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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

Appellate No. 2018-002277

American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC..... Defendants,

Of which American Star Development SC, LLC is the Appellant,

And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the Respondent.

**RESPONDENT'S VERIFIED PETITION FOR AN ORDER LIFTING THE
AUTOMATIC STAY**

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January 23, 2018
Charleston, South Carolina

Respondent, Pulte Home Corporation, n/k/a Pulte Home Company, LLC (“Pulte” or “Respondent”), hereby petitions this Court pursuant to Rule 241(c)-(d) of the South Carolina Appellate Court Rules, for an order lifting the automatic stay. By Order entered November 16, 2018, (the “Order”), the Honorable R. Lawton McIntosh Circuit Judge, granted Pulte’s Motion to Cancel the Lis Pendens (2018-LP-10-336), as amended, filed by the Plaintiffs, including Appellant, American Star Development SC, LLC (“American Star”), against Pulte’s real property. See Ex. 1, Order. Because an order cancelling a lis pendens does not expressly come within the exceptions listed in Rule 241(b), American Star’s notice of appeal on December 20, 2018, triggered the automatic stay, thereby automatically reinstating the Lis Pendens.

On December 21, 2018, the day after American Star filed its Notice of Appeal, Pulte filed its Motion to Lift Automatic Stay. By order filed on January 17, 2019, Judge McIntosh denied Pulte’s Motion to Lift Automatic Stay on the basis that lifting the automatic stay would moot the issues in the appeal of his Order. See Ex. 2, Order. As explained herein, the Circuit Court unjustifiably denied Petitioner’s Motion to Lift the Automatic Stay because lifting the automatic stay will not moot the issues on appeal. Instead, leaving in place the Lis Pendens that the Circuit Court has already determined was improperly filed will moot the relief granted by the lower court and defeat the entire purpose of the Order. Additionally, lifting the automatic stay will prevent significant ongoing irreparable harm to Pulte and its home purchasers as well as mitigate Pulte’s damages stemming from the improper Lis Pendens.

FACTUAL BACKGROUND

Appellant, American Star, filed a Summons and Complaint against Defendants on April 26, 2018, along with a Lis Pendens against Pulte’s real property. See Ex. 3, Compl.; Ex. 4, Lis Pendens. American Star based its lawsuit on provisions in an Agreement for Purchase and Sale it

entered with J. W. Acquisitions, LLC on February 25, 2015 (the “2015 Agreement”) for American Star to sell real property (the “Primus Property”) to J. W. Acquisitions, LLC., for \$8,332,000. See Ex. 5, Am. Compl., at Ex A.

On May 1, 2018, American Star filed an Amended Complaint adding KKMC Investments, LLC, and 211, LLC, as Plaintiffs. See Ex. 5. According to the Amended Complaint, “subsequent to entering into the [2015] Agreement but before the closing on the purchase of the Primus Property, ... *American Star assigned its rights, obligations, and interest under the [2015] Agreement to 211, LLC and KKMC Investments, LLC.*” Ex. 5, ¶ 16 (double emphasis added).

The three Plaintiffs filed an Amended Lis Pendens on June 13, 2018, and a Second Amended Lis Pendens on August 28, 2018 (all three lis pendens are collectively referenced as “the Lis Pendens”). See Ex. 4; Ex. 6, Am. Lis Pendens; & Ex. 7, Second. Am. Lis Pendens. The Lis Pendens purports to provide notice that “real estate [is] affected by” the action. Exs. 4, 6, & 7. The Second Amended Lis Pendens lists 46 separate TMS parcels allegedly “affected” by the lawsuit. See Ex. 7

The 46 parcels covered by the Lis Pendens are all within Pulte’s new residential subdivision in Mount Pleasant known as the Oaks at Primus that it has developed on the Primus Property. The town of Mount Pleasant approved the final plat for the Oaks at Primus on June 20, 2018, with the final plat being recorded the next day. See Ex. 8, Aff. and Verification by Raines, at Ex. A. As evident from the final plat, the Oaks at Primus has 71 residential lots that are surrounded by retention ponds and land to be deeded to the property owners’ association for the Oaks at Primus. Plaintiffs filed their Second Amended Lis Pendens against 44 of the 71 residential lots; the other two parcels subject to the Lis Pendens are a parcel described as “POA Open Space” and a parcel described as the “Future Billy Swails Blvd.” See Ex. 7

The 2015 Agreement that is the entire basis for Plaintiff's claims in the Amended Complaint contemplated the improvement of the Primus Property into a residential development and was contingent on the re-zoning of the Primus Property into a "residential Planned Unit Development." Ex. 5 at Ex. A, ¶11(a). At the time those parties entered the 2015 Agreement, American Star had already filed an application for this re-zoning that included a site plan for a subdivision of 73 residential lots. Ex. 5 at Ex. A, ¶11(b); Ex. 9, Tr. 9/21/18, pp. 5, l. 25-p. 6, l. 8.

According to the allegations of the Amended Complaint, Defendant J. W. Homes, LLC, as assignee of J. W. Acquisitions, LLC, closed on the purchase of the Primus Property on July 31, 2015. Ex. 5, ¶ 17. The Amended Complaint alleges that J.W. Homes, LLC, sold the Primus Property to Pulte on January 14, 2016, as part of a larger asset sale from J.W. Homes, LLC to Pulte. Ex. 5, ¶¶ 18-20. The Amended Complaint asserts that Pulte assumed the obligations of the J.W. Acquisitions, LLC, and J.W. Homes, LLC, under the 2015 Agreement. Ex. 5, ¶ 21.

The Amended Complaint contends Defendants breached a provision in 2015 Agreement for the buyer to design and construct an access road on the Primus Property, called the "Connection," that could later be joined to a road on the adjoining properties if American Star acquired the adjoining properties and later developed them into another residential subdivision. Ex. 5, ¶¶ 27-35; Ex. 5 at Ex. A, ¶31(b), (c), and (d). Paragraph 31(d) of the 2015 Agreement puts specific limitations on the timing of the availability of the Connection:

[The Connection] may not be used for traffic related to construction and development of the [adjoining properties]. Buyer will have the right to block access through the Connection to the [adjoining properties] until the [adjoining properties] have paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes or in connection with normal residential use.

Ex. 5 at Ex. A, ¶31(d).

The Amended Complaint requests an order of specific performance requiring Pulte “to design, seek approval for, and construct the Connection or, alternatively, damages for the loss in value of the [American Star’s] Adjacent Property.” Ex. 5, ¶ 35. The Amended Complaint does *not* seek to establish or enforce an easement across the Primus Property; rather, American Star seeks to enforce the alleged contractual obligation to design and construct the Connection or, in the alternative, to recover damages for the loss in value to its adjoining property if the Connection is not built. Plaintiffs’ fourth cause of action is entirely for damages for the alleged breach of the contractual obligation pertaining to the Connection. See Ex. 5, ¶54 (“ As a result of JWH's breach of Section 3l(b) of the Agreement, Plaintiffs are entitled to damages for the loss in value of the Adjacent Property.”).

The second provision in the 2015 Agreement at issue allegedly imposes an obligation on the buyer to split net condemnation proceeds with the seller if there is a future condemnation of a portion of the Primus Property for the right of way of an extension of Hungryneck Blvd. Ex. 5, ¶¶ 43-49; Ex. 5 at, Ex. A, ¶ 13. In its third cause of action, Plaintiffs allege they “are entitled to a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share the proceeds from any subsequent condemnation of the Primus Property or any portion thereof.” Ex. 5, ¶ 49; see also, Ex. 5, Prayer for Relief (b).

The cause of action related to condemnation proceeds likewise does *not* seek to impose or claim an interest on or in the Primus Property. This claim asks only for a declaratory judgment as to the parties’ respective contractual rights to the potential future proceeds from a yet-to-happen condemnation. Ex. 5, ¶ 49. The Amended Complaint does not allege that the referenced condemnation has occurred or is imminent.

The 2015 Agreement did not reserve to the seller any rights in the real estate sold; it required the seller to convey the Primus Property “free and clear of all liens and encumbrances except the Permitted Exceptions.” Ex. 5 at Ex. A, ¶8(a)(v).¹ The 2015 Agreement did not reserve any liens, encumbrances, or easements in favor of the seller with respect to the alleged obligation to design and construct the Connection or the alleged obligation to split net condemnation proceeds in the future. Additionally, as evident from the final plat for the Primus Property, Pulte subdivided into a separate parcel and set aside the land for the future right of way of the extension of Hungryneck Blvd. a/k/a Billy Swails Blvd. that is outside all of the residential lots. See Ex. 8 at Ex. B.

American Star’s adjoining properties, the parcels supposedly to be benefitted by the Connector when and if it is developed, are currently a lake. See Ex. 8 at Ex. B; Ex. 9, p. 5, l. 17; p. 17, l. 4-7. As apparent from the aerial photograph used as a demonstrative exhibit at the hearing, the alleged Connection on Pulte’s property would have to be situated on one or two lots, Lots 54 and 55. See Ex. 8, ¶ 5; Ex. 8 at Ex. B; see also, Ex. 9, p. 9, l. 4-6. Even though the location of the so-called Connection is geographically limited to these two lots, American Star has filed a lis pendens on the other 44 lots based on its cause of action seeking a declaration that Pulte has a **contractual obligation** to split with it any **proceeds** from a future condemnation for the extension of Hungryneck Blvd., to be known as Billy Swails Blvd. See Ex. 9 p. 14, l. 13-16; p. 19, l. 2-4.

¹ The “Permitted Exceptions” are defined as “those enumerated in Exhibit ‘C’.” Ex. 5 at Ex. A, ¶4(b)(i). Exhibit “C” to the 2015 Agreement was not part of the copy of the 2015 Agreement attached to the Amended Complaint, but American Star does not contend that the Connector or an interest in a portion of future condemnation proceeds was listed in the “Special Exceptions.”

Pulte raised several factual and legal defenses in their Answers to the Amended Complaint including that American Star, not J. W. Homes, LLC, or Pulte, submitted the site plan for the Primus Property to the Town of Mount Pleasant without the Connection, the short street it now asserts Pulte has an obligation to construct.²

Pulte filed its Motion to Cancel Lis Pendens on June 22, 2018, and its Amended Motion to Cancel Lis Pendens on September 17, 2018. See Ex. 10, Mot. to Cancel Lis Pendens; Ex. 11, Am. Mot. to Cancel Lis Pendens. Judge McIntosh heard oral arguments on the motion on September 21, 2018, taking the matter under advisement. Judge McIntosh granted the motion in a Form 4 Order filed October 1, 2018, stating that his ruling would be in a more formal order. See Ex. 12, Order. On November 14, 2016, the Circuit Court issued its full written order granting the Pulte Defendants' Amended Motion to Cancel Lis Pendens. See Ex. 1.

The Order canceled the Lis Pendens on the grounds there are no allegations in the Amended Complaint affecting an interest in real property nor concerning title to any of the 46 lots described in the Lis Pendens. See Ex. 1, 3-4 (citing S.C. Code § 15-11-10 (lis pendens only authorized in “an action affecting the title to real property.”) and Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the lis pendens does not ‘affect [] the title to real property’ as required under § 15-11-10, the lis pendens is not authorized by the statute and the statute does not limit the court’s power to cancel it.”)). In the Order, the Court directed the Clerk of Court “to mark the Second Amended Lis Pendens filed August 28, 2018, the

² The 2015 Agreement specifies that buyer “agrees this Connection will be depicted on Buyer's Sketch Plan for the Property (as distinguished from any Sketch Plan applicable to the [adjoining properties] that is ultimately approved by the Town.” Ex. 5 at Ex. A, ¶31(b); yet, it was American Star that submitted the original sketch plan without the Connection. Ex. 5 at Ex. A, ¶11(b) (“Seller filed an application on February 18, 2015, seeking Final Rezoning of the Property for a Planned Unit Development seeking an allowed density of 73 single family units.”).

Amended Lis Pendens filed June 13, 2018, and the Lis Pendens filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order.” Ex. 1, 6. The Order was entered on November 16, 2018, with the clerk of court giving written notice of the entry of the Order on November 20, 2018.

On December 20, 2018, Plaintiffs filed a Notice of Appeal of the Order. See Ex. 13, Notice of Appeal. The next day, Plaintiffs’ counsel wrote the Charleston County Clerk of Court and instructed her that “the appeal of an order canceling a lis pendens acts as an automatic stay of order and voids the cancellation of the lis pendens during the pendency of the appeal” and “request[ed] that [the clerk’s] office void the cancellation of the lis pendens and reinstate it during the appeal.” Ex. 14, Gaskins Letter dated 12/21/18.

That same day, Pulte filed a Motion to Lift the Automatic Stay with the Circuit Court. See Ex. 15, Mot. Lift Automatic Stay filed 12/21/18. In support of its Motion, Pulte filed the affidavit of Mac Evans, the Director of Finance for the Coastal Carolinas for Pulte Home Company, LLC, along with the Motion to Cancel the Lis Pendens. See Ex. 16, Aff. Evans, ¶ 2. Evans’s affidavit explained in detail that the Lis Pendens has caused considerable harm to Pulte and its home purchasers before being cancelled and the reinstatement of the Lis Pendens because of the automatic stay would result in tremendously more harm in the future. See Ex. 16, ¶¶ 5-14.

“Since acquiring the Primus Property in mid-January 2016, Pulte has been developing the Primus Property into 71 single family lots and residences.” Ex. 16, ¶ 4. In fact, Pulte has spent in excess of ten million dollars (\$10,000,000) in acquiring the Primus Property, preparing the land to be suitable for a residential subdivision, developing and obtaining approvals for the lots, procuring the needed permits from state agencies, marketing the community, building houses, and negotiating and entering contracts with purchasers. Ex. 16, ¶ 11. After Pulte’s considerable

investment of resources, “The Town of Mount Pleasant approved Pulte's final plat for the 71 lots on the Primus Property on June 20, 2018, allowing the sale of the lots and houses.” Ex. 16, ¶ 4. However, because of the Lis Pendens, Pulte’s enormous investment in the Primus project is at a financial standstill, with Pulte continuing to incur significant ongoing costs but completely unable to recognize any revenue to cover those costs because of the Lis Pendens. Ex. 16, ¶ 11.

The harm caused by the unfounded Lis Pendens and the automatic stay of its cancellation is direct and tangible—multiple potential sales of lots have been delayed. Specifically, two of the pending sales scheduled to close in November 2018 and two in December 2018 have been delayed. Ex. 16, ¶ 8. These four sales would have generated substantial revenue and prevented Pulte from incurring additional carrying costs. See Ex. 16, ¶ 9 (“... contracts on four of the fifteen homes previously set for closing had to be extended with the permission of the buyers because of the lis pendens, resulting in a delay of \$2,100,000 of revenue. The delayed closings result in Pulte incurring approximately \$3,300 per month, per lot, in additional carrying costs.”). The damage to Pulte is compounding every month. See Ex. 16, ¶ 8 (“Two are scheduled in January 2019, two in February 2019, three in March 2019, two in April 2019, and two in May 2019.”). The delay of the closings “jeopardizes each of these sales and could result in the complete loss of the revenue if the lis pendens is not lifted as soon as possible and the purchasers decide not to extend the closing dates specified in their contracts.” Ex. 16, ¶ 9. In fact, lost sales have already occurred—“at least 21 serious prospects are no longer interested in purchasing when they learned of the indefinite delays to closing caused by the lis pendens.” Ex. 16, ¶ 10.

Pulte is not alone in suffering harm as a result of American Star’s aggressive litigation strategy of filing the encompassing Lis Pendens without any claim affecting title to any of the real property described in the Lis Pendens. To Evans’s knowledge, most, if not all the purchasers,

intend use their new houses as their primary residences. Ex. 16, ¶ 12. Many have made arrangements to move out of other housing or sell other housing in the expectation that they will be able to close on their new houses within the Primus community. Ex. 16, ¶ 12. Pulte's inability to close on the sales in a timely manner because of the Lis Pendens is highly disruptive of the housing commitments and plans of these purchasers who sometimes have to find interim housing. Ex. 16, ¶ 12.

ARGUMENT

In accordance with Rule 241(d) of the South Carolina Appellate Court Rules, Pulte first sought relief from the lower court lift by filing its Motion to Lift the Automatic Stay. See Ex. 15; Rule 214(d)(1), SCACR (“... an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal”). Judge McIntosh conducted a telephone hearing on January 9, 2018, on the Motion to Lift Automatic Stay. On January 17, 2018, the Circuit Court issued a form 4 order denying the Motion to Lift the Automatic Stay “AS DOING SO WOULD MOOT ISSUE OF WHETHER OR NOT THE LIS PENDENS SHOULD HAVE BEEN FILED.” Ex. 2.

Pursuant to Rule 241, SCACR, Pulte now petitions this Court for an order suspending the automatic stay. See Rule 241(d)(2), SCACR (“After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order.”). As explained herein, the Circuit Court unjustifiably denied the Motion to Lift the Automatic Stay and Pulte respectfully requests that this Court issue its order lifting the automatic stay and reinstating the relief of the lower court lifting the Lis Pendens. See 241 (d)(4)(C), SCACR (appellate court should lift the automatic stay upon “a showing that an

application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied . . . “).

Lifting the automatic stay (1) will not moot the issues on appeal, (2) will instead prevent the relief ordered by the lower court from becoming moot, (3) will prevent continued irreparable harm to Pulte from the Lis Pendens, and (4) will mitigate Pulte’s losses as a result of the Lis Pendens.

GROUND FOR PETITION

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order . . .” Rule 241(a), SCACR. However, Rule 241(c) allows any party to seek an order lifting the automatic stay. Rule 241 (c)(1), SCACR (“After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. . .”). In fact, “an automatic stay under Rules 205 and 241 is not unassailable: a party to the action need only petition either the trial court or the appellate court for an order lifting the stay.” In re Est. v. Connor, 2009-UP-502, 2009 WL 9530097, at *2 (Ct. App. Oct. 29, 2009); see also, Lebovitz v. Mudd, 293 S.E. 49, 358 S.E.2d 698, 52 (1987) (noting that Supreme Court granted the landowner-respondent temporary relief by lifting the lis pendens during the pendency of the appeal in a case where it was ultimately determined that the lis pendens should not have been cancelled).

“In determining whether [to lift the automatic stay], . . . the lower court . . . should consider whether such an order is necessary . . . *to prevent a contested issue from becoming moot.*” S.C.R. Civ. P. Rule 241 (c)(2) (double emphasis added). Here, this Court should lift the stay to prevent the contested issue of whether the lis pendens should encumber the Pulte’s property and impair the entire residential development, inflicting harm on Pulte and its home purchasers, for the

duration of the appeal from becoming moot. See generally, Lebovitz v. Mudd, supra; Treasured Arts, Inc. v. Watson, 319 S.C. 560, 563, 463 S.E.2d 90, 92 (1995) (finding plaintiff's claim for injunctive relief moot because "a[n] order for injunctive relief would have no practical legal effect upon the existing case. . . [Therefore,] although Treasured Arts had a justiciable controversy when it brought the action, events occurring subsequent[ly] . . . have rendered any injunctive relief moot.".)³ In fact, if the Lis Pendens is allowed to stay in place for the course of this appeal and litigation, then the Circuit Court's Order that the Lis Pendens was not in compliance with South Carolina law will be rendered moot.

While not binding on this Court, the reasoning of Roger M. Young, Circuit Judge, in Carolina Park, LLC v. Marino, C/A NO. 2010-CP-10-6042 (Chs. County Circuit Court, June 23, 2011), another case involving an appeal from an order cancelling a lis pendens, is instructive.⁴ Ex. 17. In Carolina Park the Circuit Court considered the precise issue before this Court. Judge Young lifted the automatic stay pending appeal of his prior order cancelling the lis pendens reasoning as follows:

The Court can lift the stay to prevent a contested issue from becoming moot. Rule 241(c)(2), SCACR. The contested issue on appeal is whether there is any basis for the Lis pendens to stay in place while this case is pending. *If the lis pendens is allowed to stay in place for the course of this appeal, then the Court's order that*

³ Rule 241 (b)(8), SCACR, excepts from the automatic stay, an "appeal from an order granting an injunction or temporary restraining order." The Order cancelling the Lis Pendens is very much in the nature of an order granting an injunction in its strict directive to the Clerk of Court: "**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk of Court is hereby directed to mark the Second Amended *Lis Pendens* filed August 28, 2018, the Amended *Lis Pendens* filed June 13, 2018, and the *Lis Pendens* filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order." (Order, p. 6). Pulte suggests in considering its Motion, this Court consider the relief ordered on a par with an order granting an injunction.

⁴ The Supreme Court ultimately affirmed Judge Young on the merits in Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 732 S.E.2d 876 (2012).

the lis pendens was not in compliance with South Carolina law will be rendered moot in that Plaintiffs will have received exactly what they are not entitled to, namely a lis pendens during the course of this litigation that would hinder Defendant CDM in developing its property. If Republic is correct in arguing that Rule 241 does not allow for relief in this situation, then any party could file a lis pendens with its lawsuit and keep the lis pendens in place for the life of the lawsuit through appeals. A lis pendens would never be subject to effective cancellation, and orders cancelling a lis pendens would be rendered moot. ***This is the precise situation for which Rule 241 creates relief.***

(double emphasis added).

Here, the analysis in Carolina Park applies with equal force. If the Lis Pendens is allowed to stay in place for the course of this appeal, then the Circuit Court's Order granting Pulte relief from the improper lis pendens during the pendency of the case, and now the appeal, will be rendered moot. The automatic stay triggered by the Notice of Appeal has the effect of granting American Star exactly what Judge McIntosh ruled it is not entitled to, namely a lis pendens during the course of this litigation without posting a bond or providing other security for the substantial losses to Pulte if the Lis Pendens is allowed to stay in place for the next two years. See Ex. 1, 4. ("In this case, the threshold statutory requirement is not met. The allegations of the Amended Complaint do not assert that this action affects title to Pulte's real property.").

The filing of a *lis pendens* is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See, South Carolina Nat'l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the *lis pendens* renders the *lis pendens* invalid). The automatic stay is inconsistent with the strict construction of the *extraordinary* privilege of filing a Lis Pendens and the exception from the automatic stay afforded to orders granting injunctions. See, p. 5, n. 3, supra. By filing an appeal and triggering the automatic stay, American Star has affectively obtained the ultimate relief

of the *lis pendens* statute encumbering the title to 46 parcels without qualifying for this “extraordinary privilege.”

This anomaly is even more egregious where American Star has conclusively admitted in Paragraph 16 of its Amended Complaint that before the 2015 closing for the sale of the Primus Property it assigned all of its rights under the 2015 Agreement that is the basis for its claims to the other two Plaintiffs that have not appealed. Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (“The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.”).

Additionally, lifting the automatic stay will not moot the relief sought by American Star in its Amended Complaint, as mistakenly indicated by the lower court, because none of its alleged claims or requests for relief affect the title to the lots subjected to the *Lis Pendens*. South Carolina Code 15-11-10, allows the filing of *lis pendens* only in “an action ***affecting the title*** to real property.” (double emphasis added). Here, as correctly determined by Circuit Court, the allegations of the Amended Complaint do not assert any such claims. Ex. 1, 4.

American Star argues that its claim that Pulte is required to build a connection road on Pulte’s own property under the 2015 Agreement is a claim affecting title. See Ex. 9, p. 15, l. 7- p.16, l. 4. However, there is no mention in the Amended Complaint of enforcing an easement or encumbrance or establishing an equitable interest in the lots subjected to the Second Amended *Lis Pendens*. See Ex. 5; Ex. 1, 4. The prayer for relief is clear that the action does not affect ***title*** to real property. See Ex. 5, at Prayer for Relief (a). Moreover, American Star has asserted that money damages are available to compensated it for the alleged failure to construct the road. See Ex. 5, at

Prayer for Relief (a). Even if American Star were to prevail on its claims, it would not be entitled to specific performance when money damages are available. See generally, Clardy v. Bodolosky, 383 S.C. 418, 426, 679 S.E.2d 527, 531 (Ct. App. 2009) (noting that specific performance is only available as a remedy when there is “no adequate remedy at law”). American Star’s claim for damages for failure to construct the Connection is unaffected by cancelling the Lis Pendens.

Like the alleged obligation of Pulte to build a connection road on two of Pulte’s lots, the alleged obligation to share proceeds from a future condemnation of a part of the Property for a road right of way does not affect the title to the lots or the Property. See Ex. 5, at Prayer for Relief (b) (seeking “a declaratory judgment” that Pulte has an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof). Rather than any interest affecting title to real property, American Star has asserted an alleged contractual right to money (i.e., condemnation *proceeds*). Plaintiffs’ right or interest, if any, concerns personal property, not real property. See, e.g., Martin & Earle v. Maxwell et al., 86 S.C. 1, 67 S.E.2d 962, 964 (1910) (“Since under the will the trustee therein named was to sell the land and divide the proceeds of the sale after the death of the life beneficiary, the interest of F. B. Maxwell and the other children of Mrs. Maxwell is a contingent interest, not in the land, but in the proceeds of the land, which is personalty.”); see also, Caulk v. Orange County, 661 So. 2d 932, 934 (Fla. 5th Dist. App. 1995) (holding a covenant purporting to reserve to a grantor a right to condemnation proceeds could not run with the land because “[t]he only thing the covenant in the instant case really ‘touches’ and ‘concerns’ is the intangible personal property, namely cash, that may be paid by a condemnor.”); see also, Ex. 1, 5 (Circuit Court finding that the alleged right to a share of proceeds from a possible future condemnation does not affect title to real property).

Because none of the claims affects title to real property, granting this Petition to Lift the Automatic Stay of the Order Cancelling the Lis Pendens will not moot any of the relief sought by American Star.

Conversely, the relief sought by Pulte in its Motion to Cancel Lis Pendens – to lift the Lis Pendens to enable it and its home purchasers to proceed with this residential project during the course of the litigation -- is being mooted by the automatic stay. Neither Pulte nor the purchasers of its homes in the Oaks at Primus can close while the Lis Pendens is pending. Pulte and its purchasers are suffering irreparable harm every day. See Ex. 16, ¶ 5 & ¶¶ 7-12. Pulte has asserted a counterclaim for abuse of process to recover the damages it is suffering from the unlawful Lis Pendens. See Ex. 18, Answer to Am. Compl., ¶¶ 57-63; Ex. 16, ¶ 14. In moving to have this Court lift the automatic stay, Pulte is also seeking to mitigate its damages flowing from the improper Lis Pendens.

Lastly, the rule governing the lifting of the automatic stay allows this Court wide discretion including the conditions, if any, the Court might impose if it determines to lift the automatic stay:

The granting of supersedeas or the lifting of the automatic stay under this Rule may be condition upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

Rule 241(c)(3), SCACR. To the extent this Court believes that American Star's claims related to the alleged obligation on the seller to design and construct the Connection would be mooted if the automatic stay is lifted, then this Court has the authority to lift the automatic stay for all the parcels except Lots 54 and 55, the only possible remaining location for the Connection. In his Affidavit

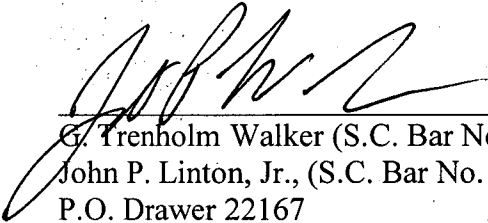
and Verification, submitted with this Petition, Matthew Raines, Vice President of Land for the Coastal Carolinas for Pulte, suggests this alternative. Ex. 8, ¶ 7. As previously shown, there is no basis for contending that lifting the automatic stay as to the other 44 parcels in any manner moots American Star's cause of action for declaratory judgment that Pulte has a contractual obligation under the 2015 Agreement to split any net proceeds from a future condemnation with it.

CONCLUSION

Therefore, for the reasons described herein, Pulte respectfully requests the Court grant this Petition and issue a order lifting the automatic stay and allowing the Circuit Court's Order cancelling the unfounded Lis Pendens to resume effect, or, in the alternative, that it lift the stay except for Lots 54 and 55.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT,

PULTE HOME CORPORATION, n/k/a

PULTE HOME COMPANY, LLC

January 23, 2018

Charleston, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KKM INVESTMENTS, LLC AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

ORDER CANCELLING
LIS PENDENS

FILED
2018 NOV 15 AM 11:10
CLERK OF COURT

This matter came before the Court for hearing on September 21, 2018, on the Amended Motion to Cancel *Lis Pendens* of Defendant Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte") seeking to cancel the three *lis pendens* filed by Plaintiffs on real property owned by Pulte. G. Trenholm Walker, Esq. and John P. Linton, Jr., Esq., appeared on behalf of Pulte, and E. Brandon Gaskins, Esq. appeared on behalf of Plaintiffs. Defendant J. W. Homes, LLC, ("JWH") was represented at the hearing by Susan M. Gaddy, Esq. For the reasons explained herein, the Court GRANTS the motion and cancels the three *Lis Pendens* filed by Plaintiffs.

BACKGROUND

Plaintiff American Star Development SC, LLC, filed a Summons and Complaint against the above captioned defendants on April 26, 2018, and an Amended Complaint (adding the other two Plaintiffs) on May 1, 2018. Plaintiffs filed a *Lis Pendens* on April 26, 2018, an Amended *Lis Pendens* on June 13, 2018, and a Second Amended *Lis Pendens* on August 28, 2018 (collectively referenced as "the *Lis Pendens*").

According to the allegations of the Amended Complaint, Plaintiff American Star Development SC, LLC, ("American Star") is the former owner of 24.81 acres in Mount Pleasant (the "Property"). Plaintiff American Star sold the Property to Defendant JWH, now known as Falcon Properties, LLC. Defendant JWH later sold the Property to Defendant Pulte pursuant to a written Asset Purchase Agreement between Pulte and JWH.¹ According to the Agreement for Purchase and Sale between American Star Development SC, LLC ("Seller") and JWH Acquisitions, LLC or its assigns dated February 25, 2015, copy attached as Exhibit A to the Amended Complaint (the "Agreement"), the Property was intended to be developed into at least 73 single family residential lots. Exhibit A at ¶ 11(b).

The Second Amended *Lis Pendens* asserts that the Amended Complaint affects 46 separate lots that are part of the final plat of a subdivision of the Property now owned by Pulte that was recorded June 21, 2018, in Plat Book L18 at Pages 0336-0339 in the ROD Office for Charleston County, according to the property description attached to the Second Amended *Lis Pendens*.

The Amended Complaint alleges, among other things, that Pulte assumed the terms of the Agreement and is liable thereunder "to design, seek approval for, and construct" a road that connects the Property to adjoining land owned by American Star. Plaintiffs allege that Pulte has breached the Agreement by failing to design, seek approval for, and construct the connecting road. Plaintiff American Star also alleges it "has been damaged by the diminution in value" of its adjacent property "resulting from lack of access" to it from the Property.

Plaintiff's first cause of action is for breach of contract against Pulte, seeking the relief of specific performance requiring Pulte to design and construct the connection road on Pulte's own

¹ Terms of the JWH-Pulte Asset Purchase Agreement are not before the court.

property or, in the alternative, for an award of money damages for the alleged loss in value of its adjoining land due to the lack of the connection road.

The second cause of action in the Amended Complaint asserts that Pulte is equitably estopped from denying “obligation to design, seek approval for, and construct the Connection, and it should be ordered to fulfil such obligation.”

Plaintiffs’ third cause of action for declaratory judgment is premised on another provision of the Agreement dealing with the possible condemnation of a portion of the Property for a public road right of way. Plaintiffs allege the Agreement obligates Pulte to split the net proceeds from any such condemnation with Plaintiffs. Plaintiffs therefore seek a declaratory judgment that Pulte has the “obligation to share the proceeds from any subsequent condemnation” with Plaintiffs.

The Amended Complaint does not contain any allegations asserting a claim to establish an easement nor does the Agreement attached as Exhibit A that is the basis for Plaintiffs’ claims refer to the grant of an easement or even use the word “easement” concerning the alleged connection road.

DISCUSSION

The Second Amended *Lis Pendens* purports to provide notice that 46 separate parcels owned by Pulte are “real estate [is] affected by” the action. However, there are no allegations in the Amended Complaint asserting any right to, interest in, or encumbrance on, the *title* to any of these parcels or any of the Property.

South Carolina Code 15-11-10, allows the filing of *lis pendens* only in “an action ***affecting the title*** to real property.” (double emphasis added). A circuit court properly cancels a *lis pendens* when the action does not affect the title to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the *lis pendens* does not

‘affect [] the title to real property’ as required under § 15-11-10, the *lis pendens* is not authorized by the statute and the statute does not limit the court’s power to cancel it.”). The filing of a *lis pendens* is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat’l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the *lis pendens* renders the *lis pendens* invalid).

In this case, the threshold statutory requirement is not met. The allegations of the Amended Complaint do not assert that this action affects title to Pulte’s real property.

Plaintiffs correctly note the extraordinary statutory privilege to file a *lis pendens* applies not only to those cases that involve the question of title, but also those cases that are brought to establish an equitable estate, interest, or right in specific real property or to enforce an encumbrance. See Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) (listing types of actions that may sufficiently allege title to real property is affected such that a *lis pendens* is proper). Plaintiffs argue that the *lis pendens* is proper because their claims are “essentially” claims to establish the existence of an easement, enforce an encumbrance, and/or establish an equitable interest in real property.

However, as discussed above, the allegations of the Amended Complaint do not assert any such claims, even when considering all the relevant terms of the Agreement attached to the Amended Complaint as Exhibit A. Additionally, the prayer seeks the following relief, making no mention of enforcing an easement or encumbrance or establishing an equitable interest in the Property or the lots subjected to the Second Amended *Lis Pendens*:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection; (ii) or, alternatively, award damages to

American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;

b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof;...

The prayer does not seek relief that affects *title* to Pulte's real property. Plaintiffs do not seek to establish an easement, equitable estate, or right in real property or enforce any encumbrance on real property.

Likewise, the alleged obligation to share proceeds from a future condemnation of a part of the Property for a road right of way—the subject of the third cause of action and subparagraph (b) of the prayer for relief—does not affect the title to the lots or the Property. Plaintiffs instead assert an alleged contractual right to money (i.e., condemnation *proceeds*). Plaintiffs' right or interest, if any, concerns personal property, not real property. See, e.g., Martin & Earle v. Maxwell et al., 86 S.C. 1, 67 S.E.2d 962, 964 (1910) ("Since under the will the trustee therein named was to sell the land and divide the proceeds of the sale after the death of the life beneficiary, the interest of F. B. Maxwell and the other children of Mrs. Maxwell is a contingent interest, not in the land, but in the proceeds of the land, which is personalty."); see also, Caulk v. Orange County, 661 So. 2d 932, 934 (Fla. 5th Dist. App. 1995) (holding a covenant purporting to reserve to a grantor a right to condemnation proceeds could not run with the land because "[t]he only thing the covenant in the instant case really 'touches' and 'concerns' is the intangible personal property, namely cash, that may be paid by a condemnor.")

Therefore, the Court finds the *Lis Pendens* is improper and grants Pulte's motion.

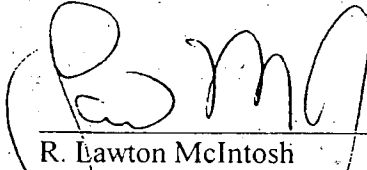
CONCLUSION

IT IS THEREFORE ORDERED, for the foregoing reasons, that Pulte's Amended Motion to Cancel Lis Pendens be, and the same is hereby, **GRANTED** and the Second Amended *Lis Pendens*, Amended *Lis Pendens*, and *Lis Pendens* filed herein are hereby **CANCELLED**.

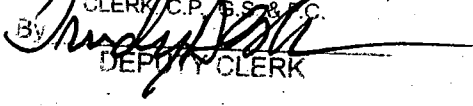
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court is hereby directed to mark the Second Amended *Lis Pendens* filed August 28, 2018, the Amended *Lis Pendens* filed June 13, 2018, and the *Lis Pendens* filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order.

AND IT IS SO ORDERED!

November 14, 2018
Anderson, South Carolina



R. Lawton McIntosh
South Carolina Circuit Court Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., B.S. & C.
By 
DEPUTY CLERK

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-1002175



AMERICAN STAR DEVELOPMENT
SC LLC

PULTEGROUP INC.

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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

PULTEGROUP INC.'S MOTION TO LIFT AUTOMATIC STAY IS DENIED AS DOING SO WOULD MOOT ISSUE OF WHETHER OR NOT THE LIS PENDENS SHOULD HAVE BEEN FILED. MR. GASKINS TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

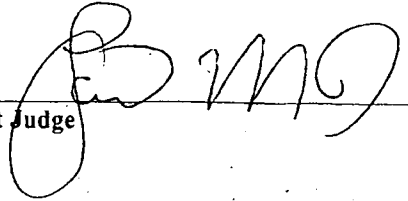
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2155
Judge Code

1-11-19
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

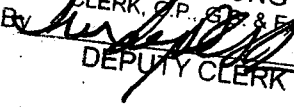
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.P. & F.
By 
DEPUTY CLERK



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) CIVIL ACTION NO. 2018-CP-10-2175

AMERICAN STAR DEVELOPMENT SC,
LLC; KKM INVESTMENTS, LLC; AND
211, LLC;

Plaintiffs,

COMPLAINT

vs.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC,

Defendants.

FILED
2018 APR 26 PM 3:11
JULIA B. HARRIS
CLERK OF COURT

Plaintiffs American Star Development, SC, LLC ("American Star"); KKM Investments, LLC; and 211, LLC, complaining of Defendants PulteGroup, Inc. ("PulteGroup"); Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC"); and, alternatively, of Defendant JW Homes, LLC ("JWH"), alleges as follows:

INTRODUCTION

1. PulteGroup and PHC, as successors to JW Homes, LLC, have a contractual obligation to construct an access to road to American Star's property, pursuant to a purchase and sale agreement entered into between American Star and JW Homes. PulteGroup and PHC have refused to honor their obligation to construct the access road in breach of the agreement, thereby limiting American Star's ability to develop its property and causing it to suffer millions of dollars in damages.

THE PARTIES

2. Plaintiff American Star is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

3. Plaintiff KMMC Investments, LLC is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

4. Plaintiff 211, LLC is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

5. Defendant PulteGroup is a corporation organized and existing under the laws of the State of Michigan. Upon information and belief, PulteGroup does business in Charleston County, South Carolina.

6. Defendant PHC is a limited liability company and subsidiary of Defendant PulteGroup, organized and existing under the laws of the State of Michigan. PHC does business and owns property in Charleston County, South Carolina.

7. Defendant JWH is a limited liability company organized and existing under the laws of the State of Delaware. JWH was conducting business and owned property in Charleston County, South Carolina, at the times relevant to this action.

VENUE AND JURISDICTION

8. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30.

9. This Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-20 and Article 5 of the South Carolina Constitution.

10. This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803.

FACTS

11. On February 25, 2015, American Star and JWH Acquisitions entered into an Agreement for Purchase and Sale (the "Agreement") (attached as Exhibit A), wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, as described more particularly on Exhibit B (the "Primus Property").

12. American Star owns property adjacent to the Primus Property bearing TMS # 578-00-00-005 (the "Adjacent Property").

13. Pursuant to Section 31(a) of the Agreement, American Star granted JWH Acquisitions the right of first offer to negotiate to purchase certain parcels owned by American Star (the "ROFO Parcels"), including the Adjacent Property.

14. Pursuant to Section 31(b) of the Agreement and in consideration for American Star granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agreed that the access road through the Primus Property would be designed and constructed under standards applicable to public roads to provide vehicular and pedestrian access to connect the Primus Property to the Adjacent Property (the "Connection"). JWH Acquisitions further agreed that the Connection would be depicted on the sketch plan ultimately approved by the Town of Mount Pleasant and that the Connection would be designed and constructed as a continuation of the access road serving the Primus Property to the point it touches the common boundary line between the Primus Property and the Adjacent Property.

15. Pursuant to Section 13(a) of the Agreement, if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star.

16. Subsequent to entering into the Agreement but before the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Agreement to JWH, and American Star assigned its rights, obligations, and interest under the Agreement to 211, LLC and KKMC Investments, LLC.

17. On or about July 31, 2015, 211, LLC and KKMC Investments, LLC, as assignees of American Star under the Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Agreement.

18. On or about December 15, 2015, PulteGroup entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire substantially all of the assets of JWH and its affiliates and subsidiaries (the "Acquisition"). Upon information and belief, the Primus Property was one of the assets of JWH to be acquired by PulteGroup in the Acquisition pursuant to the APA.

19. Pursuant to Section 2.3 of the APA, PulteGroup agreed to assume and discharge certain liabilities and obligations of JWH. Upon information and belief, JWH's obligations under the Agreement, including the obligation to design and construct the Connection and to share condemnation proceeds, were liabilities and/or obligations assumed by PulteGroup pursuant to the APA.

20. On or about January 14, 2016, PulteGroup acquired substantially all of JWH's assets pursuant to the APA. Also, on or about January 14, 2016, JWH conveyed the Primus Property to PHC. Upon information and belief, the conveyance of the Primus Property to PHC was pursuant to Section 4.2 of the APA, which required JWH to execute and deliver special warranty deeds for the acquired properties to PulteGroup or affiliates of PulteGroup, including PHC.

21. As a result of the agreements made in the APA and the related transactions conveying the Primus Property to PHC, PulteGroup and PHC expressly agreed to assume responsibility for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds.

22. In addition to expressly assuming JWH's liabilities and obligations pursuant to the APA, PulteGroup assumed liability for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds, because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

23. JWH, PHC, and/or PulteGroup obtained approval from the Town of Mount Pleasant to begin residential development of the Primus Property. However, the sketch plans and plats for the development, as approved by the Town of Mount Pleasant, lack any design or depiction of the Connection.

24. American Star has made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but PHC and PulteGroup have refused American Star's demands.

25. PHC's and PulteGroup's refusal to design, seek approval for, and construct the Connection is a breach of the Agreement.

26. As a result of PHC's and PulteGroup's breach of the Agreement, American Star has been damaged by the diminution in value of the Adjacent Property resulting from lack of access to the Adjacent Property from the Primus Property and the consequent limitations on the development and use of the Adjacent Property.

FIRST CAUSE OF ACTION
(Breach of Contract as against PulteGroup and PHC)

27. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

28. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

29. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

30. The Agreement constitutes a valid and binding contract between American Star and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

31. Section 31(b) of the Agreement requires PulteGroup and PHC, as successors to JWH, to design, seek approval for, and construct the Connection.

32. Plaintiffs have performed their obligations under the Agreement, and American Star remains able and willing to perform its obligation to provide PulteGroup and/or PHC with a right of first offer to negotiate the purchase of the ROFO Parcels.

33. PulteGroup and PHC have breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

34. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

35. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, Plaintiffs are entitled to specific performance requiring PulteGroup and PHC to design, seek

approval for, and construct the Connection or, alternatively, damages for the loss in value of the Adjacent Property.

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

36. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

37. PHC, through its conduct and silence, made the false representation after it acquired the Primus Property that it would design, seek approval for, and construct the Connection.

38. PHC made the false representation that it would design, seek approval for, and construct the Connection with the intention or expectation that American Star would rely upon such representation.

39. — PHC knew that it had no intention of designing, seeking approval for, and constructing the Connection.

40. Plaintiffs lacked knowledge and the means of knowledge that PHC had no intention of designing, seeking approval for, and constructing the Connection.

41. Plaintiffs relied on PHC's false representations to its prejudice.

42. As a result, PHC should be estopped from denying its obligation to design, seek approval for, and construct the Connection, and it should be ordered to fulfil such obligation.

THIRD CAUSE OF ACTION
(Declaratory Judgment against PulteGroup and PHC)

43. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

44. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

45. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

46. The Agreement constitutes a valid and binding contract between American Star and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

47. Section 13(a) of the Agreement requires PulteGroup and PHC, as successors to JWH, to share with Plaintiffs the proceeds if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension.

48. PulteGroup and PHC deny they are successors to JWH with respect to JWH's obligations under the Agreement, thereby denying the obligation to share the proceeds from any subsequent condemnation.

49. Plaintiffs are entitled to a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share the proceeds from any subsequent condemnation of the Primus Property or any portion thereof.

FOURTH CAUSE OF ACTION
(Alternatively, Breach of Contract against JWH)

50. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

51. In the event that PulteGroup and/or PHC are not successors to JWH with respect to JWH's obligations under the Agreement, then, alternatively, JWH had an obligation to design, seek approval for, and construct the Connection prior to conveying the Primus Property to PHC pursuant to Section 31(b) of the Agreement.

52. JWH breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

53. As a result of JWH's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

54. As a result of JWH's breach of Section 31(b) of the Agreement, Plaintiffs are entitled to damages for the loss in value of the Adjacent Property.

WHEREFORE, Plaintiffs pray as follows:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;
- b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof; and/or
- c. An award of all other appropriate relief as is just and proper under the circumstances.

CHARLESTON, SC
April 26, 2018

E. Brandon Gaskins

E. Brandon Gaskins (State Bar No. 73274)

MOORE & VAN ALLEN, PLLC

78 Wentworth Street

P.O. Box 22828

Charleston, South Carolina 29413-2828

Telephone: (843) 579-7000

brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made and entered into as of February 25, 2015, by and between AMERICAN STAR DEVELOPMENT SC, LLC ("Seller") and JWH ACQUISITIONS, LLC or its assigns ("Buyer").

WITNESSETH

In consideration of the mutual terms, covenants, conditions and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the sum of One (\$1.00) Dollar paid to the Seller by the Buyer, the parties hereto agree as follows:

1. Purchase and Sale of Property.

(a) Seller agrees to sell and Buyer agrees to purchase the property more particularly described on Exhibit "A" and known as Tax Map Parcel Numbers 558-00-00-138, 558-00-00-139, 558-00-00-140, 558-00-00-141, 558-00-00-142, 558-00-00-143, 558-00-00-144, 558-00-00-172, 558-00-00-310, 558-00-00-311, and 578-00-00-004, containing approximately 24.81 acres, more or less, on Six Mile Road off Highway 17 North, Mt. Pleasant, Charleston County, South Carolina, together with all and singular the tenements, hereditaments, rights, easements and appurtenances now or hereafter belonging thereto, including all deeded rights to Primus Road (the "Property").

(b) Within 5 days from the Effective Date (as defined herein) of this Agreement, Seller shall provide Buyer with any leases, surveys, title policies, soils reports, environmental reports, and any other documents and information pertinent to the Property to which Seller has access and set forth in part in Exhibit "B" (the "Required Information Materials").

2. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be \$8,332,000.00. Buyer will deliver the Purchase Price, as adjusted by the prorations calculated pursuant to Section 16 below and with appropriate credit for the Earnest Money previously paid, to Escrow Agent in immediately available funds for payment to Seller.

3. Earnest Money.

(a) Within 3 business days after the Effective Date of this Agreement, the Buyer shall deposit the sum of \$75,000.00 (the "Earnest Money") with Krawcheck & Davidson, LLC ("1st Escrow Agent") to be held in escrow in a federally-insured, interest bearing account by Escrow Agent as provided herein.

(b) In the event that Buyer does not terminate this Agreement during the Inspection Period, 1st Escrow Agent shall transfer the Earnest Money to Chicago Title Insurance Company ("2nd Escrow Agent") to be held in escrow in a federally-insured interest bearing account by 2nd Escrow agent as provided herein. Buyer shall deposit with 2nd Escrow Agent within 3 business

days after the expiration of the Inspection Period an additional \$100,000.00 which shall become a part of the Earnest Money. All accrued interest to become a part of the Earnest Money.

(c) The Earnest Money shall be applied to the Purchase Price at Closing, or in the event the Earnest Money is not so applied, then the Earnest Money shall be disbursed by 2nd Escrow Agent in accordance with the terms of this Agreement.

4. Closing.

(a) The closing of the purchase and sale of the Property, herein called "Closing" shall be held on the date that is the later of (i) 3 days after the date on which Final Rezoning (defined below) is obtained, or (ii) 30 days after the expiration of the Inspection period (the "Closing Date"). TIME IS OF THE ESSENCE. The Closing will be at the offices of Buyer's attorney, Krawcheck and Davidson, LLC, 9 State Street, Charleston, South Carolina 29401, or at such other place as shall be mutually agreeable to the parties hereto.

(b) On the Closing Date, the Seller shall execute and deliver to Buyer, the following:

- (i) A General Warranty deed in recordable form conveying the Property to Buyer in fee simple free and clear of all liens and encumbrances except those enumerated in Exhibit "C" attached hereto (the "Permitted Exceptions"). Provided, however, and notwithstanding the foregoing, the following parcels shall be transferred by quit claim deed: 558-00-00-139, 558-00-00-142, and 558-00-00-172.
- (ii) An Affidavit indicating that, as of the date of the Closing, there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving the Seller; that there are no labor or material furnished to the Property for which mechanic's liens could be filed; and that there are no other unrecorded leases or other interests in the Property of any kind.
- (iii) A FIRPTA Certificate, Seller's tax identification number or Social Security Number and any other documentation as may be required by the Title Company (as hereinafter defined) or the attorney for the Buyer to carry out the terms, covenants, conditions, and intent of the within Agreement.
- (iv) Such documents as Buyer's counsel, or the Title Company (as hereinafter defined) may reasonably request to evidence Seller's authority to execute and perform under this Agreement and to execute and deliver all documents conveying the Property to Buyer.
- (v) Seller's South Carolina Residency Withholding Affidavit.

(vi) Affidavit that the sale of the property will not be a sale of the majority of Seller's assets, or a tax compliance letter from the South Carolina Department of Revenue, if the sale is a majority of Seller's assets.

(vii) Any permits, variances, or rezoning approvals obtained by Seller and relevant to the Property.

(c) The sale described herein shall be closed in escrow pending a final title update and recording of all recordable documents.

5. Inspection Period.

(a) Buyer will have until 11:59 pm on the 60th day after the Effective Date (the "Inspection Period"), and until Closing if Buyer does not terminate this Agreement as provided herein, in which to enter upon the Property to make inspections of the Property, including title matters, soil, engineering, planning, environmental, code, permitting, zoning, or other studies and investigations as Buyer shall deem appropriate. In any event, if Buyer, in Buyer's sole judgment and discretion, shall conclude that said inspections, reviews, studies, matters, and/or investigations are not satisfactory, for whatever reason, then Buyer may terminate this Agreement by delivering written notice of such termination to Seller on or before the expiration of the Inspection Period. If Buyer fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Buyer shall have no further right to terminate this Agreement pursuant to this paragraph. If Buyer does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Earnest Money shall be refunded to Buyer, less the sum of \$100.00 as consideration of the Buyer's inspection rights as set forth herein, and the parties hereto shall have no further rights, duties or obligations under this Agreement. Buyer shall pay all costs incurred by Buyer in making any such inspections and investigations and shall indemnify, defend, and hold the Seller harmless from any liens, claims, losses and liability arising out of the Buyer's exercise of such right and privilege to go upon the Property.

(b) Prior to the Closing, Buyer and Buyer's agents shall have reasonable access to the Property at reasonable times to conduct such surveys, studies, and investigations as Buyer shall deem appropriate. Buyer shall pay all costs incurred by Buyer in making such surveys, studies, inspections and investigations and shall indemnify, defend, and hold the Seller harmless from any liens, claims, losses or liabilities arising out of the Buyer's exercise of such right and privileges to go upon the Property. Provided however, Buyer agrees to make its request for access at least 24 hours in advance of Buyer's desired inspection time(s). Buyer's access to any dwellings or improvements are subject to Seller obtaining the occupant's consent after at least 24 hours advance request.

(c) Upon terminating this Agreement for dissatisfaction with its Inspection Period results as allowed above under Section 5(a), or for any other reason, Buyer will, upon request of Seller and payment of \$10,000 by Seller to Buyer, assign to Seller all of Buyer's rights to plans and other materials submitted by Buyer or on Buyer's behalf by SRS Engineering (traffic and impact study consultant) or Seamon + Whiteside (its engineer) to the Town of Mount Pleasant

related to the entitlement of the Property. Buyer agrees that it shall provide Seller with written confirmation from the providers that they have been paid in full for their plans and materials and they acknowledge Buyer has assigned its rights in and to the plans and materials to Seller.

6. Marketable Title. This sale shall be conditioned upon the delivery of a good and marketable and insurable title to the Property and title shall be conveyed to Buyer, free and clear of all encumbrances or liens except the Permitted Exceptions. Buyer agrees to complete its title inspection and issue a title objections letter ("Title Objections Letter") to Seller stating any title objections within 30 days of the Effective Date. Buyer's failure to object to a matter of title which exists as of the date of Buyer's title search shall be a waiver of title objection as to that matter and any further title objections must be based upon new title matters which were not matters of record prior to issuance of the Title Objections Letter or new matters which arose after issuance of Buyer's Title Objection Letter. This sale shall be further conditioned upon Buyer obtaining, at the time of Closing, a standard ALTA owner's policy of title insurance in the amount of the Purchase Price issued by Chicago Title Insurance Company (the "Title Company"). The owner's title insurance policy shall insure the marketability of the title to the Property, free and clear of (i) all liens, rights, agreements, charges, and encumbrances, except the Permitted Exceptions, (ii) all survey exceptions, and (iii) unrecorded mechanics' or materialmen's liens. Specifically, Seller shall have the obligation, at Seller's sole cost and expense, to resolve all matters of hereditary and intestacy that affect title to the Property. If Buyer's objections cannot reasonably be removed or the defects cured by Seller, Buyer shall have the option of terminating this Agreement, in which case the Earnest Money shall be fully refunded to Buyer.

7. Buyer's Survey. Buyer may, prior to the end of the Inspection Period, obtain at Buyer's expense, an ALTA/ACSM boundary survey (the "Survey") of the Property. Should any Survey reveal matters objectionable to Buyer, Seller and Buyer shall have the same rights and obligations with respect thereto as provided in this Agreement regarding objections to title. If, during the Inspection Period, Buyer does not object in writing to matters of survey, then any such matters shall be deemed waived.

8. Seller's Representations and Warranties.

(a) As an inducement to the Buyer to enter into this Agreement, and in addition to the representations, warranties, and agreements contained elsewhere in this Agreement, Seller makes the following representations, warranties and agreements, each of which is material and is relied upon by Buyer and shall survive Closing:

- (i) That the Seller has the right, power, and authority to enter into this Agreement, and has or will have the right, power and authority to convey the Property in accordance with the terms and conditions of this Agreement, and the individual or individuals signing this Agreement for and on behalf of the Seller is or are duly authorized to do so.
- (ii) That, other than eminent domain proceedings for the extension of Hungryneck Boulevard and the extension and/or realignment of Long

Point Road, the Seller has received no notice of, nor is the Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof. The Seller shall promptly upon receiving any such notice or learning of any such contemplated or threatened action, give the Buyer written notice thereof.

- (iii) Other than actions to quiet title to portions of the Property which are either in progress or to be filed as part of Seller's obligation to provide clear title with respect to matters of heredity or intestacy, there is no pending litigation or dispute against the Seller with respect to the Property, including, without limitation, any litigation or dispute involving or concerning the location of the lines and corners of the Property.
- (iv) That Seller shall provide at Closing any affidavits, resolutions, by-laws, meetings of minutes, proofs, opinions of counsel, or such further assurance as may be available and within Seller's authority to satisfy Buyer, its counsel or the Title Company that title to be conveyed shall be of the quality herein represented.
- (v) That Seller will be, on the Closing Date, the owner of the Property and will have full authority to convey the same free and clear of all liens and encumbrances except the Permitted Exceptions. Seller is not the current owner of the Property, but is under contract to purchase the Property from the current title owners. Seller shall acquire title immediately prior to, or simultaneously with, the Closing. Seller agrees that during the term of this Agreement, Seller will not record new instruments affecting the Property without Buyer's prior written consent. Furthermore, Seller shall not consent to any recordation by the Underlying Sellers of new instruments affecting the Property except to the extent necessary or helpful to quieting title to the Property or portions of it.
- (vi) Seller is not aware of any condition or governmental requirement which would prevent the subdivision of the Property for residential development. To the actual knowledge of Seller, the Property (A) has not been registered or certified as "historic" by any governmental entity or historic condition; (B) is not inhabited by a protected bird or other animal which might affect its development; (C) there are no cemeteries, grave sites, or burial sites on the Property. Buyer acknowledges awareness of the old earthworks on or near the joint boundary line of 558-00-00-004, 144, 310, and 311.
- (vii) That Seller will have the exclusive right of possession of the Property at Closing, and the Property will not be encumbered by any lease or leases.

(viii) Seller is not aware of any written notice of any civil, criminal, or administrative suit, claim, hearing, violation, investigation, proceeding or demand against Seller or the Property relating in any way to the Release or compliance with Environmental Laws, and to the Seller's knowledge there has been no Release on the Property of existing condition in violation of applicable Environmental Law. For purposes of this Agreement, the phrase "Environmental Law" shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation and any common laws regarding health, safety, radioactive materials, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, et seq. ("TSCA"); the Occupational Safety and Health Act, 29 U.S.C. §651, et seq. ("OSHA"); the Clean Air Act, 42 U.S.C. §7401, et seq. ("CAA"); the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq. ("FWPCA"); the Safe Drinking Water Act, 42 U.S.C. §3001, et seq. ("SDWA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq. ("HMTA") and the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, et seq. ("EPCRA"); the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. ("ESA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. ("FIFRA") and other comparable federal, state or local laws, each as amended, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder. The phrase "Hazardous Materials" shall mean each and every elements, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws (as hereinafter defined) or the Release of which is regulated under Environmental Laws. The term "Release" shall mean the discharge, disposal, deposit, injection, dumping, spilling, leaking, leaching, placing, presence, pumping, pouring, emitting, emptying, escaping or other release of any Hazardous Material. For purposes of the representations and warranties set forth in this clause, "Hazardous Materials" shall not include consumer products, office supplies, and cleaning and maintenance supplies stored and used in the ordinary course of operation of the Property and in compliance with applicable Environmental Laws.

(ix) Seller warrants that electrical service, water service and telephone service are available along the Six Mile Road which is contiguous to the Property.

(b) Seller hereby agrees that the truthfulness of each of said representations and warranties and of all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder. Upon the material breach of any of these presentations and warranties or upon the material breach by Seller of any other representation,

warranty, condition or provision hereof, Buyer may declare this Agreement null and void, in which case the Earnest Money, shall be fully refunded to Buyer.

9. Operation Prior to Closing. Seller agrees, and shall cause the current owners of the Property, to continue to maintain, operate and manage the Property in its usual manner between the date of this Agreement and the date of Closing, making every reasonable effort to do nothing which might damage or adversely affect the value of the Property. Seller agrees to enter into no leases, no material agreements or contracts relating to the Property which survive Closing without Buyer's prior written consent, which consent shall not be unreasonably withheld. The Property shall be substantially the same condition on the date of Closing as on the date of this Agreement.

10. Conditions Precedent to Buyer's Obligation to Purchase.

(a) This Agreement, and all of Buyer's obligations hereunder, shall be subject to and specifically contingent upon the following conditions precedent (the "Conditions Precedent"):

- (i) All of Seller's representations and warranties contained in this Agreement shall be true and correct as of the Effective Date of this Agreement (if so represented and warranted) and as of the Closing Date, and Seller shall have complied with all of its obligations hereunder.
- (ii) The Property is platted with allowed parcels as necessary to be conveyed to Buyer on plats approved by the Town of Mt. Pleasant and recorded in the RMC Office for Charleston County. This does not, however, require that the Property has received a final or preliminary plat approval from the Town of Mount Pleasant for Buyer's Intended Use.
- (iii) Any permits, plans and approval from any and all governmental agencies previously obtained by Seller shall be valid, transferable to Buyer and in full force and effect. If any permit shall have expired, Seller shall take all steps necessary to secure reissue at Seller's expense.
- (iv) Seller shall have obtained all signatures reasonably necessary to close on its purchase of the Property with the Underlying Sellers and shall close on such purchase immediately prior to Seller's closing with Buyer.
- (v) Seller shall have obtained the approval of the Primus Family of Buyer's intended name for the neighborhood to be developed on the Property. Buyer agrees to submit its intended name (which includes the name "Primus") before the end of the Inspection Period. Seller agrees to work diligently to obtain approval from the Primus Family within 15 days thereafter. If the Primus Family does not approve such name choice, Buyer agrees to submit an alternate name choice within 10 days thereafter and Seller agrees to diligently pursue approval within 15 days thereafter.

(b) In the event any of the foregoing Conditions Precedent are not met and satisfied on or before the Closing Date, Buyer shall have the right to (i) terminate this Agreement (in which event the Earnest Money shall be refunded to Buyer), or (ii) waive said Conditions Precedent and close on the Property in accordance with the terms and provisions of this Agreement.

11. Conditions Regarding Final Rezoning

(a) This Agreement, and all of Buyer's obligations hereunder, shall be subject to and specifically contingent upon Buyer receiving Final Rezoning for Property. "Final Rezoning" means that:

- (i) the Property has received final and unappealable approval from the Town of Mount Pleasant to re-zone the Property for Buyer's intended development of the Property as a residential Planned Unit Development ("Buyer's Intended Use") subject only to existing zoning ordinance requirements and normal development standards for residential Planned Developments in the Town of Mount Pleasant;
- (ii) the Property has been annexed into the City of Mount Pleasant, South Carolina; and
- (iii) all appeals (if any) have been exhausted and all remaining appeal periods have expired without any appeal filed.

(b) Seller filed an application on February 18, 2015, seeking Final Rezoning of the Property for a Planned Unit Development seeking an allowed density of 73 single family units. However, Buyer will be responsible for coordinating all other efforts to obtain Final Rezoning and the costs associated therewith, including a reimbursement to Seller for the approximately \$2,400 in application filing fees (Rezoning and Annexation) with said reimbursement to be paid directly to Seller within three (3) business days of execution of this Agreement. Seller agrees to, and shall cause the Underlying Sellers to, reasonably cooperate in such rezoning, including signing such applications and attending such meetings as may be required or deemed reasonably necessary.

(c) In the event the Town of Mount Pleasant imposes a Final Rezoning with restrictions allowing fewer than 73 single family units, then Buyer shall be entitled to a decrease in the Purchase Price calculated as \$114,000.00 for each single family detached unit below 73.

(d) If, despite diligent efforts, Final Rezoning is not obtained within 6 months after the Application Date, either party may elect by written notice delivered to the other party on or after such date, to terminate this Agreement and upon such occurrence all Earnest Money shall be returned to Buyer and neither Buyer nor Seller shall have any further obligations hereunder except those that survive termination. However, before terminating this Agreement under this provision, Seller must provide Buyer notice of its intention to do so. At that point, Buyer may

waive the condition relating to Final Rezoning and close on the Property in accordance with the terms and provisions of this Agreement.

12. Risk of Loss. Until the purchase of the Property has been consummated on the date of Closing, all risk of loss of, or damage to, or destruction of, the Property, whether by fire, flood, tornado, hurricane or other casualty, or by the exercise of the power of eminent domain, or otherwise, shall belong to and be borne by the Seller. If, prior to Closing, the Property or any part thereof (other than existing residences and structures) shall be damaged or destroyed, Buyer, at Buyer's option, may declare this Agreement null and void and receive a full refund of the Earnest Money, plus interest. If Buyer elects to proceed and to consummate the transfer and conveyance under this Agreement despite such damage or destruction, there shall be no reduction in, abatement of, or set-off against the Purchase Price, and Seller shall assign to Buyer all of Seller's rights, title and interest in and to any insurance proceeds resulting from such damage or destruction.

13. Condemnation.

(a) The parties are aware of the potential that a portion of the Property may be taken by eminent domain for the extension of Hungryneck Boulevard. If any portion of the Property is taken for this purpose by eminent domain or by an agreed-upon sale in lieu of eminent domain proceedings, whether before or after the Closing, the parties agree that any proceeds paid by the governmental authority to Buyer or Seller will be distributed first to Buyer or Seller, as the case may be depending on which party then owns the portion being taken, in an amount equal to the costs and expenses (including attorney's fees) incurred by such party in connection with the taking or agreed-upon sale. Any amounts remaining after paying such costs and expenses will be divided evenly between Buyer and Seller. The parties shall memorialize Seller's interest in the condemnation proceeds by means of a recordable instrument, the form of which is to be agreed upon during the Buyer's Inspection Period, and such instrument shall be signed by the parties and recorded at the Closing.

(b) If, prior to Closing, the Property or any part thereof shall be taken by eminent domain other than through the projects described in Section 13(a), this Agreement shall become null and void, at Buyer's option, and all Earnest Money, plus interest shall be refunded to Buyer. Seller shall notify Buyer in writing of any such taking as soon as Seller becomes aware of it. If Buyer elects to proceed and to consummate the transfer and conveyance under this Agreement despite such taking, there shall be no reduction in, abatement of, or setoff against the Purchase Price and Seller shall assign to Buyer all of Seller's right, title and interest in and to any award or settlement made or to be made in the condemnation proceedings.

14. Brokerage Commission. Except as to Southeastern Realty Services ("Buyer's Broker") for whose commission Buyer is solely responsible, Buyer has not employed any real estate broker, agent or finder, in connection with this Agreement or this transaction. Except as to Oswald Cooke and Associates ("Seller's Broker"), for whose commission Seller is solely responsible, Seller has not employed any real estate broker, agent or finder, in connection with this Agreement or this transaction. Buyer and Seller each warrant and represent to the other that other than Buyer's Broker and Seller's Broker, no other brokers', agents', finders' fees,

commissions or other similar fees are due or will be due in connection with this Agreement or this transaction, and Buyer and Seller each agree to indemnify and hold the other harmless from and against all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) that the other party may suffer or incur because of any claim by a broker, agent or finder claiming by, through or under such indemnifying party, whether or not meritorious, for any compensation with respect to this Agreement or Closing. This Section shall survive Closing or any termination of this Agreement.

15. Closing Costs. The Seller shall be responsible for the fees and expenses of Seller's attorneys, deed preparation fees, the fees or taxes for documentary stamps or other transfer taxes, including all fees due pursuant to South Carolina Code Section 12-24-10, et seq., due with respect to the transfer of the Property, and any other costs and expenses actually incurred by the Seller. The Buyer shall be responsible for customary buyer closing costs.

16. Prorations.

(a) All rents, ad valorem taxes, user fees, and assessments due with respect to the Property for the calendar year of the Closing shall be prorated between Buyer and the Seller as of the Closing Date. If the actual amount of such taxes is not known as of such date, the proration will be on an equitable basis and will be based on the most current and accurate billing information available. If, upon receipt of the actual property tax bills for the year of Closing, such proration proves to be inaccurate, then the Seller and the Buyer shall correct any such malapportionment.

(b) Seller shall be solely responsible for any past due, delinquent, taxes applicable to the Property, and the title policy will be issued at Closing without exception for any such taxes. With respect to roll back tax liability, Buyer shall be responsible to pay any such taxes. This paragraph shall survive Closing.

17. Possession. Buyer shall be entitled to possession of the Property upon Closing.

18. Default and Remedy.

(a) Notwithstanding anything to the contrary in this Agreement, if Seller defaults under this Agreement prior to Closing and fails to cure such default within 5 business days of notice thereof and curing such default was reasonably achievable by Seller with the exercise of diligence, at Buyer's option, Buyer may elect: (i) to terminate this Agreement, in which case the Earnest Money shall be returned to Buyer, and Seller must also reimburse Buyer for all costs or expenses incurred by Buyer in connection with this Agreement or the transaction contemplated hereunder (including, without limitation, fees and costs incurred in connection with obtaining or attempting to obtain the Final Rezoning, attorney's fees, due diligence expenses, and other out of pocket costs) up to a maximum reimbursement of \$25,000.00, and this Agreement shall, without further action of the parties, become null and void and neither party shall have any further rights or obligations under this Agreement, or (ii) to sue Seller for specific performance of the sale of the Property, in accordance with the terms of this Agreement. The parties recognize that if Seller breaches this Agreement and refuses to perform under the provisions of this Agreement,

monetary damages alone would not be adequate to compensate Buyer for its injury, due to the unique nature of the Property.

If, however, Seller's failure to cure was the result of Seller's practical or legal inability to effect a cure notwithstanding the exercise of reasonable diligence, then Buyer's remedy shall be limited to the remedy outlined in Section 18(a)(i). In such a case, Seller cannot be forced to specifically perform and this Agreement shall, without further action of the parties, become null and void and neither party shall have any further rights or obligations under this Agreement, except as provided in the preceding sentence.

(b) Notwithstanding anything to the contrary contained in this Agreement, if Buyer defaults under this Agreement as a result of which the Closing fails to occur and fails to cure such default within 5 business days of notice thereof, the Earnest Money shall be forfeited to Seller as liquidated damages, which shall be Seller's sole and exclusive remedy at law or equity against Buyer, and neither party shall have any further rights or obligations under this Agreement. Seller and Buyer acknowledge and agree that (1) the Earnest Money is a reasonable estimate of and bears a reasonable relationship to the damages that would be suffered and costs incurred by Seller as a result of having withdrawn the Property from sale and the failure of Closing to occur due to a default of Buyer under this Agreement; (2) the actual damages suffered and costs incurred by Seller as a result of such withdrawal and failure to close due to a default of Buyer under this Agreement would be extremely difficult and impractical to determine; (3) the Earnest Money shall be and constitute valid liquidated damages and not a penalty; and (4) the Earnest Money shall be fully refundable to Buyer if the Closing fails to occur for any reason other than a default hereunder by Buyer.

19. Assignment. Either party shall have the right to assign this Agreement to any partnership, limited liability company, or other entity owned or controlled in whole or in part by the party (or any affiliate, parent or subsidiary of the party), or may otherwise assign this Agreement without the other party's consent. Additionally, either party shall have the right to assign this Agreement to an unrelated party (such as a 1031 exchange qualified intermediary) to enable the party to engage in a 1031 tax deferred exchange and, in such case, the other party agrees to accommodate such requests provided the accommodation is at no material cost to the accommodating party. It is provided, however, that any such assignments shall not relieve the original parties from responsibility to perform under this Agreement.

20. Survival. All of the terms, conditions, covenants, representations, warranties, and agreements in this Agreement shall survive and continue in full force and effect and shall be enforceable after the Closing.

21. Notice. Notice to Seller and Buyer shall be deemed to have been made if deposited in the U.S. Mail, return receipt requested, with the date of postmark constituted the date of notification, or by fax or email. Notification shall be made as follows:

AS TO BUYER:

JW Homes, LLC
3015 Dunes West Blvd., Suite 502
Mt. Pleasant SC 29466
Attn: Fred Vandercook
Email: fred.vandercook@jwhomes.com

WITH A COPY TO:

JW Homes, LLC
4125 Atlanta Road
Smyrna, GA 30080
Attn: Joel S. Reed, Esquire
Email: joel.reed@jwhomes.com

WITH A COPY TO:

Leonard Krawcheck, Esquire
Krawcheck & Davidson, LLC
9 State Street
Charleston, SC 29401
Email: lk@krawdavlaw.com

AS TO SELLER:

American Star Development SC, LLC
Attn: Brian Harvin
1022 Carolina Boulevard
Isle of Palms, SC 29451
Email: brianharvin@yahoo.com

AND WITH A COPY TO:

Jamison Cox, Esquire
Smith Cox & Associates, LLP
160 East Bay Street, Suite 201
Charleston, SC 29401
Email: jcox@smithcox.com

22. Entire Agreement. Modification. This Agreement constitutes the entire and complete agreement between the parties hereto and supercedes any prior oral or written agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in anyway change the terms, covenants, and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

23. Binding Effect. All covenants, agreements, warranties, and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

24. Governing Law. This Agreement shall be governed by the law of the State of South Carolina.

25. Effective Date. The Effective Date of this Agreement means the later of the dates that this Agreement is signed by Buyer or Seller.

26. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all parties hereto, whether or not each counterpart is executed by all parties hereto, so long as each party hereto has executed one or more counterparts hereof.

27. Attorney's Fees. All attorneys' fees and other costs associated with this Agreement shall be paid by the party incurring them.

28. Confidentiality/Non-Solicitation. Seller agrees to keep confidential all discussions, negotiations, and proceedings relating to the Property and the proposed transaction between Buyer and Seller for a period commencing on the date hereof. Seller will not solicit or entertain any offers or inquiries from third parties to purchase the Property while this Agreement is in effect. Buyer shall have all rights and remedies at law or in equity in the event of a breach of this confidentiality provision by Seller.

29. Business Day. The term "business day" shall mean Monday through Friday, excluding days on which the Federal Reserve Bank either in or closest to the state in which the Property is located is closed for business. If the day for any action under this Agreement falls on a day other than a business day, the day for the action shall automatically be extended until the next business day.

30. Underlying Agreements, Simultaneous Closing.

(a) Notwithstanding anything contained in this Agreement to the contrary, it is specifically understood and agreed that this Agreement is contingent upon the closing of the purchase of the Property between Seller and the current Owners of the Property (the "Underlying Sellers"). Within five (5) days from the Effective Date, Seller shall furnish to Buyer written confirmation from Seller's procuring real estate agents confirming that their brokerage(s) is/are holding earnest money deposits and fully executed purchase and sale contracts with the Underlying Owners for all of the parcels comprising the Property identified in Section 1(a) above. The parties further acknowledge and agree that Seller intends to close on its purchase of the Property from Underlying Owners immediately preceding ("simultaneous closing") the Closing of the transaction contemplated by this Agreement. In the event Seller, despite its due diligence and best efforts, is unable to consummate the purchase of the Property from Underlying Owners prior to the Closing Date, Seller shall notify Buyer in writing of same, and this Agreement shall terminate as of the date of such notice. In such event, all Earnest Money

shall be promptly returned to Buyer, and Buyer and Seller shall be released and relieved of all obligations and liabilities under this Agreement except any which expressly survive termination of this Agreement.

(b) Seller represents and warrants that:

- (i) there are no verbal or other unwritten agreements with the Underlying Sellers regarding the sale of the Property;
- (ii) the Underlying Agreements are in full force and effect; and
- (iii) Seller has not received any notice of default, notice of termination or other such notice, whether verbal or written, regarding Seller's performance or failure to perform under any Underlying Agreements.

(c) If any of the Underlying Sellers commit any act (or fail to act) with respect to the Property that would have a material and adverse effect on the aggregate cost to develop the entire Property, Buyer may terminate this Agreement, in which case 2nd Escrow Agent will return the Earnest Money to Buyer.

31. Right of First Offer.

(a) Seller hereby grants to Buyer a Right of First Offer (herein so called) to negotiate to purchase the following parcels of land (the "ROFO Parcels"), whether sold by Seller or affiliates of Seller: (i) the parcel bearing TMS #578-00-00-005; (ii) the parcel bearing TMS #578-00-00-006; and (iii) the parcel bearing TMS #578-00-00-007. This Right of First Offer commences when this Agreement is signed by Buyer and Seller and it remains available to Buyer until the earlier of [1] 180 days thereafter, [2] Closing on Buyer's purchase of the Property, or [3] termination of this Agreement (regardless of the reason or party exercising the termination). Buyer acknowledges that, as of the date of this Agreement, Seller does not own the ROFO Parcels, but has contractual rights to purchase the ROFO Parcels. Seller intends to purchase the ROFO Parcels, but nothing in this Agreement requires Seller to purchase the ROFO Parcels and any such purchase is in Seller's sole discretion. If Buyer and Seller are able to agree upon business terms for Buyer's purchase of the ROFO Parcels then, unless Seller agrees otherwise, the closing date for the ROFO Parcels shall not be sooner than one (1) year and one (1) day after the Closing Date for the Property.

(b) In consideration for the granting of this Right of First Offer, and regardless of whether Buyer and Seller execute a contract for the purchase and sale of the ROFO Parcels, Buyer agrees the access road ("Access Road") through the Property (not including the ROFO Parcels) to be constructed by Buyer on the Property shall be designed and constructed under standards applicable to public roads to provide vehicular and pedestrian access to connect the Property to the ROFO Parcel 578-00-00-005 (the "Connection"). Buyer agrees this Connection will be depicted on Buyer's Sketch Plan for the Property (as distinguished from any Sketch Plan applicable to the ROFO Parcels) that is ultimately approved by the Town and shall be designed and constructed as a continuation of the Access Road serving the Property to the point it touches

the common boundary line between the Property and ROFO Parcel 578-00-00-005. Buyer's obligation to design and construct the Connection survives the Closing.

(c) If the design and construction of this Connection results in a change to the number of Lots otherwise approved for the Property by the Town of Mount Pleasant, then Seller and Buyer shall reconcile the Purchase Price of the Property to compensate for the Lot or Lots which are forfeited or gained. In such a case, the compensation shall be \$114,000 per Lot forfeited or gained for the Property as a result of the re-design for the Connection portion of the Access Road and this amount will be credited against (or added to) the Purchase Price for the Property at the time of the Closing, regardless of whether Buyer purchases the ROFO Parcels from Seller.

(d) The Access Road may not be used for traffic related to construction and development of the ROFO Parcels. Buyer will have the right to block access through the Connection to the ROFO Parcels until the ROFO Parcels have paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes or in connection with normal residential use.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.

WITNESSES:

WITNESSES:

BUYER:

JWH ACQUISITIONS, LLC.
a Delaware limited liability company

By: 
Name: Frederick R. Vandercook
Its: President - Charleston Division
Date of Execution: 2/25/15

SELLER:

AMERICAN STAR DEVELOPMENT
SC, LLC

By: 
Name: Brian Harkin
Its: MEMBER-MANAGER
Date of Execution: 2/25/15

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980; thereafter conveyed to American Pride Properties, LLC by Tax Deed of Daniel M. Gregory, Delinquent Tax Collector of Charleston County, dated February 11, 2014, and recorded in the aforementioned RMC Office on February 21, 2014, in Book 0389, page 849.

PARCEL B [TMS # 558-00-00-140]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.758 acres, more or less, and being shown and designated as Lot B on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately 1.169 acres, more or less, conveyed to the Town of Mount Pleasant in the matter of Town of Mount Pleasant vs. Fred L. Swinton and Penderlee Swinton; Charleston County

Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

This is a portion of the same property wherein title was confirmed in the name of Penderlee Swinton and Fred L. Swinton in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL D [TMS # 558-00-00-141]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.209 acres, more or less, and being shown and designated as Lot D on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property wherein title was confirmed in the name of Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property conveyed to Debra C. Schweitzer by deed of James M. Farris as Delinquent Tax Collector for Charleston County, dated December 30, 2006, and recorded in the RMC Office for Charleston County on January 31, 2006, in Deed Book E571 at Page 495.

PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

Less and except that certain portion of approximately .008 acre (370) square feet., more or less, conveyed to the Town of Mount Pleasant by AMENDED ORDER FOR DISTRIBUTION OF FUNDS in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Case 2009-CP10-3392, as shown in the Amended Condemnation Notice recorded in the office of the aforementioned RMC on June 5, 2009, at Book 0352, Page 475.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown, Flora Green Gilford, Fred L. Swinton, Penderlee Swinton, Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).

EXHIBIT "B"

REQUIRED INFORMATION MATERIALS

1. Copies of all surveys of the Property.
2. Copies of any deed or deeds to the Property, together with copies of all title insurance policies with respect to the Property, along with legible copies of all title exceptions and Permitted Encumbrances which may be in Seller's possession.
3. Copies of tax bills applicable to the Property.
4. Copies of any soil reports, environmental studies or reports, permits, licenses, approvals, leases, contracts, agreements or other documents associated with or applicable to the Property, if any.
5. Copies of any leases affecting the Property.
6. Copies of any other agreements affecting the Property.
7. Copies of prior construction documents, if any.
8. Copies of environmental surveys or reports.

EXHIBIT "C"

PERMITTED EXCEPTIONS

1. Real property taxes, if any, for the year of Closing and subsequent years.
2. The claim of the State of South Carolina to any marshland or land below the mean high water mark.
3. Existing easements and rights-of-way of public record provided (a) such items do not prevent Buyer's Intended Use of the Property or such items are reasonably capable of relocation during Buyer's re-development of the Property without extraordinary cost to Buyer, and (b) such items are accepted by Buyer following the title objection process outlined in Section 6;..

EXHIBIT B

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980; thereafter conveyed to American Pride Properties, LLC by Tax Deed of Daniel M. Gregory, Delinquent Tax Collector of Charleston County, dated February 11, 2014, and recorded in the aforementioned RMC Office on February 21, 2014, in Book 0389, page 849.

PARCEL B [TMS # 558-00-00-140]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.758 acres, more or less, and being shown and designated as Lot B on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately 1.169 acres, more or less, conveyed to the Town of Mount Pleasant in the matter of Town of Mount Pleasant vs. Fred L. Swinton and Penderlee Swinton; Charleston County

Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

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PARCEL D [TMS # 558-00-00-141]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.209 acres, more or less, and being shown and designated as Lot D on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property wherein title was confirmed in the name of Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. — L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property conveyed to Debra C. Schweitzer by deed of James M. Farris as Delinquent Tax Collector for Charleston County, dated December 30, 2006, and recorded in the RMC Office for Charleston County on January 31, 2006, in Deed Book E571 at Page 495.

PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

Less and except that certain portion of approximately .008 acre (370) square feet., more or less, conveyed to the Town of Mount Pleasant by AMENDED ORDER FOR DISTRIBUTION OF FUNDS in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Case 2009-CP10-3392, as shown in the Amended Condemnation Notice recorded in the office of the aforementioned RMC on June 5, 2009, at Book 0352, Page 475.

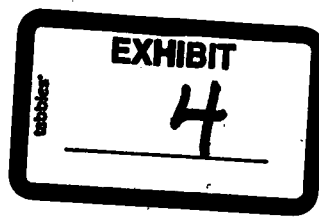
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PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).

4/6/18
2:37 PM



2018-Q-10-2175

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) COURT FILE NO. 2018-LP-10-336

AMERICAN STAR DEVELOPMENT
SC, LLC

Plaintiff,

vs.

PULTE HOME CORPORATION N/K/A
PULTE HOME COMPANY, LLC,

Defendant.

LIS PENDENS

FILED
2018 APR -6 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE IS HEREBY GIVEN THAT an action will be initiated within twenty (20) days of the date of filing of this lis pendens in the Court of Common Pleas for the County and State aforesaid, by the above-named Plaintiff, against the Defendant above named, and that the real estate affected by such action is situate in the County and State aforesaid, and the following is a description thereof:

SEE ATTACHED EXHIBIT "A"

Being the same property conveyed to Pulte Home Corporation, a Michigan corporation by deed of JW Homes, LLC, a Delaware limited liability company, dated as of the 14th day of January, 2016, and recorded in the Office of the RMC for Charleston County on January 21, 2016, in Book 0530 at Page 301; said deed being re-recorded in the aforesaid office on July 1, 2016, in Book 0565 at Page 398.

A handwritten signature in black ink, appearing to read "E. Brandon Gaskins".

E. Brandon Gaskins (State Bar No. 73274)
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
Telephone: (843) 579-7000
brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC.
April 6, 2018

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E.-L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980; thereafter conveyed to American Pride Properties, LLC by Tax Deed of Daniel M. Gregory, Delinquent Tax Collector of Charleston County, dated February 11, 2014, and recorded in the aforementioned RMC Office on February 21, 2014, in Book 0389, page 849.

PARCEL B [TMS # 558-00-00-140]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.758 acres, more or less, and being shown and designated as Lot B on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately 1.169 acres, more or less, conveyed to the Town of Mount Pleasant in the matter of Town of Mount Pleasant vs. Fred L. Swinton and Penderlee Swinton; Charleston County

Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

This is a portion of the same property wherein title was confirmed in the name of Penderlee Swinton and Fred L. Swinton in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL D [TMS # 558-00-00-141]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.209 acres, more or less, and being shown and designated as Lot D on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property wherein title was confirmed in the name of Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property conveyed to Debra C. Schweitzer by deed of James M. Farris as Delinquent Tax Collector for Charleston County, dated December 30, 2006, and recorded in the RMC Office for Charleston County on January 31, 2006, in Deed Book E571 at Page 495.

PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

Less and except that certain portion of approximately .008 acre (370) square feet., more or less, conveyed to the Town of Mount Pleasant by AMENDED ORDER FOR DISTRIBUTION OF FUNDS in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Case 2009-CP10-3392, as shown in the Amended Condemnation Notice recorded in the office of the aforementioned RMC on June 5, 2009, at Book 0352, Page 475.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown, Flora Green Gilford, Fred L. Swinton, Penderlee Swinton, Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO. 2018-CP-10-2175

AMERICAN STAR DEVELOPMENT SC,
LLC; KKMC INVESTMENTS, LLC; AND
211, LLC;

Plaintiffs,

vs.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC,

Defendants.

AMENDED COMPLAINT

BY

JULIE L. ARMSTRONG
CLERK OF COURT

2018 MAY -1 PM 3:38

FILED

Plaintiffs American Star Development, SC, LLC ("American Star"); KKMC Investments, LLC; and 211, LLC, complaining of Defendants PulteGroup, Inc. ("PulteGroup"); Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC"); and, alternatively, of Defendant JW Homes, LLC ("JWH"), alleges as follows:

INTRODUCTION

1. PulteGroup and PHC, as successors to JW Homes, LLC, have a contractual obligation to construct an access to road to American Star's property, pursuant to a purchase and sale agreement entered into between American Star and JW Homes. PulteGroup and PHC have refused to honor their obligation to construct the access road in breach of the agreement, thereby limiting American Star's ability to develop its property and causing it to suffer millions of dollars in damages.

THE PARTIES

2. Plaintiff American Star is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

3. Plaintiff KMMC Investments, LLC is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

4. Plaintiff 211, LLC is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

5. Defendant PulteGroup is a corporation organized and existing under the laws of the State of Michigan. Upon information and belief, PulteGroup does business in Charleston County, South Carolina.

6. Defendant PHC is a limited liability company and subsidiary of Defendant PulteGroup, organized and existing under the laws of the State of Michigan. PHC does business and owns property in Charleston County, South Carolina.

7. Defendant JWH is a limited liability company organized and existing under the laws of the State of Delaware. JWH was conducting business and owned property in Charleston County, South Carolina, at the times relevant to this action.

VENUE AND JURISDICTION

8. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30.

9. This Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-20 and Article 5 of the South Carolina Constitution.

10. This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803.

FACTS

11. On February 25, 2015, American Star and JWH Acquisitions entered into an Agreement for Purchase and Sale (the "Agreement") (attached as Exhibit A), wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, as described more particularly on Exhibit B (the "Primus Property").

12. American Star owns property adjacent to the Primus Property bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property").

13. Pursuant to Section 31(a) of the Agreement, American Star granted JWH Acquisitions the right of first offer to negotiate to purchase certain parcels owned by American Star (the "ROFO Parcels"), including the Adjacent Property.

14. Pursuant to Section 31(b) of the Agreement and in consideration for American Star granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agreed that the access road through the Primus Property would be designed and constructed under standards applicable to public roads to provide vehicular and pedestrian access to connect the Primus Property to the Adjacent Property (the "Connection"). JWH Acquisitions further agreed that the Connection would be depicted on the sketch plan ultimately approved by the Town of Mount Pleasant and that the Connection would be designed and constructed as a continuation of the access road serving the Primus Property to the point it touches the common boundary line between the Primus Property and the Adjacent Property.

15. Pursuant to Section 13(a) of the Agreement, if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star.

16. Subsequent to entering into the Agreement but before the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Agreement to JWH, and American Star assigned its rights, obligations, and interest under the Agreement to 211, LLC and KKMC Investments, LLC.

17. On or about July 31, 2015, 211, LLC and KKMC Investments, LLC, as assignees of American Star under the Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Agreement.

18. On or about December 15, 2015, PulteGroup entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire substantially all of the assets of JWH and its affiliates and subsidiaries (the "Acquisition"). Upon information and belief, the Primus Property was one of the assets of JWH to be acquired by PulteGroup in the Acquisition pursuant to the APA.

19. Pursuant to Section 2.3 of the APA, PulteGroup agreed to assume and discharge certain liabilities and obligations of JWH. Upon information and belief, JWH's obligations under the Agreement, including the obligation to design and construct the Connection and to share condemnation proceeds, were liabilities and/or obligations assumed by PulteGroup pursuant to the APA.

20. On or about January 14, 2016, PulteGroup acquired substantially all of JWH's assets pursuant to the APA. Also, on or about January 14, 2016, JWH conveyed the Primus Property to PHC. Upon information and belief, the conveyance of the Primus Property to PHC was pursuant to Section 4.2 of the APA, which required JWH to execute and deliver special warranty deeds for the acquired properties to PulteGroup or affiliates of PulteGroup, including PHC.

21. As a result of the agreements made in the APA and the related transactions conveying the Primus Property to PHC, PulteGroup and PHC expressly agreed to assume responsibility for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds.

22. In addition to expressly assuming JWH's liabilities and obligations pursuant to the APA, PulteGroup assumed liability for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds, because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

23. JWH, PHC, and/or PulteGroup obtained approval from the Town of Mount Pleasant to begin residential development of the Primus Property. However, the sketch plans and plats for the development, as approved by the Town of Mount Pleasant, lack any design or depiction of the Connection.

24. American Star has made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but PHC and PulteGroup have refused American Star's demands.

25. PHC's and PulteGroup's refusal to design, seek approval for, and construct the Connection is a breach of the Agreement.

26. As a result of PHC's and PulteGroup's breach of the Agreement, American Star has been damaged by the diminution in value of the Adjacent Property resulting from lack of access to the Adjacent Property from the Primus Property and the consequent limitations on the development and use of the Adjacent Property.

FIRST CAUSE OF ACTION
(Breach of Contract as against PulteGroup and PHC)

27. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

28. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

29. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

30. The Agreement constitutes a valid and binding contract between American Star and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

31. Section 31(b) of the Agreement requires PulteGroup and PHC, as successors to JWH, to design, seek approval for, and construct the Connection.

32. Plaintiffs have performed their obligations under the Agreement, and American Star remains able and willing to perform its obligation to provide PulteGroup and/or PHC with a right of first offer to negotiate the purchase of the ROFO Parcels.

33. PulteGroup and PHC have breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

34. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

35. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, Plaintiffs are entitled to specific performance requiring PulteGroup and PHC to design, seek

approval for, and construct the Connection or, alternatively, damages for the loss in value of the Adjacent Property.

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

36. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

37. PHC, through its conduct and silence, made the false representation after it acquired the Primus Property that it would design, seek approval for, and construct the Connection.

38. PHC made the false representation that it would design, seek approval for, and construct the Connection with the intention or expectation that American Star would rely upon such representation.

39. PHC knew that it had no intention of designing, seeking approval for, and constructing the Connection.

40. Plaintiffs lacked knowledge and the means of knowledge that PHC had no intention of designing, seeking approval for, and constructing the Connection.

41. Plaintiffs relied on PHC's false representations to its prejudice.

42. As a result, PHC should be estopped from denying its obligation to design, seek approval for, and construct the Connection, and it should be ordered to fulfil such obligation.

THIRD CAUSE OF ACTION
(Declaratory Judgment against PulteGroup and PHC)

43. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

44. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

45. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

46. The Agreement constitutes a valid and binding contract between American Star and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

47. Section 13(a) of the Agreement requires PulteGroup and PHC, as successors to JWH, to share with Plaintiffs the proceeds if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension.

48. PulteGroup and PHC deny they are successors to JWH with respect to JWH's obligations under the Agreement, thereby denying the obligation to share the proceeds from any subsequent condemnation.

49. Plaintiffs are entitled to a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share the proceeds from any subsequent condemnation of the Primus Property or any portion thereof.

FOURTH CAUSE OF ACTION
(Alternatively, Breach of Contract against JWH)

50. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

51. In the event that PulteGroup and/or PHC are not successors to JWH with respect to JWH's obligations under the Agreement, then, alternatively, JWH had an obligation to design, seek approval for, and construct the Connection prior to conveying the Primus Property to PHC pursuant to Section 31(b) of the Agreement.

52. JWH breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

53. As a result of JWH's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

54. As a result of JWH's breach of Section 31(b) of the Agreement, Plaintiffs are entitled to damages for the loss in value of the Adjacent Property.

WHEREFORE, Plaintiffs pray as follows:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;
- b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof; and/or
- c. An award of all other appropriate relief as is just and proper under the circumstances.

CHARLESTON, SC
May 1, 2018



E. Brandon Gaskins (State Bar No. 73274)
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78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
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brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made and entered into as of February 25, 2015, by and between AMERICAN STAR DEVELOPMENT SC, LLC ("Seller") and JWH ACQUISITIONS, LLC or its assigns ("Buyer").

WITNESSETH

In consideration of the mutual terms, covenants, conditions and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the sum of One (\$1.00) Dollar paid to the Seller by the Buyer, the parties hereto agree as follows:

1. Purchase and Sale of Property.

(a) Seller agrees to sell and Buyer agrees to purchase the property more particularly described on Exhibit "A" and known as Tax Map Parcel Numbers 558-00-00-138, 558-00-00-139, 558-00-00-140, 558-00-00-141, 558-00-00-142, 558-00-00-143, 558-00-00-144, 558-00-00-172, 558-00-00-310, 558-00-00-311, and 578-00-00-004, containing approximately 24.81 acres, more or less, on Six Mile Road off Highway 17 North, Mt. Pleasant, Charleston County, South Carolina, together with all and singular the tenements, hereditaments, rights, easements and appurtenances now or hereafter belonging thereto, including all deeded rights to Primus Road (the "Property").

(b) Within 5 days from the Effective Date (as defined herein) of this Agreement, Seller shall provide Buyer with any leases, surveys, title policies, soils reports, environmental reports, and any other documents and information pertinent to the Property to which Seller has access and set forth in part in Exhibit "B" (the "Required Information Materials").

2. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be \$8,332,000.00. Buyer will deliver the Purchase Price, as adjusted by the prorations calculated pursuant to Section 16 below and with appropriate credit for the Earnest Money previously paid, to Escrow Agent in immediately available funds for payment to Seller.

3. Earnest Money.

(a) Within 3 business days after the Effective Date of this Agreement, the Buyer shall deposit the sum of \$75,000.00 (the "Earnest Money") with Krawcheck & Davidson, LLC ("1st Escrow Agent") to be held in escrow in a federally-insured, interest bearing account by Escrow Agent as provided herein.

(b) In the event that Buyer does not terminate this Agreement during the Inspection Period, 1st Escrow Agent shall transfer the Earnest Money to Chicago Title Insurance Company ("2nd Escrow Agent") to be held in escrow in a federally-insured interest bearing account by 2nd Escrow agent as provided herein. Buyer shall deposit with 2nd Escrow Agent within 3 business

days after the expiration of the Inspection Period an additional \$100,000.00 which shall become a part of the Earnest Money. All accrued interest to become a part of the Earnest Money.

(c) The Earnest Money shall be applied to the Purchase Price at Closing, or in the event the Earnest Money is not so applied, then the Earnest Money shall be disbursed by 2nd Escrow Agent in accordance with the terms of this Agreement.

4. Closing.

(a) The closing of the purchase and sale of the Property, herein called "Closing" shall be held on the date that is the later of (i) 3 days after the date on which Final Rezoning (defined below) is obtained, or (ii) 30 days after the expiration of the Inspection period (the "Closing Date"). TIME IS OF THE ESSENCE. The Closing will be at the offices of Buyer's attorney, Krawcheck and Davidson, LLC, 9 State Street, Charleston, South Carolina 29401, or at such other place as shall be mutually agreeable to the parties hereto.

(b) On the Closing Date, the Seller shall execute and deliver to Buyer, the following:

- (i) A General Warranty deed in recordable form conveying the Property to Buyer in fee simple free and clear of all liens and encumbrances except those enumerated in Exhibit "C" attached hereto (the "Permitted Exceptions"). Provided, however, and notwithstanding the foregoing, the following parcels shall be transferred by quit claim deed: 558-00-00-139, 558-00-00-142, and 558-00-00-172.
- (ii) An Affidavit indicating that, as of the date of the Closing, there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving the Seller; that there are no labor or material furnished to the Property for which mechanic's liens could be filed; and that there are no other unrecorded leases or other interests in the Property of any kind.
- (iii) A FIRPTA Certificate, Seller's tax identification number or Social Security Number and any other documentation as may be required by the Title Company (as hereinafter defined) or the attorney for the Buyer to carry out the terms, covenants, conditions, and intent of the within Agreement.
- (iv) Such documents as Buyer's counsel, or the Title Company (as hereinafter defined) may reasonably request to evidence Seller's authority to execute and perform under this Agreement and to execute and deliver all documents conveying the Property to Buyer.
- (v) Seller's South Carolina Residency Withholding Affidavit.

- (vi) Affidavit that the sale of the property will not be a sale of the majority of Seller's assets, or a tax compliance letter from the South Carolina Department of Revenue, if the sale is a majority of Seller's assets.
 - (vii) Any permits, variances, or rezoning approvals obtained by Seller and relevant to the Property.
- (c) The sale described herein shall be closed in escrow pending a final title update and recording of all recordable documents.

5. Inspection Period.

(a) Buyer will have until 11:59 pm on the 60th day after the Effective Date (the "Inspection Period"), and until Closing if Buyer does not terminate this Agreement as provided herein, in which to enter upon the Property to make inspections of the Property, including title matters, soil, engineering, planning, environmental, code, permitting, zoning, or other studies and investigations as Buyer shall deem appropriate. In any event, if Buyer, in Buyer's sole judgment and discretion, shall conclude that said inspections, reviews, studies, matters, and/or investigations are not satisfactory, for whatever reason, then Buyer may terminate this Agreement by delivering written notice of such termination to Seller on or before the expiration of the Inspection Period. If Buyer fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Buyer shall have no further right to terminate this Agreement pursuant to this paragraph. If Buyer does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Earnest Money shall be refunded to Buyer, less the sum of \$100.00 as consideration of the Buyer's inspection rights as set forth herein, and the parties hereto shall have no further rights, duties or obligations under this Agreement. Buyer shall pay all costs incurred by Buyer in making any such inspections and investigations and shall indemnify, defend, and hold the Seller harmless from any liens, claims, losses and liability arising out of the Buyer's exercise of such right and privilege to go upon the Property.

(b) Prior to the Closing, Buyer and Buyer's agents shall have reasonable access to the Property at reasonable times to conduct such surveys, studies, and investigations as Buyer shall deem appropriate. Buyer shall pay all costs incurred by Buyer in making such surveys, studies, inspections and investigations and shall indemnify, defend, and hold the Seller harmless from any liens, claims, losses or liabilities arising out of the Buyer's exercise of such right and privileges to go upon the Property. Provided however, Buyer agrees to make its request for access at least 24 hours in advance of Buyer's desired inspection time(s). Buyer's access to any dwellings or improvements are subject to Seller obtaining the occupant's consent after at least 24 hours advance request.

(c) Upon terminating this Agreement for dissatisfaction with its Inspection Period results as allowed above under Section 5(a), or for any other reason, Buyer will, upon request of Seller and payment of \$10,000 by Seller to Buyer, assign to Seller all of Buyer's rights to plans and other materials submitted by Buyer or on Buyer's behalf by SRS Engineering (traffic and impact study consultant) or Seamon + Whiteside (its engineer) to the Town of Mount Pleasant

related to the entitlement of the Property. Buyer agrees that it shall provide Seller with written confirmation from the providers that they have been paid in full for their plans and materials and they acknowledge Buyer has assigned its rights in and to the plans and materials to Seller.

6. Marketable Title. This sale shall be conditioned upon the delivery of a good and marketable and insurable title to the Property and title shall be conveyed to Buyer, free and clear of all encumbrances or liens except the Permitted Exceptions. Buyer agrees to complete its title inspection and issue a title objections letter ("Title Objections Letter") to Seller stating any title objections within 30 days of the Effective Date. Buyer's failure to object to a matter of title which exists as of the date of Buyer's title search shall be a waiver of title objection as to that matter and any further title objections must be based upon new title matters which were not matters of record prior to issuance of the Title Objections Letter or new matters which arose after issuance of Buyer's Title Objection Letter. This sale shall be further conditioned upon Buyer obtaining, at the time of Closing, a standard ALTA owner's policy of title insurance in the amount of the Purchase Price issued by Chicago Title Insurance Company (the "Title Company"). The owner's title insurance policy shall insure the marketability of the title to the Property, free and clear of (i) all liens, rights, agreements, charges, and encumbrances, except the Permitted Exceptions, (ii) all survey exceptions, and (iii) unrecorded mechanics' or materialmen's liens. Specifically, Seller shall have the obligation, as Seller's sole cost and expense, to resolve all matters of hereditary and intestacy that affect title to the Property. If Buyer's objections cannot reasonably be removed or the defects cured by Seller, Buyer shall have the option of terminating this Agreement, in which case the Earnest Money shall be fully refunded to Buyer.

7. Buyer's Survey. Buyer may, prior to the end of the Inspection Period, obtain at Buyer's expense, an ALTA/ACSM boundary survey (the "Survey") of the Property. Should any Survey reveal matters objectionable to Buyer, Seller and Buyer shall have the same rights and obligations with respect thereto as provided in this Agreement regarding objections to title. If, during the Inspection Period, Buyer does not object in writing to matters of survey, then any such matters shall be deemed waived.

8. Seller's Representations and Warranties.

(a) As an inducement to the Buyer to enter into this Agreement, and in addition to the representations, warranties, and agreements contained elsewhere in this Agreement, Seller makes the following representations, warranties and agreements, each of which is material and is relied upon by Buyer and shall survive Closing:

- (i) That the Seller has the right, power, and authority to enter into this Agreement, and has or will have the right, power and authority to convey the Property in accordance with the terms and conditions of this Agreement, and the individual or individuals signing this Agreement for and on behalf of the Seller is or are duly authorized to do so.
- (ii) That, other than eminent domain proceedings for the extension of Hungryneck Boulevard and the extension and/or realignment of Long

Point Road, the Seller has received no notice of, nor is the Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof. The Seller shall promptly upon receiving any such notice or learning of any such contemplated or threatened action, give the Buyer written notice thereof.

- (iii) Other than actions to quiet title to portions of the Property which are either in progress or to be filed as part of Seller's obligation to provide clear title with respect to matters of heredity or intestacy, there is no pending litigation or dispute against the Seller with respect to the Property, including, without limitation, any litigation or dispute involving or concerning the location of the lines and corners of the Property.
- (iv) That Seller shall provide at Closing any affidavits, resolutions, by-laws, meetings of minutes, proofs, opinions of counsel, or such further assurance as may be available and within Seller's authority to satisfy Buyer, its counsel or the Title Company that title to be conveyed shall be of the quality herein represented.
- (v) That Seller will be, on the Closing Date, the owner of the Property and will have full authority to convey the same free and clear of all liens and encumbrances except the Permitted Exceptions. Seller is not the current owner of the Property, but is under contract to purchase the Property from the current title owners. Seller shall acquire title immediately prior to, or simultaneously with, the Closing. Seller agrees that during the term of this Agreement, Seller will not record new instruments affecting the Property without Buyer's prior written consent. Furthermore, Seller shall not consent to any recordation by the Underlying Sellers of new instruments affecting the Property except to the extent necessary or helpful to quieting title to the Property or portions of it.
- (vi) Seller is not aware of any condition or governmental requirement which would prevent the subdivision of the Property for residential development. To the actual knowledge of Seller, the Property (A) has not been registered or certified as "historic" by any governmental entity or historic condition; (B) is not inhabited by a protected bird or other animal which might affect its development; (C) there are no cemeteries, grave sites, or burial sites on the Property. Buyer acknowledges awareness of the old earthworks on or near the joint boundary line of 558-00-00-004, 144, 310, and 311.
- (vii) That Seller will have the exclusive right of possession of the Property at Closing, and the Property will not be encumbered by any lease or leases.

(viii) Seller is not aware of any written notice of any civil, criminal, or administrative suit, claim, hearing, violation, investigation, proceeding or demand against Seller or the Property relating in any way to the Release or compliance with Environmental Laws, and to the Seller's knowledge there has been no Release on the Property of existing condition in violation of applicable Environmental Law. For purposes of this Agreement, the phrase "Environmental Law" shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation and any common laws regarding health, safety, radioactive materials, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, et seq. ("TSCA"); the Occupational, Safety and Health Act, 29 U.S.C. §651, et seq. ("OSHA"); the Clean Air Act, 42 U.S.C. §7401, et seq. ("CAA"); the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq. ("FWPCA"); the Safe Drinking Water Act, 42 U.S.C. §3001, et seq. ("SDWA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq. ("HMTA") and the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, et seq. ("EPCRA"); the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. ("ESA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. ("FIFRA") and other comparable federal, state or local laws, each as amended, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder. The phrase "Hazardous Materials" shall mean each and every elements, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws (as hereinafter defined) or the Release of which is regulated under Environmental Laws. The term "Release" shall mean the discharge, disposal, deposit, injection, dumping, spilling, leaking, leaching, placing, presence, pumping, pouring, emitting, emptying, escaping or other release of any Hazardous Material. For purposes of the representations and warranties set forth in this clause, "Hazardous Materials" shall not include consumer products, office supplies, and cleaning and maintenance supplies stored and used in the ordinary course of operation of the Property and in compliance with applicable Environmental Laws.

(ix) Seller warrants that electrical service, water service and telephone service are available along the Six Mile Road which is contiguous to the Property.

(b) Seller hereby agrees that the truthfulness of each of said representations and warranties and of all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder. Upon the material breach of any of these presentations and warranties or upon the material breach by Seller of any other representation,

warranty, condition or provision hereof, Buyer may declare this Agreement null and void, in which case the Earnest Money, shall be fully refunded to Buyer.

9. Operation Prior to Closing. Seller agrees, and shall cause the current owners of the Property, to continue to maintain, operate and manage the Property in its usual manner between the date of this Agreement and the date of Closing, making every reasonable effort to do nothing which might damage or adversely affect the value of the Property. Seller agrees to enter into no leases, no material agreements or contracts relating to the Property which survive Closing without Buyer's prior written consent, which consent shall not be unreasonably withheld. The Property shall be substantially the same condition on the date of Closing as on the date of this Agreement.

10. Conditions Precedent to Buyer's Obligation to Purchase.

(a) This Agreement, and all of Buyer's obligations hereunder, shall be subject to and specifically contingent upon the following conditions precedent (the "Conditions Precedent"):

- (i) All of Seller's representations and warranties contained in this Agreement shall be true and correct as of the Effective Date of this Agreement (if so represented and warranted) and as of the Closing Date, and Seller shall have complied with all of its obligations hereunder.
- (ii) The Property is platted with allowed parcels as necessary to be conveyed to Buyer on plats approved by the Town of Mt. Pleasant and recorded in the RMC Office for Charleston County. This does not, however, require that the Property has received a final or preliminary plat approval from the Town of Mount Pleasant for Buyer's Intended Use.
- (iii) Any permits, plans and approval from any and all governmental agencies previously obtained by Seller shall be valid, transferable to Buyer and in full force and effect. If any permit shall have expired, Seller shall take all steps necessary to secure reissue at Seller's expense.
- (iv) Seller shall have obtained all signatures reasonably necessary to close on its purchase of the Property with the Underlying Sellers and shall close on such purchase immediately prior to Seller's closing with Buyer.
- (v) Seller shall have obtained the approval of the Primus Family of Buyer's intended name for the neighborhood to be developed on the Property. Buyer agrees to submit its intended name (which includes the name "Primus") before the end of the Inspection Period. Seller agrees to work diligently to obtain approval from the Primus Family within 15 days thereafter. If the Primus Family does not approve such name choice, Buyer agrees to submit an alternate name choice within 10 days thereafter and Seller agrees to diligently pursue approval within 15 days thereafter.

(b) In the event any of the foregoing Conditions Precedent are not met and satisfied on or before the Closing Date, Buyer shall have the right to (i) terminate this Agreement (in which event the Earnest Money shall be refunded to Buyer), or (ii) waive said Conditions Precedent and close on the Property in accordance with the terms and provisions of this Agreement.

11. Conditions Regarding Final Rezoning

(a) This Agreement, and all of Buyer's obligations hereunder, shall be subject to and specifically contingent upon Buyer receiving Final Rezoning for Property. "Final Rezoning" means that:

- (i) the Property has received final and unappealable approval from the Town of Mount Pleasant to re-zone the Property for Buyer's intended development of the Property as a residential Planned Unit Development ("Buyer's Intended Use") subject only to existing zoning ordinance requirements and normal development standards for residential Planned Developments in the Town of Mount Pleasant;
- (ii) the Property has been annexed into the City of Mount Pleasant, South Carolina; and
- (iii) all appeals (if any) have been exhausted and all remaining appeal periods have expired without any appeal filed.

(b) Seller filed an application on February 18, 2015, seeking Final Rezoning of the Property for a Planned Unit Development seeking an allowed density of 73 single family units. However, Buyer will be responsible for coordinating all other efforts to obtain Final Rezoning and the costs associated therewith, including a reimbursement to Seller for the approximately \$2,400 in application filing fees (Rezoning and Annexation) with said reimbursement to be paid directly to Seller within three (3) business days of execution of this Agreement. Seller agrees to, and shall cause the Underlying Sellers to, reasonably cooperate in such rezoning, including signing such applications and attending such meetings as may be required or deemed reasonably necessary.

(c) In the event the Town of Mount Pleasant imposes a Final Rezoning with restrictions allowing fewer than 73 single family units, then Buyer shall be entitled to a decrease in the Purchase Price calculated as \$114,000.00 for each single family detached unit below 73.

(d) If, despite diligent efforts, Final Rezoning is not obtained within 6 months after the Application Date, either party may elect by written notice delivered to the other party on or after such date, to terminate this Agreement and upon such occurrence all Earnest Money shall be returned to Buyer and neither Buyer nor Seller shall have any further obligations hereunder except those that survive termination. However, before terminating this Agreement under this provision, Seller must provide Buyer notice of its intention to do so. At that point, Buyer may

waive the condition relating to Final Rezoning and close on the Property in accordance with the terms and provisions of this Agreement.

12. Risk of Loss. Until the purchase of the Property has been consummated on the date of Closing, all risk of loss of, or damage to, or destruction of, the Property, whether by fire, flood, tornado, hurricane or other casualty, or by the exercise of the power of eminent domain, or otherwise, shall belong to and be borne by the Seller. If, prior to Closing, the Property or any part thereof (other than existing residences and structures) shall be damaged or destroyed, Buyer, at Buyer's option, may declare this Agreement null and void and receive a full refund of the Earnest Money, plus interest. If Buyer elects to proceed and to consummate the transfer and conveyance under this Agreement despite such damage or destruction, there shall be no reduction in, abatement of, or set-off against the Purchase Price, and Seller shall assign to Buyer all of Seller's rights, title and interest in and to any insurance proceeds resulting from such damage or destruction.

13. Condemnation.

(a) The parties are aware of the potential that a portion of the Property may be taken by eminent domain for the extension of Hungryneck Boulevard. If any portion of the Property is taken for this purpose by eminent domain or by an agreed-upon sale in lieu of eminent domain proceedings, whether before or after the Closing, the parties agree that any proceeds paid by the governmental authority to Buyer or Seller will be distributed first to Buyer or Seller, as the case may be depending on which party then owns the portion being taken, in an amount equal to the costs and expenses (including attorney's fees) incurred by such party in connection with the taking or agreed-upon sale. Any amounts remaining after paying such costs and expenses will be divided evenly between Buyer and Seller. The parties shall memorialize Seller's interest in the condemnation proceeds by means of a recordable instrument, the form of which is to be agreed upon during the Buyer's Inspection Period, and such instrument shall be signed by the parties and recorded at the Closing.

(b) If, prior to Closing, the Property or any part thereof shall be taken by eminent domain other than through the projects described in Section 13(a), this Agreement shall become null and void, at Buyer's option, and all Earnest Money, plus interest shall be refunded to Buyer. Seller shall notify Buyer in writing of any such taking as soon as Seller becomes aware of it. If Buyer elects to proceed and to consummate the transfer and conveyance under this Agreement despite such taking, there shall be no reduction in, abatement of, or setoff against the Purchase Price and Seller shall assign to Buyer all of Seller's right, title and interest in and to any award or settlement made or to be made in the condemnation proceedings.

14. Brokerage Commission. Except as to Southeastern Realty Services ("Buyer's Broker") for whose commission Buyer is solely responsible, Buyer has not employed any real estate broker, agent or finder, in connection with this Agreement or this transaction. Except as to Oswald Cooke and Associates ("Seller's Broker"), for whose commission Seller is solely responsible, Seller has not employed any real estate broker, agent or finder, in connection with this Agreement or this transaction. Buyer and Seller each warrant and represent to the other that other than Buyer's Broker and Seller's Broker, no other brokers', agents', finders' fees,

commissions or other similar fees are due or will be due in connection with this Agreement or this transaction, and Buyer and Seller each agree to indemnify and hold the other harmless from and against all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) that the other party may suffer or incur because of any claim by a broker, agent or finder claiming by, through or under such indemnifying party, whether or not meritorious, for any compensation with respect to this Agreement or Closing. This Section shall survive Closing or any termination of this Agreement.

15. Closing Costs. The Seller shall be responsible for the fees and expenses of Seller's attorneys, deed preparation fees, the fees or taxes for documentary stamps or other transfer taxes, including all fees due pursuant to South Carolina Code Section 12-24-10, et seq., due with respect to the transfer of the Property, and any other costs and expenses actually incurred by the Seller. The Buyer shall be responsible for customary buyer closing costs.

16. Prorations.

(a) All rents, ad valorem taxes, user fees, and assessments due with respect to the Property for the calendar year of the Closing shall be prorated between Buyer and the Seller as of the Closing Date. If the actual amount of such taxes is not known as of such date, the proration will be on an equitable basis and will be based on the most current and accurate billing information available. If, upon receipt of the actual property tax bills for the year of Closing, such proration proves to be inaccurate, then the Seller and the Buyer shall correct any such malapportionment.

(b) Seller shall be solely responsible for any past due, delinquent, taxes applicable to the Property, and the title policy will be issued at Closing without exception for any such taxes. With respect to roll back tax liability, Buyer shall be responsible to pay any such taxes. This paragraph shall survive Closing.

17. Possession. Buyer shall be entitled to possession of the Property upon Closing.

18. Default and Remedy.

(a) Notwithstanding anything to the contrary in this Agreement, if Seller defaults under this Agreement prior to Closing and fails to cure such default within 5 business days of notice thereof and curing such default was reasonably achievable by Seller with the exercise of diligence, at Buyer's option, Buyer may elect: (i) to terminate this Agreement, in which case the Earnest Money shall be returned to Buyer, and Seller must also reimburse Buyer for all costs or expenses incurred by Buyer in connection with this Agreement or the transaction contemplated hereunder (including, without limitation, fees and costs incurred in connection with obtaining or attempting to obtain the Final Rezoning, attorney's fees, due diligence expenses, and other out of pocket costs) up to a maximum reimbursement of \$25,000.00, and this Agreement shall, without further action of the parties, become null and void and neither party shall have any further rights or obligations under this Agreement, or (ii) to sue Seller for specific performance of the sale of the Property, in accordance with the terms of this Agreement. The parties recognize that if Seller breaches this Agreement and refuses to perform under the provisions of this Agreement,

monetary damages alone would not be adequate to compensate Buyer for its injury, due to the unique nature of the Property.

If, however, Seller's failure to cure was the result of Seller's practical or legal inability to effect a cure notwithstanding the exercise of reasonable diligence, then Buyer's remedy shall be limited to the remedy outlined in Section 18(a)(i). In such a case, Seller cannot be forced to specifically perform and this Agreement shall, without further action of the parties, become null and void and neither party shall have any further rights or obligations under this Agreement, except as provided in the preceding sentence.

(b) Notwithstanding anything to the contrary contained in this Agreement, if Buyer defaults under this Agreement as a result of which the Closing fails to occur and fails to cure such default within 5 business days of notice thereof, the Earnest Money shall be forfeited to Seller as liquidated damages, which shall be Seller's sole and exclusive remedy at law or equity against Buyer, and neither party shall have any further rights or obligations under this Agreement. Seller and Buyer acknowledge and agree that (1) the Earnest Money is a reasonable estimate of and bears a reasonable relationship to the damages that would be suffered and costs incurred by Seller as a result of having withdrawn the Property from sale and the failure of Closing to occur due to a default of Buyer under this Agreement; (2) the actual damages suffered and costs incurred by Seller as a result of such withdrawal and failure to close due to a default of Buyer under this Agreement would be extremely difficult and impractical to determine; (3) the Earnest Money shall be and constitute valid liquidated damages and not a penalty; and (4) the Earnest Money shall be fully refundable to Buyer if the Closing fails to occur for any reason other than a default hereunder by Buyer.

19. Assignment. Either party shall have the right to assign this Agreement to any partnership, limited liability company, or other entity owned or controlled in whole or in part by the party (or any affiliate, parent or subsidiary of the party), or may otherwise assign this Agreement without the other party's consent. Additionally, either party shall have the right to assign this Agreement to an unrelated party (such as a 1031 exchange qualified intermediary) to enable the party to engage in a 1031 tax deferred exchange and, in such case, the other party agrees to accommodate such requests provided the accommodation is at no material cost to the accommodating party. It is provided, however, that any such assignments shall not relieve the original parties from responsibility to perform under this Agreement.

20. Survival. All of the terms, conditions, covenants, representations, warranties, and agreements in this Agreement shall survive and continue in full force and effect and shall be enforceable after the Closing.

21. Notice. Notice to Seller and Buyer shall be deemed to have been made if deposited in the U.S. Mail, return receipt requested, with the date of postmark constituted the date of notification, or by fax or email. Notification shall be made as follows:

AS TO BUYER:

JW Homes, LLC
3015 Dunes West Blvd., Suite 502
Mt. Pleasant SC 29466
Attn: Fred Vandercook
Email: fred.vandercook@jwhomes.com

WITH A COPY TO:

JW Homes, LLC
4125 Atlanta Road
Smyrna, GA 30080
Attn: Joel S. Reed, Esquire
Email: joel.reed@jwhomes.com

WITH A COPY TO:

Leonard Krawcheck, Esquire
Krawcheck & Davidson, LLC
9 State Street
Charleston, SC 29401
Email: lk@krawdavlav.com

AS TO SELLER:

American Star Development SC, LLC
Attn: Brian Harvin
1022 Carolina Boulevard
Isle of Palms, SC 29451
Email: brianharvin@yahoo.com

AND WITH A COPY TO:

Jamison Cox, Esquire
Smith Cox & Associates, LLP
160 East Bay Street, Suite 201
Charleston, SC 29401
Email: jcox@smithcox.com

22. Entire Agreement. Modification. This Agreement constitutes the entire and complete agreement between the parties hereto and supercedes any prior oral or written agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in anyway change the terms, covenants, and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

23. Binding Effect. All covenants, agreements, warranties, and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

24. Governing Law. This Agreement shall be governed by the law of the State of South Carolina.

25. Effective Date. The Effective Date of this Agreement means the later of the dates that this Agreement is signed by Buyer or Seller.

26. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all parties hereto, whether or not each counterpart is executed by all parties hereto, so long as each party hereto has executed one or more counterparts hereof.

27. Attorney's Fees. All attorneys' fees and other costs associated with this Agreement shall be paid by the party incurring them.

28. Confidentiality/Non-Solicitation. Seller agrees to keep confidential all discussions, negotiations, and proceedings relating to the Property and the proposed transaction between Buyer and Seller for a period commencing on the date hereof. Seller will not solicit or entertain any offers or inquiries from third parties to purchase the Property while this Agreement is in effect. Buyer shall have all rights and remedies at law or in equity in the event of a breach of this confidentiality provision by Seller.

29. Business Day. The term "business day" shall mean Monday through Friday, excluding days on which the Federal Reserve Bank either in or closest to the state in which the Property is located is closed for business. If the day for any action under this Agreement falls on a day other than a business day, the day for the action shall automatically be extended until the next business day.

30. Underlying Agreements, Simultaneous Closing.

(a) Notwithstanding anything contained in this Agreement to the contrary, it is specifically understood and agreed that this Agreement is contingent upon the closing of the purchase of the Property between Seller and the current Owners of the Property (the "Underlying Sellers"). Within five (5) days from the Effective Date, Seller shall furnish to Buyer written confirmation from Seller's procuring real estate agents confirming that their brokerage(s) is/are holding earnest money deposits and fully executed purchase and sale contracts with the Underlying Owners for all of the parcels comprising the Property identified in Section 1(a) above. The parties further acknowledge and agree that Seller intends to close on its purchase of the Property from Underlying Owners immediately preceding ("simultaneous closing") the Closing of the transaction contemplated by this Agreement. In the event Seller, despite its due diligence and best efforts, is unable to consummate the purchase of the Property from Underlying Owners prior to the Closing Date, Seller shall notify Buyer in writing of same, and this Agreement shall terminate as of the date of such notice. In such event, all Earnest Money

shall be promptly returned to Buyer, and Buyer and Seller shall be released and relieved of all obligations and liabilities under this Agreement except any which expressly survive termination of this Agreement.

(b) Seller represents and warrants that:

- (i) there are no verbal or other unwritten agreements with the Underlying Sellers regarding the sale of the Property;
- (ii) the Underlying Agreements are in full force and effect; and
- (iii) Seller has not received any notice of default, notice of termination or other such notice, whether verbal or written, regarding Seller's performance or failure to perform under any Underlying Agreements.

(c) If any of the Underlying Sellers commit any act (or fail to act) with respect to the Property that would have a material and adverse effect on the aggregate cost to develop the entire Property, Buyer may terminate this Agreement, in which case 2nd Escrow Agent will return the Earnest Money to Buyer.

31. Right of First Offer.

(a) Seller hereby grants to Buyer a Right of First Offer (herein so called) to negotiate to purchase the following parcels of land (the "ROFO Parcels"), whether sold by Seller or affiliates of Seller: (i) the parcel bearing TMS #578-00-00-005; (ii) the parcel bearing TMS #578-00-00-006; and (iii) the parcel bearing TMS #578-00-00-007. This Right of First Offer commences when this Agreement is signed by Buyer and Seller and it remains available to Buyer until the earlier of [1] 180 days thereafter, [2] Closing on Buyer's purchase of the Property, or [3] termination of this Agreement (regardless of the reason or party exercising the termination). Buyer acknowledges that, as of the date of this Agreement, Seller does not own the ROFO Parcels, but has contractual rights to purchase the ROFO Parcels. Seller intends to purchase the ROFO Parcels, but nothing in this Agreement requires Seller to purchase the ROFO Parcels and any such purchase is in Seller's sole discretion. If Buyer and Seller are able to agree upon business terms for Buyer's purchase of the ROFO Parcels then, unless Seller agrees otherwise, the closing date for the ROFO Parcels shall not be sooner than one (1) year and one (1) day after the Closing Date for the Property.

(b) In consideration for the granting of this Right of First Offer, and regardless of whether Buyer and Seller execute a contract for the purchase and sale of the ROFO Parcels, Buyer agrees the access road ("Access Road") through the Property (not including the ROFO Parcels) to be constructed by Buyer on the Property shall be designed and constructed under standards applicable to public roads to provide vehicular and pedestrian access to connect the Property to the ROFO Parcel 578-00-00-005 (the "Connection"). Buyer agrees this Connection will be depicted on Buyer's Sketch Plan for the Property (as distinguished from any Sketch Plan applicable to the ROFO Parcels) that is ultimately approved by the Town and shall be designed and constructed as a continuation of the Access Road serving the Property to the point it touches

the common boundary line between the Property and ROFO Parcel 578-00-00-005. Buyer's obligation to design and construct the Connection survives the Closing.

(c) If the design and construction of this Connection results in a change to the number of Lots otherwise approved for the Property by the Town of Mount Pleasant, then Seller and Buyer shall reconcile the Purchase Price of the Property to compensate for the Lot or Lots which are forfeited or gained. In such a case, the compensation shall be \$114,000 per Lot forfeited or gained for the Property as a result of the re-design for the Connection portion of the Access Road and this amount will be credited against (or added to) the Purchase Price for the Property at the time of the Closing, regardless of whether Buyer purchases the ROFO Parcels from Seller.

(d) The Access Road may not be used for traffic related to construction and development of the ROFO Parcels. Buyer will have the right to block access through the Connection to the ROFO Parcels until the ROFO Parcels have paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes or in connection with normal residential use.

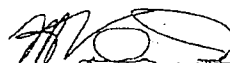
IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.

WITNESSES:

WITNESSES:

BUYER:

JWH ACQUISITIONS, LLC,
a Delaware limited liability company

By: 
Name: Frederick R. Vandercook
Its: President - Charleston Division
Date of Execution: 2/25/15

SELLER:

AMERICAN STAR DEVELOPMENT
SC, LLC

By: 
Name: Brian Harrison
Its: MEMBER-MANAGER
Date of Execution: 2/25/15

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E., L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980; thereafter conveyed to American Pride Properties, LLC by Tax Deed of Daniel M. Gregory, Delinquent Tax Collector of Charleston County, dated February 11, 2014, and recorded in the aforementioned RMC Office on February 21, 2014, in Book 0389, page 849.

PARCEL B [TMS # 558-00-00-140]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.758 acres, more or less, and being shown and designated as Lot B on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980:

(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E., L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately 1.169 acres, more or less, conveyed to the Town of Mount Pleasant in the matter of Town of Mount Pleasant vs. Fred L. Swinton and Penderlee Swinton; Charleston County

Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

This is a portion of the same property wherein title was confirmed in the name of Penderlee Swinton and Fred L. Swinton in the matter of Fred L. Swinton vs. Primus Green. et. al., Charleston County Case 2006-CP10-2980.

PARCEL D [TMS # 558-00-00-141]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.209 acres, more or less, and being shown and designated as Lot D on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property wherein title was confirmed in the name of Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green. et. al., Charleston County Case 2006-CP10-2980.

PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

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PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green. et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. – L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. – L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

Less and except that certain portion of approximately .008 acre (370) square feet., more or less, conveyed to the Town of Mount Pleasant by AMENDED ORDER FOR DISTRIBUTION OF FUNDS in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Case 2009-CP10-3392, as shown in the Amended Condemnation Notice recorded in the office of the aforementioned RMC on June 5, 2009, at Book 0352, Page 475.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown, Flora Green Gilford, Fred L. Swinton, Penderlee Swinton, Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).

EXHIBIT "B"

REQUIRED INFORMATION MATERIALS

1. Copies of all surveys of the Property.
2. Copies of any deed or deeds to the Property, together with copies of all title insurance policies with respect to the Property, along with legible copies of all title exceptions and Permitted Encumbrances which may be in Seller's possession.
3. Copies of tax bills applicable to the Property.
4. Copies of any soil reports, environmental studies or reports, permits, licenses, approvals, leases, contracts, agreements or other documents associated with or applicable to the Property, if any.
5. Copies of any leases affecting the Property.
6. Copies of any other agreements affecting the Property.
7. Copies of prior construction documents, if any.
8. Copies of environmental surveys or reports.

EXHIBIT "C"

PERMITTED EXCEPTIONS

1. Real property taxes, if any, for the year of Closing and subsequent years.
2. The claim of the State of South Carolina to any marshland or land below the mean high water mark.
3. Existing easements and rights-of-way of public record provided (a) such items do not prevent Buyer's Intended Use of the Property or such items are reasonably capable of relocation during Buyer's re-development of the Property without extraordinary cost to Buyer, and (b) such items are accepted by Buyer following the title objection process outlined in Section 6;

EXHIBIT B

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E.-L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980; thereafter conveyed to American Pride Properties, LLC by Tax Deed of Daniel M. Gregory, Delinquent Tax Collector of Charleston County, dated February 11, 2014, and recorded in the aforementioned RMC Office on February 21, 2014, in Book 0389, page 849.

PARCEL B [TMS # 558-00-00-140]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.758 acres, more or less, and being shown and designated as Lot B on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately 1.169 acres, more or less, conveyed to the Town of Mount Pleasant in the matter of Town of Mount Pleasant vs. Fred L. Swinton and Penderlee Swinton; Charleston County

Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

This is a portion of the same property wherein title was confirmed in the name of Penderlee Swinton and Fred L. Swinton in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL D [TMS # 558-00-00-141]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.209 acres, more or less, and being shown and designated as Lot D on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property wherein title was confirmed in the name of Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is the same property conveyed to Debra C. Schweitzer by deed of James M. Farris as Delinquent Tax Collector for Charleston County, dated December 30, 2006, and recorded in the RMC Office for Charleston County on January 31, 2006, in Deed Book E571 at Page 495.

PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

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PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968; and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

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This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown, Flora Green Gilford, Fred L. Swinton, Penderlee Swinton, Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).



3:03pm

6/13

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) COURT FILE NO. 2018-CP-10-2175

AMERICAN STAR DEVELOPMENT
SC, LLC; KKM INVESTMENTS,
LLC; AND 211, LLC,

Plaintiffs,

vs.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE
HOME COMPANY, LLC; AND JW
HOMES, LLC,

Defendants.

AMENDED LIS PENDENS

2018 JUN 13 PM 3:03
FILED J. ADAMS, JR.
CLERK OF COURT

NOTICE IS HEREBY GIVEN THAT an action has been initiated and is pending in the Court of Common Pleas for Charleston County, South Carolina, by the above-named Plaintiffs, against the above-named Defendants, and that the real estate affected by such action is situate in the County and State aforesaid, and the following is a description thereof:

SEE ATTACHED EXHIBIT "A"

Being the same property conveyed to Pulte Home Corporation, a Michigan corporation by deed of JW Homes, LLC, a Delaware limited liability company, dated as of the 14th day of January, 2016, and recorded in the Office of the RMC for Charleston County on January 21, 2016, in Book 0530 at Page 301; said deed being re-recorded in the aforesaid office on July 1, 2016, in Book 0565 at Page 398.

E. Brandon Gaskins (State Bar No. 73274)
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
Telephone: (843) 579-7000
brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
June 13, 2018

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL A [TMS # 558-00-00-139]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.78 acres, more or less, and being shown and designated as Lot A on a plat prepared by Harold J. Lea Mond, P.E.-L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Less and except that certain portion of approximately .037 acres (1,592 square feet), more or less, conveyed to Town of Mount Pleasant by Rosielee Brown in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Charleston County Case 2009-CP10-3886, as shown in the AMENDED CONDEMNATION NOTICE recorded in the Office of the aforementioned RMC on June 22, 2009, at Book 0329, Page 088.

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(Parcel incorrectly identified on p. 7 of said Order as TMS 558-00-00-141. Correct reference is TMS 558-00-00-140.)

PARCEL C [TMS # 558-00-00-138]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 2.73 acres, more or less, and being shown and designated as Lot C on a plat prepared by Harold J. Lea Mond, P.E.-L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

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Case Number 2009-CP10-3393, as shown in the CONDEMNATION NOTICE AND TENDER OF PAYMENT recorded in the office of the aforementioned RMC on February 14, 2011, at Book 0171, Page 807.

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PARCEL E [TMS # 558-00-00-142]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.87 acres, more or less, and being shown and designated as Lot E on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

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PARCEL F-1 [TMS # 558-00-00-143]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, being shown and designated as Lot F-1 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

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PARCEL F-2 [TMS # 558-00-00-311]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.822 acres, more or less, and being shown and designated as Lot F-2 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and

recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL F-3 [TMS # 558-00-00-310]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 1.477 acres, more or less, and being shown and designated as Lot F-3 on plat by James Kelly Davis, R.L.S. of Atlantic Surveying, Inc. titled "BOUNDARY SURVEY OF 4 EXISTING LOTS" dated February 24, 2010, and recorded on April 5, 2010, in Plat Book S10, Page 0060, said parcel having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Charleston County Case 2006-CP10-2980.

PARCEL G [TMS # 558-00-00-144]

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, containing 0.70 acres, more or less, and being shown and designated as Lot G on a plat prepared by Harold J. Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO, SOUTH CAROLINA", dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29 on April 5, 1968, in the Office of the Charleston County RMC. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This is a portion of the same property wherein title was confirmed in the name of Flora Green Gilford in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "PRIMUS ROAD" [TMS # 558-00-00-172]

All that certain piece, parcel or tract of land known as "50' ingress/egress easement" on a plat by Harold Lea Mond, P.E. - L.S. for Sigma Engineers, Inc. titled "PLAT OF LOT 19 AND ONE HALF OF LOT 20 LOCATED IN CHRIST CHURCH PARISH, MT. PLEASANT, CHARLESTON CO., SOUTH CAROLINA" dated October 10, 1966, revised March 6, 1968, and recorded in Plat Book X, Page 29, on April 5, 1968, in the Office of the Charleston County RMC.

Less and except that certain portion of approximately .008 acre (370) square feet, more or less, conveyed to the Town of Mount Pleasant by AMENDED ORDER FOR DISTRIBUTION OF FUNDS in the matter of Town of Mount Pleasant vs. Rosielee Brown, et. al., Case 2009-CP10-3392, as shown in the Amended Condemnation Notice recorded in the office of the aforementioned RMC on June 5, 2009, at Book 0352, Page 475.

This is a portion of the same property wherein title was confirmed in the name of Rosielee Brown, Flora Green Gilford, Fred L. Swinton, Penderlee Swinton, Leslie R. Nelson, Earnest Smith, Jr., Robin Wright, Anthony Smith, Harriet Thomas, and Harold Smith in the matter of Fred L. Swinton vs. Primus Green, et. al., Case 2006-CP10-2980.

PARCEL "POOLE TRACT" [TMS # 578-00-00-004]

All that tract of land, measuring and containing 8.5 acres more or less, being, known, and designated as 14 on a plat of a portion of Sea Shore and Boone Hall Tracts, in Christ Church Parish, Charleston County, State of South Carolina, and being recorded in Plat Book B at page 46, said property having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully appear.

This is the same property conveyed to Frankie James Poole by deed dated June 30, 2009, and recorded July 17, 2009, in Book 0068 at Page 780, from Frankie James Poole as Personal Representative of the Estate of Alice Brown Poole (Charleston County Probate Court Case 2008-ES10-809).



3:32 pm
8/28

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) COURT FILE NO. 2018-CP-10-2175
AMERICAN STAR DEVELOPMENT)
SC, LLC; KCMC INVESTMENTS,)
LLC; AND 211, LLC,)
Plaintiffs,)
vs.)
PULTEGROUP, INC.; PULTE HOME)
CORPORATION, N/K/A PULTE)
HOME COMPANY, LLC; AND JW)
HOMES, LLC,)
Defendants.)

SECOND AMENDED
LIS PENDENS

FILED
2018 AUG 28 PM 3:32
CLERK OF COURT
JULIE A. ARISTIDE

NOTICE IS HEREBY GIVEN THAT an action has been initiated and is pending in the Court of Common Pleas for Charleston County, South Carolina, by the above-named Plaintiffs, against the above-named Defendants, and that the real estate affected by such action is situate in the County and State aforesaid, and the following is a description thereof:

SEE ATTACHED EXHIBIT "A"

Being the same property conveyed to Pulte Home Corporation, a Michigan corporation by deed of JW Homes, LLC, a Delaware limited liability company, dated as of the 14th day of January, 2016, and recorded in the Office of the RMC for Charleston County on January 21, 2016, in Book 0530 at Page 301; said deed being re-recorded in the aforesaid office on July 1, 2016, in Book 0565 at Page 398.

E. Brandon Gaskins

CHARLESTON, SC
August 28, 2018

E. Brandon Gaskins (State Bar No. 73274)
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
Telephone: (843) 579-7000
brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"
PROPERTY DESCRIPTION

The following certain pieces, parcels or lots of land with the buildings and improvements thereon, situate, lying and being in Town of Mount Pleasant, Charleston County, South Carolina, being known and designated on a Plat made by Francis M. Harter III, S.C.P.L.S. of Atlas Surveying Chs, Inc., dated May 21, 2018, entitled "A FINAL PLAT OF THE OAKS AT PRIMUS TAX PARCEL NO. 578-00-00-004, 558-00-00-138 THROUGH 144, 558-00-00-310 & 311 PROPERTY OF PULTE GROUP THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA" recorded June 21, 2018 in Plat Book L18 at Pages 0336-0339 in the ROD Office for Charleston County:

<u>Lot No./Description</u>	<u>TMS No.</u>
"32"	577-05-00-186
"33"	577-05-00-187
"34"	577-05-00-188
"35"	577-05-00-189
"36"	577-05-00-190
"37"	577-05-00-191
"38"	577-05-00-192
"39"	577-05-00-193
"40"	577-05-00-194
"41"	577-05-00-195
"POA Open Space"	577-05-00-227
"23"	577-05-00-177
"24"	577-05-00-178
"25"	577-05-00-179
"26"	577-05-00-180
"27"	577-05-00-181
"28"	577-05-00-182
"29"	577-05-00-183
"30"	577-05-00-184
"31"	577-05-00-185
"Future Billy Swails Blvd."	577-05-00-228
"47"	577-05-00-201
"48"	577-05-00-202
"49"	577-05-00-203
"50"	577-05-00-204
"51"	577-05-00-205
"52"	577-05-00-206
"53"	577-05-00-207
"54"	577-05-00-208
"55"	577-05-00-209
"56"	577-05-00-210
"57"	577-05-00-211
"58"	577-05-00-212
"59"	577-05-00-213

"60"	577-05-00-214
"61"	577-05-00-215
"62"	577-05-00-216
"63"	577-05-00-217
"64"	577-05-00-218
"65"	577-05-00-219
"66"	577-05-00-220
"67"	577-05-00-221
"68"	577-05-00-222
"69"	577-05-00-223
"70"	577-05-00-224
"71"	577-05-00-225

Note: The said aforesaid plat is incorporated into this description by this reference, and the lot/piece has the size, shape, metes, bounds, location and dimensions as shown on the plat.



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate No. 2018-002277

American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC..... Defendants,

Of which American Star Development SC, LLC is the Appellant,

And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the Respondent.

AFFIDAVIT OF MATTHEW RAINES
AND VERIFICATION OF PETITION
TO LIFT AUTOMATIC STAY

APPEARING BEFORE ME, Matthew Raines, who being duly sworn, avers and states the following:

1. I am a resident of Charleston County, South Carolina, over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge, except those stated to be upon information and belief which I have reason to believe are true.
2. I serve as the Vice President of Land for the Coastal Carolinas for Pulte Home Company, LLC., the Respondent and Petitioner herein.

3. The factual statements in Respondent's Petition for an Order Lifting the Automatic Stay are true of my own knowledge, save and excepting those things therein alleged to be upon information and belief, and as to them, I believe them to be true.
4. Attached hereto as Exhibit A is a true and accurate copy of the final plat for the Oaks at Primus, which was approved by the Town of Mt. Pleasant on June 20, 2018 and recorded in the Charleston County Register of Deeds the next day at Book L18, Page 0336-0339.
5. If Pulte were to construct the alleged "Connection," as referenced by the Amended Complaint in paragraph 14, which Pulte denies any legal obligation to do, the construction would occur on Lots 54 and 55 (highlighted) on the plat attached hereto as Exhibit A, connecting to Caisa Circle, an existing street in Pulte's subdivision. This is the only location that would work because of the location of existing ponds adjacent to the subdivision including the very large pond that occupies most of the adjoining property owned by Appellant, American Star Development SC, LLC.
6. Attached hereto as exhibit B is a true and accurate copy of a demonstrative exhibit from the hearing before the Circuit Court on September 21, 2018, that is an aerial photograph of the Primus Property and American Star's adjoining property with the final subdivision plat for the Primus Property superimposed on the aerial imagery, also showing why the alleged Connection would have to be situated on Lots 54 and 55.
7. To the extent the Court deems it appropriate, Pulte would be willing to voluntarily refrain from selling those two lots until the conclusion of the appeal or to have the Lis Pendens left in place only as to those two lots.
8. Upon information and belief, because the Second Amended Lis Pendens has been reinstated due to the automatic stay triggered by this appeal, Pulte is unable to close on the contracts of sale for the lots and constructed homes in the Oaks at Primus with the contract purchasers because the title

insurer will not issue a policy. As indicated in the Affidavit of Mr. Evans submitted in support of Pulte's Motion to Lift the Automatic Stay in the Circuit Court, sales have been chilled, sales have been lost, and closings indefinitely delayed. Contract purchasers have threatened suit because of their claimed damages because they are unable to close.

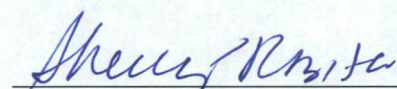
FURTHER AFFIANT SAYETH NOT.



Matthew Raines

SWORN BEFORE ME

This 23 day of January 2019



Notary Public for the State of South Carolina

My Commission Expires: August 11, 2026

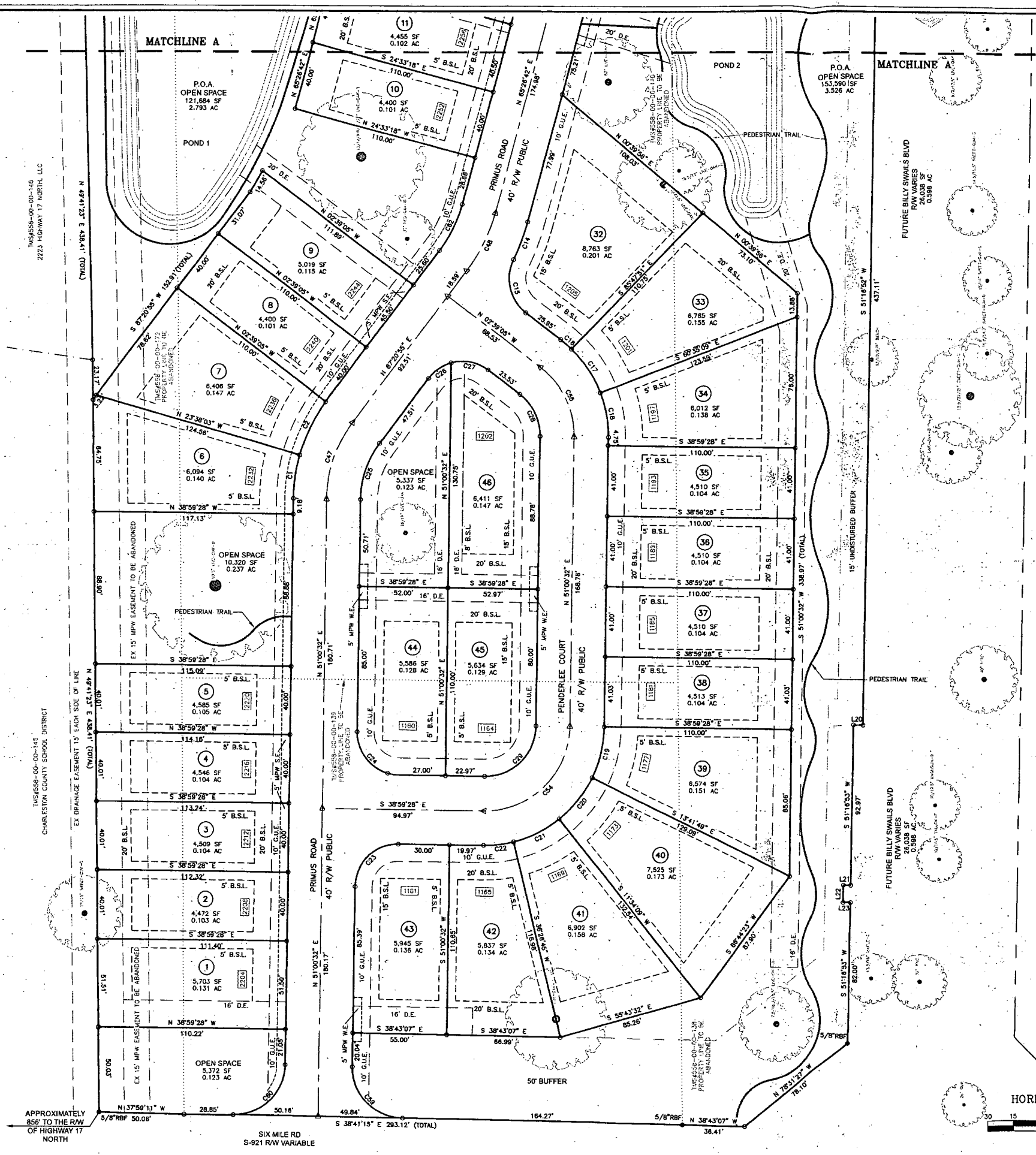
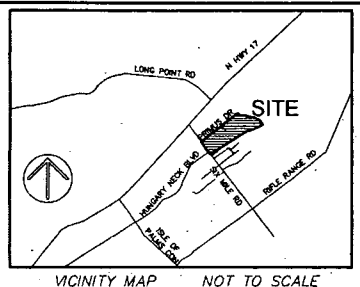


EXHIBIT
A



NUMBER OF RESIDENTIAL LOTS	71
LOT AREA	9.02 AC
ROAD RIGHT OF WAY	2.55 AC
SUBTOTAL	11.67 AC
POA AREAS	
WETLAND BUFFER	1.73 AC
NEW POND AREA	4.32 AC
OPEN SPACE	4.13 AC
TOTAL POA AREA	10.18 AC
100' LINEAR PARK	1.25 AC
FUTURE BILLY SWAILS BLVD	1.90 AC
TOWN OF MOUNT PLEASANT DEDICATED AREA	0.20 AC
TOTAL AREA	25.20 AC
WETLANDS	
FRESHWATER WETLANDS	2.08 AC
PRPW	0.24 AC
TOTAL WETLAND AREA	2.32 AC

- LEGEND
- PROPERTY CORNER SET
 - PROPERTY CORNER FOUND
 - ▲ CALCULATED POINT (NO CORNER SET)
 - GENERAL UTILITY EASEMENT
 - D.E. DRAINAGE EASEMENT
 - S.E. SEWER EASEMENT
 - W.E. WATER EASEMENT
 - EXISTING WETLAND HATCH
 - PHASE LINE
 - PROPERTY LINE
 - EASEMENT LINE
 - BUILDING SETBACK LINE
 - BUFFER LINE
 - PROPERTY LINE TO BE ABANDONED
 - CENTERLINE OF THE ROAD
 - WETLAND BUFFER

CERTIFICATE OWNER AND COVENANTS AFFIDAVIT
The undersigned designee has the authority to represent the owner(s) of this property for the purpose described herein. I understand South Carolina State Law Section 6-29-145 and by certify compliance therewith by my signature below.
Print Name *Graham Hawkins*
Signature *Graham Hawkins*

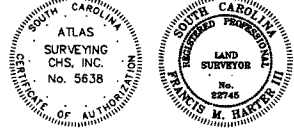
PLANNING & R.M.C. USE ONLY

PLAT APPROVED
Town of Mount Pleasant, SC
BY *[Signature]* TOWN ENGINEER
DATE *6/20/2018*

RECEIVED *6/21/18*
PER CLERK
ROD OFFICE *589*
CHARLESTON COUNTY, SC

ATLAS
SURVEYING CHS, INC.

1007 BANTON CIRCLE, SUITE D
HANAHAN, SC 29410
PHONE: (843) 573-7831
WEBSITE: WWW.ATLASSURVEYING.COM

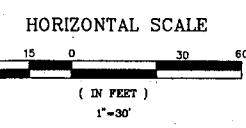


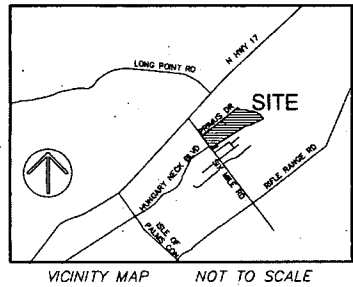
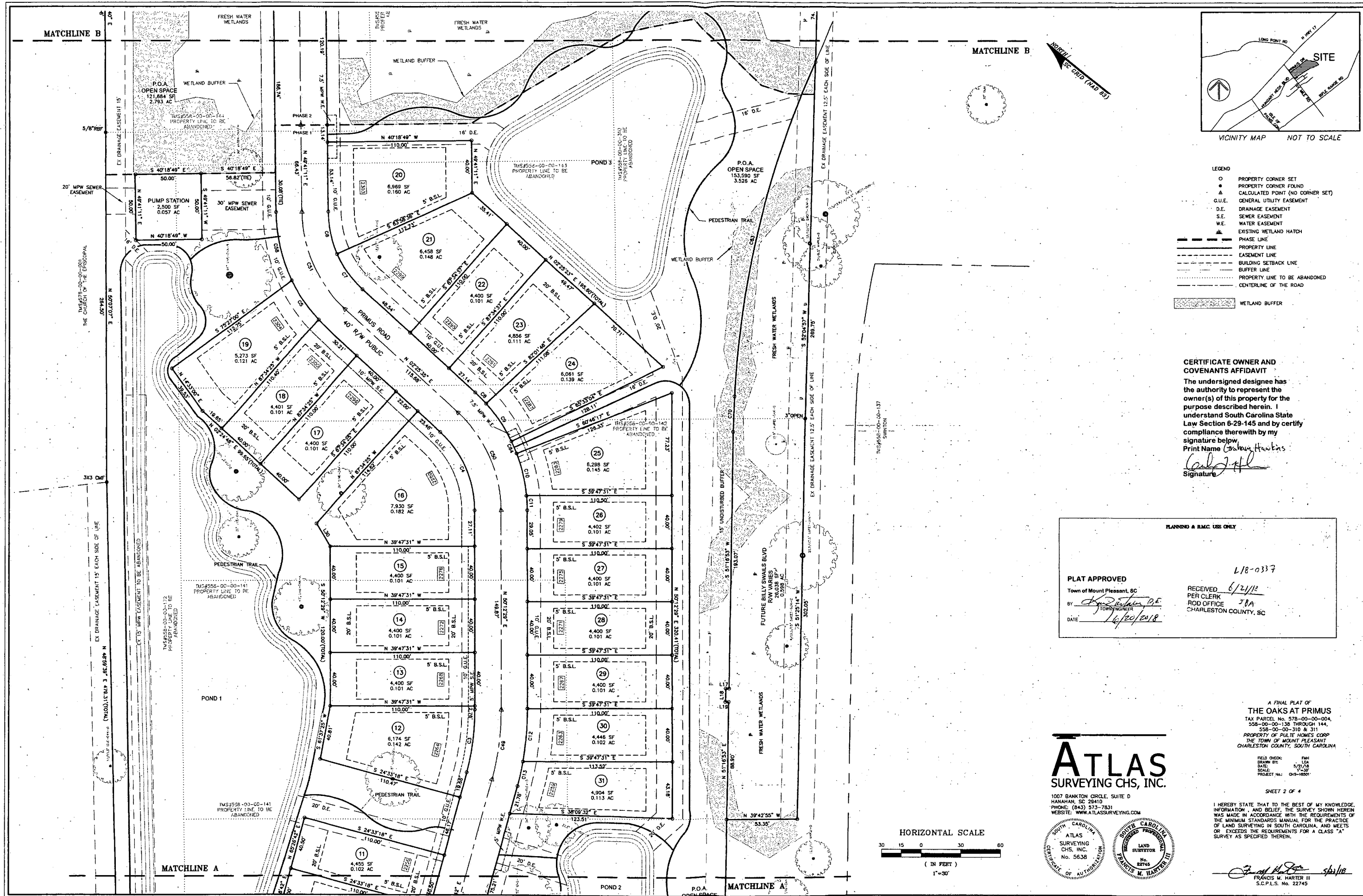
A FINAL PLAT OF
THE OAKS AT PRIMUS
TAX PARCEL No. 578-00-00-004,
558-00-00-138 THROUGH 144,
558-00-00-310 & 311
PROPERTY OF PULTE GROUP
THE TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA

FIELD CHECK: fsh
DRAWN BY: lsa
DATE: 5/7/18
SCALE: 1"=80'
PROJECT No.: CHS-18001
SHEET 1 OF 4

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

[Signature] 6/21/18
FRANCIS M. HARTER III
S.C.P.L.S. No. 22745





- LEGEND
- PROPERTY CORNER SET
 - PROPERTY CORNER FOUND
 - CALCULATED POINT (NO CORNER SET)
 - G.U.E. GENERAL UTILITY EASEMENT
 - D.E. DRAINAGE EASEMENT
 - S.E. SEWER EASEMENT
 - W.E. WATER EASEMENT
 - EXISTING WETLAND HATCH
 - PHASE LINE
 - PROPERTY LINE
 - EASEMENT LINE
 - BUILDING SETBACK LINE
 - BUFFER LINE
 - PROPERTY LINE TO BE ABANDONED
 - CENTERLINE OF THE ROAD
 - WETLAND BUFFER

CERTIFICATE OWNER AND COVENANTS AFFIDAVIT

The undersigned designee has the authority to represent the owner(s) of this property for the purpose described herein. I understand South Carolina State Law Section 6-29-145 and by certify compliance therewith by my signature below.

Print Name *Conan Hawkins*
Signature *Conan Hawkins*

PLANNING & R.M.C. USE ONLY

PLAT APPROVED
Town of Mount Pleasant, SC
BY *[Signature]*
DATE *6/20/2018*

RECEIVED *6/21/18*
PER CLERK
ROD OFFICE
CHARLESTON COUNTY, SC

ATLAS
SURVEYING CHS, INC.

1007 BANKTON CIRCLE, SUITE D
HANAHAN, SC 29410
PHONE: (843) 573-7831
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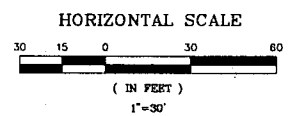


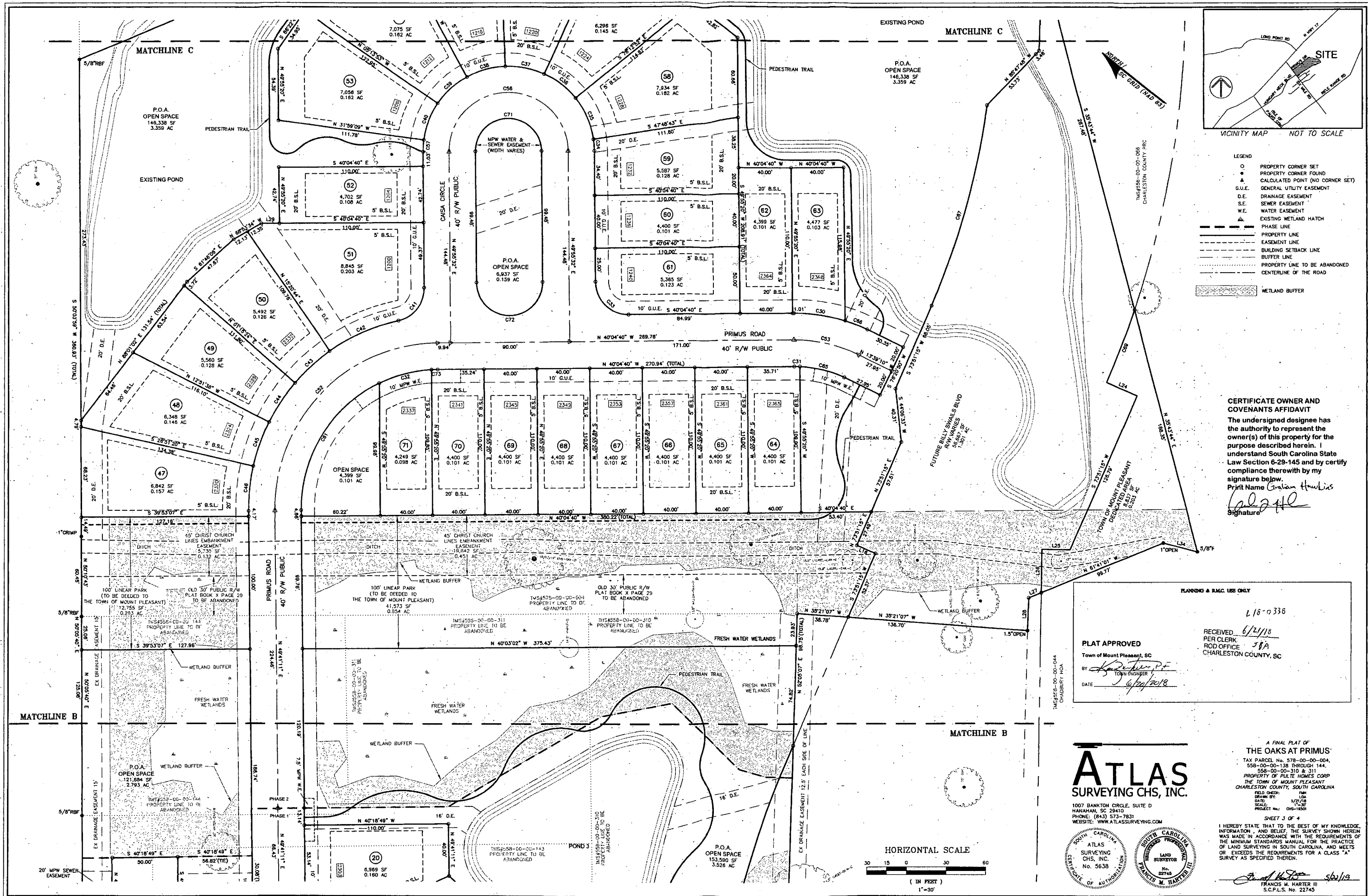
A FINAL PLAT OF
THE OAKS AT PRIMUS
TAX PARCEL No. 578-00-00-004,
558-00-00-138 THROUGH 144,
558-00-00-310 & 311
PROPERTY OF PULTE HOMES CORP
THE TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA

SHEET 2 OF 4

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

[Signature]
FRANCIS M. HARTER III
S.C.P.L.S. No. 22745





LINE	BEARING	DISTANCE
16	S 16°08'45" E	15.50
17	S 39°02'01" E	2.54
18	N 51°16'53" E	9.99
19	S 38°47'31" E	2.54
20	S 38°47'31" E	2.50
21	S 11°16'53" W	1.36
22	S 51°16'53" W	10.00
23	S 38°47'31" E	4.36
24	N 16°08'45" W	25.00
25	N 38°39'54" W	21.42
26	S 51°25'00" W	32.67
27	S 61°41'01" E	10.29
28	S 52°09'56" W	24.69
29	S 40°04'40" E	13.70
30	N 16°31'47" E	20.25

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD	BEARING	CHORD LENGTH
C1	47.45	95.00	15°21'22"	S 85°51'14" E	95.00	25.39
C2	34.79	95.00	20°58'58"	S 76°51'26" W	95.00	34.60
C3	47.87	180.00	15°14'14"	N 57°49'36" E	180.00	47.73
C4	68.72	80.00	4°48'54"	N 26°19'02" E	80.00	64.80
C5	35.89	120.00	17°02'25"	S 15°37'26" W	120.00	35.56
C6	33.04	79.97	23°40'27"	S 37°50'44" W	79.97	32.81
C7	37.83	80.00	23°39'02"	S 14°13'28" W	80.00	37.70
C8	11.82	120.00	5°32'50"	N 05°12'00" E	120.00	11.61
C9	34.51	120.00	16°28'45"	N 16°12'47" E	120.00	34.40
C10	32.96	120.00	15°44'12"	N 37°06'07" E	120.00	32.85
C11	10.97	120.00	5°14'15"	N 47°45'21" E	120.00	10.97
C12	39.39	220.00	10°15'28"	N 55°20'13" E	220.00	39.33
C13	19.12	220.00	4°58'46"	N 62°57'19" E	220.00	19.11
C14	21.90	120.00	11°24'34"	N 71°09'59" E	120.00	21.86
C15	34.89	25.00	79°30'22"	S 37°06'06" W	25.00	31.97
C16	8.37	70.00	6°51'12"	N 00°46'32" E	70.00	8.35
C17	30.80	70.00	28°12'42"	N 18°48'30" E	70.00	30.55
C18	28.38	70.00	21°35'41"	N 40°12'41" E	70.00	28.23
C19	30.90	70.00	28°17'39"	N 83°39'21" E	70.00	30.85
C20	30.87	70.00	28°15'50"	N 88°56'10" E	70.00	30.62
C21	30.39	70.01	24°52'30"	S 65°59'13" E	70.01	30.15
C22	17.79	70.00	14°33'48"	S 46°18'21" E	70.00	17.74
C23	39.27	25.00	90°00'00"	S 83°59'28" W	25.00	39.27
C24	39.27	25.00	90°00'00"	S 06°00'32" W	25.00	39.36
C25	34.88	55.00	36°20'23"	S 69°10'43" W	55.00	34.30
C26	18.35	25.00	7°29'58"	N 73°56'05" E	25.00	18.04
C27	22.94	25.00	52°34'02"	N 28°56'06" W	25.00	22.14
C28	28.10	30.00	53°39'37"	N 24°10'43" E	30.00	27.08
C29	47.12	30.00	90°00'00"	S 83°59'28" W	30.00	47.43
C30	39.80	130.08	17°28'46"	N 31°21'53" W	130.08	39.45
C31	4.29	87.94	2°47'55"	N 38°42'47" W	87.94	4.29
C32	41.48	105.00	22°38'03"	N 53°59'42" W	105.00	41.31
C33	39.27	25.00	90°00'12"	S 04°55'26" W	25.00	39.36
C34	8.86	65.43	7°45'39"	N 46°05'22" E	65.43	8.86
C35	34.50	65.00	30°22'54"	N 26°36'43" E	65.00	34.09
C36	30.36	64.91	26°47'33"	N 01°46'30" W	64.91	30.08
C37	30.35	64.91	26°47'33"	N 28°21'06" W	64.91	30.08
C38	30.35	65.00	26°45'05"	N 35°06'50" W	65.00	30.07
C39	30.35	65.00	26°44'55"	N 81°51'50" W	65.00	30.07
C40	30.34	65.00	26°44'50"	S 71°23'17" W	65.00	30.07
C41	34.08	25.00	78°05'49"	N 88°58'26" E	25.00	31.30
C42	57.39	145.00	22°40'36"	N 83°18'58" W	145.00	57.01
C43	35.90	145.00	14°11'09"	N 81°44'50" W	145.00	35.81
C44	35.48	145.00	14°01'14"	S 84°08'59" W	145.00	35.39
C45	35.42	145.00	13°59'42"	S 70°08'11" W	145.00	35.33
C46	34.08	145.00	13°27'29"	S 56°24'55" W	145.00	33.98
C47	47.57	75.00	36°20'23"	N 69°10'43" E	75.00	46.78
C48	38.23	100.00	21°54'12"	N 76°23'49" E	100.00	38.00
C49	53.19	200.00	13°14'14"	N 57°49'36" E	200.00	53.03
C50	83.39	100.00	47°46'54"	N 26°19'02" E	100.00	81.00
C51	82.47	100.00	47°14'50"	N 26°03'05" E	100.00	80.15
C52	195.86	25.00	90°14'09"	S 85°11'45" E	25.00	177.14
C53	49.98	101.13	28°19'13"	S 27°53'13" E	101.13	49.48
C54	78.54	50.00	90°00'00"	S 83°59'28" E	50.00	79.71
C55	46.83	50.00	58°59'27"	N 24°10'43" E	50.00	45.13
C56	141.37	45.00	180°00'00"	N 40°04'28" W	45.00	90.00
C57	9.18	65.00	8°05'20"	S 53°50'12" W	65.00	9.17
C58	53.68	70.00	28°31'59"	S 36°54'38" W	70.00	53.03
C59	46.98	30.00	89°41'47"	S 06°09'38" W	30.00	42.31
C60	47.28	30.00	90°18'13"	S 83°50'22" E	30.00	42.54
C61	119.17	105.00	65°00'03"	S 82°11'12" W	105.00	112.83
C62	30.58	80.00	21°54'12"	N 76°23'49" E	80.00	30.40
C63	235.68	709.50	19°01'50"	S 62°56'55" W	709.50	234.58
C64	10.01	124.67	4°36'04"	N 26°30'35" E	124.67	10.01
C65	34.91	91.03	21°58'28"	N 26°18'08" W	91.03	34.70
C66	18.02	134.68	7°40'04"	N 18°44'34" W	134.68	18.01
C67	158.52	575.00	15°47'43"	S 85°57'23" W	575.00	158.02
C68	81.43	610.50	7°36'33"	S 48°53'49" W	610.50	81.37
C69	58.44	720.00	4°39'01"	N 71°31'44" E	720.00	58.42
C70	28.85	709.50	7°09'07"	S 52°21'26" W	709.50	28.64
C71	78.54	25.00	180°00'00"	N 40°04'28" W	25.00	50.00
C72	78.54	25.00	180°00'00"	N 40°04'28" W	25.00	50.00
C73	4.77	149.51	1°49'36"	S 41°22'42" E	149.51	4.77

NOTES

- TRACT SURVEYED THE OAKS AT PRIMUS TMS# 578-00-00-004, 558-00-00-138,144,310,311 AND PRIMUS ROAD
- TOTAL AREA OF THE PRIMUS TRACT 25.20 ACRES AREA OF P.O.A. OPEN SPACE IS 10.18 ACRES PROPOSED RIGHT-OF-WAY IS 2.65 ACRES 100' LINEAR PARK AREA 1.25 ACRES
- OWNER/DEVELOPER: PULTE HOMES CORPORATION COASTAL CAROLINA DIVISION 4000 FABER PLACE DRIVE, SUITE 100 NORTH CHARLESTON, SC 29405 843-746-3570
- CIVIL ENGINEER: SEAMON, WHITESIDE & ASSOCIATES, INC. 501 WANDO PARK BOULEVARD, SUITE 200 CHARLESTON, SC 29492 843-884-1667
- SURVEYOR: ATLAS SURVEYING, INC. 1007 BANKTON CIRCLE, SUITE D HANAHAN, SC 29410 843-573-7831
- ZONING: SUBJECT PROPERTY IS ZONED PD-CD (TOWN OF MOUNT PLEASANT) PD-CD: LOT WIDTH - 40 FT LOT DEPTH - 110 FT SETBACK REQUIREMENTS: FRONT - 20 FT REAR - 20 FT SIDE - 5 FT SIDE (CORNER SIDE YARD) - 15 FT MAXIMUM HEIGHT - 40 FT
- ALL MONUMENTS SET HEREON ARE 5/8" REBAR
- THIS PARCEL LIES IN FLOOD X, FIRM COMMUNITY PANEL # 45019C0529J & 45019C0535J EFFECTIVE DATE NOVEMBER 17,2004.
- ALL BEARINGS ARE SOUTH CAROLINA STATE PLANE GRID, NAD 83, (2011).
- ANYTHING SHOWN OUTSIDE OF THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- AREA DETERMINED BY D.M.D. METHOD.
- THERE SHALL BE NO FENCES, STRUCTURES, OR HARD STRUCTURES LOCATED WITHIN THE DRAINAGE EASEMENTS.
- WATER SYSTEM TO BE OPERATED AND MAINTAINED BY MOUNT PLEASANT WATERWORKS.
- SANITARY SEWER SYSTEM TO BE OPERATED AND MAINTAINED BY MOUNT PLEASANT WATERWORKS.
- THE P.O.A. SHALL OWN AND MAINTAIN ALL RESPONSIBILITIES FOR PEDESTRIAN ACCESS AND TRAILS. (EXCEPT FOR CONFEDERATE FORTIFICATION LINE TRAIL WHICH WILL BE THE RESPONSIBILITY OF THE TOWN OF MOUNT PLEASANT).
- ALL AREAS DESIGNATED BY P.O.A. SHALL BE OWNED AND MAINTAINED BY THE PROPERTY OWNERS ASSOCIATION.
- PRIVATE DESIGN ELEMENTS FOR DECORATIVE STREET TREATMENTS, LANDSCAPING OR SIGNAGE IN RIGHT-OF-WAY AND HOMEOWNER OR DEVELOPER INITIATED BUFFER YARDS ARE TO BE MAINTAINED BY THE PROPERTY OWNERS ASSOCIATION.
- TREE PROTECTION REQUIREMENTS: ALL TREES SHOWN ARE SUBJECT TO THE ZONING LAWS OF THE TOWN OF MT PLEASANT AND CANNOT BE REMOVED AS SPECIFIED IN ZONING ORDINANCE 156.224 AND ARE SUBJECT TO THE FOLLOWING REGULATIONS:
 - GRADE CHANGES: 1. MODERATE FILL MAY BE ALLOWED UPON PRIOR APPROVAL OF THE PLANNING BOARD AND DEVELOPMENT AND WITH THE PRIOR INSTALLATION OF AN AERATION SYSTEM. 2. A DECREASE IN GRADE SHALL NOT BE ALLOWED. THE GRADE OUTSIDE THE TREE PROTECTION ZONE SHALL ONLY BE DECREASED WITH THE USE OF APPROVED RETAINING WALLS OR TERRACING PLANS BY THE TOWN.
 - UTILITY INSTALLATION: 1. THE INSTALLATION OF UTILITIES THROUGH A PROTECTION ZONE MAY BE ALLOWED, BY BORING OR TUNNELING, WITH PRIOR APPROVAL. 2. TRENDING WILL NOT BE ALLOWED WITHIN THE TREE PROTECTION ZONE.
 - IMPERVIOUS SURFACE MATERIALS ARE NOT ALLOWED WITHIN THE TREE PROTECTION ZONE EXCEPT SIDEWALKS AS SHOWN.
 - BUILDING FOUNDATIONS AND OTHER SUBGRADE BUILDING ELEMENTS ARE NOT ALLOWED WITHIN THE TREE PROTECTION ZONE.
- A 10' GENERAL UTILITY EASEMENT SHALL BE PLACED ALONG ALL ROAD RIGHT-OF-WAYS. UTILITIES SHALL NOT DISTURB MARSH, WETLANDS, OR BUFFERS. ALTERNATIVE INSTALLATION SUCH AS BORING SHALL BE UTILIZED WITHIN MARSH, WETLANDS AND BUFFER AREAS.
- BENCH MARK DATA=BM LOCATED IN PK NAIL SOUTH OF EXISTING PRIMUS ROAD, ELEVATION 18.30 NOV 1929.
- PROJECT HISTORY: PLANNING COMMISSION SKETCH PLAN APPROVAL 9-23-15 PLANNING COMMISSION PRELIMINARY PLAT APPROVAL 12-16-15
- WETLAND PERMIT SAC 2014-01248 EXPIRES MARCH 18, 2018.
- CHRIST CHURCH LINES EMBANKMENT EASEMENT (45' WIDTH) UNDER CONSERVATION EASEMENT WITH SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST. (25,372 SF 0.583 AC)

REFERENCE

- A SET OF PLANS FOR THE OAKS AT PRIMUS, MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA. DATE: 11-18-15 REV: 8-1-17 SEAMON WHITESIDE & ASSOCIATES, INC. BY: JASON E. MUNDAY, S.C.P.L.S. No. 26145
- A BOUNDARY SURVEY OF TMS# 558-00-00-004, 558-00-00-138 THRU 144, 172, 310, AND 311 MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA. DATE: 7-12-2015 PLAT BOOK L15 PAGE 371 MICHAEL SHULSE S.C.P.L.S. No.18268
- PLAT OF A 15' PERMANENT UTILITY EASEMENT MOUNT PLEASANT, CHARLESTON COUNTY SOUTH CAROLINA DATE: 7-10-1995 PLAT BOOK L15 PAGE 784 E.M. SEABROOK JR INC E.M. SEABROOK III S.C. REG No 8436

POND AND DRAINAGE CERTIFICATION

POND AND DRAINAGE CERTIFICATION THE OWNER OF RECORD OF THE LAND SHOWN ON THIS PLAT AND WHOSE NAME IS SUBSCRIBED THERETO, AND ANY SUBSEQUENT OWNER, HEIR, SUCCESSOR OR ASSIGN, ACKNOWLEDGES AND AGREES TO THE PERPETUAL MAINTENANCE OF THE POND(S) LOCATED IN THIS SUBDIVISION; AND DOES RELEASE AND HOLD HARMLESS THE TOWN FROM ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, ATTORNEY'S FEES AND COSTS OR JUDGEMENTS ARISING FROM SAID POND(S); AND SPECIFICALLY RELEASES THE TOWN FROM ANY AND ALL LIABILITY AND RESPONSIBILITY FOR FLOODING OR EROSION FROM STORM DRAINS OR FROM FLOODING FROM HIGH WATER OR NATURAL CREEKS, RIVER, OR DRAINAGE FEATURES. A DRAINAGE EASEMENT IS ESTABLISHED FOR THE SOLE PURPOSE OF PROVIDING FOR THE EMERGENCY PROTECTION OF THE FREE FLOW OF SURFACE WATERS ALONG ALL WATERCOURSES, AS ESTABLISHED BY THESE REGULATIONS AND THE DIRECTOR OF PLANNING AND DEVELOPMENT. THE TOWN MAY CONDUCT EMERGENCY MAINTENANCE OPERATIONS WITHIN THIS EASEMENT WHERE EMERGENCY CONDITIONS EXIST. EMERGENCY MAINTENANCE SHALL BE THE REMOVAL OF TREES AND OTHER DEBRIS, EXCAVATION, FILLING, AND THE LIKE NECESSARY TO REMEDY A CONDITION, WHICH, IN THE JUDGEMENT OF THE DIRECTOR, IS POTENTIALLY INJURIOUS TO LIFE, PROPERTY, OR THE PUBLIC ROAD OR UTILITY SYSTEM. SUCH EMERGENCY MAINTENANCE, CONDUCTED FOR THE COMMON GOOD, SHALL NOT BE CONSTRUED AS CONSTITUTING A CONTINUAL MAINTENANCE OBLIGATION ON THE PART OF THE TOWN.

SIGNATURE OF OWNER
PULTE HOMES CORPORATION
COASTAL CAROLINA DIVISION
4000 FABER PLACE DRIVE
SUITE 100
NORTH CHARLESTON SC 29405
CONTACT: MATT RAINES
OFFICE: 843-740-7270

OWNER'S CERTIFICATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THE OWNER OF RECORD OF THE LAND SHOWN ON THIS PLAT AND WHOSE NAME IS SUBSCRIBED THERETO, AND IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, ACKNOWLEDGES THAT THIS PLAT WAS MADE FROM AN ACTUAL SURVEY AND DEDICATES TO THE USE OF THE TOWN OF MOUNT PLEASANT FOREVER THE FOLLOWING:

ROAD R/W AREA 2.65 AC.
P.O.A. POND/OPEN SPACE 10.82 AC.

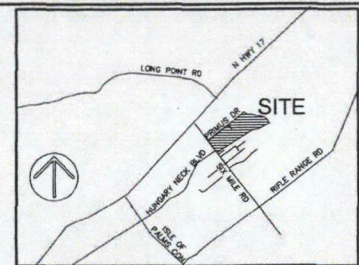
SIGNATURE OF OWNER
PULTE HOMES CORPORATION
COASTAL CAROLINA DIVISION
4000 FABER PLACE DRIVE
SUITE 100
NORTH CHARLESTON SC 29405
CONTACT: MATT RAINES
OFFICE: 843-740-7270

OPEN SPACE DEDICATION

BY THE RECORDING OF THIS PLAT, I HEREBY DEDICATE ALL LANDS DEPICTED OR INTENDED AS OPEN SPACE TO REMAIN FREE OF DEVELOPMENT THAT WOULD VIOLATE ITS PURPOSE. ALL PROPERTY REFERRED TO AS A FORM OF COMMON COMMUNITY SPACE AND THE LIKE IS CONSIDERED OPEN SPACE. NOTHING IN THIS DEDICATION SHALL BE CONSTRUED TO IMPLY AN ACCEPTANCE BY THE TOWN OF MOUNT PLEASANT.

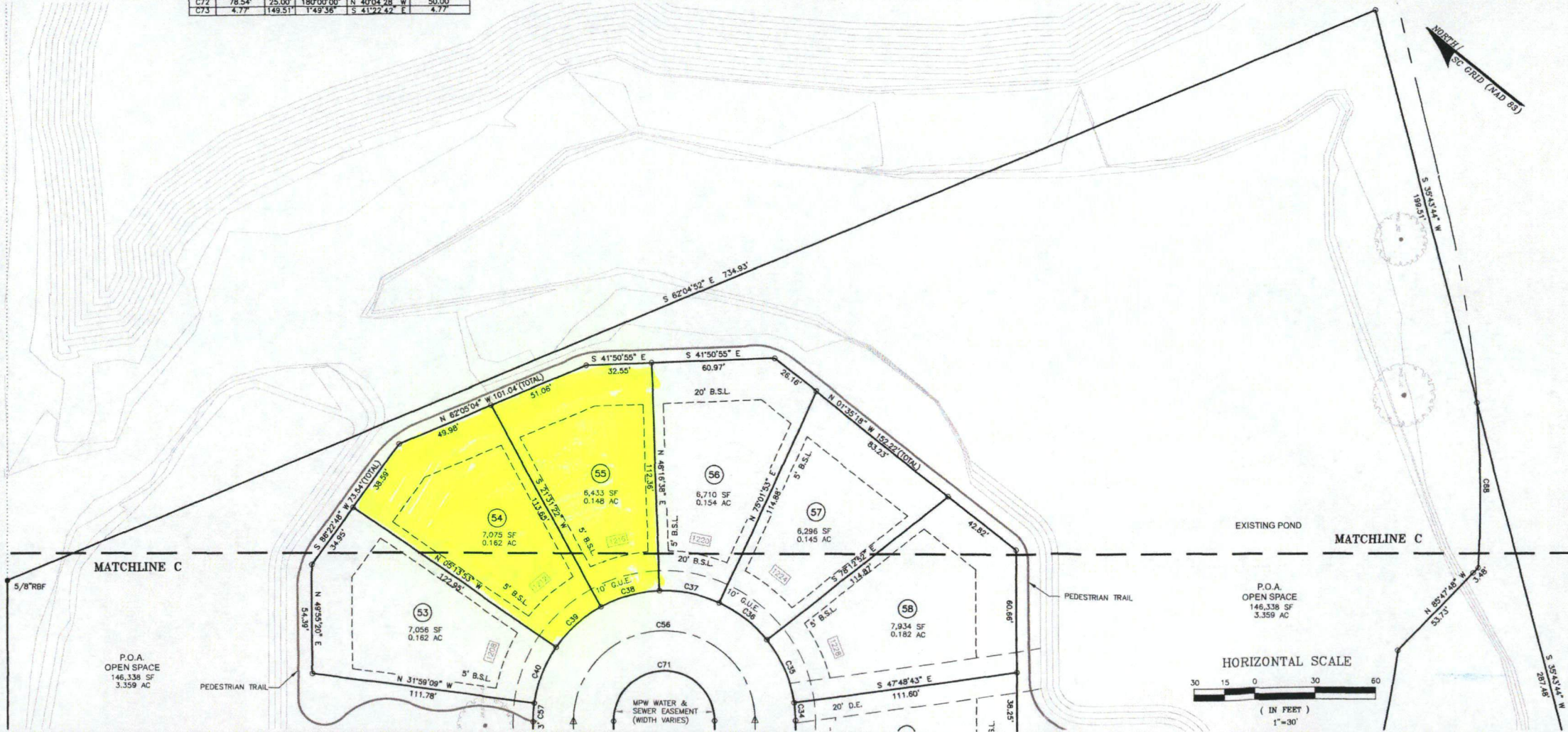
CERTIFICATE OWNER AND COVENANTS AFFIDAVIT

The undersigned designee has the authority to represent the owner(s) of this property for the purpose described herein. I understand South Carolina State Law Section 6-29-145 and by certify compliance therewith by my signature below.
Print Name Graham Hawkins
Signature
Signature



VICINITY MAP NOT TO SCALE

- LEGEND
- PROPERTY CORNER SET
 - PROPERTY CORNER FOUND
 - CALCULATED POINT (NO CORNER SET)
 - GENERAL UTILITY EASEMENT
 - DRAINAGE EASEMENT
 - SEWER EASEMENT
 - WATER EASEMENT
 - EXISTING WETLAND HATCH
 - PHASE LINE
 - PROPERTY LINE
 - EASEMENT LINE
 - BUILDING SETBACK LINE
 - BUFFER LINE
 - PROPERTY LINE TO BE ABANDONED
 - CENTERLINE OF THE ROAD
 - WETLAND BUFFER



PLANNING & RMC USE ONLY

PLAT APPROVED
Town of Mount Pleasant, SC
BY: [Signature]
DATE: 6/20/2018

RECEIVED 6/21/18
PER CLERK JBA
RCD OFFICE
CHARLESTON COUNTY, SC

A FINAL PLAT OF
THE OAKS AT PRIMUS
TAX PARCEL No. 578-00-00-004,
558-00-00-138 THROUGH 144,
558-00-00-310 & 311
PROPERTY OF PULTE HOMES CORP
THE TOWN OF MOUNT PLEASANT
CHARLESTON COUNTY, SOUTH CAROLINA

FIELD CHECK: [Signature]
DATE: 6/21/18
SCALE: 1"=30'
PROJECT No.: CHS-1607

SHEET 4 OF 4

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

ATLAS SURVEYING CHS, INC.
1007 BANKTON CIRCLE, SUITE D
HANAHAN, SC 29410
PHONE: (843) 573-7831
WEBSITE: WWW.ATLASSURVEYING.COM

ATLAS SURVEYING CHS, INC. No. 5638

FRANCIS M. HARTER III
S.C.P.L.S. No. 22745

EXHIBIT

B

Legend

PULTE PROPERTY
(PRIMUS)

PROPOSED
LONGPOINT RD. EXTENSION

LAKE ACCESS

KHOV PROPERTY
(purchased from
American Star, needed
sewer easement)

AMERICAN STAR
PROPERTY

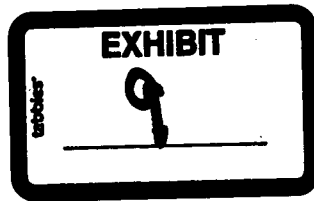
TOWN-OWNED
RIGHT OF WAY (APPROX.)

BILLY SWAILS BLVD. EXTENSION

EXHIBIT:
PRIMUS - AMERICAN STAR
- BILLY SWAILS EXTENSION

09.19.18

300 ft



STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
American Star Development SC,	)	
LLC,	)	CASE NO. 2018-CP-10-02175
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	COPY
	)	
Pultegroup, Inc., et al,	)	
	)	
DEFENDANTS.	)	

September 21, 2018

Charleston, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh

A P P E A R A N C E S:

E. Brandon Gaskins, Esquire
For the Plaintiff

George Trenholm Walker, Esquire
For the Defense

John P. Linton, Jr., Esquire
For the Defense

Susan McDonald Gatty, Esquire
For the Defense

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING - Motion to Cancel Lis Pendens -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 25

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: American Star Development versus
2 Pultegroup. All right, this is a motion, counsel, a lis
3 pendens; is that correct?

4 MR. WALKER: Yes, Your Honor.

5 THE COURT: Is it your motion?

6 MR. WALKER: Yes, sir.

7 THE COURT: All right, sir. Be glad to hear from you.

8 MR. WALKER: Thank you very much. My name is Trenholm
9 Walker, and I am here with John Linton on behalf of the two
10 Pulte defendants. With us is Matt Raines who is from Pulte.

11 MS. GATTY: And I am Susan Gatty. I represent JW
12 Holmes which is another defendant who is not part of the
13 motion.

14 MR. WALKER: As Your Honor said, this is an action to
15 cancel a lis pendens. This complaint was filed in late May
16 of this year.

17 Pulte is the owner of property that was once owned by
18 the plaintiff, American Star. And the genesis of the
19 controversy is a contract that American Star entered with
20 our predecessor in title, JW Homes, back in 2015, February
21 of 2015.

22 And the first thing I want to do is just orient you to
23 the land and then we will get into the contract and the
24 basis of the claim and why we say it should be dismissed.

25 THE COURT: All right, sir.

1 MR. WALKER: This is property over in Mount Pleasant
2 that was in the county until it was annexed into Mount
3 Pleasant as part of this overall transaction in 2015.

4 And the status of the property today is reflected on
5 this aerial (display). And to give you an idea of the
6 relationship of the parcels we put in the subdivisions that
7 have been granted.

8 But to simplify, all of this property once was at
9 various times owned by American Star. American Star still
10 owns the parcel in the middle that is referred to in the
11 complaint as the adjacent land or the adjoining lands.

12 To your right is a parcel that it assembled and sold to
13 a developer called K-Hoff (ph). To the left is the parcel
14 in question, the long parcel that we are looking at. And
15 what you are seeing here is a final subdivision plat that
16 was approved by the Town of Mount Pleasant earlier this
17 year. And this is the subject property that has the lis
18 pendens on it (pointing).

19 And I have submitted to the court a copy of the final
20 plat and highlighted in yellow all of the lots that the lis
21 pendens is on.

22 And essentially the lis pendens covers - we refer to
23 the bottom - all of these lots except these two (pointing),
24 all of these lots (pointing), these lots (pointing) except
25 these two (pointing), and all of these lots (pointing).

1 The original lis pendens was on the initial parcels.

2 The current lis pendens is on over 40 of the lots.

3 Pulte is about to go to market and it is at market
4 right now. And as you can imagine this lis pendens is a
5 significant issue because it has created a huge problem with
6 the marketability of this property.

7 Now to back up a little more, if you would take a look
8 at the contract there really -- and the contract is attached
9 both to the motion -- or excuse me, the opposition that was
10 filed by American Star as well as the complaint. And this
11 is the basis of the claim for the lis pendens. The
12 complaint itself seeks a declaratory judgment that my client
13 Pulte has the obligation to construct a connector street
14 basically from American Star's property to the road system
15 here (pointing). It would be this small area right here
16 (pointing).

17 American Star's property is 95 percent a lake. All of
18 this outlined property that you see on the aerial, this dark
19 that you see (pointing), is a lake, not high ground.

20 American Star is claiming that under the contract that
21 was entered in 2015, which it is alleged Pulte assumed,
22 the -- Pulte has the obligation to design and construct a
23 road that leads to these roads (pointing). They are public
24 roads, the Town of Mount Pleasant.

25 Now what is really interesting in this is that the plan

1 that we see here, the lot plan, was part of the site plan
2 that was submitted by the plaintiff to the Town of Mount
3 Pleasant without the connector road, and the connection road
4 was never shown.

5 It was not shown in the site plan. It was not shown in
6 the sketch plan. It was not shown in the preliminary plan.
7 It was not shown in the -- preliminary plat but not shown in
8 the final plat.

9 The second basis for the lis pendens is you will see a
10 red area down here (pointing). And this is land that the
11 Town of Mount Pleasant has notified the public it is going
12 to be the extension of what is known as Billy Swails
13 Boulevard. It is Hungryneck and Billy Swails. It ends
14 right here across from this access (pointing). The Town has
15 given notice that it intends to acquire the right-of-way.

16 The first portion of this that is in the dark red has
17 already been acquired by the Town. And that is separated
18 from the lots by essentially a little open space area which
19 is a buffer between the lots and the future Billy Swails.

20 But if you go to the contract the contract says in
21 Paragraph 32 or provides in Paragraph 32 -- excuse me
22 thirty ---

23 THE COURT: I do not have that contract in front of me
24 for some reason. Do you have an extra copy I can look at,
25 please?

1 MR. GASKINS: Your Honor, it is -- I am sorry to
2 interrupt, but it is attached to the memorandum that we
3 submitted and was handed up to your law clerk earlier.

4 THE CLERK: Okay. I read a memorandum from you
5 yesterday. To be honest with you I didn't read all of the
6 attachments to it.

7 MR. WALKER: It is way at the back of the contract,
8 Your Honor.

9 THE COURT: Exhibit A?

10 MR. WALKER: Yes, sir.

11 THE COURT: All right, sir, what paragraph am I looking
12 at?

13 MR. WALKER: There is thirty-one on Page 14 of the
14 contract.

15 THE COURT: All right, sir.

16 MR. WALKER: It is 31(B) that says in consideration for
17 granting the right of first offer and regardless of whether
18 the buyer and seller execute a contract for the purchase and
19 sale of the RFO parcels - and that would be the land that is
20 the lake, the lake land - buyer -- and that was JW Homes;
21 but let's assume for purposes of this argument it is Pulte,
22 my client. Agrees the access road, access road, through the
23 property not including the RFO parcels, to be constructed by
24 buyer and the property shall be designed and constructed
25 under standards applicable to public roads to provide

1 vehicular and pedestrian access to connect the property to
2 the ROFO parcel. And then there is the TMS number.

3 The connection. Buyers agrees that this connection
4 will be depicted on buyer's sketch plan for the property, as
5 distinguished from any sketch plan applicable to the
6 adjoining parcels, that is ultimately approved by the Town
7 and shall be designed and constructed as a continuation of
8 the access road serving the property.

9 It goes on to say that in Subpart C which is on the
10 next page near the bottom of Subpart C it says that if any
11 of these lots -- because this site plan had already been
12 submitted by American Star, not by my client, by American
13 Star to the Town. But it said if the connection road takes
14 any of these lots then at closing, at closing, there would
15 be a deduct of 114,000 per lot that was needed to construct
16 that street at closing.

17 Then it goes down to "D" to talk about when it might be
18 accessed. And the last sentence is also very important:
19 Buyer will have the right to block access through the
20 connection. Buyer - we are assuming for purposes of this
21 motion is Pulte - has the right to block access through the
22 connection until the ROFO parcels have paved streets that
23 are being used by normal passenger traffic in connection
24 with the purchase and sale of homes or in connection with
25 normal residential use.

1 Well, obviously we are a long way from having any homes
2 on this lake. And even if the road were constructed there
3 would be no obligation to open it.

4 And also I would like to point out, Your Honor, that
5 the only high ground that touches my client's property is
6 adjacent to only two lots, 54 and 55.

7 So here is our motion, Your Honor. The contract itself
8 doesn't mention the word easement. The complaint doesn't
9 mention the word easement.

10 The obligation in the contract is to show or depict the
11 connection on the sketch plan to design and construct the
12 road. There is no conveyance of an interest in property.
13 In fact, the purchase contract -- and I don't want to get
14 bogged down on all the terms.

15 But the purchase contract says it will be the property
16 will be conveyed free and clear of all liens and
17 encumbrances, charges against the land, with normal
18 language, except for the permitted exceptions. And the
19 permitted exceptions don't mention anything dealing with
20 this connector road or that it is an easement.

21 The statute governing lis pendens and the case law
22 requires that to sustain a lis pendens the plaintiff must
23 have an interest in the title.

24 The beginning language of 15-11-10 says in an action
25 affecting the title to real property. The plaintiff's

1 action in this case does not affect the real property.

2 They are not seeking to declare an easement. They are
3 seeking to adjudicate that my client has the obligation to
4 design and construct this connector street somewhere in here
5 (pointing) to this circular road that is a public road to
6 the Town of Mount Pleasant.

7 But regardless, they have not asserted any type of
8 interest in real property. Instead they have put a lien --
9 or a lis pendens on every lot, on the tail end probably 20
10 lots in the far end of the subdivision. And the only thing
11 we can think of is clearly is to gain leverage over our
12 client because they are going to market.

13 There was no contention by the plaintiff that Pulte had
14 the obligation to construct this road until say within six
15 months of the filing of the action.

16 But the legal issue before the court -- that is just
17 background. The legal issue is there is no interest in the
18 real property now.

19 The plaintiff has gone through several imaginative
20 arguments as to how it is an interest because they say,
21 well, their folks ultimately will have access.

22 Well, we would say that is not ripe yet. They haven't
23 built any houses. They haven't even filled in the lake. I
24 mean they have no -- they can't command that we construct it
25 and open it.

1 But it is not an action on an interest in real
2 property. And the fact that we had an obligation to
3 construct is different from an interest in real property.
4 In fact, if you look at the contract the lawyers were
5 very meticulous that they were not creating an interest in
6 real property.

7 So that is our case as to number-one basis for the
8 easement, which is the contractual obligation to design and
9 construct the connector street.

10 The second basis for this lis pendens is that the
11 contract in Paragraph 13 -- and I think Your Honor has it
12 before you. It is on Page 9, Your Honor. About a third of
13 the way down, condemnation.

14 And the second basis for the lis pendens is pitched on
15 Paragraph 13(A). And I won't belabor that and read the
16 whole thing.

17 The essence of that paragraph is that the buyer agreed
18 that should any of the sold property - and that would be the
19 property outlined in yellow - if any portion of that were
20 condemned by the Town for Billy Swails then assuming my
21 client stepped in the shoes of the interim buyer then my
22 client would have the obligation to pay 50 percent of the
23 net condemnation proceeds to Mr. Gaskins' client.

24 Again the contract is pretty clear that it is a right
25 to proceeds which is personalty, not a right to the title of

1 the property or an interest in the real property.

2 The plaintiff makes the argument that they are a
3 condemnee and cites the condemnation statute which clearly
4 we would say refutes their contention because it says that a
5 condemnee is a person with an interest in the real property.
6 It could be a leasehold. But not somebody who is entitled
7 to proceeds.

8 It would be tantamount to a real estate agent filing a
9 lis pendens because they have a commission from the sale of
10 the property. That is a right, contractual right; but it is
11 not an interest in real property.

12 The plaintiff in this case says, well, we don't have
13 any security. There is no obligation that it have security
14 for the -- for that contractual right. They can sue.

15 The contract did contain a provision, if you go to the
16 very end of that paragraph that we were looking at, 13A,
17 Your Honor, it did say that the parties shall memorialize
18 seller's interest in the condemnation proceeds by means of a
19 recordable instrument the form of which is to be agreed upon
20 during the buyer's inspection period and such instrument
21 shall be signed by the parties and recorded at closing.

22 Well, the buyer -- I mean, excuse me, the seller, the
23 current plaintiff, never insisted on it. Didn't do it.
24 There was never a recordable instrument that was agreed to.
25 There was no fight over it. No instrument has been recorded

1 because it was never agreed to and signed.

2 Nor is there any claim in this case for a specific
3 performance. Which would be a tough one to do because this
4 says it is to be recorded before closing. But in any event,
5 the ultimate right itself is to the proceeds and not to the
6 land.

7 And so for those reasons, Your Honor, we say that this
8 lis pendens which is filed on all of these properties, on
9 these 40 something lots, that it should be canceled, that
10 that doesn't prejudice the plaintiff at all.

11 They have claimed damages. They claim that if we don't
12 build this road this property is going to be diminished,
13 their lake is going to be diminished in value.

14 Well, if they have a right to damages they can't get
15 specific performance. The law is clear on that. And we
16 will get to that in another motion.

17 But there is no prejudice. They can still sue for
18 damages. And they had no right in the first place. And
19 they can sue us for any losses as a result of connecting the
20 road. And we have a ton of defenses to that, but we don't
21 get to them in this motion because this motion concentrates
22 on whether they have any interest in the real property.

23 Thank you, Your Honor. Mr. Linton is going to handle
24 the reply argument.

25 THE COURT: All right. Thank you.

1 All right, sir. Let me ask you on what basis do you
2 feel like you have the right -- I understand there are
3 potential fiats that may be involved, but to place a lis
4 pendens on the remaining lots which clearly would not be
5 involved in any alleged connector road whatsoever.

6 MR. GASKINS: Yes, Your Honor. And I will address
7 that. If you don't mind I think the best way to do that ---

8 THE COURT: If you will address it now I would
9 appreciate it.

10 MR. GASKINS: Yes, Your Honor. So the lots that would
11 not serve as a site for the connection the lis pendens has
12 been filed on -- concerning those properties. Because as
13 Mr. Walker stated, my client has an interest in the proceeds
14 from a condemnation, a potential condemnation by the Town of
15 Mount Pleasant for this connection -- or for the extension
16 of Hungry Neck Boulevard to Billy Swails Parkway.

17 And this is the property in question (pointing). This
18 is the Billy Swails Boulevard, Phase 4(B) project area
19 (pointing). And this is the Primus property that is in
20 question (pointing). This is my client's adjacent property
21 (pointing).

22 And as you can see, this portion of the development is
23 within the project area (pointing). After the final plat
24 was approved we amended the lis pendens to take out this
25 portion (pointing) of the development. Because we will

1 concede that we do not have an interest or -- an interest in
2 that property.

3 However, this is different. And I think it is
4 important to note that the test is not whether a party
5 filing a lis pendens has an interest in the property. That
6 is not the test.

7 The statute says, Section 15-11-10, that you have a
8 right to file if the action affects the title to real
9 property. Not that you have an interest in it, not that you
10 own it, but if the action affects title to real property.

11 And courts, South Carolina courts, interpreting this
12 provision have stated it is not limited just to direct
13 actions affecting ownership or affecting title; but they
14 also include those are which are brought to establish an
15 equitable estate's interest or right in specific real
16 property or to enforce any lien, charge, or encumbrance
17 against it.

18 And that is effectively what this is, it is an
19 encumbrance on that property. It is a claim on that
20 property. And this lis pendens serves the important
21 function of putting potential purchasers and potential
22 condemnors on notice of our interest.

23 That interest attaches to the property, therefore it
24 affects the title to the real property.

25 So Mr. Walker repeatedly stated, well, they don't have

1 an interest, they don't have an interest. We do have an
2 interest in the proceeds, but -- and that interest attaches
3 to the property and therefore it affects real property and
4 it is appropriate under the lis pendens statute, Your Honor.

5 THE COURT: Okay, sir.

6 MR. GASKINS: And I think it is very important -- now
7 Mr. Walker said, well, this is being done for leverage.
8 That is not true. This is being done to protect my client's
9 right and to protect potential purchasers.

10 If there are homebuyers or other companies who are
11 going to develop that, they need to know that. So this lis
12 pendens puts them on notice and protects my client's right
13 if they proceed with purchasing that property.

14 So this is not about leverage. This is about
15 protecting rights and protecting potential purchasers which
16 is the purpose of the lis pendens statute.

17 Turning to the connection. Regardless of whether the
18 complaint calls it an easement or not, that is effectively
19 what we are seeking. We are seeking specific performance of
20 a connection from this property (pointing) to that property
21 (pointing), to allow my clients to use that connection, to
22 use that land. That is the definition of an easement.

23 In the case law in South Carolina it is clear that an
24 easement is an action affecting title to property. Pond
25 Place Partners which is cited in the memorandum. So we

1 clearly have our action with regards to specific performance
2 for the connection and the access road affects title to
3 property and is appropriate.

4 Mr. Walker makes a lot of statements; well, this is a
5 lake. But that is really immaterial. My clients intend to
6 fill that lake as a non-jurisdictional wetland and develop
7 it or sell it to a developer. And their failure to have
8 access has a real impact on them. That is what this is
9 about.

10 And there's allusions to, well, this should have
11 happened at closing or this should have been recorded at
12 closing. And that is a good point.

13 That reminds me, on the condemnation issue Section 13
14 of the contract says this -- your right to the proceeds
15 shall be recorded. Recorded. An instrument recorded with
16 the register of deeds. That clearly affects the title to
17 the property.

18 But going back to Mr. Walker's arguments, well, this
19 should have happened at closing; those are arguments that go
20 to the merits of the action. Maybe they prevail. Maybe
21 they don't. But they are really immaterial to the issue
22 before you today, Your Honor.

23 THE COURT: Let me ask you this. Are there any parcels
24 that you placed liens on that are unassociated with any
25 supposed connector road or any parcel that would be subject

1 to this possible condemnation?

2 MR. GASKINS: No, sir. And I want to caveat that. I
3 am not -- I am not a dirt lawyer. So we specifically tried
4 not to ---

5 THE COURT: Well, you filed something affecting dirt,
6 so I want to -- yeah ---

7 MR. GASKINS: Yeah.

8 THE COURT: Because it looked to me initially
9 regardless of the merits of the motion from the other side
10 from Pulte that there was a significant number of lots
11 unassociated with any connector road or unassociated with
12 any condemnation. I may be wrong, because I haven't studied
13 it. But it just seemed like there were.

14 MR. GASKINS: Your Honor, if it was it was
15 unintentional. And I don't think they have alleged that.
16 We were specifically careful in identifying which lots ---

17 THE COURT: Okay.

18 MR. GASKINS: --- according to their new TMS
19 numbers ---

20 THE COURT: Right.

21 MR. GASKINS: --- were subject to the lis pendens. And
22 because it -- it does affect a large portion of the
23 property. So pretty much anything on the right side of the
24 property and everything on the back, because it is within
25 the project area. And then these lots (pointing) would be

1 potential sites for the connection.

2 So while it is 40 lots I believe all of those 40 lots
3 are within this project area or would serve as a site for
4 the connection.

5 THE COURT: Thank you, sir.

6 How do you address the contention that he raises that
7 in fact it was to be recordable form indicates that it does
8 affect the real property involved in this matter and whether
9 or not it is done that goes to the merits and not to the
10 interest involved?

11 MR. WALKER: The recording was that it had a right to
12 proceeds, not an interest in the real property. There's --
13 it just gave the world record notice of its right to
14 proceeds.

15 THE COURT: All right.

16 MR. WALKER: It is the same thing. It doesn't matter
17 whether it was recorded. We weren't going to record an
18 interest in the real property.

19 And we have got a case from I think it is Florida where
20 under very similar facts a party that had a contractual
21 right to half the proceeds from the sale of the property
22 filed a lis pendens. They said, no way. And I would be
23 happy to ---

24 THE COURT: Is their statute similar to ours?

25 MR. WALKER: Yes. And I can provide that at the end,

1 Your Honor.

2 THE COURT: Please do.

3 All right, sir.

4 MR. LINTON: Your Honor, John Linton. Nice to see you
5 again.

6 THE COURT: Good to see you.

7 MR. LINTON: Following up on that question you just
8 asked, one other important point about this sentence and the
9 contract that required a recording at closing is that the
10 plaintiffs have not moved to have anything recorded in this
11 case. They haven't moved to enforce anything that was or
12 should have been recorded. What they have brought a suit
13 for is to collect proceeds from a condemnation if one ever
14 happens.

15 And one of the most pertinent facts I think is that
16 they also sued JW Homes, the former owner of this property,
17 who has no interest in this property at all, for this same
18 reason.

19 It is obvious that these are personal claims because
20 they say that under this contract JW Homes transferred the
21 obligation to us. You can't -- and if there wasn't a
22 recording transfer I mean it is personal. And they have
23 alleged that as to JW Homes as an alternative claim.

24 And as to your question about the parcels and which
25 ones are covered by this potential condemnation what they

1 have shown you is a project area which was at one time
2 defined. What you see here in this red (pointing) for Billy
3 Swails Extension is what the DOT has determined is the
4 preferred path. This project has progressed beyond just
5 defining a project area. And it is very obvious that this
6 preferred path that has been decided was done with great
7 respect for the lots that Mount Pleasant has already adopted
8 an ordinance and approved this subdivision plat so that
9 these lots could be sold.

10 And so the idea that, oh, any of this property could be
11 subject to a condemnation one day is really not in tune with
12 the current facts about where this connection road or this
13 extension is planned for.

14 You also heard a lot of discussion from Mr. Gaskins
15 about what the complaint essentially is; it is basically an
16 easement, it is basically interest in property and that our
17 South Carolina statute for lis pendens says it just needs to
18 be affecting the title and so it was basically an easement,
19 we might as well get to keep a lis pendens on 46 parcels.

20 But the lis pendens statute - and we cited some cases
21 in our motion about this - is an extraordinary act having a
22 lis pendens on a piece of property. It ties up the whole
23 thing.

24 And our courts have said that it needs to be strictly
25 construed, the language of that statute. And it says

1 affecting title to real property. A personal interest in
2 condemnation proceeds doesn't affect title.

3 And what they are saying is we owe them damages or we
4 need to construct a road on our property. They are not
5 saying and they nowhere allege that they have an easement
6 over that. In Mount Pleasant the roads in a subdivision are
7 deemed to be public roads.

8 They are saying we should build them a road on our
9 property. They are not saying that they have an easement on
10 our property. And they have alleged a damages claim for
11 that as well.

12 And so for those reasons if you look at the complaint
13 instead of what it might essentially be it is very clear
14 that there is no interest in real property -- or title to
15 real property that has been alleged in this case or that
16 they are seeking.

17 So for that reason we would ask the court to grant the
18 motion and cancel the lis pendens in full.

19 THE COURT: All right. Thank you, sir.

20 MR. GASKINS: Your Honor, may I respond very briefly?

21 THE COURT: Yes, sir, you may.

22 MR. GASKINS: With regards to issues of what the road
23 is going to be and what DOT has approved that is entirely
24 speculative and it is not in the record. And if that is the
25 fact then the course of action is to file a dispositive

1 motion because the matter is moot. They haven't done that.

2 What we have is an action affecting interest -- or
3 affecting title to that property. And that interest
4 attaches to the property so it affects title.

5 And then, just to be clear, the action for the related
6 to the condemnation proceeds is not a claim for money
7 damages; it is a declaratory judgment action for the court
8 to declare our rights under Section 13(A) which says we have
9 a right to record this instrument and let the world know of
10 our interest in the future condemnation proceeds.

11 So that is the nature of the action, not a claim for
12 money damages.

13 MR. LINTON: Your Honor, the prayer for relief says
14 that it is a declaratory judgment. And it says that we have
15 an obligation to share with plaintiffs the proceeds from any
16 subsequent condemnation of the premise property or any
17 portion thereof.

18 It doesn't say we have an obligation to record an
19 instrument or that they have any interest in our title.
20 They say they want a DJ that we have to pay them. And that
21 is not an interest in real property and is protected under
22 the lis pendens statute.

23 THE COURT: All right. Thank you, gentlemen.

24 Let me read through these memoranda again.

25 Do you have that case from Florida?

1 MR. WALKER: I do. And I was looking at it, Your
2 Honor. And in that -- this case -- and I will provide it to
3 Your Honor. I still think it is dispositive -- or helpful.

4 The contract said that there would be no lien in the
5 real property. And we think it is similar here when they
6 sold it free and clear and didn't list it as a permitted
7 exception.

8 THE COURT: All right, sir.

9 MR. WALKER: And I will provide a copy to opposing
10 counsel.

11 THE COURT: Please do.

12 MR. WALKER: I have got it. Thank you, Your Honor.

13 THE COURT: Yes, sir. Thank you, gentlemen.

14 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on September 21, 2018.

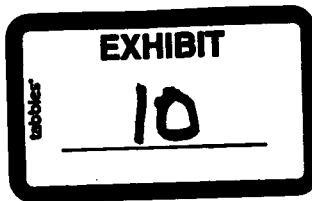
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: January 5, 2019

Certified Transcript Provided For: Walker, Linton
Certification Reference #2019-0105 Copy



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KKMC INVESTMENTS, LLC AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

NOTICE OF MOTION AND
MOTION
TO CANCEL LIS PENDENS

FILED
2018 JUN 22 AM 11:30
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendant, Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte"), by and through its undersigned attorneys will move before the Presiding Judge of the Charleston County Court of Common Pleas on the tenth (10th) day after service, or as soon as counsel may be heard, for an Order canceling the Lis Pendens (2018-LP-10-336); as amended, filed by Plaintiff American Star Development SC, LLC ("American Star").

American Star filed a Summons and Complaint against the above captioned defendants on April 26, 2018 and an Amended Complaint (adding two additional Plaintiffs) on May 1, 2018. The Amended Complaint alleges PulteGroup, LLC and Pulte "have a contractual obligation to construct an access to road to American Star's property. . ." Am. Compl. ¶1. The Amended Complaint asserts cause of actions for breach of contract, equitable estoppel, and declaratory judgment. See Am. Compl. ¶¶27-54. American Star does not allege the action affects title to any real property.

American Star filed a Lis Pendens on April 26, 2018 and an Amended Lis Pendens on June 13, 2018 (collectively referenced as “the Lis Pendens”). The Lis Pendens purports to provide notice that “real estate [is] affected by” the action. The Lis Pendens lists 11 “affected” parcels identified by following tax map numbers: TMS#558-00-00-139; 558-00-00-140; 558-00-00-138; 558-00-00-141; 558-00-00-142; 558-00-00-143; 558-00-00-311; 558-00-00-310; 558-00-00-144; 558-00-00-172; and 578-00-00-004. However, there are no allegations in the Amended Complaint concerning title to any of these parcels. Therefore, the Court should enter an order cancelling the Lis Pendens.

South Carolina Code 15-11-10, only allows the filing of lis pendens in “an action *affecting the title to real property*.” (double emphasis added). Our Supreme Court has recognized a circuit court’s authority to cancel a lis pendens when the action does not affect the *title* to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the lis pendens does not ‘affect [] the title to real property’ as required under § 15–11–10, the lis pendens is not authorized by the statute and the statute does not limit the court’s power to cancel it.”).

The filing of a lis pendens is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat’l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid). In this case, the statutory requirements are not met because the allegations of the Amended Complaint do not assert that *title* to any real property is affected by the action.

The Lis Pendens purports to provide notice to third parties that 11 parcels owned by Pulte are affected by the case. However, based on the allegations of the Amended Complaint, the titles

to those 11 parcels are not affected by the case. Therefore, the filing of the Lis Pendens is improper and inconsistent with the purposes of the lis pendens statute:

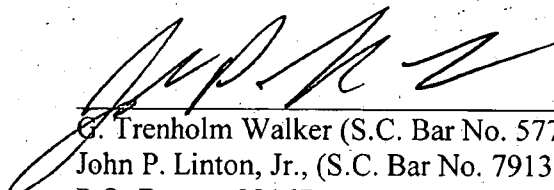
The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) (quoting 51 Am.Jur.2d Lis Pendens § 2 (2000)).

Therefore, for the reasons explained above, the Lis Pendens should be cancelled. This motion is supported by the pleadings and affidavits on file and any supplemental memorandums and affidavits that may be filed.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar No. 5777)
John P. Linton, Jr., (S.C. Bar No. 79130)
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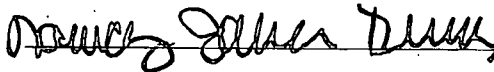
LINTON@WGFLAW.COM

ATTORNEYS FOR DEFENDANTS

June 21, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 21st day of June, 2018, in Charleston, South Carolina.





STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
Civil Action No.: 2018-CP-10-2175

AMERICAN STAR DEVELOPMENT SC,
LLC; KCMC INVESTMENTS, LLC AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC

Defendants.

AMENDED NOTICE OF MOTION
AND
MOTION
TO CANCEL LIS PENDENS

2018 SEP 17 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that Defendant, Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte"), by and through its undersigned attorneys will move before the Presiding Judge of the Charleston County Court of Common Pleas on the tenth (10th) day after service, or as soon as counsel may be heard, for an Order canceling the Lis Pendens (2018-LP-10-336), as amended, filed by Plaintiff American Star Development SC, LLC ("American Star").

American Star filed a Summons and Complaint against the above captioned defendants on April 26, 2018 and an Amended Complaint (adding two additional Plaintiffs) on May 1, 2018. The Amended Complaint alleges PulteGroup, LLC and Pulte "have a contractual obligation to construct an access to road to American Star's property. . ." Am. Compl. ¶1. The Amended Complaint asserts cause of actions for breach of contract, equitable estoppel, and declaratory judgment. See Am. Compl. ¶¶27-54. American Star does not allege the action affects title to any real property.

American Star filed a Lis Pendens on April 26, 2018, an Amended Lis Pendens on June 13, 2018, and a Second Amended Lis Pendens August 28, 2018 (collectively referenced as “the Lis Pendens”). The Lis Pendens purports to provide notice that “real estate [is] affected by” the action. The Lis Pendens lists 46 “affected” parcels identified by separate tax map numbers. However, there are no allegations in the Amended Complaint concerning title to any of these parcels, nor does the Lis Pendens claim that title is affected by the lawsuit. Therefore, the Court should enter an order cancelling the Lis Pendens.

South Carolina Code 15-11-10, only allows the filing of lis pendens in “an action *affecting the title to real property*.” (double emphasis added). Our Supreme Court has recognized a circuit court’s authority to cancel a lis pendens when the action does not affect the *title* to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the lis pendens does not ‘affect [] the title to real property’ as required under § 15-11-10, the lis pendens is not authorized by the statute and the statute does not limit the court’s power to cancel it.”).

The filing of a lis pendens is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat’l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid). In this case, the statutory requirements are not met because the allegations of the Amended Complaint do not assert that *title* to any real property is affected by the action.

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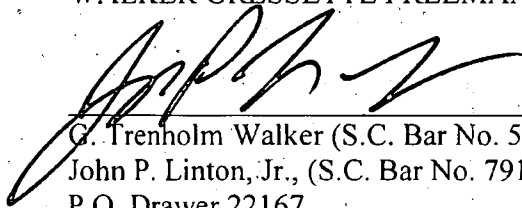
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Respectfully submitted,

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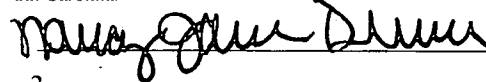
LINTON@WGFLAW.COM

ATTORNEYS FOR DEFENDANTS

September 17, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 17th day of Sept, 2018, in Charleston, South Carolina.



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP-1002175



AMERICAN STAR DEVELOPMENT SC LLC
PLAINTIFF(S)

PULTEGROUP INC.
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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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

MOTION TO CANCEL LIS PENDENS GRANTED. DEFENSE COUNSEL TO PREPARE FORMAL ORDER CONSISTENT WITH BRIEFING AND ORAL ARGUMENTS.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2155

9-25-18

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

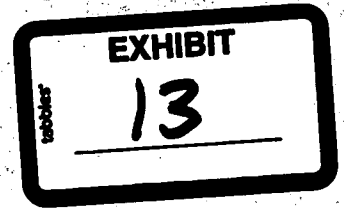
Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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

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

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.F. S.S. & F.C.
BY *[Signature]*
DEPUTY CLERK



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-CP-10-2175

American Star Development SC, LLC; KKMC Investments, LLC; and 211,
LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC;
and JW Homes, LLC..... Defendants,

Of whom American Star Development SC, LLC is the..... Appellant,

Of whom Pulte Home Corporation, n/k/a Pulte Home Company, LLC
are the..... Respondent.

NOTICE OF APPEAL

American Star Development SC, LLC ("Appellant") appeals the Order of the
Honorable R. Lawton McIntosh, dated November 14, 2018, and filed November 16,
2018, which granted the Motion to Cancel Lis Pendens filed by Defendants PulteGroup,
Inc. and Pulte Home Corporation, n/k/a Pulte Home Company, LLC. Appellant received
written notice of the entry of the Order on November 20, 2018.

A handwritten signature in black ink, appearing to read "E. Brandon Gaskins".

E. Brandon Gaskins (S.C. Bar No. 72374)
Charles R. Scarminach (S.C. Bar No. 101582)
Moore & Van Allen PLLC
78 Wentworth Street
Charleston, SC 29401
PH: (843) 579-7038
FAX (843) 579-8738
E-mail: brandongaskins@mvalaw.com

December 20, 2018

charlesscarminach@mvalaw.com

Charleston, SC

*Attorneys for Appellant American Star
Development SC, LLC*

Other Counsel of Record:

G. Trenholm Walker, Esquire
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

*Attorneys for Defendants PulteGroup, Inc., and Pulte Home Corporation,
n/k/a Pulte Home Company, LLC*

Susan M. Gaddy, Esquire
The Gaddy Law Firm, LLC
1156 Bowman Rd., Ste. 200
Mt. Pleasant, SC 29464

Attorneys for Defendant JW Homes, LLC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-CP-10-2175

American Star Development SC, LLC; KKMC Investments, LLC; and 211,
LLC Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC;
and JW Homes, LLC Defendants,

Of whom American Star Development SC, LLC is the Appellant,

Of whom Pulte Home Corporation, n/k/a Pulte Home Company, LLC
are the Respondent.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing **Notice of Appeal** by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

G. Trenholm Walker, Esquire
John P. Linton, Jr., Esquire
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

*Attorneys for Defendants PulteGroup, Inc., and Pulte Home Corporation,
n/k/a Pulte Home Company, LLC*

Susan M. Gaddy, Esquire
The Gaddy Law Firm, LLC
1156 Bowman Rd., Ste. 200
Mt. Pleasant, SC 29464

Attorneys for Defendant JW Homes, LLC



E. Brandon Gaskins (S.C. Bar No. 72374)
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charlesscarminach@mvalaw.com

*Attorneys for Appellant American Star
Development SC, LLC*

December 20, 2018

Charleston, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KCMC INVESTMENTS, LLC AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

ORDER CANCELLING
LIS PENDENS

FILED
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CLERK OF COURT

This matter came before the Court for hearing on September 21, 2018, on the Amended Motion to Cancel *Lis Pendens* of Defendant Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte") seeking to cancel the three *lis pendens* filed by Plaintiffs on real property owned by Pulte. G. Trenholm Walker, Esq. and John P. Linton, Jr., Esq., appeared on behalf of Pulte, and E. Brandon Gaskins, Esq. appeared on behalf of Plaintiffs. Defendant J. W. Homes, LLC, ("JWH") was represented at the hearing by Susan M. Gaddy, Esq. For the reasons explained herein, the Court GRANTS the motion and cancels the three *Lis Pendens* filed by Plaintiffs.

BACKGROUND

Plaintiff American Star Development SC, LLC, filed a Summons and Complaint against the above captioned defendants on April 26, 2018, and an Amended Complaint (adding the other two Plaintiffs) on May 1, 2018. Plaintiffs filed a *Lis Pendens* on April 26, 2018, an Amended *Lis Pendens* on June 13, 2018, and a Second Amended *Lis Pendens* on August 28, 2018 (collectively referenced as "the *Lis Pendens*").

According to the allegations of the Amended Complaint, Plaintiff American Star Development SC, LLC, ("American Star") is the former owner of 24.81 acres in Mount Pleasant (the "Property"). Plaintiff American Star sold the Property to Defendant JWH, now known as Falcon Properties, LLC. Defendant JWH later sold the Property to Defendant Pulte pursuant to a written Asset Purchase Agreement between Pulte and JWH.¹ According to the Agreement for Purchase and Sale between American Star Development SC, LLC ("Seller") and JWH Acquisitions, LLC or its assigns dated February 25, 2015, copy attached as Exhibit A to the Amended Complaint (the "Agreement"), the Property was intended to be developed into at least 73 single family residential lots. Exhibit A at ¶ 11(b).

The Second Amended *Lis Pendens* asserts that the Amended Complaint affects 46 separate lots that are part of the final plat of a subdivision of the Property now owned by Pulte that was recorded June 21, 2018, in Plat Book L18 at Pages 0336-0339 in the ROD Office for Charleston County, according to the property description attached to the Second Amended *Lis Pendens*.

The Amended Complaint alleges, among other things, that Pulte assumed the terms of the Agreement and is liable thereunder "to design, seek approval for, and construct" a road that connects the Property to adjoining land owned by American Star. Plaintiffs allege that Pulte has breached the Agreement by failing to design, seek approval for, and construct the connecting road. Plaintiff American Star also alleges it "has been damaged by the diminution in value" of its adjacent property "resulting from lack of access" to it from the Property.

Plaintiff's first cause of action is for breach of contract against Pulte, seeking the relief of specific performance requiring Pulte to design and construct the connection road on Pulte's own

¹ Terms of the JWH-Pulte Asset Purchase Agreement are not before the court.

property or, in the alternative, for an award of money damages for the alleged loss in value of its adjoining land due to the lack of the connection road.

The second cause of action in the Amended Complaint asserts that Pulte is equitably estopped from denying “obligation to design, seek approval for, and construct the Connection, and it should be ordered to fulfil such obligation.”

Plaintiffs’ third cause of action for declaratory judgment is premised on another provision of the Agreement dealing with the possible condemnation of a portion of the Property for a public road right of way. Plaintiffs allege the Agreement obligates Pulte to split the net proceeds from any such condemnation with Plaintiffs. Plaintiffs therefore seek a declaratory judgment that Pulte has the “obligation to share the proceeds from any subsequent condemnation” with Plaintiffs.

The Amended Complaint does not contain any allegations asserting a claim to establish an easement nor does the Agreement attached as Exhibit A that is the basis for Plaintiffs’ claims refer to the grant of an easement or even use the word “easement” concerning the alleged connection road.

DISCUSSION

The Second Amended *Lis Pendens* purports to provide notice that 46 separate parcels owned by Pulte are “real estate [is] affected by” the action. However, there are no allegations in the Amended Complaint asserting any right to, interest in, or encumbrance on, the *title* to any of these parcels or any of the Property.

South Carolina Code 15-11-10, allows the filing of *lis pendens* only in “an action *affecting the title* to real property.” (double emphasis added). A circuit court properly cancels a *lis pendens* when the action does not affect the title to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the *lis pendens* does not

'affect [] the title to real property' as required under § 15-11-10, the *lis pendens* is not authorized by the statute and the statute does not limit the court's power to cancel it."). The filing of a *lis pendens* is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat'l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the *lis pendens* renders the *lis pendens* invalid).

In this case, the threshold statutory requirement is not met. The allegations of the Amended Complaint do not assert that this action affects title to Pulte's real property.

Plaintiffs correctly note the extraordinary statutory privilege to file a *lis pendens* applies not only to those cases that involve the question of title, but also those cases that are brought to establish an equitable estate, interest, or right in specific real property or to enforce an encumbrance. See Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) (listing types of actions that may sufficiently allege title to real property is affected such that a *lis pendens* is proper). Plaintiffs argue that the *lis pendens* is proper because their claims are "essentially" claims to establish the existence of an easement, enforce an encumbrance, and/or establish an equitable interest in real property.

However, as discussed above, the allegations of the Amended Complaint do not assert any such claims, even when considering all the relevant terms of the Agreement attached to the Amended Complaint as Exhibit A. Additionally, the prayer seeks the following relief, making no mention of enforcing an easement or encumbrance or establishing an equitable interest in the Property or the lots subjected to the Second Amended *Lis Pendens*:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection; (ii) or, alternatively, award damages to

American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;

b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof;...

The prayer does not seek relief that affects *title* to Pulte's real property. Plaintiffs do not seek to establish an easement, equitable estate, or right in real property or enforce any encumbrance on real property.

Likewise, the alleged obligation to share proceeds from a future condemnation of a part of the Property for a road right of way—the subject of the third cause of action and subparagraph (b) of the prayer for relief—does not affect the title to the lots or the Property. Plaintiffs instead assert an alleged contractual right to money (i.e., condemnation *proceeds*). Plaintiffs' right or interest, if any, concerns personal property, not real property. See, e.g., Martin & Earle v. Maxwell et al., 86 S.C. 1, 67 S.E.2d 962, 964 (1910) ("Since under the will the trustee therein named was to sell the land and divide the proceeds of the sale after the death of the life beneficiary, the interest of F. B. Maxwell and the other children of Mrs. Maxwell is a contingent interest, not in the land, but in the proceeds of the land, which is personalty."); see also, Caulk v. Orange County, 661 So. 2d 932, 934 (Fla. 5th Dist. App. 1995) (holding a covenant purporting to reserve to a grantor a right to condemnation proceeds could not run with the land because "[t]he only thing the covenant in the instant case really 'touches' and 'concerns' is the intangible personal property, namely cash, that may be paid by a condemnor.")

Therefore, the Court finds the *Lis Pendens* is improper and grants Pulte's motion.

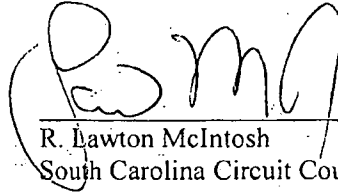
CONCLUSION

IT IS THEREFORE ORDERED, for the foregoing reasons, that Pulte's Amended Motion to Cancel *Lis Pendens* be, and the same is hereby, **GRANTED** and the Second Amended *Lis Pendens*, Amended *Lis Pendens*, and *Lis Pendens* filed herein are hereby **CANCELLED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court is hereby directed to mark the Second Amended *Lis Pendens* filed August 28, 2018, the Amended *Lis Pendens* filed June 13, 2018, and the *Lis Pendens* filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order.

AND IT IS SO ORDERED!

November 14, 2018
Anderson, South Carolina



R. Lawton McIntosh
South Carolina Circuit Court Judge

Moore & Van Allen

December 21, 2018

FIRST CLASS MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

E. Brandon Gaskins
Attorney at Law

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F 843 579 8738
brandongaskins@mvalaw.com

Moore & Van Allen PLLC

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Mailing Address:
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Charleston, SC 29413-2828

Re: American Star Development SC, LLC; KKM Investments, LLC; and 211, LLC vs. PulteGroup, INC.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC.
Case No. 2018-CP-10-2175
Our File No.: 042460.1

Dear Ms. Armstrong:

I represent Plaintiff American Star Development SC, LLC ("American Star") in the above-referenced matter. In this case, we filed a lis pendens in connection with property that is the subject of the action, and Defendant Pulte Home Company, LLC's subsequently filed a motion to cancel the lis pendens. Judge McIntosh granted the motion to cancel the lis pendens, and it appears from the public index that said lis pendens has been canceled.

Please be advised that American Star has filed the attached notice of appeal on Judge McIntosh's order granting the motion to cancel the lis pendens. Under *Lebovitz v. Mudd*, 289 S.C. 476, 347 S.E.2d 94 (1986), the appeal of an order canceling a lis pendens acts as an automatic stay of order and voids the cancellation of the lis pendens during the pendency of the appeal. Therefore, American Star respectfully requests that your office void the cancellation of the lis pendens and reinstate it during the appeal.

I am serving all counsel of record with a copy of this correspondence/request.

Thank you for your assistance in this matter.

Sincerely,

Moore & Van Allen PLLC



E. Brandon Gaskins

EBG/

Enclosures: as stated

FILED
2018 DEC 27 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

Charlotte, NC
Research Triangle Park, NC
Charleston, SC

cc (via e-mail):

G. Trenholm Walker, Esquire
John P. Linton, Jr., Esquire
Susan M. Gaddy, Esquire
Mark V. Hanrahan, Esquire
Ms. Carolina Leonard
Ms. Rachel Bunch



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KCMC INVESTMENTS, LLC AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

NOTICE OF MOTION AND
MOTION
TO LIFT AUTOMATIC STAY
AND FOR
EXPEDITED HEARING
AND
MEMORANDUM IN SUPPORT

YOU WILL PLEASE TAKE NOTICE that Defendant, Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte"), by and through its undersigned attorneys hereby moves before the Honorable R. Lawton McIntosh, Circuit Judge, as soon as counsel may be heard, to shorten the time for hearing and for an Order pursuant to Rule 62(d) of the South Carolina Rules of Civil Procedure and Rule 241(c) of the South Carolina Appellate Court Rules, lifting any automatic stay of Judge McIntosh's Order entered November 16, 2018, canceling the Lis Pendens (2018-LP-10-336), as amended, filed by Plaintiffs. In support of this Motion, Pulte relies on the applicable law, the pleadings and filings in the case and the affidavit of Mac Evans attached hereto as Exhibit 1.

BACKGROUND

Plaintiff, American Star Development SC, LLC ("American Star"), filed a Summons and Complaint against Defendants on April 26, 2018 and an Amended Complaint (adding the two other Plaintiffs) on May 1, 2018. Plaintiffs also filed a Lis Pendens on April 26, 2018, an Amended Lis Pendens on June 13, 2018, and a Second Amended Lis Pendens on August 28, 2018 (collectively

referenced as “the Lis Pendens”). The Lis Pendens purported to provide notice that “real estate [is] affected by” the action. The second amended Lis Pendens lists 46 separate TMS parcels, almost all residential lots, allegedly “affected” by the lawsuit.

The core of Plaintiff's lawsuit is their allegation that Defendants breached a provision in a contract for the purchase and sale of development acreage in Mount Pleasant known as the Primus Property. Plaintiffs allege that the purchase and sale agreement (attached as an exhibit to the Amended Complaint) allegedly obligated the buyer to design and install a street on the Primus Property that would connect to adjoining property owned by Plaintiff American Star that is now covered by a lake. The contract of sale closed in 2015, and Plaintiffs conveyed the Primus Property to Defendant JW Homes, LLC. According to the allegations of the Amended Complaint, Defendant JW Homes later sold the Primus Property to the Pulte Defendants in January 2016. ¶20 Amended Complaint.

Plaintiffs filed the Lis Pendens against 46 lots, even though it is not disputed the future connection street would occupy only one or two of the residential lots. Plaintiffs base their lis pendens on the other 44 lots on a different provision in the 2015 contract of purchase and sale providing that the buyer will split any net proceeds obtained in any future condemnation for the extension of Hungryneck Boulevard. While the contract addressed the net proceeds from a possible future condemnation, it did not reserve to the seller any rights in the real estate sold. Additionally, as evident from the final plat for the Primus Property that was an exhibit at the hearing, Pulte subdivided into a separate parcel and set aside the land that will be the future right of way.

The Pulte Defendants raise several factual and legal defenses in their Answers to the Amended Complaint including that Plaintiff American Star submitted the site plan for the Primus

Property to the Town of Mount Pleasant without the street it now asserts Defendants have an obligation to construct.

On November 14, 2016, this Court granted the Pulte Defendants' Amended Motion to Cancel Lis Pendens. The Order canceled the Lis Pendens on the grounds there are no allegations in the Amended Complaint concerning title to any of the 40 or so house lots described in the Lis Pendens. See Ex. 2, Order filed November 16, 2018; see also, S.C. Code § 15-11-10 (lis pendens only authorized in "an action affecting the title to real property."); Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) ("if the court finds that the lis pendens does not 'affect [] the title to real property' as required under § 15-11-10, the lis pendens is not authorized by the statute and the statute does not limit the court's power to cancel it."). In the Order, the Court directed the Clerk of Court "to mark the Second Amended Lis Pendens filed August 28, 2018, the Amended Lis Pendens filed June 13, 2018, and the Lis Pendens filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order." The Order was entered on November 16, 2018, with the clerk of court giving written notice of the entry of the Order on November 20, 2018.

Yesterday, on the final day to appeal, Plaintiffs filed a Notice of Appeal of the Order. The appeal triggered the automatic stay in rule 241 of the South Carolina Appellate Court Rules. As explained in the affidavit of Mac Evans, the Director of Finance for the Coastal Carolinas for Pulte Home Company, LLC, the Lis Pendens caused considerable harm to Pulte and its home purchasers before being cancelled and the reinstatement of the Lis Pendens because of the automatic stay will result in tremendously more harm in the future.

Pulte has spent in excess of ten million dollars (\$10,000,000) in acquiring the Primus Property, preparing the land to be suitable for a residential subdivision, developing and obtaining

approvals for the lots, procuring the needed permits from state agencies, marketing the community, building houses, and negotiating and entering contracts with purchasers. Aff. Evans ¶ 11. Because of the Lis Pendens, Pulte's enormous investment in the Primus project is at a financial standstill, with Pulte continuing to incur significant ongoing costs but completely unable to recognize any revenue to cover those costs because of the Lis Pendens. Aff. Evans ¶ 11.

Multiple potential sales have been delayed as a result of the Lis Pendens and the automatic stay of the Order cancelling it. Specifically, two of the pending sales scheduled to close in November 2018 and two in December 2018 have been delayed. Aff. Evans ¶ 8. These four sales would have generated substantial revenue and prevented Pulte from incurring additional carrying costs. see also, ¶ 9 (“... contracts on four of the fifteen homes previously set for closing had to be extended with the permission of the buyers because of the lis pendens, resulting in a delay of \$2,100,000 of revenue. The delayed closings result in Pulte incurring approximately \$3,300 per month, per lot, in additional carrying costs.”).

The damage to Pulte is compounding every month. See Aff. Evans, ¶ 8 (“Two are scheduled in January 2019, two in February 2019, three in March 2019, two in April 2019, and two in May 2019.”). The delay of the closings “jeopardizes each of these sales and could result in the complete loss of the revenue if the lis pendens is not lifted as soon as possible and the purchasers decide not to extend the closing dates specified in their contracts.” Aff. Evans ¶ 9. In fact, lost sales have already occurred—“at least 21 serious prospects are no longer interested in purchasing when they learned of the indefinite delays to closing caused by the lis pendens.” Aff. Evans, ¶ 10.

To Evans's knowledge, most, if not all the purchasers, whom Pulte had to release from their contracts, as well as those that remain under contract, intend use their new houses as their

primary residences. Aff. Evans ¶ 12. Many have made arrangements to move out of other housing or sell other housing in the expectation that they will be able to close on their new houses within the Primus community. Aff. Evans ¶ 12. Pulte's inability to close on the sales in a timely manner because of the Lis Pendens is highly disruptive of the housing commitments and plans of these purchasers who sometimes have to find interim housing, causing them harm as well. Aff. Evans ¶ 12.

For the reasons explained below, the Court should lift the automatic stay to mitigate the losses and harm to Pulte and its home purchases and prevent the Order canceling the Lis Pendens from being ineffective. See Aff. Evans, ¶ 11 (discussing that “. . . further ongoing losses and irreparable harm to Pulte, as well as significant future harm, will be avoided if the Court lifts the automatic stay of the Order cancelling the lis pendens that resulted when Plaintiffs appealed the Order.”).

DISCUSSION

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order . . .” S.C.R. Civ. P. Rule 241(a). However, Rule 241(c) allows any party to seek an order lifting the automatic stay. S.C.R. Civ. P. Rule 241 (c)(1) (“After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. . . .”). In fact, “an automatic stay under Rules 205 and 241 is not unassailable: a party to the action need only petition either the trial court or the appellate court for an order lifting the stay.” In re Est. v. Connor, 2009-UP-502, 2009 WL 9530097, at *2 (S.C. App. Oct. 29, 2009); see also, Lebovitz v. Mudd, 293 S.E. 49, 358 S.E.2d 698, 52 (1987) (noting that Supreme Court granted the landowner-respondent temporary relief by lifting the lis pendens during

the pendency of the appeal in a case where it was ultimately determined that the lis pendens should not have been cancelled).

“In determining whether [to lift the automatic stay], . . . the lower court . . . should consider whether such an order is necessary . . . to prevent a contested issue from becoming moot.” S.C.R. Civ. P. Rule 241 (c)(2). Here, the Court should lift the stay to prevent the contested issue of whether the lis pendens was filed in violation of the lis pendens statute from becoming moot. See generally, Treasured Arts, Inc. v. Watson, 319 S.C. 560, 563, 463 S.E.2d 90, 92 (1995) (finding plaintiff’s claim for injunctive relief moot because “a[n] order for injunctive relief would have no practical legal effect upon the existing case. . . [Therefore,] although Treasured Arts had a justiciable controversy when it brought the action, events occurring subsequent[ly] . . . have rendered any injunctive relief moot.”). In fact, if the Lis Pendens is allowed to stay in place for the course of this appeal and litigation, then the Court’s order that the Lis pendens was not in compliance with South Carolina law will be rendered moot. Further, the lifting of the Lis Pendens will mitigate the damages being incurred by Pulte from Plaintiff’s actions in filing the Lis Pendens.

It is important to note the Plaintiffs have alleged they are entitled to the alternative remedy of damages if the Court does not award them specific performance by issuing an order requiring construction of the road or the payment of the half of any future condemnation proceeds. The availability of this remedy at law to compensate Plaintiffs if they are entitled to prevail also weighs heavily in favor of lifting the automatic stay. If the Plaintiffs prevail on liability with respect to the alleged failure to install the connection street, they can recover the alleged loss of value to their property, as alleged in their Amended Complaint. Amended Complaint, ¶35 (“As a result of PulteGroup’s and PHC’s breach of Section 31(b) of the Agreement, Plaintiffs are entitled to specific

performance requiring PulteGroup and PHC to design, seek approval for, and construct the Connection *or, alternatively, damages for the loss in value of the Adjacent Property.*").

Plaintiffs' only cause of action related to the alleged obligation to share the net proceeds of a future condemnation simply seeks a declaratory judgment Defendants have this obligation. It does not seek a monetary judgment or a lien against the 46 parcels that Plaintiffs have encumbered with the Lis Pendens. Amended Complaint, Third Cause of Action.

The Rule governing the lifting of the automatic stay leaves the decision in the trial court's discretion including the conditions, if any, the trial court might impose if it determines to lift the automatic stay:

The granting of supersedeas or the lifting of the automatic stay under this Rule may be condition upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

Rule 241(c)(3), SCACR.

Therefore, for the reasons described herein and to prevent the ongoing irreparable harm to Pulte and its home purchasers described in the Affidavit of Mac Evans (Exhibit 1) -- particularly in light of the available remedies of damages and declaratory judgment for the claims that are the alleged basis for the Lis Pendens -- Pulte respectfully requests the Court grant its Motion to Lift the Automatic Stay to allow the Court's Order cancelling the unfounded Lis Pendens to resume effect.

[signature page follows]

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar No. 5777)

John P. Linton, Jr., (S.C. Bar No. 79130)

P.O. Drawer 22167

Charleston, SC 29413

T: (843) 727-2252

WALKER@WGFLAW.COM

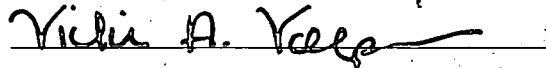
LINTON@WGFLAW.COM

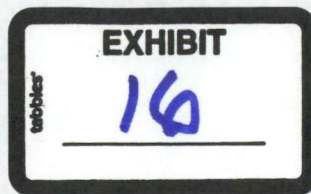
ATTORNEYS FOR DEFENDANTS

December 21, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 21 day of December, 2018, in Charleston, South Carolina.





STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2018-CP-10-2175
AMERICAN STAR DEVELOPMENT SC,	)	
LLC; KKMC INVESTMENTS, LLC AND	)	
211, LLC,	)	
	)	
Plaintiffs,	)	<u>AFFIDAVIT OF XAVIER</u>
	)	<u>DEWAYNE MAC EVANS</u>
	)	<u>IN SUPPORT OF</u>
	)	<u>MOTION TO LIFT STAY</u>
V.	)	<u>AND</u>
	)	<u>FOR EXPEDITED HEARING</u>
PULTEGROUP, INC.; PULTE HOME	)	
CORPORATION, N/K/A PULTE HOME	)	
COMPANY, LLC; AND JW HOMES, LLC	)	
	)	
Defendants.	)	
	)	

APPEARING BEFORE ME, Xavier Dewayne Mac Evans, who being duly sworn, avers and states the following:

1. I am a resident of Charleston County, South Carolina, over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge, except those stated to be upon information and belief which I have reason to believe are true.
2. I currently serve as Director of Finance for the Coastal Carolinas for Pulte Home Company, LLC.
3. Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("Pulte") is the owner of a large acreage tract in Mount Pleasant, SC, described as the Primus Property in the Amended Complaint in this action that was once owned by Plaintiffs. Plaintiffs KKMC Investments, LLC and 221, LLC sold the Primus Property to Defendant JW Homes, LLC, that in turn sold it to Pulte.
4. Since acquiring the Primus Property in mid-January 2016, Pulte has been developing the Primus Property into 71 single family lots and residences. The Town of Mount Pleasant approved Pulte's

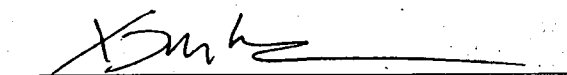
final plat for the 71 lots on the Primus Property on June 20, 2018, allowing the sale of the lots and houses.

5. As explained below, many of these single family residential properties are under contract for sale with individual purchasers and would have closed by now but for the second amended lis pendens that Plaintiff has filed on August 28, 2018, on over 40 of the 71 lots.
6. Upon information and belief, the Court cancelled the lis pendens by Order dated November 14, 2018, that was filed on November 16, 2018.
7. Pulte has under contract fifteen residential lots that are not able to close as specified in the respective purchase contracts because of the lis pendens that was filed with the Complaint that was later amended two times and because of the notice of appeal filed by Plaintiffs that, upon information and belief, reinstated the lis pendens that was cancelled by this Court's Order. The title insurance company will not issue the needed title insurance policies for these residential lots unless the automatic stay during the pendency of the appeal is lifted.
8. Currently, two of the pending sales were scheduled to close in November 2018 and two in December 2018. Two are scheduled in January 2019, two in February 2019, three in March 2019, two in April 2019, and two in May 2019.
9. As noted above, contracts on four of the fifteen homes previously set for closing had to be extended with the permission of the buyers because of the lis pendens, resulting in a delay of \$2,100,000 of revenue. The delayed closings result in Pulte incurring approximately \$3,300 per month, per lot, in additional carrying costs. The delay caused by the lis pendens also jeopardizes each of these sales and could result in the complete loss of the revenue if the lis pendens is not lifted as soon as possible and the purchasers decide not to extend the closing dates specified in their contracts.

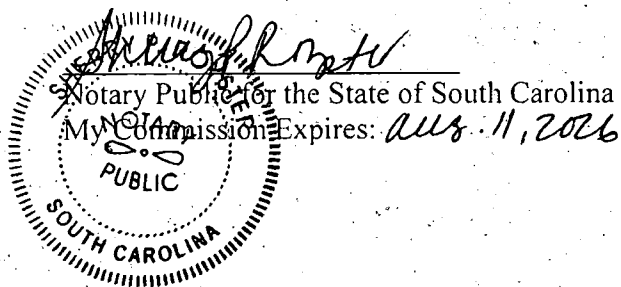
10. In addition to the delayed closings, at least 21 serious prospects lost interest in purchasing when they learned of the indefinite delays to closing caused by the lis pendens.
11. Upon information and belief, further ongoing losses and irreparable harm to Pulte, as well as significant future harm, will be avoided if the Court lifts the automatic stay of the Order cancelling the lis pendens that resulted when Plaintiffs appealed the Order. Pulte has spent in excess of ten million dollars (\$10,000,000) in acquiring the Primus Property, preparing the land to be suitable for a residential subdivision, developing and obtaining approvals for the lots, procuring the needed permits from state agencies, marketing the community, building houses, and negotiating and entering contracts with purchasers. Because of the lis pendens, Pulte's enormous investment in the Primus project is at a financial standstill, with Pulte continuing to incur significant ongoing costs but completely unable to recognize any revenue to cover those costs because of the lis pendens.
12. Additionally, to my knowledge, most, if not all the purchasers intend to use their new house as their primary residence. Upon information and belief, many have made arrangements to move out of other housing or sell other housing in the expectation that they will be able to close on their new houses within the Primus community. Pulte's inability to close on the sales in a timely manner because of the lis pendens is highly disruptive of the housing commitments and plans of these purchasers who sometimes have to find interim housing, causing these persons irreparable harm.
13. Based on my review of the Amended Complaint, Plaintiffs have asserted claims for damages as a result of the alleged breach of the contract between Plaintiff American Star and Defendant JW Homes that it alleges Pulte is also liable upon. Pulte has sufficient financial resources to respond to a monetary judgment for the Plaintiffs, if one were rendered.

14. Pulte has asserted a counterclaim for abuse of process arising from Plaintiffs' filing of the lis pendens which Pulte asserts was, and is, improper and used primarily to gain leverage over Pulte outside the litigation. Pulte may assert later claims as a result of Plaintiffs' action in filing the lis pendens. An Order lifting the automatic stay would significantly mitigate Pulte's damages.

FURTHER AFFIANT SAYETH NOT.


Xavier Dewayne Mac Evans

SWORN BEFORE ME
This 21 day of December 2018





STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-10-6042

CAROLINA PARK ASSOCIATES, LLC,)
and REPUBLIC-CHARLESTON, LLC,)
for itself and on behalf of Carolina Park)
Associates, LLC,)

Plaintiffs,)

vs.)

BENEDICT T. MARINO, DOUGLAS H.)
DITTRICK, JOHN CHALSTY, MDC OF)
CHARLESTON, LLC, and CDM OF)
CHARLESTON, LLC,)

Defendants.)

ORDER GRANTING DEFENDANT
CDM'S MOTION TO LIFT STAY
PENDING APPEAL

FILED
2011 JUN 23 PM 2:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter is before the Court on the motion of Defendant CDM of Charleston, LLC, to lift the stay pending appeal of the Court's Order entered on May 25, 2011 pursuant to Rule 241 of the South Carolina Appellate Court Rules. The Court hereby grants the motion, lifts the stay pending appeal, and orders the clerk to cancel the lis pendens filed by Plaintiff Republic-Charleston, LLC.

FACTS

On May 25, 2011, this Court issued an order cancelling Plaintiff's lis pendens that covered 1,600 acres of land owned by Defendant CDM. The Court found that neither Plaintiff Republic nor Plaintiff Carolina Park Associates, LLC ("CPA"), has a cognizable interest in the property. Therefore, this was not "an action affecting the title to real property," a prerequisite for a lis pendens. S.C. Code Ann. § 15-11-10. Plaintiffs have no legal or equitable interest in the

B

property because Defendant CDM acquired the property through an uncontested and unappealed foreclosure action that cannot be collaterally attacked, S.C. Code Ann. § 15-39-870, and cut off all legal and equitable interests that Plaintiff CPA may have once had in the property. S.C. Code Ann. § 15-39-880.

Since the foreclosure extinguished all of CPA's legal and equitable right, title, and interest in and to the subject property, CPA cannot now legitimately maintain "an action affecting the title to real property" as a matter of law, including a constructive trust claim. CPA did not appeal the foreclosure decree and final order. Any effort by CPA to roll back the title of the subject real estate is a collateral attack on the foreclosure and an assertion of a legal or equitable right to the property, both of which are statutorily barred. Consequently, the Court dismissed all of CPA's claims to the real estate and ordered the lis pendens cancelled. In order to keep Republic informed for purposes of its potential claims related to the profits of CDM, the Court ordered CDM to provide semi-annual accountings to Republic, which will allow Republic to monitor the property and its sales.

On June 3, 2011, Plaintiff Republic filed and served a Notice of Appeal challenging the May 25, 2011 Order. That appeal automatically stayed the Order pursuant to the general rule set out in Rule 241(a) of the South Carolina Appellate Court Rules. Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94, 96 (1986) (the appeal of an order cancelling a lis pendens acts as an automatic stay of that order).

On June 13, 2011, Defendant CDM moved to lift the automatic stay and requested an expedited hearing. The Court conducted a hearing on June 20, 2011 on the motion.

LEGAL ARGUMENT

I. THIS COURT HAS JURISDICTION TO CONSIDER THE MOTION TO STAY.

Plaintiff Republic first argues that this Court does not have jurisdiction to consider the motion to stay and that the motion should have been made in the first instance to the Court of Appeals. Rule 241(d)(1) of the South Carolina Appellate Court Rules states:

Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.

None of the parties have claimed that "extraordinary circumstances" exist to justify a direct application to the Court of Appeals. As such, the motion for stay was appropriately made before this Court in the first instance.

Similarly, Rule 205 of the South Carolina Appellate Court Rules, cited by Plaintiff Republic as divesting this Court of jurisdiction to hear the motion to stay, in fact states:

Upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; **the lower court of administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided in Rule 241.**

(Emphasis added). Thus, both Rule 205 and Rule 241 make clear that this Court has jurisdiction to entertain this motion to stay.

II. DEFENDANT CDM IS ENTITLED TO HAVE THE STAY LIFTED AND THE LIS PENDENS CANCELLED.

Rule 241(c), SCACR, allows any party to seek an order lifting the automatic stay in cases involving the general rule. The Court can lift the stay to prevent a contested issue from becoming moot. Rule 241(c)(2), SCACR. The contested issue on appeal is whether there is any basis for the lis pendens to stay in place while this case is pending. If the lis pendens is allowed to stay in place for the course of this appeal, then the Court's order that the lis pendens was not

in compliance with South Carolina law will be rendered moot in that Plaintiffs will have received exactly what they are not entitled to, namely a lis pendens during the course of this litigation that would hinder Defendant CDM in developing its property. If Republic is correct in arguing that Rule 241 does not allow for relief in this situation, then any party could file a lis pendens with its lawsuit and keep the lis pendens in place for the life of the lawsuit through appeals. A lis pendens would never be subject to effective cancellation, and orders cancelling a lis pendens would be rendered moot. This is the precise situation for which Rule 241 creates relief.

Moreover, the Court is given broad powers to fashion relief that protects all parties during the course of an appeal:

The granting of supersedeas or the lifting of the automatic stay 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, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

Rule 241(c)(3), SCACR.

The only way to afford CDM complete relief from Plaintiff's lis pendens is by lifting the stay and cancelling the lis pendens. With the lis pendens in place, Plaintiff Republic is impairing Defendant CDM's investment in the property without any showing that Republic or CPA has a right to do so. Plaintiff Republic has done this at no cost to itself whatsoever.

More importantly, Plaintiff Republic has not come forward with any plausible theory that would sustain a lis pendens when neither it nor CPA has any legal or equitable claim to the property following foreclosure. Defendant CDM owns the property due to that foreclosure, and that ownership cannot be challenged under clear statutory law. Regardless of any claims that

Plaintiffs might have against Defendant CDM for actions that occurred prior to the foreclosure, Defendant CDM's ownership of the property simply cannot be challenged. Further, allowing the lis pendens during an appeal of indefinite duration would cause significant harm to Defendant CDM since its business is the development and sale of the land in question. Defendant CDM has submitted uncontested affidavits that the lis pendens is jeopardizing significant sales and the development of the property.

Plaintiffs are unable to cite any legal precedent in South Carolina allowing a foreclosed land owner who did not appeal the foreclosure to maintain a later action asserting a legal or equitable interest in the land. The Lebovitz opinion, cited by Plaintiffs, did not involve similar facts or issues. The question before the Supreme Court in that case was whether cancellation of the lis pendens was automatically stayed by the appeal. In Lebovitz the Court did not have before it the question of whether the automatic stay should be lifted pending the appeal where there is no legitimate basis for claiming an interest in the real property as a matter of law and significant harm would ensue if the stay were not lifted.

The Court has already acted to protect Plaintiffs by ordering semi-annual accountings of Defendant CDM which will allow Plaintiffs to monitor but not interfere in the development of the property, which is around 1600 acres. In addition, the Court will re-address this ruling and consider additional protection if the total sales of tracts within the property reach \$50 million, the investment that CDM made in the property and is entitled to receive back before disbursing profits to its partners. Until that threshold is reached, Plaintiff Republic is simply not in danger of losing a potential claim because it has no potentially cognizable claim to anything other than profits derived from the property and the partnership after Defendant CDM's investment is

returned. Consequently, the semi-annual accountings is a sufficient "undertaking" under Rule 241(c)(3) under the circumstances.

CONCLUSION

Based on the foregoing, in order to afford Defendant CDM the complete relief it is entitled to under Rule 241, the Court grants the motion to lift the stay and orders that the lis pendens is cancelled. The only undertaking required of Defendant CDM at this point is that it provide semi-annual accountings to Republic as required in the Court's previous order. If sales of the subject property reach \$50 million, the Court will entertain requests for additional protection for Plaintiffs pursuant to Rule 241.

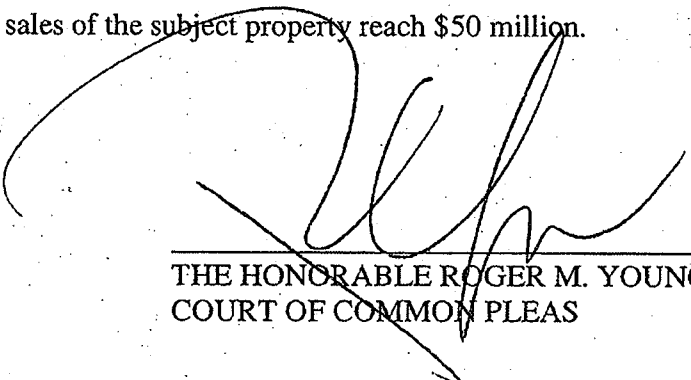
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT Defendant CDM's motion to lift the stay pending appeal created by Rule 241(a) of the South Carolina Appellate Court Rules is hereby granted;

IT IS FURTHER ORDERED THAT the Clerk of Court shall, therefore, cancel the lis pendens filed by Plaintiffs in this matter immediately pursuant to this Court's earlier Order dated May 25, 2011;

IT IS FURTHER ORDERED THAT the Court will reconsider the protection afforded Plaintiffs under Rule 241(c)(3) should sales of the subject property reach \$50 million.

IT IS SO ORDERED.

6/27, 2011
Charleston, South Carolina



THE HONORABLE ROGER M. YOUNG
COURT OF COMMON PLEAS



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

AMERICAN STAR DEVELOPMENT SC,
LLC; KKMC INVESTMENTS, LLC; AND
211, LLC,

Plaintiffs,

V.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC,

Defendants.

ANSWER
AND COUNTERCLAIM

FILED
2018 JUN -6 PM 1:10
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant PulteGroup, Inc., expressly reserving and not waiving its objection to personal jurisdiction, and Defendant Pulte Home Corporation n/k/a Pulte Home Company, LLC ("Pulte" or "Defendants" or "Counterclaim Plaintiffs"), by and through their undersigned attorneys, answer the Amended Complaint of the Plaintiffs herein, alleging and stating as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified, or explained, is denied and proof thereof is demanded, including those in the prayer for relief.
2. As to the allegations contained in Paragraph 1 of the Amended Complaint that refer to written agreements, Defendants refer to the agreements referenced and deny any allegations inconsistent with the terms and conditions of those agreements. To the extent this Paragraph alleges conclusions of law, the Defendants are not required to admit or deny

the same. Defendants deny the factual allegations contained in Paragraph 1 of the Amended Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Amended Complaint upon information and belief.
4. Defendants admit the allegations of Paragraph 5 of the Amended Complaint in so far as they allege that Defendant PulteGroup is organized and existing under the laws of Michigan but deny the remaining allegations of Paragraph 5.
5. Defendants admit the allegations of Paragraph 6 of the Amended Complaint.
6. The allegations of paragraph 7 are not directed to these Defendants and therefore, do not require a response; to the extent any response is deemed required, Defendants admit the allegations upon information and belief.
7. Defendants admit the allegations of Paragraphs 8, 9, and 10 of the Amended Complaint in as much as they allege subject-matter jurisdiction and venue are proper in this court.
8. Defendants admit, upon information and belief, the allegations of Paragraphs 11 and 12 of the Amended Complaint.
9. In response to the allegations of Paragraphs 13, 14, and 15 of the Amended Complaint, Defendants crave reference to the referenced agreement and deny all allegations inconsistent therewith.
10. The allegations of Paragraphs 16 and 17 of the Amended Complaint are not directed to these Defendants and, therefore, do not require a response; to the extent any response is deemed required, Defendants crave reference to the described agreements and deny any allegation inconsistent therewith.

11. Defendants admit the allegations of Paragraphs 18, 19, and 20 in as much as they allege that JW Homes, LLC, JW Land Investment, LLC, and PulteGroup, Inc. entered into an asset purchase agreement ("APA") dated December 15, 2015. Defendants also admit that via deed dated January 14, 2016, Pulte Home Corporation acquired certain real property from JW Homes, LLC as reflected by the deed recorded at Book 0530 Page 301. With respect to the additional allegations of Paragraphs 18, 19, and 20 of the Amended Complaint, Defendants crave reference to the APA and deed, and deny any allegations inconsistent therewith. Defendants deny any remaining allegations of the Paragraphs.
12. The allegations contained in Paragraphs 21 and 22 of the Amended Complaint include conclusions of law which the Defendants are not required to admit or deny. To the extent the allegations of Paragraphs 21 and 22 of the Amended Complaint refer to the terms of the APA, Defendants crave reference to the APA and deny any allegations inconsistent therewith. Notwithstanding, Defendants deny the allegations contained in Paragraph 22 of the Amended Complaint that allege consolidation or merger of PulteGroup and JWH.
13. As to the allegations of Paragraph 23, Defendants admit that the sketch plans and plats for the development, as approved by the Town of Mount Pleasant, did not depict the Connection. Defendants further allege that Plaintiff American Star submitted the sketch plan without the Connection as part of its request for zoning and fully concurred in the sketch plan without the Connection.
14. As to the allegations of Paragraph 24, Defendants deny that American Star made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but admit that recently American Star made such demands even though American Star has known since early 2015 when it submitted the sketch plan to the Town

of Mount Pleasant that it did not include the Connection and even though it has no legitimate plans to develop the Adjacent Property that is mostly ponds.

15. The allegations contained in Paragraphs 25 and 26 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 25 and 26 of the Amended Complaint.
16. In response to the allegations of Paragraph 27 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the Paragraphs realleged.
17. The allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint.
18. In response to the allegations of Paragraph 36 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the paragraphs realleged.
19. Defendants deny the allegations of Paragraph 37 and 38 of the Amended Complaint.
20. As to the allegations of Paragraph 39, Defendants admit that PHC has not proceeded to design and construct the Connection and further allege that for the reasons set forth in this Answer and Counterclaim, PHC has no legal obligation to design and construct the Connection.
21. Defendants deny the allegations of Paragraphs 40 and 41 of the Amended Complaint.

22. The allegations contained in Paragraph 42 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraph 42 of the Amended Complaint.
23. In response to the allegations of Paragraph 43 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the Paragraphs realleged.
24. The allegations contained in Paragraphs 44, 45, 46, and 47 of the Amended Complaint express conclusions of law which Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 44, 45, 46, and 47 of the Amended Complaint.
25. As to the allegations of Paragraphs 48, Defendants admit they have denied they are successors to JWH with respect to JWH's obligations under the Agreement, and crave reference to the terms and conditions of the APA that are controlling of the respective obligations of the parties.
26. The allegations contained in Paragraph 49 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraph 49 of the Amended Complaint.
27. In response to the allegations of Paragraph 50 of the Amended Complaint, Defendants hereby reallege and reiterate their previous allegations in response to the Paragraphs realleged.
28. The allegations of Paragraphs 51, 52, 53, and 54 of the Amended Complaint are not directed to these Defendants and, therefore, do not require a response; to the extent any response is deemed required, Defendants respond that the allegations contained in

Paragraphs 51, 52, 53, and 54 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 51, 52, 53, and 54 of the Amended Complaint.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

29. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

30. Defendants would show that the allegations of the Amended Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Personal Jurisdiction)

31. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

32. This court lacks personal jurisdiction over Defendant PulteGroup, Inc.

FOR AN ADDITIONAL DEFENSE
(Ripeness)

33. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

34. Defendants would show that Plaintiffs' claims are premature and nonjusticiable under the doctrine ripeness.

FOR AN ADDITIONAL DEFENSE
(Statute of Frauds)

35. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

36. Defendants would show that Plaintiffs' claims are barred by the statute of frauds.

FOR AN ADDITIONAL DEFENSE

(Mistake)

37. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

38. Defendants would show that Plaintiffs' claims are barred by the defense of mutual or unilateral mistake doctrine.

FOR AN ADDITIONAL DEFENSE

(Estoppel and Waiver)

39. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

40. Defendants would show that Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

FOR AN ADDITIONAL DEFENSE

(Laches)

41. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

42. Defendants would show that Plaintiffs' claims are barred by the doctrine of laches.

FOR AN ADDITIONAL DEFENSE

(Unclean Hands)

43. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

44. Defendants would show that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR AN ADDITIONAL DEFENSE
(Statute of Limitations)

45. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
46. Defendants would show that Plaintiffs' claims are barred by the applicable statute of limitations.

FOR AN ADDITIONAL DEFENSE
(No Standing)

47. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
48. Defendants would show, upon information and belief, that Plaintiffs KKMC Investments, LLC and 211, LLC, have no legal interest in the Adjoining Property, have suffered no damages, and have no standing.

FOR AN ADDITIONAL DEFENSE
(Setoff and Credit)

49. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
50. If any of the Plaintiffs is entitled to recover damages against the Defendants, which the Defendants expressly deny, Defendants are entitled to a setoff and credit for the full cost of developing the Adjoining Property including but not limited to permitting, site preparation, engineering, and infrastructure costs.

FOR AN ADDITIONAL DEFENSE
(Failure to Mitigate)

51. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

52. Defendants would show that Plaintiffs have failed to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(Ratification)

53. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

54. Through their knowledge, conduct, and actions, Plaintiffs ratified the sketch plan submitted and approved by the Town of Mount Pleasant, the absence of the Connection, and the other actions of the Defendants, and their claims are barred by such ratification.

FOR AN ADDITIONAL DEFENSE
(Right to Rely on Other Defenses and Right to Amend)

55. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

56. Defendants reserve the right to rely upon the affirmative defenses raised in the pleadings of any other party to this action, and each and every such alleged affirmative defense set forth in those pleadings is hereby realleged and reiterated as fully as if set forth verbatim and incorporated herein. Additionally, Defendants reserve the right to amend this Answer and affirmative defenses after investigation, discovery, and further information are disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and Defendants are not waiving any defenses that may arise during investigation, discovery, and trial of this litigation.

FOR AN ADDITIONAL DEFENSE
AND BY WAY OF COUNTERCLAIM

57. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

58. American Star Development SC, LLC, KMMC Investments, LLC, and 211, LLC ("Counterclaim Defendants") are South Carolina limited liability companies with their principal place of business in Charleston County, South Carolina.

59. Counterclaim Plaintiffs were sued by Counterclaim Defendants in the above captioned action, and jurisdiction and venue are appropriate in this court.

60. Counterclaim Defendants have no intention of developing the Adjacent Property and have brought this action not to compel the design and construction of the Connection but are bringing this action instead for other purposes than the relief requested herein.

61. Upon information and belief, the primary purpose of the claims asserted by Counterclaim Defendants is to coerce Counterclaim Plaintiffs to purchase the two parcels owned by Counterclaim Defendants and identified as TMS# 578-00-00-005 and 578-00-00-006 described as the Adjacent Property.

62. By filing this action, Counterclaim Defendants have acted willfully and overtly in their use of the legal process aimed at an illegitimate collateral objective as described above.

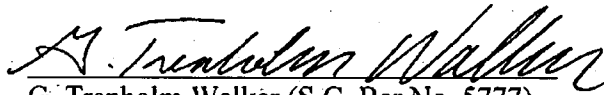
63. Counterclaim Plaintiffs are entitled to a judgment for actual damages, including attorney's fees, caused by Counterclaim Defendants' abuse of process and punitive damages.

WHEREFORE, having answered Plaintiffs' Amended Complaint and asserted the Counterclaim above, Defendants pray for the dismissal of Plaintiffs' Amended Complaint with prejudice pursuant to the defenses set forth above; for a trial by jury on all triable issues; for

judgment in an amount to be determined by a jury on their Counterclaim for all actual and punitive damages; that the costs of this action be taxed to a party other than Defendants; and for all such other relief as the Court deems equitable, just, and proper.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar No. 5777)

John P. Linton, Jr., (S.C. Bar No. 79130)

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ATTORNEYS FOR DEFENDANTS
PULTEGROUP, INC., AND PULTE HOME
CORPORATION n/k/a PULTE HOME
COMPANY, LLC

June 5, 2018
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate No. 2018-002277

RECEIVED

JAN 25 2019

SC Court of Appeals

American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC..... Defendants,

Of which American Star Development SC, LLC is the Appellant,

And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the Respondent.

PROOF OF SERVICE

I hereby certify that I have served a true copy of the foregoing **RESPONDENT'S VERIFIED PETITION FOR AN ORDER LIFTING THE AUTOMATIC STAY** by delivering copies to the following counsel/parties, in accordance with the applicable Rules of Appellate Procedure, on **January 23, 2019**, by first class mail, postage prepaid, properly addressed to the following:

E. Brandon Gaskins, Esq.
Charles R. Scarminach, Esq.
Moore & Van Allen, PLLC
P.O. Box 22828
Charleston, SC 29402
*Attorneys for Appellant American
Star Development SC, LLC*

Susan M. Gaddy, Esq.
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January 23, 2019

US MAIL [X] EMAIL []

Hon. Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: American Star Development v. PulteGroup, Inc.
Appellate Case No. 2018-002277

RECEIVED

JAN 25 2019

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the following:

1. Original and six copies of Respondent's Verified Petition for an Order Lifting the Automatic Stay with exhibits;
2. Certified copies of the lower court's rulings;
3. Copy of Notice of Appeal;
4. \$50 filing fee; and
5. Proof of Service on opposing parties.

Yours very truly,

WALKER GRESSETTE FREEMAN & LINTON, LLC

A handwritten signature in blue ink, appearing to read "John P. Linton, Jr.", written over the printed name.

John P. Linton, Jr.

Enclosures (As Stated)

c: E. Brandon Gaskins, Esq.
Charles R. Scarminach, Esq.
Susan M. Gaddy, Esq.