

*Attorneys for Respondent Associated
Developers, Inc.*

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STATEMENT OF THE ISSUES

- I. Did Appellant Nordic Group, Inc., preserve its arguments and evidence for review where they appear for the first time in support of its post-trial Rule 59(e), SCRPC, Motion to Reconsider?
- II. Did the trial court properly approve the sale of heirs property to Respondent Associated Developers, Inc., instead of Appellant Nordic Group, Inc., where Appellant failed to present a valid purchase contract for consideration by the court?
- III. Does the evidence and testimony properly admitted at the final hearing support the trial court's decision to approve the sale of heirs property to Associated Developers, Inc., where Appellant Nordic Group, Inc., offered no competent evidence at trial, its offer was not in writing, its offer was contingent, and it had not made an agreement with the heirs to preserve their family grave sites?

STATEMENT OF THE CASE

Plaintiffs commenced this action on February 13, 2015, pursuant to the South Carolina Uniform Declaratory Judgment Act seeking to determine the lawful owners of certain heirs property located in Charleston County, South Carolina. (R. pp. 51-52). Plaintiffs also sought a partition by sale of the subject property to Respondent Associated Developers, Inc. ("Associated"), which had contracted with Plaintiffs to purchase it for the sum of \$455,000. (R. p. 53). Plaintiffs further requested an accounting for certain expenses paid in relation to the property. (R. p. 52).

The appointed Guardian *ad Litem Nisi* answered, agreeing with the relief Plaintiffs requested in the Complaint. (R. p. 55-57). After all other defendants were either placed in default or consented, the action was referred to the Master-In-Equity for the entry of a final decree. (R. p. 6) (Order of Default); (R. p. 1) (Consent Order of Reference).

On December 17, 2015, the trial court held what was expected to be a final hearing; however, only a determination of the lawful heirs occurred. The remaining

issues were not reached because Appellant Nordic Group, LLC (“Nordic”) unexpectedly appeared and claimed it had an unsigned offer to purchase the property from another heir for the sum of \$560,000. The trial court set a hearing for May 3, 2016, to determine the value and the remaining issues. (R. pp. 16-17); (R. pp. 29-30); (R. p. 72). In the interim, both Associated and Nordic were permitted, to intervene. (R. p. 11); (R. p. 13); (R. p. 59); (R. p. 66).

At the May 3, 2016, hearing, all parties agreed that the value of the subject property was \$560,000. (R. p. 128 (Trans. 6, lines 6-22)); (R. p. 130 (Trans. 13 ln. 24 to Trans. 14, ln. 4)); (R. p. 131 (Trans. 18, ln. 3 to 19, ln. 9)); (R. p. 142 (Trans. 63, ln. 22 to Trans. 64, ln. 12)). The only relevant¹ claim left to decide was whether to approve the sale of the property to Associated or to Nordic. (R. pp. 29-32); (R. pp. 128-129 (Trans. 6, ln. 6 to Trans. 9, ln. 21)); (R. p. 131 (Trans. 19, lines 6 – 16)); (R. p. 133 (Trans. 27, ln. 16 to Trans. 28, ln. 10)); (R. p. 135 (Trans. 36, lines 8 – 21)); (R. pp. 141-142 (Trans. 59, ln. 5 to Trans. 62, ln. 9)); (R. pp. 142-143 (Trans. 63, ln. 17 to Trans. 66, ln. 12). The trial court approved Plaintiffs’ request to sell to Associated and entered a Form 4 Order dated May 5, 2016 to that effect. (R. p. 14).

Nordic’s Motion to Reconsider was heard June 7, 2016, and denied June 9, 2016. (R. p. 15). This appeal follows.²

¹ The trial court also heard and granted Plaintiffs’ request for an accounting. This claim forms no part of this appeal. (R. p. 16); (R. pp. 143-144).

² The trial court entered a *supersedeas* preventing the transfer of the property during the appeal, requiring Nordic to post a \$100,000 surety bond. (R. p. 44).

STATEMENT OF THE FACTS

The dispositive facts are either undisputed or without contradiction in the record.

1. Background

This appeal involves two unimproved tracts of heirs property, measuring approximately 7.0 acres, in Charleston County, South Carolina (the “Property”). (R. pp. 51-52); (R. p. 129 (Trans. 10, lines 3-22)). Plaintiffs entered into a real estate contract dated August 11, 2014, to sell the Property to Associated for the sum of \$455,000. (R. p. 53); (R. p. 152); (R. p. 159); (R. pp. 127 (Trans. 4, lines 14-16)); (R. pp. 128-129 (Trans. 8, ln. 19 to Trans. 9, ln. 19)); (R. pp. 129-130 (Trans. 11, ln. 1 to Trans. 13, ln. 7)). Because Plaintiffs and Defendants, all of whom are heirs, did not agree on the disposition of the Property, Plaintiffs brought this action to quiet title, partition the Property by sale, and seeking approval of the contract of sale to Associated. (R. pp. 51-53). After contracting with Plaintiffs to buy the Property, Associated expended significant funds and engaged in substantial due diligence and development efforts in anticipation of the closing. (R. pp. 131-133 (Trans. p. 20, ln. 20 to Trans. 25, ln. 3)); (R. p. 148 (Trans. 9, ln. 23 to Trans. 10, ln. 2)).

At the December 17, 2015, hearing, Nordic first appeared, claiming it had contracted with another heir, Defendant Ernestine Brown, to buy the Property for \$560,000. (R. p. 127 (Trans. 3, lines 16-19)). According to the Master’s Decree, Nordic did not present a signed contract. (R. p. 16). But, because Nordic’s offer raised an issue about the value of the Property, the trial court set a final hearing on May 3, 2016 (the “May 3rd Hearing”), to address valuation and the competing contracts of Associated and Nordic. (R. p. 72); (R. p. 150 (Trans. 17, ln. 6 to Trans. 18, ln. 23)).

Thereafter, Associated and Nordic moved to intervene (R. p. 59); (R. p. 66). To support its Motion to Intervene, Nordic argued:

[Nordic] has a right to participate in the hearing scheduled on May 3, 2016, to present evidence and testimony regarding the appraisal it obtained and why its contract³ is the more favorable and equitable for the parties.

(R. p. 68) (emphasis added).

After becoming a party, Associated filed an Amended Answer, Counterclaim, and Cross-Claim seeking approval of its contract with Plaintiffs, just as Plaintiffs requested in their Complaint. In the alternative, Associated brought a claim for unjust enrichment to recover the significant sums it expended for the benefit of the Property in anticipation of closing. (R. pp. 84-89). Nordic also submitted an Answer as an exhibit to its Motion to Intervene, requesting that its contract with Ernestine Brown be approved. (R. p. 70)

2. The May 3rd Hearing

On May 3, 2016, a final hearing was held to: (i) determine the value of the Property, (ii) approve the sale to either Associated or Nordic, and (iii) address Plaintiffs' accounting claim. All parties stipulated the value of the Property was \$560,000, resolving the first issue by consent (App. Br., p. 3); (R. p. 128 (Trans. 6, lines 6-22)); (R. p. 130 (Trans. 13, ln. 24 to Trans. 14, ln. 4)); (R. p. 131 (Trans. 18, ln. 3 to Trans. 19, ln. 9)); (R. p. 142 (Trans. 63, ln. 22 to Trans. 64, ln. 4)). Plaintiffs then placed into evidence their amended contract with Associated matching the \$560,000 stipulated value. (R. pp. 152, 159, 166); (R. p. 130 (Trans. 13, ln. 24 to Trans. 14, ln. 4)); (R. pp. 130-131 (Trans. 16, ln. 16 to Trans. 18, ln. 5)). Plaintiffs also placed into evidence

³ The "contract" Nordic referenced in its Motion to Intervene is its contract with Ernestine Brown. (R. pp. 67-71).

Associated's agreement to preserve the family grave sites on the Property. (R. p. 162); (R. p. 129 (Trans. 12, lines 5-25)). All other parties, including Nordic and Ernestine Brown, declined the trial court's offer to accept further evidence about value. Thus, the trial court moved on to weigh the competing positions of Associated and Nordic, inquiring first into their respective due diligence. (R. p. 131 (Trans. 18, ln. 6 to Trans. 19, ln. 12)).

Associated's representative testified about its due diligence, including: (i) inspecting the Property; (ii) delineating wetlands, (iii) conducting boundary, topographic and tree surveys, (iv) meeting with City of Charleston engineers and consultants, and (v) developing concept plans, all at a cost of \$35,000.⁴ (R. pp. 50-52); (R. pp. 131-134 (Trans. 20, ln. 15 to Trans. 32, ln. 12)). Associated also obtained approval from the City of Charleston to annex the Property. (R. p. 132 (Trans. 23, ln. 15 to Trans. 24, ln. 15)).

Associated also testified to its agreement with Plaintiffs to preserve the grave sites, allowing family members open visitation. (R. p. 162); (R. p. 129 (Trans. 12, lines 5-25)); (R. pp. 131-132 (Trans. 20, ln. 25 to Trans. 21, ln. 7)); (R. pp. 133-134 (Trans. 28, ln. 13 to Trans. 29, ln. 10)). The record proves the importance of this agreement to the heirs⁵ and Associated's commitment to them. (R. p. 129 (Trans. 12, lines 3-25)); (R. p. 130 (Trans. 14, lines. 5-20)); (R. p. 134 (Trans. 31, ln. 6 to Trans. 32, ln. 12)). In light of

⁴ When Nordic's Motion for Temporary Restraining Order was heard, this list included completion of a Phase I Environmental Site Assessment, a Geotechnical Report, a Cultural Resources Identification Survey, and a Cemetery Delineation, among others. The amount invested by Associated had increased by \$22,250. (R. p. 124).

⁵ Preservation of the graves was also a requirement of the City's approval to annex the Property. (R. p. 132 (Trans. 21, lines 5-7)); (R. pp. 132-133 (Trans. 24, ln. 4 to Trans. 25, ln. 3)).

its substantial due diligence, Associated desired to close within thirty days (R. p. 131 (Trans. 19, lines 10-16)); (R. p. 132 (Trans. 23, lines 3-12)); (R. p. 133 (Trans. 27, ln. 16 to Trans. 28, ln. 7)). Nordic elected not to cross-examine Associated's representative. (R. p. 135 (Trans. 33, lines 13-14)).

In contrast, Nordic offered no testimony on due diligence or any other issue. When Associated requested testimony about "who the Nordic Group is . . ." its counsel stated, "There's no one here on their behalf, Your Honor." (R. p. 141 (Trans. 57, ln. 25 to Trans. 58, ln. 7)). Nordic's counsel could not confirm whether Nordic had ever visited the Property. (R. p. 142 (Trans. 61, lines 8-12)). Ernestine Brown declined to address the trial court about her contract with Nordic. Instead, her attorney revealed the "second contract" was "Just to get that figure [i.e., the \$560,000] before the Court. We have no interest other than helping the Court arrive at whatever the ultimate value is." (R. p. 135 (Trans. 36, lines 8-18)). (emphasis added).

After Associated reiterated its desire to proceed under its contract for the stipulated value of \$560,000, Nordic's counsel, for the first time, orally offered to increase its price to \$650,000, but he conceded Nordic did not have that offer in writing. (R. pp. 141-142 (Trans. 59, ln. 5 to Trans. 61, ln. 4)). Nordic gave no proof this new offer had been presented to or accepted by any heir. Nordic admitted its only written contract was the one with Ms. Brown for \$560,000, which her lawyer said was just to get that "figure" before the court. (R. p. 143 (Trans. 67, lines 8-10)); (R. p. 135 (Trans. 36, lines 8-18)).

After weighing the testimony and evidence before it, the trial court approved the sale to Associated pursuant to the terms of its amended contract placed on the record. (R. pp. 142-143 (Trans. 63, ln. 17 to Trans. 66, ln. 12)); (R. p. 14).

3. Nordic's Post-Trial Efforts to Introduce New Evidence

After the trial court approved the sale to Associated, Nordic filed a Rule 59(e) Motion to Reconsider, Alter or Amend. (R. p. 90). Nordic's Motion specifically requested the trial court to instead find that the Property must be sold to Nordic pursuant to both its contract with Ernestine Brown⁶ and its highest "bid" orally made by counsel at the final hearing. (R. pp. 90-91). Nordic attached an unsigned proposal reflecting the higher amount to its Motion. (R. p. 96).

Later, on June 3, 2016, Nordic submitted three affidavits. One attached a contract for \$650,000 between Nordic and "Ernestine Brown, et al." (R. p. 103). But, Ernestine Brown did not sign this document—it is signed only by Sheneatha and Germaine Brisbane, who are not parties to Ms. Brown's contract. (R. p. 66); (R. p. 83). Neither of these individuals testified in the final hearing. Instead, a month after the trial court approved Associated's contract, they submitted affidavits asking the trial court to approve their contract, which is not the contract Nordic had with Ms. Brown. (R. p. 112); (R. p. 114). This new contract demanded a "pre-look" contingency.

Later still, in the hearing on its Motion to Reconsider, Nordic admitted, "Within that contract [signed by Sheneatha and Germaine] there were still some of the contingencies." (R. p. 147 (Trans. 7, lines 6-11)). Nordic's counsel advised he had another new contract that removed all contingencies but the grave study contingency,

⁶ It is worth noting that Ernestine Brown did not request reconsideration of the approval of Associated's contract. (R. p. 148 (Trans. 12, lines 18-23)).

which Nordic still had not performed. (R. p. 147 (Trans. 7, lines 12-25)); (R. p. 148 (Trans. 10, ln. 25 to Trans. 11, ln. 4)). That purported document was neither offered nor accepted into evidence.

STANDARD OF REVIEW

Declaratory judgment actions are neither legal nor equitable; thus, the standard of review depends on the nature of the underlying issues. *S.C. Elec. & Gas Co. v. Hartough*, 375 S.C. 541, 546-547, 654 S.E.2d 87 (Ct. App. 2007) *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003). Two core issues arise from the trial court's approval of Associated's ratified contract over the "bid" orally announced by Nordic at the May 3rd Hearing. The first issue is whether Nordic presented a valid and enforceable contract for the purchase price of \$650,000.⁷ If Nordic establishes the timely existence of an enforceable contract for \$650,000, the second issue is whether the trial court properly approved Associated's contract over Nordic's. Analysis of these issues involves more than one standard of review.

On the first issue, when the existence of a contract is questioned and the evidence conflicts or gives rise to more than one inference, the contract's existence is a question for the finder of fact. *Sherman v. W & B Enters.*, 357 S.C. 243, 250, 592 S.E.2d 307, 310 (Ct. App. 2003). *See also Small v. Springs Indus., Inc.*, 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987) (a jury should decide the existence of a contract when its existence is questioned and the evidence is susceptible of more than one inference). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the

⁷ Nordic cannot prevail on appeal unless it proves it had a valid contract for \$650,000.

judge's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "The judge's findings are equivalent to a jury's findings in a law action." *Id.*

An exception to the general rule above exists where the undisputed facts show no contract existed, in which case the question becomes a matter of law. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).

If this Court reaches the issue of whether the trial court properly approved Associated's ratified contract, Associated submits the trial judge's selection of one contract over the other is a question arising in equity. In an action in equity referred to a master for final judgment with direct appeal to the Court of Appeals, this Court may determine facts in accordance with its own view of the preponderance of the evidence, though it is not required to disregard the findings of the master. *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n*, 317 S.C. 452, 454 S.E.2d 901 (Ct. App. 1995).

ARGUMENT AND CITATION OF AUTHORITY

It is helpful to first note what is not in dispute. No party challenged the quieting of the title or the decision to partition the Property by sale. All parties stipulated that the value of the Property was \$560,000. (App. Br., p. 3). (R. p. 128 (Trans. 6, lines 6-22)); (R. p. 130 (Trans. 13, ln. 24 to Trans. 14, ln. 4)); (R. p. 131 (Trans. 18, ln. 3 to Trans. 19, ln. 9)); (R. p. 142 (Trans. 63, ln. 22 to Trans. 64, ln. 4)). Finally, all parties agreed for the trial court to decide whether the Property should be sold to either Associated or Nordic. None of these issues was opposed at trial or appealed by any party.

Nordic's appeal is rooted solely in its disappointment with the trial court's decision to approve Associated's fully executed contract over its own oral "bid" in light of the contract terms and due diligence presented at trial. This Court should affirm.

I. NONE OF NORDIC'S ARGUMENTS ARE PRESERVED FOR REVIEW.

A review of the transcript from the May 3rd Hearing proves that none of the arguments relied upon by Nordic in this appeal was ever made to the trial court prior to its final ruling in favor of Associated. All of Nordic's current arguments, and all of its proffered "evidence," were first raised, if at all, in connection with its post-trial Rule 59(e) Motion to Reconsider. This is not proper, and Associated timely objected to the consideration of new evidence. (R. p. 148 (Trans. 11, lines 7-17)).

Rules of issue preservation are "meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716, 724 (2000). It was incumbent upon Nordic to introduce competent evidence of whatever contract it wished for the trial court to consider during the final hearing, not afterward. "A party cannot use Rule 59(e), SCRCp, to present to the trial court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990). *Accord Anderson Memorial Hospital, Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). This includes a bar against offering new evidence after the close of the proceedings. *See, e.g., Mazingo v. Ford Motor Co.*, 2009 S.C. App. Unpub. LEXIS 285, *2 (Ct. App. 2009) (noting that "a party cannot use Rule 59(e) to present new evidence to the court").

Further to the point, none of Nordic's post-trial evidence can be considered unless Nordic first proves that it was timely submitted. On this issue alone, Nordic has made no supporting argument whatsoever. It simply concludes, without explanation in its Initial Brief, that its post-trial affidavits are "timely" and should be considered. (App. Br., p. 5). This conclusory, unsupported assertion has been abandoned. *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review."); accord *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). This Court should refuse to consider any arguments and materials proffered by Nordic after the May 3rd Hearing, which is fatal to its appeal. Even if the Court considers Nordic's arguments, they have no merit.

II. NORDIC CANNOT COMPLAIN OF THE TRIAL COURT'S REFUSAL TO ACCEPT ITS ORAL BID TO PURCHASE THE PROPERTY FOR \$650,000 WHERE IT FAILED TO ESTABLISH PROOF AT TRIAL OF A VALID AND ENFORCEABLE AGREEMENT.

In order for the trial court to weigh two competing contracts against one another, logic demands that each contract must be legally enforceable and properly admitted into evidence to deserve consideration. Nordic's attempts fail in both respects.

A. Nordic's oral "bid" of \$650,000 violates the Statute of Frauds

Nordic moved to intervene for the purpose of showing proof "why its contract is the more favorable and equitable for the parties." (R. p. 66). However, Nordic failed to present an enforceable offer for the price of \$650,000.

S.C. Code Ann. § 31-3-10 requires agreements for the sale of real property to be in writing and signed. *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602 (2007) ("To satisfy the Statute of Frauds, every essential element of the contract must be expressed in

a writing signed by the party to be compelled.”). At the May 3rd Hearing, Nordic conceded it had no written agreement to purchase the Property for \$650,000. (R. p. 141 (Trans. 59, ln. 25 to Trans. 60, ln. 5)). This undisputed fact is fatal to its case, because the burden of proof was on Nordic to satisfy the Statute of Frauds. *Id.* (noting the party seeking to enforce the contract has the burden of proof). Counsel’s verbal statement as to what Nordic might have been willing to offer in terms of price, terms and contingencies does not satisfy Nordic’s burden of proof. *See Sessions v. Withers*, 327 S.C. 409, 414, 488 S.E.2d 888 (Ct. App. 1997)(noting statements of fact appearing only in arguments of counsel will not be considered); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (observing the trial court properly disregarded statements of counsel about testimony appearing in depositions not otherwise entered into evidence).

In an attempt to escape this flaw, Nordic attached a “copy of its amended contract to reflect its bid made during the hearing” to its Motion to Reconsider. (R. p. 90). In addition to being untimely, this copy was signed by no one, not even Nordic. It cannot be enforced by anyone and has no evidentiary value. Nordic’s oral “bid” cannot possibly amend the price in its contract with Ernestine Brown. *See Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. (2d) 856 (1983) (evidence of oral modification of the real estate contract violates the Statute of Frauds). Thus, Nordic failed to present a valid and enforceable contract to purchase the Property for \$650,000. *Stevens & Wilkinson*, 409 S.C. at 578, 762 S.E.2d at 701 (“where the undisputed facts do not establish a contract, the question becomes one of law”).⁸

⁸ Whether Nordic presented a valid contract increasing the purchase price to \$650,000 was questioned below. (R. p. 148 (Trans. 9, ln. 4 to Trans. 10, ln. 10)). The trial court found that Nordic failed to present a valid, written contract for \$650,000 as required by

Nordic also argues the May 3rd Hearing should have been handled like a public auction with oral bids. However, no party requested a public sale or an auction of any kind, and Nordic concedes this was not a public auction. (**App. Br., p. 8**). The trial court was certain, stating, “What it was not, was not bidding day in the courthouse.” (**R. p. 150**, (Trans. 17, lines 2-5)). The question before the trial court was simply a choice of “Contract A” versus “Contract B.” That is how the issue was presented to the trial court without objection from anyone, and no one appealed that process. Thus, it is the law of this case there was no auction bidding. *Accord Charleston Lumber Co., Inc. v. Miller Hous. Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling becomes the law of the case).

Besides, bidding was unnecessary once the parties stipulated to the value of the Property at \$560,000. Nordic concedes in its Brief that all parties agreed to partition the Property by sale to either Associated or Nordic. (**App. Br., pp. 7-8**). Considering it was not an auction, but instead a selection between two contracts for the sale of real property, all material terms offered by Nordic must satisfy the Statute of Frauds. They do not, just as the trial court found. (**R. p. 150** (Trans. 17, lines 6-20)).

Nordic knew the May 3rd Hearing was for the purpose of making findings of fact and conclusions of law regarding the value of the Property and which contract, Associated’s or Nordic’s, would be approved. (**R. p. 66**). Procedures reserved for judicial auctions simply do not apply here. Besides, Nordic ignores the fact that its “oral bid” was not the sole reason for the trial court’s ruling. Matters of due diligence, long-
the Statute of Frauds. (**R. p. 142** (Trans. 63, lines 17-21)); (**R. p. 150** (Trans. 17, lines 2-20)).

term commitment, and other factors also influenced the result. (R. pp. 142-143 (Trans. 64, ln. 14 to Trans. 66, ln. 12)); (R. p. 150 (Trans. 17, ln. 6 to Trans. 18, ln. 3)).

B. Nordic cannot rely on untimely evidence, and this Court should disregard the materials Nordic offered for the first time post-trial

At the May 3rd Hearing Nordic called no witnesses, introduced no evidence, conducted no cross-examinations, and made no objections. No one attended the hearing on its behalf other than trial counsel. (R. pp. 142-143 (Trans. 63, ln. 17 to Trans. 66, ln. 12)). Only after the trial court approved Associated's contract did Nordic try to develop a record. It first filed an unsigned version of a proposal for \$650,000. (R. p. 72). Later, a month after the final hearing, Nordic submitted three affidavits in support of its post-trial Motion to Reconsider. (R. pp. 112-14); (R. p. 103). Then, at the June 7th hearing, Nordic announced it had yet another version of the contract that removed certain, but not all, contingencies. (R. p. 147 (Trans. 7, lines 6-22)).

In addition to running afoul of issue preservation rules and the proper use of Rule 59(e), Nordic's use of post-trial affidavits filed after the May 3rd Hearing ended deprives other parties of the "opportunity for cross examination with the respect to the proffered, additional evidence." *Goolsby v. Goolsby*, 229 S.C. 101, 92 S.E.2d 57 (1956) (citing *Dempsey v. Huskey*, 224 S.C. 536, 80 S.E.2d 119 (1954) (where additional evidence submitted after the reference was closed and the referee made his report was not considered because there was no opportunity for cross examination)).

It behooved appellant to produce the affiants as witnesses if she wanted the benefit of their testimony, and let them be subject to cross-examination. The latter is a most valuable right. It is the law of evidence that when a witness has been examined in chief, the other party has a right to cross-examine him. The power of cross-examination has been justly said to be one of the principal, as it

certainly is one of the most efficacious, tests which the law has devised for the discovery of truth.

Goolsby, 229 S.C. at 111-12, 92 S.E.2d at 62. (internal quotations and citations omitted).

If Nordic wished to rely upon a new contract accepted by Sheneatha and Germaine Brisbane, Nordic should have introduced that agreement at the May 3rd Hearing and called them as witnesses (which would have been hard considering their agreement did not exist on that date). If Mr. and Ms. Brisbane desired a different result, they should have timely pled for relief, appeared and testified, and subjected themselves to cross-examination.⁹ By failing to present these witnesses, Nordic deprives the Court, the remaining heirs, and Associated the essential right to cross-examine them¹⁰ about their untimely “evidence.” This is not allowed. *See, generally, Zaman v. S.C. State Bd. of Med. Exam’rs*, 305 S.C. 281, 408 S.E.2d 213 (1991) (finding it was error to allow a party to submit evidence by affidavits because it denied the right of cross-examination); *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 130-131, 348 S.E.2d 381 (Ct. App. 1986) (“The introduction of evidence by affidavit rather than live testimony accordingly deprived the defendants of the due process right to confrontation and cross examination.”); *S.C. Dep’t of Soc. Servs. v. Beeks*, 325 S.C. 243, 481 S.E.2d 703 (1997) (civil due process affords a party the right to cross-examine the writer of a

⁹ Sheneatha and Germaine Brisbane each acknowledged service of process, but neither of them filed an answer objecting to Plaintiffs’ prayer for relief. (R. pp. 112-114). They each received ample notice of the May 3, 2016 hearing. (R. p. 72). Neither of them chose to testify, if they were present.

¹⁰ Nordic may complain of citations herein to the Affidavit of Christopher Phillips, filed in opposition to Nordic’s post-trial Motion for Temporary Restraining Order. This Court should refuse to consider any evidence that was not presented to the trial court during the May 3rd Hearing. But, if Nordic’s post-trial evidence is considered, so, too, should the Affidavit of Christopher Phillips. Nordic cannot have it both ways.

report entered into evidence as well as any witness whose statements formed the basis for the report). “Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Zaman*, 305 S.C. at 284, 408 S.E.2d 215.

Here, the record fails to establish that Nordic had a valid contract to buy the Property for \$650,000. Whether this Court finds Nordic’s oral “bid” was barred by the Statute of Frauds or that the factual record is not sufficient to meet Nordic’s burden of proof during the May 3rd Hearing to establish a contract in that amount, the result is the same. Either way, the trial court should be affirmed.

III. THE TRIAL COURT PROPERLY APPROVED ASSOCIATED’S FULLY RATIFIED CONTRACT OVER THE ORAL BID SUBMITTED BY NORDIC’S COUNSEL DURING THE MAY 3RD FINAL HEARING.

Citing to S.C. Code Ann. § 15-61-25, Nordic complains, for the first time, that the trial court should not have gone beyond determining the value of the Property in the May 3rd Hearing to then award “one contract over another.” (*App. Br.*, pp. 7-8). Nordic never objected to this process; rather, it intervened before the May 3rd Hearing to prove why its contract was preferable. (*R. p. 68*). Having voiced no objection, and having requested approval of its own “bid” at the hearing, Nordic consented to this process and cannot question it on appeal. *Hill v. S.C. Dep’t of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E.2d 612, 624 (2010) (“[A] contemporaneous objection is required to preserve an issue for appellate review.”); *Gissel v. Hart*, 382 S.C. 235, 243, 676 S.E.2d 320, 324 (2009) (a party may not complain on appeal of an error that his conduct induced).¹¹ To

¹¹ Nordic asks this Court to direct the sale of the property to it rather than Associated. (*App. Br.*, p. 13). Nordic cannot complain of the trial court’s selection between the two potential buyers when that is the same result Nordic also seeks.

the extent Nordic's assignment of error focuses on the basis for the trial court's decision to approve Associated's contract, its argument is equally flawed.

A. The trial court properly approved Associated's contract, because Nordic's proposal is materially different, and less favorable

Nordic represented to the trial court, and continues to claim on appeal, that its \$650,000 proposal removed all contingencies (except the grave site contingency) and is on an "equal playing field" with Associated's ratified contract. (App. Br., pp. 9-10); (R. pp. 141-142 (Trans. 59, ln. 5 to Trans. 61, ln. 4)); (R. p. 147 (Trans. 6, ln. 25 to Trans. 7, ln. 22)). Associated pointed out this was not true during the May 3rd Hearing. (R. p. 141-142 (Trans. 60, ln. 23 – Trans. 61, ln. 4)). In any event, the terms of Nordic's untimely agreement with Sheneatha and Germaine Brisbane prove this to be patently false.

The agreement executed by Sheneatha and Germaine Brisbane a month after the final hearing is fully contingent upon Nordic's satisfaction with the Property. Specifically, Nordic kept the right to terminate "If [Nordic] is not satisfied with [Nordic's] inspections ... in [Nordic's] sole discretion." (R. p. 111). During the June 7th hearing on its Motion to Reconsider, Nordic admitted: "Within that contract there still some of the contingencies." (R. p. 147 (Trans. 7, lines 6-11)). In contrast, Associated had no such "pre-look" contingency. Presumably seeing this as a problem, counsel for Nordic informed the trial court that he had with him at the June 7th hearing yet another version of the agreement that removed all but the grave site contingency. This document was neither offered nor accepted into evidence. (R. p. 147 (Trans. 7, lines 12-22)).

The fact that Nordic still required a grave survey contingency on June 7, 2016, further separates the two deals. Contrary to Nordic's contention during the June 7th

hearing, Associated had, by then, already completed its grave site survey, doing so within days of the May 3rd Hearing. (R. p. 147 (Trans. 6, lines 17-24)). Associated informed the trial court it had removed its final contingency and was ready to close. (R. p. 141 (Trans. 58, ln. 15 to Trans. 59, ln. 4)); (R. pp. 141-142 (Trans. 60, ln. 19 to Trans. 61, ln. 4)); (R. p. 148 (Trans. 10, ln. 11 to Trans. 11, ln. 7)); (R. p. 124). There is more.

Indisputably, preserving the family grave sites was of paramount importance. But, Nordic's post-trial contract with Sheneatha and Germaine Brisbane merely provides that "At closing, Buyer and Seller shall enter into a written agreement regarding the perpetual maintenance of all such grave sites and the right of Sellers and respective Heirs to visit such grave sites." (R. p. 111). (all emphasis added). Here, Nordic has offered nothing more than an unenforceable "agreement to agree," which is void under South Carolina law. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) ("Provisions which are essentially agreements to agree in the future have no legal effect.") (citing *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994) (where a contract provided that "as each child begins college, the parties shall agree to an amount for support of the home while said child is in college," it was void because it left material terms open for future agreement)); accord *Stevens & Wilkinson*, 409 S.C. at 578, 762 S.E.2d at 701; *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2 (1932). Nordic has made no commitment to the heirs on this crucial issue because its promise to enter into an agreement at a future closing is unenforceable.

Fortunately for the heirs, Plaintiffs provided proof of the fully ratified agreement whereby Associated committed to preserve the heirs' family grave sites. (R. p. 162); (R.

p. 129 (Trans. 12, lines 5-25)); (R. p. 131 (Trans. 17, lines 17-25)). Nordic has nothing to compare.

B. The record supports the trial court's determination that Associated's ratified contract was in the best interest of the parties

"A partition should be fair and equitable to all parties." *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801 (Ct. App. 2009). By approving the sale to Associated, the trial court entered a ruling it found was in the best interest of the parties. (R. p. 142 (Trans. 63, lines 17-21)); (R. pp. 142-143 (Trans. 64, ln. 14 to Trans. 66, ln. 12)); (R. pp. 149-150 (Trans. 16, ln. 14 to Trans. 18, ln. 23)). Associated testified about its due diligence and expenses incurred, and it placed its fully ratified purchase contract into evidence, along with its agreement to preserve the family grave sites. (R. pp. 152, 159, 162); (R. pp. 129-131 (Trans. 11, ln. 1 to Trans. 17, ln. 25)). All of this influenced the trial court's reasoned decision. (R. pp. 142-143 (Trans. 63, ln. 17 to Trans. 66, ln. 12)). Associated promptly completed its grave study and stands ready to close, contingency-free, at the stipulated value. Nordic has done none of this, and the trial court had no meaningful opportunity to evaluate Nordic's claims.

Certainly, "the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or to allow a partition by allotment." *Campbell*, 382 S.C. at 451, 675 S.E.2d 801 (emphasis added). *Whether* to require a judicial sale was not questioned. All parties stipulated the Property was worth \$560,000, and all parties agreed the Property would be sold to either Associated or Nordic. Even if we ignore the Statute of Frauds, the particular details of each competing "contract" were relevant, and price alone was not the sole consideration. (R. p. 128 (Trans. 9, lines 15-18)). The fact that Nordic's offer was contingent and Associated's contract is a "sure

thing” and ready to close is evidence supporting the trial court’s determination that Associated’s contract is in the best interest of the parties. (R. p. 142 (Trans. 63, ln. 17 to Trans. 66, ln. 12)); (R. p. 148 (Trans 10, ln. 25 to Trans. 11, ln. 7)); (R. pp. 148-149 (Trans. 12, ln. 25 to Trans. 14, ln. 10)); (R. p. 149 (Trans. 15, ln. 23 to Trans. 16, ln. 5)); (R. pp. 149-150 (Trans. 16, ln. 14 to Trans. 18, ln. 23)); (R. p. 124).

Price is important, but it is not the penultimate factor where other essential collateral matters must be considered, such as the preservation of grave sites, unsatisfied contingencies (on Nordic’s part), and abundant due diligence efforts performed by Associated.¹² The trial court carefully considered these issues and the evidence presented and made the correct ruling. See Rule 71(f)(4), SCRCP (“But if it shall appear to the court that it would be more for the interest of the parties interested in the estate or property that it should be sold and the proceeds of sale be divided among them, then the court shall direct a sale to be made upon such terms as the court shall deem right.”) (emphasis added). Considering Nordic failed to even introduce a signed, written agreement for the higher price of \$650,000,¹³ the trial court made the right decision.

¹² Price is not the end-all-be-all factor, even in judicial sales. In *Holliday v. McFadden*, 188 S.C. 187, 198 S.E. 392 (1938), the trial court refused to accept an oral bid that was entered just moments after bidding closed, even though it was higher. If pecuniary interests were the only consideration that mattered, *Holliday* necessarily would have been decided the other way. Nordic’s higher, unwritten offer, cannot overcome its failure to otherwise prove that its contract is the more favorable.

¹³ Even if Associated and Nordic *did* have identical contracts in every respect (which they do not), there was no error in selecting Associated’s because it appeared and testified, whereas Nordic did not. Cf. *Crewe v. Blackmon*, 289 S.C. 229, 233-34, 345 S.E.2d 754, 757 (Ct. App. 1986) (citing *Evatt v. Campbell*, 234 S.C. 1, 9, 106 S.E. (2d) 447, 451 (1959) (noting the master’s conclusion has “peculiar value in arriving at a correct result. . . .” because the master observed the demeanor and appearance of the witnesses who testified)).

IV. AS AN ADDITIONAL SUSTAINING GROUND, NORDIC CANNOT RELY ON ITS CONTRACTS WITH ERNESTINE BROWN, SHENEATHA BRISBANE AND GERMAINE BRISBANE.

Plaintiffs prayed for approval of their contract with Associated, as did Associated in its pleadings. (R. p. 53). The court-appointed Guardian *ad Litem Nisi* agreed with Plaintiff's requested remedy. (R. p. 55).

The picture looks much different on the other side of things. Ernestine Brown was in default when Nordic contracted with her. (R. p. 6). When Nordic later moved to intervene, it requested approval of the specific contract it made with Ms. Brown. (R. pp. 67, 70). Ms. Brown's attorney admitted that her "second contact" with Nordic was simply to get the higher price before the trial court and that she had no other interest aside from that point.¹⁴ The record is devoid of any signed, revised agreement for \$650,000 being entered into between Nordic and Ms. Brown, despite both parties having representation at the May 3rd Hearing.

Sheneatha and Germaine Brisbane acknowledged service and consented to the order of reference, but never filed an answer or other pleading requesting any remedy or relief. They did not participate in the May 3rd Hearing despite receiving notice. In fact, they had no contract at all until well after the trial court ruled. Sheneatha and Germaine are not parties to Nordic's contract with Ms. Brown. Likewise, the document they submitted a month after the May 3rd Hearing is not an "amendment" to Nordic's contract

¹⁴ Nordic's contract with Ms. Brown was relevant only to value. Even though a party in default maintains a right of first refusal to purchase the Property pursuant to S.C. Code Ann. § 15-61-25(A), nothing in Section 15-61-25 affords a party an equivalent right to contract to sell the Property while in default of a pending declaratory judgment action seeking approval of another ratified contract. Ms. Brown never made any prayer for relief.

with Ms. Brown. It cannot be such because Ms. Brown did not sign it as required by the Statute of Frauds. S.C. Code Ann. § 31-3-10; *Fici v. Koon*, 372 S.C. at 346, 642 S.E.2d 602 (agreement must be signed by the party to be compelled). Having declined to participate in the proceedings despite receiving notice, neither Sheneatha nor Germaine have the ability to request relief at this point. Neither of them appealed the trial court's findings—thus, they have abandoned their untimely, post-trial request to have their contract preferred.

Last, the trial court lacked authority to consider Nordic's contract with Sheneatha and Germaine. When Nordic moved to intervene, it requested approval of the specific contract it made with Ms. Brown. Its pleadings contain the same prayer for relief regarding, its contract with Ernestine Brown. Nordic never amended its pleadings to request approval of a different contract with Sheneatha and Germaine, to which Ms. Brown is not a party. In *Rushing v. Intex Products, Inc.*, 285 S.C. 595, 599, 330 S.E.2d 555, 557 (Ct. App. 1985), the Court held:

In the instant case, the only issue tendered by the parties was whether the 1971 Patent Agreement was still valid or whether it had been cancelled by the 1976 Agreement. Rushing did not allege that the 1978 letters either modified the Patent Agreement or superseded it. In fact, the pleadings contain no reference to the letters. The court therefore erred in considering them and in granting Rushing relief based on them.

Id. Neither this Court nor the trial court can approve Nordic's contract with Sheneatha and Germaine because its pleadings contain no facts or claims pertaining to it. Associated opposed Nordic's attempt to rely upon a new contract post-trial. (R. p. 148 (Trans. 9, ln. 4 to Trans. 10, ln. 10)). *Cf. Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (holding absent an amendment of the pleadings or

implied consent to consider relief not requested in the pleadings, the panel could only consider the issues contained within the pleadings and could only award the relief requested within the pleadings).

CONCLUSION

For the reasons set forth herein, Respondent Associated Developers, Inc. respectfully requests this Court to affirm the judgment below.¹⁵

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



Michael A. Timbes, SC Bar No. 69730
Thomas J. Rode, SC Bar No. 77480
15 Middle Atlantic Wharf
Charleston, SC 29401
Phone: 843-937-8000
Fax: 843-937-4200
Email: michael@tktlawyers.com
Email: thomas@tktlawyers.com

*Attorneys for Respondent Associated
Developers, Inc.*

¹⁵ In the alternative, if this Court decides to reverse, it must remand the matter for further proceedings rather than award the sale to Nordic. Associated's claim for unjust enrichment to recover the significant fees, costs, and expenses it incurred in good faith to the benefit of the Property while conducting its due diligence was not reached below because the trial court approved Associated's contract. (**R. pp. 83-89**). If this Court reverses, this claim must be heard before a decision is made to award the contract to Nordic, because this claim affects the resulting pecuniary interests of the heirs by reducing the net value of Nordic's offer. Both Associated and the heirs have a right to be heard on that issue before choosing between Associated and Nordic. The trial court already signaled that Associated would be entitled to recover on this claim, finding: "[Associated] expended a considerable amount of money in the meanwhile, and somebody's going to have to pay that money. If the property doesn't go to [Associated]." (**R. p. 150** (Trans. 17, ln. 21 to Trans. 18, ln. 3)).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough

Appellate Case Tracking No. 2016-001298
Trial Court Case No. 2015CP1000939

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden,
Robert Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton,
James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton,
Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson,
Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis
Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark
Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William
Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy
Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown,
Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny
Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown,
Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr.,
Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny
Bolds, Raymond Bold, Michael Bold, David Bold, Carolyn Logan,
Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr.,
Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie
Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D.
Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell,
Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia
Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn
Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George
Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse
Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur
Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell
Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane
B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton,
LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr.,
Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald
Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson,
Delores Richardson, William Richardson, Robert Heyward, Katina
Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit

Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor, successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Briwbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manifault, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group,
LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. NORDIC'S ARGUMENTS WERE PROPERLY PRESERVED FOR APPEAL.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Supreme Court with a platform for meaningful appellate review. *Herron v. Century BMW*, 719 S.E.2d 640 (S.C. 2011). In general, for an issue to be preserved on appeal, it must be presented to the trial court and ruled on by the trial court. *Foster v. Foster*, 711 S.E.2d 878 (S.C. 2011). The issue on appeal in this case is whether the Master-in-Equity erred in failing to consider an oral offer when directing the sale of certain heirs property. The Master-in-Equity's Decree clearly shows that the issue was before the Court and ruled on by the Court. Specifically, Paragraph Seventy-Nine of the Master-in-Equity's Decree states as follows:

“. . . Although counsel for Nordic indicated that his client would be willing to negotiate a higher price, no such binding offer or agreement was presented on Nordic's behalf. It appears to the Court that the contract writing between Plaintiffs and Associated is more likely to close at this time.”

See Decree p. 16 (R. p. 031).

The Court's decree finds that because Appellant's (Nordic) increased offer to \$650,000.00 was not presented to the Court at the valuation hearing in writing and is therefore non-binding. The Court's ruling is in error and the issue is preserved for appeal.

Going into the May 3, 2016 hearing, Nordic was under the impression that the contract it had for \$560,000 was in competition to the contract Associated Developers had for \$455,000. Nordic had an appraisal to submit to the Court that supported a \$560,000.00 value for the property. Because of the appraisal, and because of Nordic's

\$560,000.00 contract, Associated Developers amended its prior contract and presented a \$560,000.00 contract to the Court without any prior notice to Nordic. As a result, Nordic amended its offer in Court to the \$650,000.00 contract amount, which the Master-in-Equity refused to consider because it was not in writing.

Thus, at the start of the valuation hearing, Respondent's contract with the landowners was for \$455,000.00. Respondent, through the course of the valuation hearing, was allowed to enter an amendment to its contract increasing the offered purchase price to \$560,000.00, matching Appellant's contract proposal. As stated in Appellant's initial brief, the trial court, through partition, ultimately made a selection of one contract over the other, similar to a judicial sale. (Appellant's Initial Brief pg. 8) The trial court noted that had Appellant's \$650,000.00 contract offer been presented in writing at the May 3, 2016 hearing, it may have decided differently.

II. NORDIC'S RULE 59(e) MOTION WAS PROPER

Respondent's assertion that Nordic's Rule 59(e) motion was an attempt to create a record post-trial lacks merit. It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also a vehicle to seek "reconsideration" of issues and arguments. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). The Supreme Court has expressed the view that there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity. *Id.*

The purpose of Nordic's Rule 59(e) motion was to call to the court's attention an error in its failure to give consideration to Nordic's oral offer of \$650,000.00. See

Motion to Reconsider (R. p. 90). The evidence submitted by affidavit at the Rule 59(e) motion hearing was a memorialization of the \$650,000.00 offer presented by Nordic at the May 3, 2016 hearing. See Affidavits of James A. Bruorton IV (R. p. 103); Sheneatha Brisbane (R. p. 112); and Germaine Brisbane (R. p. 114). In the absence of a statute providing otherwise, an oral bid is sufficient. 68 C.J.S Partition § 177 (citing *Holliday v. McFadden*, 188 S.C. 187, 198 S.E. 392 (1938)). South Carolina's Partition Statute does not provide that an oral bid is insufficient nor does it disallow a memorialization of a verbal offer at a later date. The Master-in-Equity decision is in error and warrants reversal or remand for consideration of Nordic's \$650,000.00 contract.

Under Rule 59(f), SCRCP, a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." *Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994). Here, the trial court elected to have a hearing on Nordic's motion. Nordic did not present new evidence at the hearing, Nordic simply submitted an executed contract memorializing its \$650,000.00 offer that was rendered to the Court at the May 3, 2016 hearing. See Affidavit of James A. Bruorton IV (R. p. 103). All parties and the court were aware of the \$650,000.00 offer that had been presented to the Court and there was no surprise or prejudice by that offer being memorialized in writing.

III. CROSS-EXAMINATION OF PROFFERED ADDITIONAL EVIDENCE IS NOT PRECLUDED

Respondent argues that Nordic's use of post-trial affidavits filed after May 3, 2016 deprives other parties of the "opportunity for cross examination with respect to the proffered, additional evidence." As noted by the Respondent in its initial brief, the trial court was expected to hold a final hearing in this matter on December 17, 2015.

(Respondent's Brief pg. 1) The issue of the sale of the heirs property was not reached because Nordic unexpectedly appeared and claimed it had an unsigned offer to purchase the property from another heir for the sum of \$560,000.00. (Respondent's Brief pg. 2) As a result, the trial court set a hearing for May 3, 2016 to determine the value and remaining property issues, including approval of the sale of the property to Associated or Nordic. In the interim, both Associated and Nordic were permitted to intervene. See Associated's Motion to Intervene (R. p. 59); Order Granting Associated's Intervention (R. p. 11); Nordic's Motion to Intervene (R. p. 66); Order Granting Nordic's Intervention (R. p. 13).

At the May 3, 2016 hearing, Nordic's executed contract for \$560,000.00 along with an appraisal in support of the value were before the Court. Associated, for the first time, increased its contract amount from \$455,000.00 to \$560,000 in order to match Nordic's appraised value for the property of \$560,000.00. As a result, Nordic offered to purchase the property for \$650,000.00, a value in excess of the appraised value of the property. If Associated or the Court had concern over Associated's inability to cross-examine Nordic on its increased contract amount, no decision should have been made by the Court and the valuation hearing should have been continued. A trial judge may continue a case *sua sponte*. *Pioneer Electronics (USA) Inc. v. Cook*, 294 S.C. 135, 363 S.E.2d 112 (Ct. App. 1987). To completely disallow and give no consideration to Nordic's \$650,000.00 offer, which was submitted in response to an amended contract with an increased amount from Associated, is in error and an abuse of the trial court's discretion.

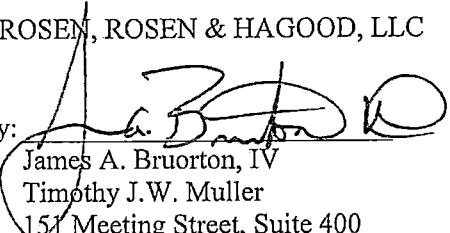
Also, as stated in Nordic's initial brief, if the trial court had concern over

Appellant's ability to perform the proposed contract, it could have given Appellant a timeline to close on the Property. If Appellant failed to comply with the trial court's ordered timeline, then the Property could be sold to Respondent pursuant to Respondent's presented contract. Such action would have resulted in no prejudice to the parties, provided the timeline was consistent with that presented for closing of Respondent's contract.

CONCLUSION

For all the foregoing reasons and for those set forth in the Brief of the Appellant, this Court should reverse the Master-in-Equity's Form 4 Order dated May 5, 2016 and the Master's Decree dated June 16, 2016 directing the sale of Property to Respondent and instead direct the sale of the Property to Appellant pursuant to its purchase agreement with Defendants or remand to the trial court for further consideration.

ROSEN, ROSEN & HAGOOD, LLC

By: 

James A. Bruorton, IV
Timothy J.W. Muller
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

November 15, 2016

ATTORNEYS FOR APPELLANT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth
Nelson Gadsden, Robert Blake Brisbane and Mildred
Chapman, Plaintiffs,

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane,
Francena B. Lawton, James B. Watson, Helen Davis,
Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden,
Daniel Simmons, Jr., Mary Mosely, Horace Robinson,
Jr., James Robinson, Henry Robinson, Avis D. Robinson
a/k/a Avis Robertson, Dora Robinson, Jamie Williams,
Desiree Williams, Mark Williams, Grace Ettison,
Dannion Jordan, Ronald Williams, William Drayton,
Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr.,
Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette
Brown, Arthur Brown, Antonio Brown, Dwayne Brown,
Polly Brown, Keith Brown, Kenny Brown, Dexter
Brown, Marie Brown, Starcia Stewart, James L. Brown,
Jr., Glen Brown, Ernestine Brown, Veronica Brown,
Calvin Brown, Jr., Harold Brown, Jr., Mary Anne
Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond
Bolds, Michael Bolds, David Bolds, Carolyn Logan,
Mary Jane Brown, Miriam Grant a/k/a Muriel Grant,
Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata
O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest,
Gloria Gibbs, Christopher Gathers, John D. Heyward,
Allen Mitchell, Jr., Tiffany N. Daley, Michael S.
Mitchell, Allen Mitchell, III, Frederica Coleman,
Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane,
Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary
Brisbane, Carl Brisbane, Carlotta Bickham, George

Brisbane, Elias Brisbane, Maxine Brisbane, Evan
 Brisbane, Jesse Simmons, Jr., Odell White, Christina
 Hartfield, Sarah Mitchell, Arthur Albert Mitchell,
 Suzanne Mitchell, Olethia Gadsen, Wand Mitchell
 Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara
 Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E.
 Nelson, Carolyn Singleton, LaMotta Nelson, Rodney
 Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy
 Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown,
 Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin
 Frasier, Marie Richardson, Delores Richardson, William
 Richardson, Robert Heyward, Katina Heyward, Valorie
 Heyward, Karvin Dotson, Youlonda Brisbane, Kermit
 Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy
 Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net
 Elliott, Stephanie Elliott, Rodney Elliott, Nancy
 Brisbane, William Albert Brisbane, Jr., Bernard
 Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta
 Brisbane Hamilton, Elizabeth Hamilton, and Rosetta B.
 Brown, John Doe, adults, and Richard Roe, infants,
 insane persons, incompetents, and persons in the military
 service of the United States of America, being fictitious
 names designating as a class any unknown person or
 persons who may be an heir, distributee, devisee, legatee,
 widower, widow, assign, administrator, executor,
 creditor, successor, personal representative, issue, or
 alienee of James Brisbane, James Brisbane, Jr., James
 Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey
 Brisbane, Rosa Robinson, Henrietta Brisbane Geathers,
 Laura Geathers, Geneva Grant, Viola Heyward, Henrietta
 Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia
 Young, Roxanna Pinckney, Daniel Simmons, Horace
 Robinson, Elizabeth Williams, Mabel Robinson, Julian
 Robinson, Patricia Williams, Albertha Graham, Joseph E.
 Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr.,
 Roger Brown, James LeRoy Brown, Harold Brown,
 Theodore Heyward, Theodore Heyward, Jr., Mary E.
 Mitchell, James Heyward, Clarence Brisbane, Swackie
 Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a
 Janie Richardson Brisbane, Ruby Mitchell, Jesse

Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown, and Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group, LLC, Intervenors,

Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

Appellate Case No. 2016-001298

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2018-UP-062
Submitted January 1, 2018 – Filed February 7, 2018

AFFIRMED

Wallace K. Lightsey, of Wyche Law Firm, of Greenville;
James Atkinson Bruorton, IV and Timothy James Wood Muller, both of Rosen Rosen & Hagood, LLC, of Charleston, all for Appellant.

Michael A. Timbes and Thomas James Rode, both of
Thurmond Kirchner & Timbes, P.A., of Charleston, for
Respondent.

PER CURIAM: Nordic Group, LLC, (Nordic) appeals the Master-in-Equity's order approving Associated Developers, Inc.'s (Associated's) contract to purchase heirs' property in Charleston County and the Master's order denying Nordic's motion to reconsider. Nordic argues (1) the Master erred by approving Associated's contract to purchase the property and (2) Nordic's in-court, oral offer of \$650,000 for the property was sufficient and binding. We affirm.¹

We find the Master did not err by approving Associated's contract to purchase the property. *See Laughon v. O'Braitis*, 360 S.C. 520, 524, 602 S.E.2d 108, 110 (Ct. App. 2004) ("A partition action . . . is an action in equity. In an appeal from an equitable action, this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence."). Here, Associated presented evidence at the valuation hearing of its contract for the sale of the property, its contract amendment increasing the value it would pay for the property to \$560,000, and its agreement to provide for the perpetual care of the gravesites on the property. Although Nordic submitted to the Master a written but unsigned offer to purchase the property for the price of \$560,000 prior to the valuation hearing, the only evidence Nordic offered at the hearing was its attorney's oral offer increasing its offer price. We find the attorney's statement was not proper evidence for the Master to consider. *See McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This [c]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 185 (Ct. App. 1986) (noting the circuit court properly disregarded statements of counsel about testimony appearing in depositions not otherwise introduced into evidence). Nordic's attorney was unable to submit a signed, written commitment that Nordic would waive the contingencies in its current offer or provide for the family gravesites. Accordingly, the only evidence properly before the Master at the valuation hearing was Nordic's original \$560,000 offer; Associated's original contract, its amended contract for \$560,000, and its agreement to care for the gravesites; and the parties' stipulation that the property's fair market value was \$560,000.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

After the valuation hearing, Nordic filed two new contracts indicating an increased offer price in support of its motion to reconsider. At the hearing on its motion to reconsider, Nordic indicated it had yet another contract but failed to admit this contract into evidence; however, a party cannot submit new evidence in support of its motion to reconsider. *See Dempsey v. Huskey*, 224 S.C. 536, 544, 80 S.E.2d 119, 122 (1954) (per curiam) (stating additional evidence submitted after the reference was closed could not be considered by the court because there was no opportunity for cross examination and the evidence was not necessary for "substantial justice"). Because Nordic presented no timely evidence of its new offer, Associated's written-and-signed contract was for the fair market value of the property as stipulated by the parties, and Associated had an agreement to perpetually care for the gravesites on the property, we find the Master did not err in approving Associated's contract.

As to Nordic's arguments regarding the Master's authority to proceed as it did at the valuation hearing, we find these arguments are unpreserved because Nordic never objected to the procedure at the time of the valuation hearing. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit] court to be preserved."); *Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (per curiam) ("An issue may not be raised for the first time in a motion to reconsider."). To the extent Nordic argues the valuation hearing was the equivalent of a judicial sale, Nordic did not raise this issue until its Rule 59(e), SCRCF motion, and thus, the issue is not preserved for appellate review. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570 ("An issue may not be raised for the first time in a motion to reconsider."). Similarly, to the extent Nordic argues the Master did not have to award a contract at the valuation hearing, Nordic raised this issue for the first time on appeal, and thus, the issue is not preserved. *See Pye*, 369 S.C. at 564, 633 S.E.2d at 510 ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit] court to be preserved.").

Finally, we find Nordic's oral offer to purchase the property was not sufficient and binding because the statement of Nordic's attorney regarding Nordic's oral offer at the valuation hearing did not constitute evidence of an offer. *See McManus*, 171 S.C. at 89, 171 S.E. at 475 ("This [c]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."). Because Nordic offered no evidence of the oral offer at the hearing, there was no valid offer, and the offer was not sufficient or binding on the Master.

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

A handwritten signature in black ink, consisting of a series of loops and a final upward stroke.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

Honorable Mikell R. Scarborough

Appellate Case Tracking No. 2016-001298

Trial Court Case No. 2015CP1000939

RECEIVED
FEB 22 2018
SC Court of Appeals

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert
Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton,
James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton,
Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr.,
James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson,
Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace
Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton,
Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian,
Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne
Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie
Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown,
Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane,
Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David
Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant,
Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha
Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers,
John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell,
Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane,
Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary
Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane,
Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina
Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia
Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell,
Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson,
Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins,
Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon
Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie
Richardson, Delores Richardson, William Richardson, Robert Heyward,

Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor, successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Briwbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manifold, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

APPELLANT'S PETITION FOR REHEARING

TABLE OF AUTHORITIES

Cases

<i>Campbell v. Jordan</i> , 382 S.C. 445, 675 S.E.2d 801 (2009).....	9
<i>Elam v. S.C. Dept. of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004)	11
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<i>Herron v. Century BMW</i> , 719 S.E.2d 640 (S.C. 2011).....	9
<i>Holliday v. McFadden</i> , 188 S.C. 187, 198 S.E.2d 392 (1938)	7
<i>Laughon v. O’Braitis</i> , 360 S.C. 520, 524, 602 S.E.2d 108, 110 (Ct. App. 2004)	4
<i>McManus v. Bank of Greenwood</i> , 188 S.C. (S.Ct. 1993)	7
<i>Pollard v. County of Florence</i> , 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).....	12

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Statutes

S.C. Code Ann. § 15-61-25	5, 8
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Other Reference Sources

Black’s Law Dictionary (10 th ed. 2014)	5
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Appellant, Nordic Group, LLC, petitions this Court for a rehearing of its decision filed February 7, 2018, which was received by Appellant on February 8, 2018. This Court issued its decision based upon the briefs and Record on Appeal, without oral argument. In affirming the trial court's decision, this Court based its legal analysis on factual assertions that are not correct or supported by the record, erroneously decided that certain issues were not properly preserved for appeal, and failed to weigh the equities of the parties in rendering its opinion.

Appellant appealed the Master-in-Equity's ruling in a partition action related to heirs' property in Charleston County. A partition action is an action in equity. In an appeal from an equitable action, this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *See Laughon v. O'Braitis*, 360 S.C. 520, 524, 602 S.E.2d 108, 110 (Ct. App. 2004). Here, this Court overlooked or misapprehended key facts before the Court and disregarded record evidence pertinent to the issues on appeal.

I. APPELLANT'S ORAL OFFER TO PURCHASE FOR \$650,000.00 IS VALID AND ENFORCEABLE

This Court's review of the record is in error as to the evidence that was before the trial court for consideration during the May 3, 2016 valuation hearing. This Court's opinion inaccurately states, "Although Nordic submitted to the Master a written but unsigned offer to purchase the property for the price of \$560,000 prior to the valuation hearing, the only evidence Nordic offered at the hearing was its attorney's oral offer increasing its offer price." *See Ct. App. Opinion*, p.4. This statement reflects an erroneous view of the record.

At the initial December 2015 hearing determining the ownership interests of the numerous heirs involved, the trial court was presented with a purchase agreement for the property from Appellant in the amount of \$560,000.00 and a purchase agreement for the property from Respondent in the amount of \$455,000.00. *See* R. 127-128. Accordingly, the trial court scheduled a hearing to obtain testimony on the value of the property for the purpose of partition and ultimately a sale based on S.C. Code Ann. § 15-61-25. *See* R. 127-128. At the May 3, 2016 valuation hearing, Appellant's executed contract for \$560,000.00 along with an appraisal in support of the value were before the Court. *See* Appellant's Reply Brief p. 4. The purpose of the May 3, 2016 hearing was to take testimony and to determine the "fair market value" of the subject property as of the date of the initial hearing on December 17, 2015. "Fair Market Value" is defined as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." VALUE, Black's Law Dictionary (10th ed. 2014); see also <http://www.investopedia.com/terms/fairmarketvalue.asp>. ("the price that a person reasonably interested in buying a given asset would pay to a person reasonably interested in selling it for the purchase of the asset or asset would get in the marketplace.").

At the hearing, the trial court established the value of the property at \$560,000.00 based upon an appraisal presented to the Court by Appellant. Thus, the trial court, as a matter of law, determined the "fair market value" of the property to be \$560,000.00. Based on the Appellant's appraisal, Respondent increased its contract amount from \$455,000.00 to \$560,000.00 to match Appellant's contract amount to purchase the property. At this point, the trial court had evidence of two contracts of equal value in the record. Appellant, through

a binding offer made on the record by its counsel, with authority, increased its offer during the valuation hearing to purchase the property for \$650,000.00. The trial court disregarded Appellant's increased proposed contract amount of \$650,000.00, despite evidence in the record that the "fair market value" of the property is what a buyer is able to pay for it. During his hearing testimony, the Respondent testified "the property is worth what I can pay for it". R 134. At the same hearing, Appellant, through its duly authorized counsel's statement on the record, agreed to amend its purchase agreement and increase the amount of consideration paid to the landowners to \$650,000.00. *See* R. 127, 141. The Respondent testified he would not increase his offer above the \$560,000.00 offer. R 135.

Appellant's offer to purchase the heirs' property for \$650,000.00 was ruled by the trial court to be invalid because it was not in writing. In doing so, the trial court ruled as a matter of law that Appellant's oral offer of \$650,000.00 was insufficient under the statutes governing Partition actions in South Carolina. South Carolina's Partition Statute, which governs this dispute, does not provide that an oral bid is insufficient, nor does it disallow memorialization of a verbal offer at a later date, as was done here by Appellant. See S.C. Code Ann. § 15-53-10.

Given that Appellant was reasonably interested in buying the property for \$650,000.00 and the landowners were reasonably interested in selling the property for what the property would get in the marketplace, the "Fair Market Value" of the property was therefore established at \$650,000.00 during the May 3, 2016 hearing through Appellant's binding offer to pay \$650,000.00 for the property. Further, landowner Clarence Brisbane objected to the sale of the property to Respondent for the price of \$560,000.00. During

questioning from Judge Scarborough, Mr. Brisbane testified that he was opposed to the sale of the property to Respondent and believed the landowners were entitled to an amount greater than the \$560,000.00 offered by Respondent. R. 137. The trial court erred in ruling as a matter of law that the "fair market value" of the asset was \$560,000.00 and ordering the sale of the property to the Respondent for less than a reasonably interested buyer was willing to purchase the property for.

In affirming the trial court, this Court relies upon the 1933 Supreme Court Opinion of *McManus v. Bank of Greenwood* to conclude that Appellant's oral offer to purchase the subject property for \$650,000.00 through its counsel was a fact appearing only in argument of counsel and the trial court was not in error in disregarding the offer. *See* Ct. of App. Opinion. In *McManus*, the attorney's statement of fact was that a particular fund in question was held in trust by a bank for a special purpose, which weighed upon how the Court applied the funds for purpose of satisfying a judgement. *See McManus* 171 S.E. at 474-475. Here, Appellant's counsel's oral offer of \$650,000.00 on behalf of Appellant is distinguishable from the Supreme Court's ruling in *McManus*, and this Court's application of *McManus* is flawed. The statement by counsel in the instant case was not a statement purporting to present evidence not in the record, but rather was a binding offer made by a duly authorized legal representative of the offeror. Thus, it constituted the offer *in and of itself*, and therefore is direct evidence of the same, made on and put in the record.

Per the South Carolina Supreme Court's holding in *Holliday v. McFadden*, 188, S.C. 187, 198 S.E. 392 (1938), Appellant's oral offer, made on the record through counsel, to purchase the property should have been found by the trial court and this Court as sufficient.

Further, Appellant's submission of the executed contract memorializing the \$650,000.00 at the hearing on Appellant's Rule 59 motion is not submission of new evidence to the Court. Rather, the submission of the executed contract was made simply to memorialize the evidence already before the trial court.

Thus, the master-in-equity and this Court are in error by not recognizing Appellant's oral offer to purchase the subject property as sufficient, and by not accepting the subsequent memorialization of the offer in the form of an executed contract. In making its ruling, the trial court stated:

"I'm going to approve the Associate Developer's contract as amended today. I'm using what I think is my best judgment. It's not the highest price that's coming here, but it's the highest price that's coming here pursuant to law. Mr. Lanning, we read the statute as you and Mr. McFarland was talking, and you-all were supposed to come in here, and we'll have a fight over valuation. That's what this hearing was today. Both parties agree the value of the property is \$560,000. Now, your offering over and above that. I have a problem with how it was done . . . [i]f you-all were willing to come in here ten days ago and put your 650 on the table I would do it, and I would say that was clearly pursuant to Statute 15-61-25, which is one of the reasons that I wanted to make sure that I got you in this case prior to today's hearing so you could put the offer in. I don't have anything in writing to that effect. I understand what you're telling me. I understand the benefit of an additional \$90,000. I can tell you, at this stage of the proceeding, because of where we are and because of the due diligence that's been done by the party that's under contract with the Plaintiffs in this case, I think that they're prepared and ready to close. . . . So I find that they've acted in good faith. I think its in their best interest."

R. 142 (emphasis added). This was an effort of law, and it is properly before this Court on appeal.

The trial court's initial ruling, based on the premise that it disfavored the manner in which Appellant had gone about the process, is purely subjective and goes outside of the factors that should be considered by the trial court in determining whether to approve a contract; it has no bearing on the legitimacy of any contract presented. Under South Carolina law, a property partition procedure must be fair and equitable to *all parties* to the action. *Campbell v. Jordan*, 382 S.C. 445, 675 S.E.2d 801 (2009). Here, the trial court's ruling, and this Court's subsequent affirmation of it, are not fair and equitable to any party and promote only the interest of Respondent. In fact, the trial court in its ruling refers to the ruling as being in the best interest of the Respondent. *See* R. 142. The result is inequitable and tainted by the trial court's errors of law presented through this appeal.

II. NORDIC'S ARGUMENTS WERE PROPERLY PRESERVED FOR APPEAL.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Supreme Court with a platform for meaningful appellate review. *Herron v. Century BMW*, 719 S.E.2d 640 (S.C. 2011). In general, for an issue to be preserved on appeal, it must be presented to the trial court and ruled on by the trial court. *Foster v. Foster*, 711 S.E.2d 878 (S.C. 2011). The issues on appeal in this case are whether the Master-in-Equity erred by approving Respondent's contract to purchase the property and whether the Master-in-Equity erred by not giving consideration to Appellants' oral offer to purchase the subject property when directing the sale of certain heirs property. These issues are preserved and are properly before the appellate court.

This Court held that Appellant raised three (3) arguments on appeal that were not properly preserved at the trial court level. First, that Appellant failed to object to the procedure taken by the Master-in-Equity during the valuation hearing. Second, Appellant's argument that the valuation hearing was in-kind to a judicial sale was not raised until Appellant's Rule 59(e) motion. Third, Appellant's argument that the Master-in-Equity did not have to award a contract at the valuation hearing was not raised until this appeal. Appellant respectfully submits that this Court is in error by excluding these arguments, as all arguments were in fact ruled on by the trial court.

Appellant does not raise in this appeal any argument opposing the procedure followed by the Master-in-Equity at the valuation hearing. Instead, Appellant has raised issues with the trial court's substantive failure to accept Appellant's oral offer during the valuation hearing in establishing the fair market value of the property. The trial court's decree finds that, because Appellant's (Nordic) increased offer of \$650,000.00 was not presented to the court at the valuation hearing in writing, it is therefore non-binding. The court's ruling is in error and the issue is preserved for appeal.

Further, Appellant argues the Master-in-Equity's basis for ordering the sale of the property to Respondent is in error. Appellant's initial brief, referenced the ruling by the trial court, through partition, making a selection of one contract by competing buyers over another is similar to a judicial sale. (Appellant's Initial Brief pg. 8). Appellant does not argue that the trial court should have held a judicial sale. Instead, the trial court failed to take all offers to purchase the property into consideration when making its determination to order the sale of the property to Respondent, over the Appellant. The trial court noted that had Appellant's

\$650,000.00 contract offer been presented in writing at the May 3, 2016 hearing, it may have decided the case differently. However, nothing within South Carolina's Partition Statute prevents an oral offer from being submitted. The trial court's erroneous ruling to the contrary is properly at issue in this appeal.

Finally, nothing within the South Carolina Partition Statute requires the trial court to order and/or approve the sale of the property at the valuation hearing. All these arguments were presented by Appellant to the trial court and ruled on by the trial court. At the start of the valuation hearing, Respondent's contract with the landowners was for \$455,000.00. Respondent, through the course of the valuation hearing, was allowed to enter an amendment to its contract increasing the offered purchase price to \$560,000.00, matching Appellant's contract. The trial court's refusal to consider Appellant's offer increasing its price was inequitable, legally erroneous, and properly before this Court.

III. NORDIC'S RULE 59(e) MOTION WAS PROPER

This Court's affirmation of the trial court's initial ruling and disregard for Appellant's arguments raised at the Rule 59(e) hearing disregards the intent of the South Carolina Rules of Civil Procedure. It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also a vehicle to seek "reconsideration" of issues and arguments. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). The Supreme Court has expressed the view that there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity. *Id.*

The basis of the arguments presented by the Appellant in its Rule 59(e) motion was to call to the court's attention to an error in its failure to give consideration to Appellant's oral offer of \$650,000.00. *See* Motion to Reconsider (R. 90). The documents submitted by affidavit at the Rule 59(e) motion hearing were a memorialization of the oral offer submitted by Appellant at the May 3, 2016 hearing. *See* Affidavits of James A. Bruorton IV (R. 103); Sheneatha Brisbane (R. p. 112); and Germaine Brisbane (R. 114). Appellant did not submit new evidence to the Court at the Rule 59(e) hearing. The Master-in-Equity decision is in error and warrants reversal or remand for consideration of Nordic's \$650,000.00 contract.

Under Rule 59(f), SCRCP, a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." *Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994). Here, the trial court elected to have a hearing on Nordic's motion. Nordic did not present new evidence at the hearing, Nordic simply submitted an executed contract memorializing its \$650,000.00 offer that was rendered to the Court at the May 3, 2016 hearing. *See* Affidavit of James A. Bruorton IV (R. 103). All parties and the court were aware of the \$650,000.00 offer that had been presented to the court and there was no surprise or prejudice by that offer being memorialized in writing.

IV. TRIAL COURT ABUSED ITS DISCRETION IN PLACING RESPONDENTS' INTEREST AHEAD OF THE OTHER PARTIES.

This Court's opinion does not address the Appellant's argument that the trial court abused its discretion in placing the Respondent's interest ahead of the other parties, including the landowner-heirs. The trial court's application of factors outside of the parameters of a

partition action represent an error of law and abuse of discretion, and the Appellate Court should make an independent review of this issue. This Court has not done such an exercise in this case and should reconsider its opinion.

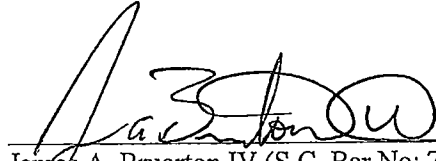
After hearing the arguments of counsel at the June 7, 2016 Motion to Reconsider hearing, the trial court chose to follow its initial ruling based on the premise that it disfavored the manner in which Appellant had gone about the whole process. R. 142. Its subjective basis in approving Respondent's purchase agreement rather Appellant's agreement goes outside of the factors that should be considered by the trial court in determining whether to approve a contract and has no bearing on the legitimacy of any contract presented.

The trial court went as far as to say that if Appellant wanted to purchase the property from Respondent for the offered \$650,000.00 it certainly could. "Appellant's got a solution ... They can go to Associated and buy their contract if that's what they want to do. That's what the market does. That's what happens all the time." R. 149-150.

Suggesting Appellant pursue a purchase of the Property from Respondent after Respondent has purchased the Property from the landowner-heirs for a lesser price, is in complete disregard of the pecuniary interest of the landowner-heirs and applicable principles of law concerning partition actions. The trial court recognized that Respondent had already incurred development costs in the Property and took that into consideration when choosing the contract to approve. Failing to approve the purchase contract which presented \$90,000.00 in additional value to the landowners disregards the pecuniary interest of the parties and is in error. The trial court placed the interest of Respondent ahead of the other parties, including the landowners. In doing so, the trial court abused its discretion.

CONCLUSION

For the reasons set forth herein, this Court should reconsider its decision, allow for oral arguments and render an opinion reversing the trial court and remanding the matter for further hearing.



James A. Bruorton IV (S.C. Bar No: 71300)
Timothy J.W. Muller (S.C. Bar No. 74601)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

Wallace K. Lightsey (S.C. Bar No: 6476)
WYCHE, P.A.
44 E. Camperdown Way
Greenville, S.C. 29601
(864) 242-8207
wlightsey@wyche.com

February 21, 2018

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

Case No. 2016-001298

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs,

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may

be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mithcell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants.

And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

TABLE OF AUTHORITIES

Cases

<i>Anderson Memorial Hospital, Inc. v. Hagen</i> , 313 S.C. 497, 443 S.E.2d 399 (Ct. App. 1994)	5
<i>Campbell v. Jordan</i> , 382 S.C. 445, 675 S.E.2d 801 (Ct. App. 2009).....	8
<i>Commercial Credit Loans, Inc., v. Riddle</i> , 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999).....	5
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<i>Ellis v. Taylor</i> , 316 S.C. 245, 449 S.E.2d 487 (1994)	8
<i>Fici v. Koon</i> , 372 S.C. 341, 642 S.E.2d 602 (2007)	3
<i>Gilmore v. Ivey</i> , 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).....	4
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<i>Goolsby v. Goolsby</i> , 229 S.C. 101, 92 S.E.2d 57 (1956).....	7
<i>Harkins v. Greenville County</i> , 340 S.C. 606, 533 S.E.2d 886 (2000)	3
<i>Hickman v. Hickman</i> , 301 S.C. 455, 392 S.E.2d 481 (1990).	4, 7
<i>Hill v. S.C. Dep't of Health & Envtl. Control</i> , 389 S.C. 1, 698 S.E.2d 612 (2010)	5
<i>Kennedy v. S.C. Ret. Sys.</i> , 349 S.C. 531, 532, 564 S.E.2d 322 (2001).....	1, 2
<i>Laughon v. O'Braitis</i> , 360 S.C. 520, 602 S.E.2d 108 (Ct. App. 2004)	2
<i>McManus v. Bank of Greenwood</i> , 171 S.C. 84, 89, 171 S.E. 473, 475 (1933)	4
<i>ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche</i> , 327 S.C. 238, 489 S.E.2d 470 (1997)	2
<i>N. Am. Rescue Prods. v. Richardson</i> , 411 S.C. 371, 769 S.E.2d 237 (2015)	8
<i>Sessions v. Withers</i> , 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997).....	4
<i>State ex rel. Medlock v. Nest Egg Soc. Today, Inc.</i> , 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)	7
<i>Windham v. Honeycutt</i> , 279 S.C. 109, 302 S.E.2d 856 (1983).....	3

Zaman v. S.C. State Bd. of Med. Exam'rs, 305 S.C. 281, 408 S.E.2d 213 (1991) 7

Other Authorities

Rule 240(e), SCACR 1

Rule 221(a), SCACR 1

S.C. Code Ann. § 31-3-10 3

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent Associated Developers, Inc., received a copy of Appellant's Petition for Rehearing via U.S. Mail on February 23, 2018. Pursuant to Rule 240(e), SCACR, Respondent timely files this Return.

INTRODUCTION

Appellant Nordic Group, Inc. ("Nordic"), seeks reconsideration of this Court's Per Curiam decision entered February 7, 2018, affirming the Master in Equity's approval of Respondent's fully ratified contract to purchase the property at issue. Nordic rehashes its belief that the Master should have instead approved its oral bid, made only by its trial counsel, even though the bid was not in writing, had not been accepted, and untimely written versions still contained contingencies and failed to provide for the preservation of the family gravesites. For the reasons set forth herein,¹ this Court should deny Nordic's Petition for Rehearing.

ARGUMENT AND CITATION OF AUTHORITY

I. NORDIC'S PETITION FAILS TO MEET THE BURDEN OF RULE 221, SCACR.

Rule 221(a), SCACR, requires Nordic to state with particularity the points that were overlooked or misapprehended by this Court. *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001) ("In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument."). Nordic's Petition does not reveal any principle of law or material fact this Court overlooked or misapprehended. On the contrary, the dispositive facts are without contradiction in the record, and those facts fit squarely within the well-settled precedent cited by this Court. Nordic's Petition merely repeats the same flawed

¹ The underlying factual and procedural background of this appeal is accurately set forth in Respondent's Brief on file with the Court. For brevity, it is not repeated here.

arguments it presented before. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d 322 (it is not the purpose of a petition for rehearing to have the case tried again in the appellate court for a second time).

Nordic also fails to challenge this Court's finding that Nordic's failed to submit a signed, written commitment waiving contingencies and providing for the family gravesites. Respondent satisfied these key elements in the Record, but Nordic did not. *Laughon v. O'Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004) (this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence). This Court agreed that Nordic's lingering contingencies and lack of gravesite protection were material to the approval of Respondent's contract, and Nordic did not challenge these findings in its Petition. An unappealed ruling becomes the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997). For these reasons alone, Nordic's Petition should be denied.

II. THE MASTER PROPERLY APPROVED RESPONDENT'S RATIFIED CONTRACT OVER THE ORAL BID NORDIC ATTEMPTED TO PRESENT BEFORE THE MASTER.

This Court squarely addressed this issue in its decision and did not overlook or misapprehend any matter of fact or law. Nordic falsely argues the Master erred in determining, *as a matter of law*, that the "fair market value" of the property was \$560,000. (Petition, p. 5-7). As this Court noted, that all parties, including Nordic, *stipulated* the value of the property was \$560,000, as determined by Nordic's appraiser.² (R. p. 128 (Trans. 6, lines 6-22)); (R. p. 131 (Trans. 18, ln. 3 to Trans. 19, ln. 9)). Nordic is trying to change the undisputed facts.

The Record also contradicts Nordic's suggestion that its trial counsel was "duly authorized" at the May 3rd hearing to contract on its behalf for \$650,000. At the May 3rd hearing,

² Nordic admitted in its Initial Brief the value of the property was determined by stipulation. (App. Brief, p. 3).

Nordic's trial counsel admitted, **"There's no one here on their behalf, Your Honor."** (R. p. 141 (Trans. 57, ln. 25 to Trans. 58, ln. 7))(emphasis added). If Nordic's trial counsel had authority to create a binding contract at the hearing, one must wonder why he did not sign and submit a written, approved contract in that amount. Besides, the Record contains no corporate resolution or other evidence whatsoever establishing trial counsel's authority to bind Nordic to any offer or contract. *See Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (noting it is Appellant's requirement to develop a record sufficient for this Court to review the alleged errors).

At bottom, this Court considered and rejected Nordic's claim that the Master should have accepted its May 3rd "oral bid," over Respondent's fully ratified purchase agreement and separate written agreement to preserve the gravesites. Nordic improperly conflates an oral offer (if it was an "offer" at all) with a written and ratified contract. They are not the same.

The Record proves that: (i) no witnesses appeared on Nordic's behalf at the May 3rd hearing;³ (ii) Nordic did not introduce a written⁴ offer for the \$650,000 purchase price at the May 3rd hearing; and (iii) there is no evidence that any heir had accepted Nordic's \$650,000 oral bid at or before the May 3rd hearing in order to create a contract. Nordic's trial counsel had to ask, "No, Your Honor, I don't have a written offer, but is anybody here willing to agree to 650?" (R. p. 141 (Trans. 69, ln. 25 to Trans. 60, ln. 5)). Ernestine Brown, with whom Nordic originally contracted

³ Nordic elected not to attend despite having moved to intervene in order **"to participate in the hearing scheduled on May 3, 2016, to present evidence and testimony regarding the appraisal it obtained and why its contract is the more favorable and equitable for the parties."** (R. p. 68) (emphasis added). Nordic offered no such testimony or competent evidence.

⁴ S.C. Code Ann. § 31-3-10 requires agreements for the sale of real property to be in writing and signed. *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602 (2007). Nordic's oral "bid" could not amend the price in its contract with Ernestine Brown. *See Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. (2d) 856 (1983) (evidence of oral modification of the real estate contract violates the Statute of Frauds). It is axiomatic that all material terms offered by Nordic must satisfy the Statute of Frauds if they are to be considered. They did not.

for the lower price of \$560,000, attended the hearing, but she never agreed to Nordic's oral bid. This Court carefully considered the arguments and Record and correctly found that Nordic failed to introduce competent evidence of a binding contract for \$650,000. *Accord McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933); *Sessions v. Withers*, 327 S.C. 409, 414, 488 S.E.2d 888 (Ct. App. 1997); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (noting statements of counsel are not evidence). It would not matter if it did.

For sake of argument only, even if the \$650,000 "oral bid" had any meaning, the Record lacks evidence that Nordic removed its contingencies and reached a binding contract with the heirs to preserve the gravesites. In contrast, the Record contains Respondent's contract with the heirs to preserve the gravesites, allowing family members open visitation.⁵ (R. p. 162); (R. p. 129 (Trans. 12, lines 3-25)); (R. p. 130 (Trans. 14, lines. 5-20)); (R. pp. 131-132 (Trans. 20, ln. 25 to Trans. 21, ln. 7)); (R. pp. 132-133 (Trans. 24, ln. 4 to Trans. 25, ln. 3)); (R. pp. 133-134 (Trans. 28, ln. 13 to Trans. 29, ln. 10)); (R. p. 134 (Trans. 31, ln. 6 to Trans. 32, ln. 12)). Respondent also removed its contingencies and stood ready to close within thirty days. (R. p. 131 (Trans. 19, lines 10-16)); (R. p. 132 (Trans. 23, lines 3-12)); (R. p. 133 (Trans. 27, ln. 16 to Trans. 28, ln. 7)). This Court correctly noted that Nordic offered no evidence matching these key concerns.

III. NORDIC'S UNPRESERVED ARGUMENTS.

All of the arguments and evidence relied upon by Nordic to support the existence of a contract for \$650,000 (as opposed to a meaningless "oral bid"), were offered after the close of the May 3rd evidentiary hearing through Nordic's Rule 59(e) motion. "A party cannot use Rule 59(e), SCRCp, to present to the trial court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990). *Accord Dempsey v. Huskey*,

⁵ Preserving the graves was also a requirement of the City's annexation of the property.

224 S.C. 536, 80 S.E.2d 119 (1954); *Anderson Memorial Hospital, Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994); *Commercial Credit Loans, Inc., v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). None of Nordic's arguments are preserved.

Nordic now concedes on page 10 of its Petition that it does not challenge the Master's procedure. Thus, Nordic has abandoned its complaint that nothing in the partition statutes required the Master to approve Respondent's contract at the May 3rd hearing. This concession also should resolve Nordic's argument that the approval of Respondent's contract over Nordic's "oral bid" was akin to a "judicial sale," which Nordic never argued at the May 3rd hearing. If not, Respondent points out that Nordic elsewhere conceded the May 3rd hearing was *not* a judicial sale. (R. p. 147 (Trans. p. 8, ln. 2-3) ("I know it wasn't a judicial sale"); (App. Br. p. 8) ("Although this action did not involve a public sale by auction").

Nordic intervened so the Master could determine whether Respondent's or Nordic's contract should be approved, not to request an open bid session. (R. p. 68). The only contract Nordic timely placed into evidence was its inferior contract with Ernestine Brown. The "oral bid" for a higher amount was not in writing, was not accepted by Ms. Brown (or anyone) at the hearing, and no ratified contract for that amount was offered during the evidentiary hearing. Having voiced no objection to the Master's proceedings, and having intervened to seek approval at the May 3rd hearing of its own contract with Ms. Brown, Nordic consented to this process and cannot now question it. *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E.2d 612, 624 (2010) ("[A] contemporaneous objection is required to preserve an issue for appellate review."); *Gissel v. Hart*, 382 S.C. 235, 243, 676 S.E.2d 320, 324 (2009) (a party may not complain on appeal of an error that his conduct induced).

IV. THIS COURT CONSIDERED AND CORRECTLY FOUND THAT NORDIC CANNOT USE RULE 59(E) TO INTRODUCE NEW EVIDENCE INTO THE CASE.

Nordic argues the Master erred in failing to consider its “\$650,000 contract.” (*Petition*, p. 12). This argument fails because the Record proves no signed contract for \$650,000 existed between Nordic and any heir when the May 3rd evidentiary hearing was held. Had it existed, Nordic would have introduced it at the hearing. Because it did not exist, Nordic later created an unsigned version dated May 11th, eight days *after* the May 3rd hearing. (*R. pp. 96-102*). That document was not signed until May 31, 2016, and June 2, 2016, about a month *after* the May 3rd hearing. (*R. pp. 103-110*).⁶ Moreover, this new contract is between different parties than the original contract with Ernestine Brown that Nordic sought to have approved. (*R. p. 143* (*Trans. p. 67, ln. 7-10*)). The suggestion that Nordic’s post-trial “\$650,000 contract” is anything other than “new evidence” is incredulous. But, Nordic did not stop there.

Nordic tried to introduce additional new evidence regarding Nordic’s business during the June 7th hearing on its motion to reconsider, because Nordic failed to introduce that evidence at the May 3rd hearing. (*R. p. 147* (*Trans. p. 5, ln. 4-18*)). Compare (*R. p. 141* (*Trans. 57, ln. 25 to Trans. 58, ln. 7*)). Nordic also brought an engineer to the June 7th hearing to testify, even though this person was not presented as a witness on May 3rd. (*R. p. 147* (*Trans. p. 5, ln. 19-24*)). Nordic told the Master about *yet another* contract purporting to remove some, but not all, of the contingencies in Nordic’s prior contract with Ms. Brown, but did not try to place it into evidence. (*R. p. 147* (*Trans. p. 7, ln. 6-18*)). *All* of this “new” evidence that cannot be introduced using Rule

⁶ An affidavit from Nordic submitting the belated \$650,000 contract states it was made between Nordic and Ms. Brown. But, it is not signed by her, and she did not seek reconsideration of the approval of Respondent’s contract. (*R. p. 148* (*Trans. 12, lines 18-23*)). Instead, Nordic introduced a new contract signed by two new heirs, Sheneatha and Germaine Brisbane. This new contract did not exist on May 3rd when the hearing was held. Additional post-trial affidavits from Sheneatha and Germain Brisbane prove their involvement did not begin until after the May 3rd hearing.

59(e), and Nordic cites no authority to the contrary. *Hickman*, 301 S.C. 455, 392 S.E.2d 481. The purported \$650,000 contract Nordic belatedly offered is not memorialization of its \$650,000 "oral bid." An unsigned, unwritten offer that has not been accepted is altogether different from a fully ratified real estate purchase contract. One is enforceable, while the other is not. Considering the hearing was held to determine whether Respondent's "contract" or Nordic's would be approved, this distinction makes all the difference.

Further, Nordic's reliance upon post-trial affidavits filed after the May 3rd hearing deprived other parties of the "opportunity for cross examination with the respect to the proffered, additional evidence." *Goolsby v. Goolsby*, 229 S.C. 101, 92 S.E.2d 57 (1956) (citing *Dempsey*, 224 S.C. 536, 80 S.E.2d 119. See also *Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 408 S.E.2d 213 (1991); *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 130-131, 348 S.E.2d 381 (Ct. App. 1986). This Court recognized this settled principle, and Nordic offers no facts or authorities that were overlooked or misapprehended.

V. NEITHER THE MASTER NOR THIS COURT PLACED RESPONDENT'S INTERESTS ABOVE THE OTHER PARTIES.

At no time during the May 3rd hearing did Nordic ever argue the Master placed Respondent's interests ahead of the other parties. In addition to not preserving this argument, Nordic seems to have manufactured an "issue" for which there is no supporting proof. Considering the Record as a whole, as this Court did, there was no error in approving Respondent's ratified contract over Nordic's "oral bid." Nordic had every opportunity to appear, testify, and have its "interests" heard and considered, but it chose not to do so. It presented no witnesses or evidence of its own, chose not cross examine the witnesses who testified, and did not introduce the contract it now says should have been favored. If Nordic believes its interests should have received more consideration, it was Nordic's reasonability to appear and make its case.

Regardless, Nordic's proposed "new" contract signed a month after the May 3rd hearing, is still fully contingent upon Nordic's sole satisfaction with the property. (R. p. 111). *See also* (R. p. 147 (Trans. 7, lines 6-11)). Recognizing this problem, Nordic tried to offer additional "new evidence" during the June 7th hearing on its Rule 59(e) motion that it had *yet another version* of the contract removing all but the gravesite contingency. This document was neither offered nor accepted into evidence. (R. p. 147 (Trans. 7, lines 12-22)). The fact that Nordic still required a grave survey contingency on June 7th further separates the two deals. By then, Respondent had already completed its gravesite survey and was prepared to close. (R. p. 141 (Trans. 58, ln. 15 to Trans. 59, ln. 4)); (R. pp. 141-142 (Trans. 60, ln. 19 to Trans. 61, ln. 4)); (R. p. 148 (Trans. 10, ln. 11 to Trans. 11, ln. 7)); (R. p. 124). To this day, the Record is devoid of any *binding contract*⁷ whereby Nordic would preserve the family gravesites.

"A partition should be fair and equitable to all parties." *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801 (Ct. App. 2009). By approving the sale to Respondent, the Master entered a ruling it found was in the best interest of the parties. (R. p. 142 (Trans. 63, lines 17-21)); (R. pp. 142-143 (Trans. 64, ln. 14 to Trans. 66, ln. 12)); (R. pp. 149-150 (Trans. 16, ln. 14 to Trans. 18, ln. 23)). This Court found no error in the Master's ruling, and Nordic identifies no matter of fact or law that was overlooked or misapprehended.

⁷ Nordic's gravesite provision was nothing more than an unenforceable "agreement to agree," which is void under South Carolina law. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) ("Provisions which are essentially agreements to agree in the future have no legal effect.") (citing *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994)). *See* (R. p. 111) ("At closing, Buyer and Seller shall enter into a written agreement regarding the perpetual maintenance of all such grave sites and the right of Sellers and respective Heirs to visit such grave sites.")(all emphasis added).

CONCLUSION

Because Nordic failed to demonstrate with particularity any preserved argument, material fact, or matter of law that was overlooked or misapprehended by this Court, Respondent respectfully requests that Nordic's Petition for Rehearing be denied.

THURMOND KIRCHNER & TIMBES, P.A.



Michael A. Timbes

SC Bar No. 69730

Thomas J. Rode

SC Bar No. 77480

15 Middle Atlantic Wharf

Charleston, SC 29401

Phone: 843-937-8000

Fax: 843-937-4200

Email: michael@tklawyers.com

Email: thomas@tklawyers.com

*Attorneys for Respondent Associated Developers,
Inc.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2016-001298

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs,

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of America, being fictitious names designating as a class any unknown person or persons who may

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And Associated Developers, Inc. and Nordic Group, LLC, Intervenor,

Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

AFFIDAVIT OF SERVICE

I, Moira K. McIntire, hereby certify that I have on this date served via Hand Delivery to Appellant and via U.S. Mail and electronic mail to all other counsel of record, a true and correct copy of Respondent's Return to Petition for Rehearing to the following:

ATTORNEY FOR PLAINTIFFS

John J. Dodds, III, Esquire
Cisa & Dodds
858 Low Country Blvd., Ste. 101
Mt. Pleasant, South Carolina 29464
john@cisadodds.com

ATTORNEY FOR APPELLANT

J. Christopher Lanning, Esquire
Lanning Law Firm, LLC
2036 Ewall St.
Mt. Pleasant, South Carolina 29464
chris@lanninglawfirm.com

ATTORNEY FOR ERNESTINE BROWN

Arthur C. McFarland, Esquire
Law Office of Arthur McFarland
1847 Ashley River Rd., Ste. 200
Charleston, South Carolina 29407
cecilesq@aol.com

ATTORNEYS FOR APPELLANT

James A. Bruorton, IV, Esquire
Timothy J.W. Muller, Esquire
Rosen Rosen & Hagood, LLC
151 Meeting St., Ste. 400
Charleston, South Carolina 29401
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com

GUARDIAN AD LITEM NISI

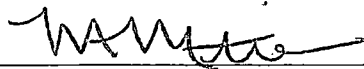
Walter R. Kaufmann, Esquire
Kaufmann & Associates, LLC
Post Office Box 459
Mt. Pleasant, South Carolina 29465
walter@kaufmannassociats.org

**ATTORNEY FOR ASSOCIATED
DEVELOPERS, INC.**

John E. Romanosky, Jr., Esquire
One Cool Blow Street, Suite 201
Charleston, SC 29403
john@jromanlaw.com

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



Moira K. McIntire
Paralegal to Michael A. Timbes & Thomas J. Rode

March 2, 2018
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

Honorable Mikell R. Scarborough

RECEIVED

MAR 07 2018

Appellate Case Tracking No. 2016-001298

Trial Court Case No. 2015CP1000939

SC Court of Appeals

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert
Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton,
James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton,
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And Associated Developers, Inc. and Nordic Group,
LLC, Intervenor,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

**APPELLANT'S REPLY IN SUPPORT OF
PETITION FOR REHEARING**

Appellant, Nordic Group, LLC, respectfully submits this reply to Respondent's Return to Appellant's Petition for Rehearing.

Respondent's Return is exactly what one would expect from a party that has little confidence in its position on the merits – a studied effort at procedural “gotchas” and meritless claims of waiver and issue preclusion. However, as the Supreme Court and this Court have cautioned litigants and lower courts: “[I]ssue preservation ‘is not a “gotcha” game aimed at embarrassing attorneys or harming litigants.’” *Johnson v. Roberts*, Op. No. 5535, Shearouse Adv. Sh. No. 6, at 72, 76 (S.C. Ct. App. Feb. 7, 2018) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)).

With respect, Appellant submits that the Court's unpublished *per curiam* opinion in the instant case fails to heed its own (and the Supreme Court's) admonition, and Respondent's attempts to play “gotcha” are misplaced and unfounded. As a result, if the decision below stands, the heirs who own the property at issue will be deprived of an additional \$90,000 that they would have received but for the Master's erroneous conclusion that it was incumbent on Appellant to produce a written signed contract at the valuation hearing. There is no such requirement in the law, nor any basis for it in logic or policy. Further, it was wrong and inequitable for the Master to allow Respondent to make a higher bid and then deny Appellant the same opportunity. The grounds asserted by Appellant for error in the Master's decision are preserved and properly at issue in this appeal, as they were all presented to and addressed by the Master.

Respondent's argument concerning law of the case is misplaced, *see* Resp. Return at 2, as it is not incumbent on a party seeking reconsideration to challenge every sentence of the Court's opinion. Rather, the purpose of the petition is to identify "points ... overlooked or misapprehended." Law of the case has no application here.

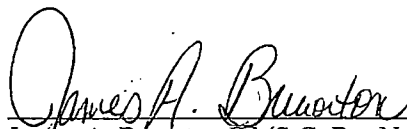
Respondent also appears to argue that Appellant's trial counsel conceded that he had no authority to make a binding offer on Appellant's behalf, *see* Resp. Return at 2-3, but the statement by trial counsel quoted by Respondent was simply a response to the Master's inquiry as to whether there was anyone present from Appellant's organization. It is axiomatic that an attorney may make a valid contractual offer on behalf of a client, and there is no reason in the law, logic, or policy that such an offer, made on the record in court, should not be considered as properly before the trial court in the context of this action. This Court erred in viewing the offer as an attempt to put in evidence through argument of counsel. However, the situation before this Court is not like that of a party claiming that its attorney's argument that the light was red, for example, is evidence that the light was red. What we are dealing with here was a contractual offer made in court, on the record, by an attorney having both actual and apparent authority to make the offer. The statement was in and of itself the offer, not an attempt to put in evidence by argument of counsel.

Respondent's contentions concerning the Rule 59(e) motion have been addressed in Appellant's Reply Brief and Petition for Rehearing, and will not be rehashed here. In short, Appellant's Rule 59(e) arguments and evidence were considered and addressed by the Master and thus are properly preserved in this appeal. In brief summary, the issues before the Court are as follows:

- The trial court misapplied the law in determining that Appellant's oral offer was insufficient under South Carolina's Partition Statute, and this Court's Opinion does not address this error of law;
- This Court overlooks landowner Clarence Brisbane's objection to the sale of the property to Respondent for \$560,000.00, indicating the landowners were entitled to the higher offer made by Appellant;
- This Court's reliance on *McManus v. Bank of Greenwood*, 171 S.C. 84 (1993), is in error;
- This Court's misapprehends principles of law in considering the executed contract presented by Appellant with Appellant's Rule 59 motion as new evidence as opposed to the memorialization of evidence already before the trial court;
- The trial court's consideration of factors that go beyond those to be considered by the trial court in determining whether to approve a contract is in error, and this Court's Opinion does not address this error of law;
- This Court's failure to address or recognize the arguments presented by Appellant at the Rule 59 hearing based on lack of preservation for appeal is in error;
- Appellant's challenge to the trial court's sale of the property at the valuation hearing is properly preserved for appeal;
- This Court erred by disregarding Appellant's arguments raised at the Rule 59(e) hearing;

- This Court's opinion overlooks Appellant's argument that the trial court abused its discretion in placing the Respondent's interest ahead of the other parties, including the landowner-heirs, and makes no ruling on that appealed issue;
- This Court overlooks the material fact that Appellant had a fully executed Contract before the Court at the May 3, 2016 valuation hearing;
- The trial court's legal determination of "Fair Market Value" is in error and this Court's Opinion does not address this error of law;
- This Court's opinion overlooks Appellant's argument that the trial court's suggestion that Appellant purchase the property from Respondent after Respondent closed on the property is in complete disregard of the pecuniary interest of the landowner-heirs and applicable principles of law concerning partition actions.

For the reasons set forth above and in Appellant's briefs and Petition for Rehearing, this Court should reject Respondent's "gotcha" tactics, reconsider the Court's decision, allow for oral argument and render an opinion reversing the trial court and remanding the matter for further hearing.



James A. Bruorton IV (S.C. Bar No: 71300)
 Timothy J.W. Muller (S.C. Bar No. 74601)
 ROSEN, ROSEN & HAGOOD, LLC
 151 Meeting Street, Suite 400
 Post Office Box 893
 Charleston, SC 29402
 (843) 577-6726
 cbruorton@rrhlawfirm.com
 tmuller@rrhlawfirm.com

Wallace K. Lightsey (S.C. Bar No: 6476)
WYCHE, P.A.
44 E. Camperdown Way
Greenville, S.C. 29601
(864) 242-8207
wlightsey@wyche.com

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM CHARLESTON COUNTY MAR 07 2018
Honorable Mikell R. Scarborough

SC Court of Appeals

Appellate Case Tracking No. 2016-001298
Trial Court Case No. 2015-CP-10-00939

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And Associated Developers, Inc. and Nordic Group,
LLC, Intervenors,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

PROOF OF SERVICE

I hereby certify that on March 7, 2018, I have served a copy of Appellant's Reply in Support of Petition for Rehearing on all counsel by electronic transmission and/or U.S. Mail addressed as follows:

Michael A. Timbes, Esquire
15 Middle Atlantic Wharf.
Charleston, SC 29401
ATTORNEY FOR INTERVENOR ASSOCIATED DEVELOPERS, INC.

Thomas J. Rode, Esquire
15 Middle Atlantic Wharf
Charleston, SC 29401
ATTORNEY FOR INTERVENOR ASSOCIATED DEVELOPERS, INC

WYCHE P.A.

By: Wallace K. Lightsey
Wallace K. Lightsey

ATTORNEYS FOR APPELLANT

March 7, 2018

The South Carolina Court of Appeals

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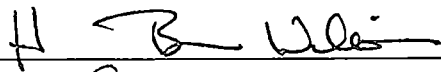
Of which Associated Developers, Inc. is the Respondent,

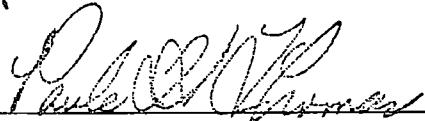
And of which Nordic Group, LLC is the Appellant.

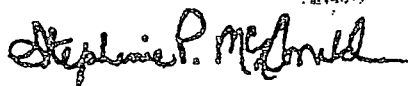
Appellate Case No. 2016-001298

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.


Columbia, South Carolina

FILED

April 4, 2018

cc:

James Atkinson Bruorton, IV, Esquire
Timothy James Wood Muller, Esquire
Michael A. Timbes, Esquire
Thomas James Rode, Esquire
Wallace K. Lightsey, Esquire
The Honorable Mikell R. Scarborough