

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 17 2013

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-213155

Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property
Owners Association, Inc.,.....Respondents,

v.

Palms Properties, LLC,.....Defendant.

Palms Properties, LLC,.....Third-Party Plaintiff,

v.

Rivers Point Row, LLC, John Derbyshire, Linda Derbyshire, and John Hagerty,.....Appellants.

RECORD ON APPEAL
VOLUME I

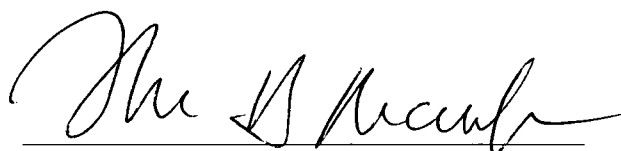
Michael J. Buhmeyer
P.O. Box 81138
Charleston, SC 29416
(843)-408-5937
Attorney for Respondent

John A. Massalon, Esquire
SC Bar Number: 010279
I. Ryan Neville, Esquire
SC Bar Number: 0076513
Wills Massalon & Allen LLC
P.O. Box 859
Charleston, South Carolina 29401
(843) 727-1144

Affidavit of Daniel C. Fosberg; 126-136

Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, with exhibits A-G
.....137-250

April 15, 2013

A handwritten signature in black ink, appearing to read "John A. Massalon", written over a horizontal line.

John A. Massalon, Esquire SC Bar #010279

I. Ryan Neville, Esquire SC Bar # 76513

WILLS MASSALON & ALLEN LLC

Post Office Box 859

Charleston, South Carolina 29402

(843) 727-1144

ATTORNEYS FOR APPELLANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Rivers A. Law

Plaintiff(s),

-VS-

Palm's Prop

Defendant(s),

IN THE COURT OF COMMON PLEAS

CASE NO:

08-CP-10-2279

SCHEDULING ORDER

FILED
2010 AUG 18 PM 12:35
CLERK OF COURT
BY

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following schedule is established in this case based upon an in court and/or telephone conference.

1. All motions to amend the pleadings and to join additional parties shall be filed on or before 8/30/10 TT to Rejoice - Tce Hand, Ssq.
2. The plaintiff(s) must identify any experts on or before 9/15/10
3. The defendant(s) must identify any experts on or before 9/30/10
4. Discovery shall be completed on or before 12/3/10
All discovery requests must be served in time for the response thereto to be served within this deadline.
5. All dispositive motions shall be filed on or before JAN 16, 2011
a. otherwise the parties agree any untimely motions shall be waived.
6. The parties shall mediate this case with John Lint on or before DEC 30, 2010
The mediator shall submit his written report to the court within 10 days of mediation.
7. This case is set for pre-trial hearing on JAN 31, 2011 @ 10:00 AM
8. The party shall come to the pre-trial hearing with a pre-trial brief to be exchanged, a list of witnesses and a good faith estimate of time for trial.
9. Upon completion of all steps noted above, the matter shall be set for a day certain trial. (usually 30-60 days)
10. This order may not be amended except by order of the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County.

IT IS SO ORDERED.

8/16 2010
Charleston, SC

*cc John Lint, Ssq
Tce Hand*

Mikell R. Scarborough
Mikell R. Scarborough
Master-In-Equity

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

v.

RIVERS POINT ROW, LLC and
JOSEPH F. HAND, JR.,

Third Party Defendants.

FILED
2011 FEB -3 PM 4:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

AMENDED SCHEDULING ORDER

The deadlines in this case are as follows:

1. The parties will amend all pleadings by February 1, 2011; *March*
2. The parties will complete depositions and all discovery on or before May 1, 2011. All discovery requests shall be served in time for responses thereto to be served by this deadline. *to include Service on Mr. Hand.*
3. The parties will complete mediation on or before May 15, 2011. *commence mediation by April 15 2011 and*
4. This case will be continued over the terms of court until at least the term of court following July 1, 2011. *with John Little, Esq.*

AND IT IS SO ORDERED.

M. R. Scarborough
The Honorable Mitchell R. Scarborough
Master-in-Equity, Charleston County

1/31, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERTY,
Individually,

Third Party Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

FILED
2012 SEP 17 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court for a hearing on the cross-motions for summary judgment filed by First Party Plaintiff Rivers Point Row Horizontal Property Regime and by Third Party Defendant Rivers Point Row, LLC on June 1st, 2012. Proper notices were provided and counsel for all parties involved were present at the hearing to argue their respective positions. Based upon the pleadings on file with the Court, and such case law and statutory authority as is applicable, I find, order and conclude as follows:

PROCEDURAL HISTORY



This action was commenced by the filing of a Summons and Complaint by the Plaintiff on April 25, 2008. The Complaint seeks judicial determination of the validity of a deed filed with the Charleston County Register of Deeds executed between the First Party Defendant Palms Properties, LLC and the Third Party Defendant Rivers Point Row, LLC for the transfer by sale of a portion of real property previously incorporated into a Master Deed in favor of the Plaintiff under the S.C. Horizontal Property Act (the "Act"). This determination is being sought by Plaintiff under Section 15-53-30 of the S.C. Uniform Declaratory Judgment Act which provides that "[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder (emphasis added). The complaint alleges that the deed as filed is erroneous and invalid in that the parties to the transaction and conveyance had no right to purchase/sell and convey the same.

Defendant timely filed its Answer on June 25, 2008 and joined Third Party Defendant Rivers Point Row, LLC to the action under a Third Party Complaint included in the Answer. The Third Party Defendant filed its Answer on December 8, 2008. The Answers generally deny the corresponding allegations in the Complaints, assert various defenses. The Third Party Complaint has since been amended to name individual Defendants, John Derbyshire, Linda Derbyshire and John Hagerty and the Third Party Plaintiffs Motion to Amend has been granted by this Court.

STANDARD OF REVIEW

The standard for summary judgment is set forth in Rule 56, S.C. R. Civ. Proc., and mirrors that of the standard for a directed verdict. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578

S.E.2d 329 (2003). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 620 S.E.2d 375 (Ct. App. 2006). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008). Further, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested on deficient grounds. M&M Group, Inc. v. Holmes, 379 S.E. 468, 666 S.E.2d 262 (Ct. App. 2008).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on the mere allegations or denials contained in the pleadings but rather must come forward with specific facts showing there is a genuine issue for trial. Singleton v. Sherer, 377 S.C. 185, 699 S.E.2d 196 (Ct. App. 2008).

ANALYSIS

In the instant case, it is undisputed that the two named Defendants entered into an agreement on or about January 26, 2005, with various subsequent supplemental addenda (the final addenda being May 12, 2005), to convey by fee simple sale and deed transfer a portion of a parcel previously conveyed to Plaintiff under a Master Deed on May 4, 2004, which at that time created a Horizontal Property Regime and Property Owners Association. This transaction was executed on May 12, 2005. The deed evidencing this transaction was later recorded with the Charleston County Register of Deeds in Box X541 at page 464 on June 22, 2005.

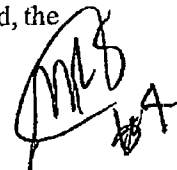
It is also undisputed that the Third Party Defendant, Rivers Point Row, LLC, as Developer and Declarant of the Master Deed to Plaintiff, reserved only a right to build certain poorly defined

[Handwritten signature]
#3

structures on the parcel at issue in this case, and did not reserve a right to transfer the parcel as a subdivided part of the larger tract to a third party in fee simple for value. Nor for that matter did they reserve the right to assign the right to build.

An analysis of unit sales transactions from the Third party Defendant as Developer/Declarant to individual owners was submitted on June 26, 2012, by Plaintiff as requested by this Court to determine when at least seventy-five percent (75 %) of the Units were transferred by sale. Titled "Supplemental to Plaintiff's Memorandum of Law in Support of Summary Judgment", this document with the attached labeled Exhibit "H" categorizes all the deeded unit conveyances by filing date on the Charleston County Register of Deed public records, and shows that the threshold inquiry of seventy-five percent (75%) of the total available Unit conveyances was complete as of December 18, 2004. The Master Deed which governs the subject property provides that an event referred to as "Loss of Controlling Interest" by the Developer/Declarant "shall occur at the earlier of (i) the conveyance by Declarant of ownership of three fourths (3/4ths) of all Units (other than conveyance to a mortgagee pursuant to terms of a mortgage or in lieu of enforcement of the terms of a mortgage), or (ii) the date on which the Declarant notifies the Unit owners in writing that it is relinquishing the Controlling Interest (emphasis added). Based on this definition, the Third Party Defendant had lost controlling interest in the Board of Directors and the development itself prior to entering into a contract for the sale of the parcel at issue in this case, and well before the execution of the deed to the Defendant/Third Party Plaintiff.

As a result of these findings, I rule that there are no genuine issues of material fact in dispute, that as a matter of law the Third Party Defendant/Developer/Declarant had no rights in the subject property as this parcel became common elements of the Regime upon recordation of the Master Deed, and that once the Loss of Controlling Interest provision in the Master Deed was triggered, the

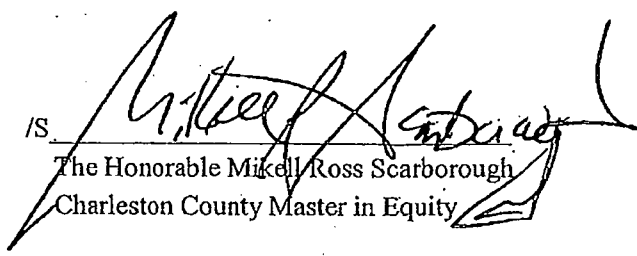
Handwritten signature and initials, possibly "MS" and "LA", in the bottom right corner of the page.

Third Party Defendant/Developer/Declarant was no longer in a position to amend the Master Deed or resolve to do any act affecting the Regime without approval of the Unit owners. I find that the Third Party Defendant was unable to affect a sale and deed transfer of any part of the parcel to the First Party Defendant based on a comprehensive review of the facts. Once submitted by Master Deed, a horizontal property regime is created and governed by the South Carolina Horizontal Property Act (the "Act"). S.C. Code Ann. §§ 27-31-10 to 300 (1991 & Supp. 2011).^{*} As in the only case with controlling authority found to be on point in this matter holds, "once common elements are set aside and vested in the co-owners of property subject to a Master Deed, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer". Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 211, 494 S.E.2d 465, 468 (Ct. App. 1997) (citing S.C. Code Ann. §§ 27-31-70, -130 (1991 & Supp. 2011)); See also 4 S.C. Juris. Condominiums §18 (1991)). This Court acknowledges that this controlling precedent is what it is bound to follow in this case.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that First Party Plaintiff Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property Owners Association, Inc.'s motion for summary judgment is GRANTED, and this Court declares the Deed recorded at Book X541 Page 464 to be invalid as a matter of law and issues this decree directing the Register of Deeds of Charleston County to strike and forever remove this erroneous deed recording from the County records.

IT IS SO ORDERED.

/s.


The Honorable Mikell Ross Scarborough
Charleston County Master in Equity

Dated: 9/11/2017
Charleston, South Carolina


* Upon filing the Master Deed, the property is no longer considered Real Property ^{per se} but part of a Horizontal Regime which is subject to the Act and terms of the Master Deed. Queen's Grant v Greenwood Devmt, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2005)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-10-2279

Rivers Point Row Horizontal Property Regime, et
al

Palms Properties, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(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
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Order Granting Plaintiff's Motion For Summary Judgment.

INFORMATION FOR THE PUBLIC 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)
N/A		\$
		\$
		\$

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

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

Circuit Court Judge

3062
Judge Code

9/12/2012
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:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERTY,
Individually,

Third Party Defendants.

**ORDER DENYING
THIRD PARTY DEFENDANTS
MOTION FOR SUMMARY JUDGMENT**

FILED
2012 SEP 17 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court for a hearing on the cross-motions for summary judgment filed by First Party Plaintiff Rivers Point Row Horizontal Property Regime and by Third Party Defendant Rivers Point Row, LLC on June 1st, 2012. Proper notices were provided and counsel for all parties involved were present at the hearing to argue their respective positions. Based upon the pleadings on file with the Court, and such case law and statutory authority as is applicable, I find, order and conclude as follows:

PROCEDURAL HISTORY



This action was commenced by the filing of a Summons and Complaint by the Plaintiff on April 25, 2008. The Complaint seeks judicial determination of the validity of a deed filed with the Charleston County Register of Deeds executed between the First Party Defendant Palms Properties, LLC and the Third Party Defendant Rivers Point Row, LLC for the transfer by sale of a portion of real property previously incorporated into a Master Deed in favor of the Plaintiff under the S.C. Horizontal Property Act (the "Act").

Defendant timely filed its Answer on June 25, 2008 and joined Third Party Defendant Rivers Point Row, LLC to the action under a Third Party Complaint included in the Answer. The Third Party Defendant filed its Answer on December 8, 2008. The Answers generally deny the corresponding allegations in the Complaints, assert various defenses. The Third Party Complaint has since been amended to name individual Defendants, John Derbyshire, Linda Derbyshire and John Hagerty and the Third Party Plaintiffs Motion to Amend has been granted by this Court.

STANDARD OF REVIEW

The standard for summary judgment is set forth in Rule 56, S.C. R. Civ. Proc., and mirrors that of the standard for a directed verdict. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 620 S.E.2d 375 (Ct. App. 2006). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008). Further, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested on deficient grounds. M&M Group, Inc. v. Holmes, 379 S.E. 468, 666 S.E.2d 262 (Ct. App. 2008).



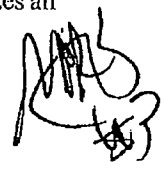
Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on the mere allegations or denials contained in the pleadings but rather must come forward with specific facts showing there is a genuine issue for trial. Singleton v. Sherer, 377 S.C. 185, 699 S.E.2d 196 (Ct. App. 2008).

ANALYSIS

In the instant case, it is undisputed that the Defendant and Third Party Defendants entered into an agreement on or about January 26, 2005, with various subsequent supplemental addenda (the final addenda being May 12, 2005), to convey by fee simple sale and deed transfer a portion of a parcel previously conveyed to Plaintiff under a Master Deed on May 4, 2004, which at that time created a Horizontal Property Regime and Property Owners Association. This transaction was executed on May 12, 2005. The deed evidencing this transaction was later recorded with the Charleston County Register of Deeds in Box X541 at page 464 on June 22, 2005.

It is also undisputed that the Third Party Defendant, Rivers Point Row, LLC, as Developer and Declarant of the Master Deed to Plaintiff, reserved only a right to build certain poorly defined structures on the parcel at issue in this case, and did not reserve a right to transfer the parcel as a subdivided part of the larger tract to a third party in fee simple for value. Nor for that matter did they reserve the right to assign the right to build.

An analysis of unit sales transactions from the Third party Defendant as Developer/Declarant to individual owners was submitted on June 26, 2012, by Plaintiff as requested by this Court to determine when at least seventy-five percent (75 %) of the Units were transferred by sale. Titled "Supplemental to Plaintiff's Memorandum of Law in Support of Summary Judgment", this document with the attached labeled Exhibit "H" categorizes all



the deeded unit conveyances by filing date on the Charleston County Register of Deed public records, and shows that the threshold inquiry of seventy-five percent (75%) of the total available Unit conveyances was complete as of December 18, 2004. The Master Deed which governs the subject property provides that an event referred to as "Loss of Controlling Interest" by the Developer/Declarant "shall occur at the earlier of (i) the conveyance by Declarant of ownership of three fourths (3/4ths) of all Units (other than conveyance to a mortgagee pursuant to terms of a mortgage or in lieu of enforcement of the terms of a mortgage), or (ii) the date on which the Declarant notifies the Unit owners in writing that it is relinquishing the Controlling Interest (emphasis added). Based on this definition, the Third Party Defendant had lost controlling interest in the Board of Directors and the development itself prior to entering into a contract for the sale of the parcel at issue in this case, and well before the execution of the deed to the Defendant/Third Party Plaintiff.

As a result of these findings, I rule that there are ^{no} genuine issues of material fact in dispute, that as a matter of law the Third Party Defendant/Developer/Declarant had no rights in the subject property as this parcel became common elements of the Regime upon recordation of the Master Deed, and that once the Loss of Controlling Interest provision in the Master Deed was triggered, the Third Party Defendant/Developer/Declarant was no longer in a position to amend the Master Deed or resolve to do any act affecting the Regime without approval of the Unit owners. I find that the Third Party Defendant was unable to affect a sale and deed transfer of any part of the parcel to the First Party Defendant based on a comprehensive review of the facts. Once submitted by Master Deed, a horizontal property regime is created and governed by the South Carolina Horizontal Property Act (the "Act"). S.C. Code Ann. §§ 27-31-10 to 300 (1991 & Supp. 2011). As in the only case with controlling authority found to be on point in this matter holds, "once common elements are set aside

**Upon filing the Master Deed, the property is no longer fee property but a horizontal regime - subject to the Act and terms of the Master Deed.*

*Queen's Grant v. Cornerwood Devmt.
358 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006).*

#4

TRB

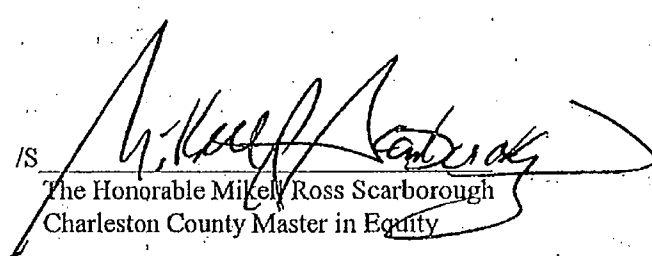
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and vested in the co-owners of property subject to a Master Deed, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer". Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 211, 494 S.E.2d 465, 468 (Ct. App. 1997) (citing S.C. Code Ann. §§ 27-31-70, -130 (1991 & Supp. 2011); *See also* 4 S.C.Juris. Condominiums §18 (1991)). This Court acknowledges that this controlling precedent is what it is bound to follow in this case.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Third Party Defendant, Rivers Point Row, LLC's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

/s/


The Honorable Mikel Ross Scarborough
Charleston County Master in Equity

Dated: 9/11/2012
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-10-2279

Rivers Point Row Horizontal Proeprty Regime, et
al

Palms Properties, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(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
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Order Denying Thldr Party Defendants' Motion For Summary Judgment.

INFORMATION FOR THE PUBLIC 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)
N/A		\$
		\$
		\$

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

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

Circuit Court Judge

3062
Judge Code

9/12/2012
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:

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

John A. Massalon
PO Box 859
Charleston, SC 29402

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master/Order denying 3rd party defnts' mot for sum judg

CASE NO: 2008CP1002279

**Rivers Point Row Horizontal Property Regime Etc , plaintiff, et al VS Palms Properties Llc
Etc ,**

This judgment was entered on the 17th day of September, 2012, and a copy mailed first class on Tuesday, September 18, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME etc

v

PALMS PROPERTIES LLC etc

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

FILED
 2009 DEC 14 AM 9:30
 JULIE A. STRONG
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

The Court is advised per Attorney David that the parties have agreed to refer this action to the Master in Equity. Therefore, pursuant to Rule 53 this court hereby refers this case to the equity division of the court for final disposition. The Master-In-Equity shall enter final judgment with any appeals to be taken in accordance with 14-11-85. The reference fee shall be paid directly to the office of the Master-In-Equity; upon a failure to do so, the Master shall order the case to be dismissed without prejudice for failure to comply with the court's order.

Dated at Charleston, South Carolina, this 9th day of Dec., 2009.

A. L. Jesse

 PRESIDING JUDGE

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-05-2270

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME A/K/A RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC

Defendant.

SUMMONS
(NON JURY)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

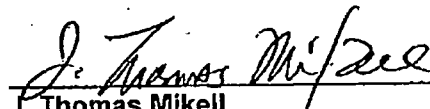
2008 APR 25 AM 11:47

FILED

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to Answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the Complaint upon the subscriber at his office at Lady's Island Professional Village, 14 Professional Village Circle, Beaufort, South Carolina 29907, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

April 25, 2008


J. Thomas Mikell
Attorney for the Plaintiff

Post Office Box 1727 (29901)
14 Professional Village Circle (29907)
Beaufort, South Carolina
Telephone: 843-524-2110
Fax: 843-524-4995

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-08- 2279
10

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME A/K/A RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC

Defendant.

COMPLAINT

BY
JULIE J. ARMSTRONG
CLERK OF COURT
2008 APR 25 AM 11:44

FILED

TO THE DEFENDANT:

The Plaintiff, complaining of the Defendant, alleges unto this Honorable Court the following, to wit:

1. The Plaintiff and the Defendant are residents of and conduct their principal business activities in Charleston County, S.C.
2. The real property which is the subject matter of this action is situate on James Island in Charleston County, S.C.
3. As set forth in Record Book G493 at Page 001 recorded on May 4, 2004 Rivers Point Row, LLC, as the developer, recorded a Master Deed pursuant to the Horizontal Property Act of South Carolina (Sections 27-31-10 et seq. S.C. Code of Laws, 1976, as amended - herein the Act).
4. The Master Deed referred to above created a horizontal property regime on James Island in Charleston County, S.C. known as Rivers Point Row Horizontal Property Regime.
5. According to Article II (v) and Article III Section I and Exhibit A of the Master Deed, the Declarant submitted to the provisions of the Act and created a horizontal property regime upon and within the Property (a defined term in the Master Deed) which parcel of real property is the 8.49 acres (369,622 square feet) described on a

Jm

plat prepared by Lewis E. Seabrook, SCRLS, on July 3, 1996 and recorded in Plat Book EB at Page 405 in the RMC Office of Charleston County, S.C.

6. At the point in time that the Master Deed was recorded on May 4, 2004 the horizontal regime was created and the entire 8.49 acres described above became subject to the terms and provisions of the Act and to the terms and provisions of the Master Deed.

7. Contrary to the terms and provisions of the Act and of the Master Deed and more than one year after the recording of the Master deed, Rivers Point Row, LLC, as the developer and without any amendment to the Master Deed nor by any vote of the Apartment Owners in the Regime, unilaterally executed a deed to the Defendant on May 12, 2005 and closed that sale for the consideration of \$180,000.

8. The Deed to the Defendant was recorded in Deed Book X541 at Page 464 on June 22, 2005 in the RMC Office of Charleston County, S.C.

9. The Deed to the Defendant attempts to convey a parcel of real property described as Tract B2 containing 0.38 acre (18,821 square feet) revised in June 2005 and recorded in Plat Book EH at Page 904 of the RMC Office of Charleston County, S.C.

10. Tract B2 containing 0.38 acre was not surveyed until June 2005 which was after the deed recorded in Book X541 at Page 464 was executed on May 12, 2005.

11. The Deed to the Defendant in Book X541 at Page 464 attempts to convey Tract B2 containing 0.38 acre which parcel of real property is a portion of the 8.49 acres previously submitted to the Act and to the provisions of the Master Deed.

12. In as much as the 8.49 acres were submitted to the terms and provisions of the Act and the Master Deed on May 4, 2004, the Developer did not have any right to subsequently convey any portion of the 8.49 acres, i.e., that entire parcel of real property belongs to the Regime.

13. Section 15-53-30 of the Uniform Declaratory Judgment Act as enacted in South Carolina provides that a person may have determined by this Court any question of construction or validity of a deed and the rights of such deed to be declared.

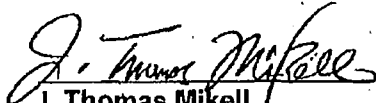
14. Due to the erroneous conveyance to the Defendant of Parcel B2 of 0.38 acre (which is a portion of the original 8.49 acres submitted to the Act and the Master Deed), it is necessary for this Court to declare the deed in Book X541 at Page 464 invalid and to issue a Decree informing the Registrar of Deeds of Charleston County, S.C. that the deed is invalid pursuant to Section 15-53-120 S.C. Code of Laws, 1976, as amended.

PRAYER

WHEREFORE, the Plaintiff prays the Court to inquire into the facts and matters alleged herein and to grant the following relief, to wit:

- A. To declare Deed Book X541 at Page 464 to be in violation of the Horizontal Property Regime Act of South Carolina and the Master Deed for Rivers Point Row Horizontal Property Regime; and,**
- B. To issue a Decree to the Registrar of Deeds of Charleston County, S.C. to mark Deed Book X541 at Page 464 to be Invalid; and,**
- C. For such other and further relief as this Court may deem to be just and proper.**

April 25, 2008


J. Thomas Mikell
Attorney for the Plaintiff

Post Office Box 1727 (29901)
14 Lady's Island Professional Village(29907)
Beaufort, South Carolina
Telephone: 843-524-2110
Fax: 843-524-4995



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

RIVERS POINT ROW HORIZONTAL PROPERTY
REGIME

Plaintiff(s)

CIVIL ACTION COVERSHEET

2008: CP - 10 - 2279

vs.

PALMS PROPERTIES, LLC

Defendant(s)

(Please Print)

Submitted By: J. Thomas MikellAddress: Post Office Box 1727Beaufort, SC 29901SC Bar #: 3967Telephone #: 843-524-2110Fax #: 843-524-4995

Other:

E-mail: mikelllaw@embargmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

* If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) <i>Declaratory Judgment</i> |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | | |

Submitting Party Signature:

J. Thomas MikellDate: April 25, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL)
PROPERTY REGIME a/k/a RIVERS)
POINT ROW PROPERTY OWNERS)
ASSOCIATION, INC.,)

Plaintiff,)

vs.)

PALMS PROPERTIES, LLC,)

Defendant.)

PALMS PROPERTIES, LLC,)

Third Party Plaintiff,)

vs.)

RIVERS POINT ROW, LLC &)
JOSEPH F. HAND, JR.)

Third Party Defendants.)

ANSWER TO PLAINTIFF'S COMPLAINT
AND COMPLAINT AS TO 3rd PARTY
DEFENDANTS

FILED
2008 JUN 25 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

Defendant Palms Properties, LLC ("Palms Properties") answers the Complaint of Plaintiff Rivers Point Row Horizontal Property Regime a/k/a River Point Row Property Owners Association, Inc. ("Rivers Point POA"). Except as admitted below, Palms Properties denies each and every allegation set forth in the Complaint.

1. Defendant Palms Properties admits the allegations in Paragraph 1 to the extent that they allege that Palms Properties is a resident of Charleston County which conducts its principle business activities in Charleston County and that Plaintiff Rivers Point is a resident of South Carolina, but Defendant Palms Properties is without sufficient information and belief sufficient to

form a belief as to the truth of allegations as to where Plaintiff Rivers Point POA conducts its principal business activities and therefore denies the same.

2. Defendant Palms Properties admits the allegations of Paragraph 2 of the Plaintiff's Complaint.

3. Defendant Palms Properties admits the allegations of Paragraph 3 of the Plaintiff's Complaint.

4. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 4 as to whether or not the said Master Deed effectively creates a Horizontal Property Regime in that Defendant does not have sufficient knowledge or belief as to whether said Master Deed fully and completely comports with each and every requirement of "the Act" and therefore denies the same.

5. Defendant Palms Properties admits the allegations in Paragraph 5 to the extent that they allege that a plat of said property was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

6. Defendant Palms Properties admits the allegations in Paragraph 6 to the extent that they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

7. Defendant Palms Properties admits the allegations in Paragraph 7 to the extent that they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant

Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a valid and lawful horizontal property regime was effectively created upon the property and therefore denies the same. Defendant denies each and every other allegation set forth in Paragraph 7.

8. Defendant Palms Properties admits the allegations of Paragraph 8 of the Plaintiff's Complaint.

9. Defendant Palms Properties admits the allegations of Paragraph 9 of the Plaintiff's Complaint.

10. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 10 as to the exact time and date of when the said survey was taken and therefore denies the same.

11. Defendant Palms Properties admits the allegations of Paragraph 11 of the Plaintiff's Complaint.

12. Defendant denies the allegations of Paragraph 12.

13. Defendant admits the allegations of Paragraph 13.

14. Defendant denies that said conveyance of property to Defendant Palms Properties was "erroneous" and/or "invalid." Defendant admits those other portions of Paragraph 14 that are not hereby denied.

FOR A FIRST DEFENSE
(Failure to State a Claim)

15. The Complaint fails to state facts sufficient to constitute any causes of action against Defendant Palms Properties and, therefore, the Complaint must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Waiver)

16. The doctrine of waiver bars Plaintiff's claims.

FOR A THIRD DEFENSE
(Third Parties' Conduct)

17. Any harm suffered by Plaintiffs resulted from acts of third parties over which Defendant Palms Properties had no control.

FOR A FOURTH DEFENSE
(Estoppel)

18. The doctrine of estoppel bars Plaintiff's claims.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND AS FURTHER
AFFIRMATIVE DEFENSE AND THIRD PARTY COMPLAINT

19. Palms Properties LLC ("Palms Properties"), as Third-Party Plaintiff hereby makes its Third-Party Complaint against Rivers Point Row, LLC ("Rivers Point LLC") and Joseph F. Hand, Jr. ("Hand"), and respectfully alleges as follows:

PARTIES

20. Third-Party Plaintiff Palm Properties is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.
21. Upon information and belief, Third-Party Defendant Rivers Point LLC is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.
22. Upon information and belief, Third-Party Defendant Hand is a resident of Charleston County, State of South Carolina.
-

JURISDICTION

23. This court has personal and subject matter jurisdiction over the claims raised in the Third-Party Complaint.

VENUE

24. Pursuant to South Carolina Code Annotated §15-7-30(1976 & Supp. 2006), venue is proper in this court because Third-Party Defendant Rivers Point LLC is organized and conducts its principal business activities in Charleston County, SC and Third-Party Defendant Hand is a resident of Charleston County.

FOR A FIRST CAUSE OF ACTION AGAINST RIVERS POINT LLC **(Breach of Contract)**

25. Third-Party Defendant Rivers Point LLC, by and through the actions of its Managing Member, John B. Hagerty, who was the President of Rivers Point POA, the above-mentioned First-Party Plaintiff Rivers Point POA at the time of the creation of the contract for sale of the land, entered into a valid and binding contract with Palms Properties to deliver marketable title and Rivers Point LLC has breached its contract with Palms Properties by failing to deliver marketable title free of encumbrances, as Palms Properties has been forced to defend itself in the current litigation, which seeks to determine the validity of the aforementioned general warranty deed to Palms Properties and the power and legal right of Rivers Point LCC to convey the property in the first place.

26. As a direct and proximate result of Third-Party Defendant Rivers Point LLC's breach of contract, Rivers Point LLC has been drawn into this declaratory judgment action, incurring fees and expenses, and runs a risk of losing its property, has not received the benefit of its bargain, has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual and consequential damages as may be shown at trial.

FOR A SECOND CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Breach of Warranty Deed/ Indemnity)

27. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

28. Third-Party Plaintiff Palms Properties was granted the right to be indemnified by Rivers Point LLC by River Point LLC's issuance of a general warranty deed which was recorded in the Charleston County RMC Office in Book X541 at Page 464 on June 22, 2005 in the event that the title to said property was challenged by the grantor or any other party, as the aforementioned deed specifically and unambiguously states that the Grantor will "warrant and forever defend ... against every person whomsoever lawfully claiming or to claim" any part of the property conveyed. Palms Properties' right to indemnity includes the responsibility of Rivers Point LLC to defend and indemnify Palms Properties in the declaratory judgment action brought by Rivers Point POA.

29. Third-Party Plaintiff Palms Properties has made it known to Rivers Point LLC that Palms Properties has been brought into litigation by the First-Party Plaintiff due to Rivers Point LLC's breach of general warranty deed and no action to defend Palms Properties has been taken at this point by Rivers Point LLC, Palms Properties has been forced to defend itself in the declaratory judgment action, incurring costs and expenses, despite the general warranties provided by Third-party Defendant Rivers Point LLC.

FOR A THIRD CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Fraud)

30. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

31. Third-Party Defendant Rivers Point LLC made a representation to Palms Properties that it held legal title and held the legal right to convey the property which is the subject of this litigation.

32. The representation of the property ownership and the legal right to convey made by Rivers Point LLC was false as the legal right of Rivers Point LLC to convey said property has been brought into question by the First-Party Plaintiff.

33. The false representation made by Rivers Point LLC was material to the contract entered by into Palms Properties and Rivers Point LLC as it was for the sale of said land and a condition of the contract required the sale to be legally valid.

34. Third-Party Defendant Rivers Point LLC held actual and/or constructive knowledge of the falsity of its legal ownership and right to convey said property to Palms Properties, or in the alternative, Rivers Point LLC acted with reckless disregard of the truth of the legal ownership and legal right to convey said property to Palms Properties.

35. Third-Party Defendant Rivers Point LLC, by entering into a contract for sale with Palms Properties, intended that Palms Properties act upon the false representation of legal ownership and legal right to convey.

36. Third-Party Defendant Palms Properties had no knowledge of the falsity of the representation of Rivers Point LLC and relied on the false representation of legal ownership and legal right to convey the property, which Palms Properties had the right to rely upon.

37. As a proximate result of the fraudulent misrepresentation by Rivers Point LLC, Palms Properties has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual, consequential, and punitive damages as may be shown at trial.

FOR A FOURTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Negligent Misrepresentation)

38. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

39. Third-Party Defendant Rivers Point LLC made repeated false representations to Palms Properties regarding its legal ownership and legal right to convey said property.
40. Upon information and belief, Rivers Point LLC had and has a pecuniary interest in making the false representations as these false representations enabled it to make a profit of One Hundred Eighty Thousand Dollars (\$180,000) from Palms Properties in the sale of the said property, of which Rivers Point LLC claimed and promised by contract to hold legal ownership and of which it claimed to hold the legal right to convey.
41. As a party to the contract with Palms Properties, Rivers Point LLC had and has a duty of care to see that it communicated truthful information to Palms Properties regarding all aspects of the transaction.
42. Third-Party Defendant Rivers Point LLC breached its duty to Palms Properties by failing to exercise due care by informing the Palms Properties of its inability to convey legal title to the property due to the language of the Rivers Point POA Master Deed and limitations on authority of parties, including the Developer, to convey the POA's property found therein.
43. Third-Party Plaintiff Palms Properties justifiably relied upon Rivers Point LLC's negligent misrepresentations as a material basis upon which Palms Properties entered into the contract for sale with River's Point LLC.
44. As a direct and proximate result of River's Point LLC's negligent misrepresentations, Palms Properties is entitled to actual damages in amounts to be proven at trial.
45. As the negligent misrepresentation made by Rivers Point LLC was caused by willful and wanton acts and omissions, Palms Properties is entitled to punitive damages to be proven at trial.

FOR A FIFTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Violation of the South Carolina Unfair Trade Practices Act)

46. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

47. The acts and omissions of Rivers Point, LLC as more fully set forth above constitute willful, unfair, unethical and deceptive acts and practices in the conduct of trade of commerce in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann § 39-5-10, et seq.

48. The acts and omissions of Rivers Point, LLC affect the public interest of the State of South Carolina in that they are capable of repetition.

49. As a direct and proximate result of Rivers Point LLC's willful violation of the South Carolina Unfair Trade Practices Act, Palms Properties has suffered actual damages in amounts to be proven at trial.

50. As a direct and proximate result of Rivers Point LLC's willful violation of the South Carolina Unfair Trade Practices Act, Palms Properties is entitled to all remedies available to it under South Carolina's Unfair Trade Practices Act, including, but not limited to, actual damages, treble damages and attorney's fees.

FOR A SIXTH CAUSE OF ACTION AGAINST HAND
(Professional Negligence)

51. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

52. At all relevant times, Third-Party Defendant Hand was the attorney for Palms Properties in the purchase transactions described herein.

53. Defendant Hand owed a duty to Palms Properties to examine the title, the deeds and plats in the transfers described herein to insure that the documents actually transferred the property which Palms Properties bargained for and expected to receive.

54. Hand breached the standard of care by negligently preparing the closing documents for the properties acquired or to be acquired in the following particulars:

- a. Defendant Hand negligently failed to recognize the conflicts in the title of said property.
- b. Defendant Hand failed to adequately review the Rivers Point Master Deed and failed to recognize which parties had legal ownership and the legal authority and right to convey property conveyed in said Master Deed, including the property sold to Palms Properties, which is the subject matter of this litigation.

55. As a direct and proximate cause of Hand's breaches of duty, Palms Properties suffered actual damages including but not limited to the following:

- a. Palms Properties did not receive true and legal title to the property it was entitled to.
- b. Palms Properties was unable to develop the property it purchased in the most economical and beneficial manner and was forced to abandon all of its development plans.
- c. Palms Properties has been forced to engage in expensive and time-consuming litigation in an attempt to protect rights it was assured it had by Third-Party Defendant Hand.
- d. Palms Properties was forced to delay the development of the property for an extended period of time and thereby having to incur the additional costs.

56. Palms Properties is entitled to actual and consequential damages in an amount to be proven at trial.

FOR A SEVENTH CAUSE OF ACTION AGAINST HAND
(Negligent Misrepresentation)

57. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

58. Third-Party Defendant Hand made material false representations to Palms Properties as follows:

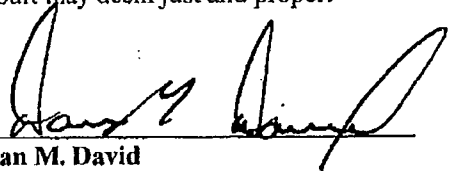
a. that the contract prepared and or revised by or under the direction of Defendant Hand was sufficient to require the conveyance of the property described therein on the terms and conditions describe therein.

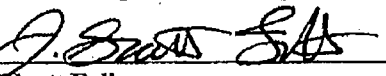
b. that the deeds prepared by or under the direction of Hand was sufficient to convey the property that Palms Properties had contracted to purchase on the terms and conditions as set forth in the contracts entered into therefore.

59. Palms Properties is entitled to actual and consequential damages in an amount to be proven at trial.

WHEREFORE, having fully answered the First-Party Plaintiff's Complaint, the First-Party Defendant/Third-Party Plaintiff, Palms Properties, prays that this Court enter the following relief:

- A) Dismissing the First-Party Plaintiff's Complaint;
- B) Awarding Defendant/Third-Party Plaintiff actual damages;
- C) Awarding Defendant/Third-Party Plaintiff punitive damages;
- D) Awarding Defendant/Third-Party Plaintiff treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act, and
- E) For any and all such further relief as this Court may deem just and proper.

By: 
Dan M. David
Email: Dan@charlestonlegal.com

By: 
J. Scott Falls
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ATTORNEYS FOR DEFENDANT/THIRD-
PARTY PLAINTIFF PALMS PROPERTIES,
LLC

CHARLESTON, SOUTH CAROLINA

6-23, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 23rd day of June, 2008.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,)

Plaintiff,)

v.)

PALMS PROPERTIES, LLC,)

Defendant.)

PALMS PROPERTIES, LLC,)

Third Party Plaintiff,)

v.)

RIVERS POINT ROW, LLC and
JOSEPH F. HAND, JR.,)

Third Party Defendants.)

THIRD PARTY DEFENDANT RIVERS
POINT ROW, LLC'S ANSWER TO
THIRD PARTY PLAINTIFF PALMS
PROPERTIES, LLC'S COMPLAINT AND
COUNTERCLAIMS AS TO
PLAINTIFF RIVERS POINT ROW
HORIZONTAL PROPERTY REGIME a/k/a
RIVERS POINT ROW PROPERTY OWNERS
ASSOCIATION, INC. AND PALMS
PROPERTIES, LLC

FILED
2008 DEC -8 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

Third Party Defendant, Rivers Point Row, LLC (hereinafter "RPRLLC") answers the Third Party Complaint of Palms Properties, LLC (hereinafter "Palms") and alleges counterclaims against Rivers Point Row Property Owners Association, Inc. (hereinafter "POA") as follows:

FOR A FIRST DEFENSE

1. RPRLLC denies each and every allegation of Palms' Third Party Complaint not hereinafter specifically admitted.
2. The allegations of paragraphs 1-18, which are in response to the Complaint of Plaintiff POA, pertain to parties other than RPRLLC, and therefore, no response by RPRLLC is required. To the extent any of these allegations pertain to RPRLLC, they are denied.
3. Paragraph 19 contains no allegations of fact or conclusions of law, and as such, it requires no response from RPRLLC.

4. RPRLLC admits, upon information and belief, the allegations of paragraph 20.
5. RPRLLC admits only so much of paragraph 21 as alleges that prior to November 15, 2007 it was a limited liability company operating under the laws of the State of South Carolina with its principal place of business in Charleston County. It denies the remaining allegations of said paragraph.
6. RPRLLC admits, upon information and belief, the allegations of paragraph 22.
7. Paragraph 23 is a conclusion of law, and as such, it requires no response.
8. Paragraph 24 is a conclusion of law, and as such, it requires no response.

AS TO THE FIRST CAUSE OF ACTION AGAINST RPRLLC

9. RPRLLC admits only so much of paragraph 25 as alleges that John B. Hagerty acting on behalf of RPRLLC entered into a contract with Palms Properties. RPRLLC denies so much of paragraph 25 as alleges that RPRLLC breached its contract with Palms, and it denies so much of said paragraph as alleges that Palms has been damaged or injured by any act or omission of RPRLLC. As to the allegations of said paragraph concerning the contents of the contract between RPRLLC and Palms, RPRLLC craves reference to the specific terms of that contract and it denies any allegations which vary from or contradict the specific language of that contract.
10. RPRLLC denies the allegations of paragraph 26.

AS TO THE SECOND CAUSE OF ACTION AGAINST RPRLLC

11. Answering the allegations of paragraph 27, RPRLLC repeats and reiterates the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
12. Answering the allegations of paragraph 28 RPRLLC craves reference to the deed identified therein and it denies any allegations which vary from or contradict the specific language of

that deed. RPRLLC further denies so much of paragraph 28 as alleges that RPRLLC must indemnify Palms. As to the remaining allegations of said paragraph, RPRLLC is without information or belief sufficient to either admit or deny those allegations, and as such, it denies the same.

13. RPRLLC admits only so much of paragraph 29 as alleges that it is aware that the Plaintiff in this action has filed suit against Palms. It denies the remaining allegations of paragraph 29.

AS TO THE THIRD CAUSE OF ACTION AGAINST RPRLLC

14. Answering the allegations of paragraph 30, RPRLLC repeats and reiterates the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
15. RPRLLC is without information or belief sufficient to either admit or deny the allegations of paragraph 31, and therefore denies the same.
16. RPRLLC denies the allegations of paragraphs 32, 33, 34, and 35.
17. RPRLLC denies so much of paragraph 36 as alleges that it made false representations to Palms. As to the remaining allegations of said paragraph, RPRLLC is without information or belief sufficient to either admit or deny those allegations of paragraph 36, and therefore it denies the same.
18. It denies the allegations of paragraph 37.

AS TO THE FOURTH CAUSE OF ACTION AGAINST RPRLLC

19. Answering the allegations of paragraph 38, RPRLLC repeats and reiterates the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
20. RPRLLC denies the allegations of paragraph 39.
21. RPRLLC admits only so much of paragraph 40 as alleges that it made a profit on the sale of

land to Palms. It denies the remaining allegations of paragraph 40.

- 22. The allegations of paragraph 41 constitute conclusions of law which RPRLLC is required neither to admit nor deny.
- 23. RPRLLC denies the allegations of paragraphs 42, 43, 44, and 45.

AS TO THE FIFTH CAUSE OF ACTION AGAINST RPRLLC

- 24. Answering the allegations of paragraph 46, RPRLLC repeats and reiterates the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
- 25. RPRLLC denies the allegations of paragraph 47.
- 26. The allegations of paragraph 48 constitute conclusions of law which RPRLLC is required neither to admit nor deny. To the extent that paragraph 48 contains allegations of fact, RPRLLC denies the same.
- 27. RPRLLC denies the allegations of paragraph 49.
- 28. RPRLLC denies the allegations of paragraph 50.

AS TO THE SIXTH CAUSE OF ACTION AGAINST HAND

- 29. The allegations of paragraphs 51 through 56 pertain to a party other than RPRLLC, and as such, no response by RPRLLC is required. To the extent any of these allegations pertain to RPRLLC, they are denied.

AS TO THE SEVENTH CAUSE OF ACTION AGAINST HAND

- 30. The allegations of paragraphs 57 through 59 pertain to a party other than RPRLLC, and as such, no response by RPRLLC is required. To the extent any of these allegations pertain to RPRLLC, they are denied.

FOR A SECOND DEFENSE

31. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' Third Party Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

32. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' claims are barred by the doctrine of estoppel.

FOR A FOURTH DEFENSE

33. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' claims are barred by the doctrine of ratification.

FOR A FIFTH DEFENSE

34. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' claims are barred by the doctrine of laches.

FOR A SIXTH DEFENSE

35. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' claims are barred by the doctrine of waiver.

FOR A SEVENTH DEFENSE

36. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms' claims are barred by the statute of limitations.

FOR AN EIGHTH DEFENSE

37. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that punitive damages, as currently awarded in South Carolina, are

violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003), and the cases upon which it is based.

FOR A NINTH DEFENSE

38. Further answering Palms' Third Party Complaint and as and for a further defense thereto, RPRLLC alleges that Palms has failed to plead fraud with sufficient particularity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING PALMS' COMPLAINT AND AS AND FOR A FURTHER DEFENSE THERETO, RPRLLC BRINGS COUNTERCLAIMS AGAINST PLAINTIFF RIVERS POINT ROW HORIZONTAL PROPERTY REGIME a/k/a RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC. AND PALMS PROPERTIES, LLC

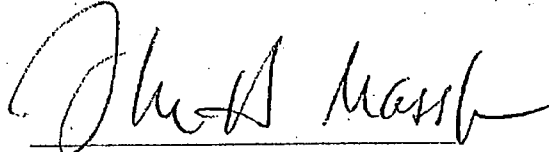
JURISDICTION AND VENUE

39. Third Party Defendant, RPRLLC, is a limited liability company operating under the laws of the State of South Carolina, and its principal place of business is in Charleston County.
40. Upon information and belief, Plaintiff, POA, is a non-profit corporation organized and existing under the laws of the State of South Carolina.
41. Upon information and belief, Defendant and Third Party Plaintiff, Palms, is a limited liability company organized and existing under the laws of the State of South Carolina, and its principal place of business is in Charleston County.
42. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

FOR A FIRST CAUSE OF ACTION AGAINST POA AND PALMS
(Attorneys' Fees)

43. Article VI, Section 1, Subsection O, of the Master Deed recorded May 4, 2004 in the Charleston County RMC in Book G493, Page 001 provides "[i]n any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof."
44. Article II, Section 1, Subsection l defines the Declarant as RPRLLC.
45. Article II, Section 1, Subsection c defines the Association as the POA, which is the Plaintiff in this action.
46. This is an action to enforce the provisions of the Declaration or the Bylaws as defined in Article VI, Section 1, Subsection O, of the Master Deed recorded May 4, 2004 in the Charleston County RMC in Book G493, Page 001.
47. Defendant and Third Party Plaintiff, Palms is subject to the Declaration by virtue of the deed from RPRLLC to Palms dated May 12, 2005.
48. As a result of the suit filed by the POA and Palms to enforce provisions of the Declaration and Bylaws, RPRLLC has and will continue to incur costs, disbursements, and attorneys' fees.
49. Pursuant to Article VI, Section 1, Subsection O of the Master Deed, RPRLLC is entitled to a judgment against the POA and/or Palms for the costs and disbursements incurred by RPRLLC in this action, including a reasonable attorneys' fee, in an amount to be determined by the finder of fact.

WHEREFORE, having fully answered the Palms' Third Party Complaint and alleged counterclaims against POA and Palms, RPRLLC, prays that Palms' Third Party Complaint be dismissed and for costs, disbursements, expenses, and attorneys' fees be paid by POA and/or Palms, and for such other and further relief as this Court may deem just and proper.



John A. Massalon
I. Ryan Neville
WILLS & MASSALON, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR THIRD PARTY DEFENDANT
RIVERS POINT ROW, LLC

CHARLESTON, SC

December 4, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 4, 2008, copies of the attached pleading were placed in envelopes, with first-class postage prepaid, and mailed to:

J. Thomas Mikell, Esquire
Law Office of J. Thomas Mikell, PC
PO Box 1727
Beaufort, South Carolina 29907
(843) 524-2110

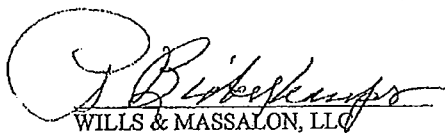
ATTORNEYS FOR PLAINTIFF

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David & Schwartz, PA
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Charleston, South Carolina 29407
(843) 571-1893

ATTORNEYS FOR DEFENDANT
AND THIRD PARTY PLAINTIFF
PALMS PROPERTIES, LLC

Joseph K. Qualey, Esquire
Qualey Law Firm
23 Broad Street
Charleston, SC 29401
(843) 577-3434

ATTORNEYS FOR THIRD PARTY DEFENDANT
JOSEPH F. HAND, JR.


WILLS & MASSALON, LLC

FILED
2008 DEC -8 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME A/K/A RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,)

Plaintiff,)

vs.)

PALMS PROPERTIES, LLC,)

Defendant.)

PALMS PROPERTIES, LLC,)

Third Party Plaintiff,)

vs.)

RIVERS POINT ROW, LLC,)

Third Party Defendant.)

REPLY
BY PLAINTIFF
TO COUNTERCLAIM
OF
RIVERS POINT ROW, LLC

2008 DEC 31 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY B3

FILED

TO WILLS & MASSALON, LLC
c/o I. Ryan Neville, Attorney:

The Plaintiff in this action Replies, Answers, and Responds to the First Cause of Action/Counterclaim asserted by Rivers Point Row, LLC dated December 4, 2008 in the following manner, to wit:

1. All allegations of Paragraphs 1 to 38 of the Answer and Counterclaim/First Cause of Action are specifically denied unless specifically admitted herein.
2. The allegations of Paragraphs 39 to 45 of the First Cause of Action are admitted.
3. The allegations of Paragraphs 46, 47, 48 and 49 of the First Cause of Action

are denied.

4. This is a suit brought by the Plaintiff to determine the validity of a deed and not to enforce the provisions of the Master Deed of Rivers Point Row Horizontal Property Regime so that allegations of the First Cause of Action/Counterclaim do not apply to the Plaintiff.

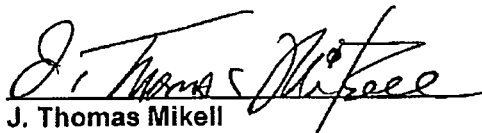
5. Notwithstanding the fact that Palm Properties, LLC joined Rivers Point Row, LLC in this suit, there is no provision in the Master Deed which allows any person to recover "costs and disbursements and reasonable attorney's fees and expenses" for the defense of a suit, those matters only being recoverable to enforce any provisions of the Declaration.

PRAYER

WHEREFORE, the Plaintiff prays the Court to inquire into the facts and matters alleged herein and to grant the following relief, to wit:

- A. To dismiss the First Cause of Action by Rivers Point Row, LLC with prejudice and costs; and,
- B. To grant the prayer of the Complaint.

December 30, 2008


J. Thomas Mikell
Attorney for the Plaintiff

Post Office Box 1727
Beaufort, South Carolina 29901
Telephone: 843-524-2110
Fax: 843-524-4995

JTM File No. 4384.0001

08.2279

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF MAILING

Name of Case: Rivers Point Row Horizontal Property Regime
-vs- Palms Properties, LLC

Calendar Number: 2008-CP-10-2279

Date: December 30, 2008

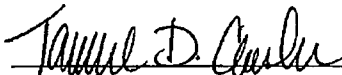
Documents: Reply By Plaintiff To Counterclaim, Of
Rivers Point Row, LLC

Addressee(s): I. Ryan Neville
Wills & Massalon, LLC
Post Office Box 859
Charleston, SC 29402
Attorney For Third Party Defendant

Dan M. David
David and Schwartz, P.A.
Post Office Box 32097
Charleston, S.C. 29417
Attorney For Third Party Plaintiff

FILED
2008 DEC 31 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that he place true and accurate copies of the Document(s) named above to the Addressee(s) named above on the Date stated above in an envelope with prepaid first class U.S. postage thereon and delivered the same to the U.S. Postal Service.


Tammie D. Cansler
Secretary to J. Thomas Mikell
Attorney for Rivers Point Row HPR

JTM File No. 4384.0001

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,)

Plaintiff,)

v.)

PALMS PROPERTIES, LLC,)

Defendant.)

PALMS PROPERTIES, LLC,)

Third Party Plaintiff,)

v.)

RIVERS POINT ROW, LLC and
JOSEPH F. HAND, JR.,)

Third Party Defendants.)

**THIRD PARTY DEFENDANT
RIVERS ROW, LLC'S FIRST
SUPPLEMENTAL ANSWERS
TO DEFENDANT AND THIRD
PARTY PLAINTIFF PALMS
PROPERTIES, LLC'S FIRST
INTERROGATORIES**

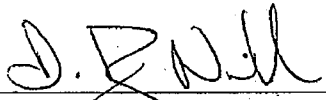
TO: J. SCOTT FALLS, ESQUIRE, DAVID & SCHWARTZ, P.A., ATTORNEYS FOR
DEFENDANT AND THIRD PARTY PLAINTIFF PALMS PROPERTIES, LLC.:

Third Party Defendant Rivers Point Row, LLC, (hereinafter "RPRLLC") supplementing its answers to Defendant and Third Party Plaintiff Palms Properties, LLC's (hereinafter "Palms") First Interrogatories, states as follows:

2. Identify each person whom you expect to call as an expert witness at any trial in this litigation. For each such person, describe the subject matter on which the expert is expected to testify or otherwise offer an opinion, summarize the substance of all facts and opinions to which said is expected to testify and the grounds for each fact or opinion, and identify all documents on which he relies or will rely or which refer to, relate to or evidence the substance of his testimony.

ANSWER: W. Gregory Pearce, Esquire
Moore & Van Allen, PLLC
40 Calhoun Street, Suite 300
Charleston, SC 29401

The subject matter on which Mr. Pearce is expected to testify concerns the conveyance(s) of land that is/are a subject of this litigation. In forming his opinion, Mr. Pearce may rely on the subject Master Deed, other documents produced during this litigation, South Carolina law, the law of other states, and his professional/personal experience.



John A. Massalon
I. Ryan Neville
WILLS & MASSALON, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR THIRD PARTY DEFENDANT
RIVERS POINT ROW, LLC

CHARLESTON, SC

October 15, 2009

CERTIFICATE OF SERVICE

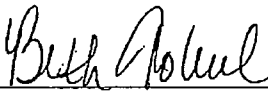
The undersigned hereby certifies that on October 15, 2009, copies of the attached pleading were placed in envelopes, with first-class postage prepaid, and mailed to:

J. Thomas Mikell, Esquire
Law Office of J. Thomas Mikell, PC
PO Box 1727
Beaufort, South Carolina 29907
(843) 524-2110

ATTORNEYS FOR PLAINTIFF

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David & Schwartz, PA
757 St. Andrews Boulevard
Charleston, South Carolina 29407
(843) 571-1893

ATTORNEYS FOR DEFENDANT
AND THIRD PARTY PLAINTIFF
PALMS PROPERTIES, LLC



WILLS & MASSALON, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
RIVERS POINT ROW HORIZONTAL)
PROPERTY REGIME, a/k/a RIVERS)
POINT ROW PROPERTY OWNERS)
ASSOCIATION, INC.,)

Plaintiff,

v.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

v.

RIVERS POINT ROW, LLC and
JOSEPH F. HAND, JR.,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 08-CP-10-2279

NOTICE OF AND MOTION
FOR SUMMARY JUDGMENT

FILED
2011 JAN 18 AM 10:05
JULIE J. ARISTON
CLERK OF COURT

TO: DAN M. DAVID, ESQUIRE, DAVID & SCHWARTZ, PA, ATTORNEYS FOR
DEFENDANT AND THIRD-PARTY PLAINTIFF PALMS PROPERTIES, LLC AND
THOMAS MIKELL, ESQUIRE LAW OFFICE OF J. THOMAS MIKELL, PC,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that Third-Party Defendant Rivers Point Row, LLC, by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Charleston County in Charleston, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as the parties might be heard for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment on the grounds that there're is no sufficient material issues of fact and Third-Party Defendant Rivers Point Row, LLC is entitled to a judgment as a matter of law as follows: against Third-Party Plaintiff on the claims set forth in its Third-Party Complaint; against Third-Party Plaintiff on the claims set forth in Third-Party Defendant Rivers Point Row, LLC's Counterclaims; and against Plaintiff on the claims set forth in Third-Party Defendants Rivers Point Row, LLC's Counterclaims.

The basis for this Motion includes, but is not limited to, an Affidavit of John Hagerty, the

South Carolina Rules of Civil Procedure, applicable law, arguments of counsel at a hearing on this matter, and a memorandum of law, if necessary.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.



John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
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Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR THIRD PARTY DEFENDANT
RIVERS POINT ROW, LLC

CHARLESTON, SC

January 14, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 14, 2011, copies of the attached pleading were placed in envelopes, with first-class postage prepaid, and mailed to:

J. Thomas Mikell, Esquire
Law Office of J. Thomas Mikell, PC
PO Box 1727
Beaufort, South Carolina 29907
(843) 524-2110

ATTORNEYS FOR PLAINTIFF

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Qualey Law Firm
23 Broad Street
Charleston, SC 29401

ATTORNEY FOR THIRD PARTY DEFENDANT
JOSEPH HAND, JR.

Dan M. David, Esquire
David & Schwartz, PA
P.O. Box 32097
Charleston, SC 29417
(843) 571-1893

ATTORNEYS FOR DEFENDANT
AND THIRD PARTY PLAINTIFF
PALMS PROPERTIES, LLC



WILLS MASSALON & ALLEN LLC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

RIVERS POINT ROW HORIZONTAL PROPERTY

☐ Plaintiff

v.

Palms Properties, Et Al

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-10-2279

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John A. Massalon, Bar No. Address: P.O. Box 859, Charleston, SC 29402 phone: 843-727-1144 fax: 843-727-7696 e-mail: jmassalon@wmalawfirm.net other:		Defendant's Attorney: Joseph Qualey, Esq., Bar No. Address: 23 Broad Street, Charleston, SC 29401 phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 Min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		January 14, 2011 3-17-08 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
RIVERS POINT ROW HORIZONTAL)
PROPERTY REGIME, a/k/a RIVERS)
POINT ROW PROPERTY OWNERS)
ASSOCIATION, INC.,)
Plaintiff,)
v.)
PALMS PROPERTIES, LLC,)
Defendant.)
PALMS PROPERTIES, LLC,)
Third Party Plaintiff,)
v.)
RIVERS POINT ROW, LLC and)
JOSEPH F. HAND, JR.,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 08-CP-10-2279

AFFIDAVIT OF JOHN HAGERTY

FILED
2011 JAN 18 PM 3:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

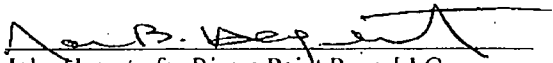
PERSONALLY appeared before me, John Hagerty, who, being first duly sworn, deposes and says:

1. I am competent to make this affidavit.
2. The matters stated herein are based upon my personal knowledge.
3. I am over eighteen (18) years of age.
4. I was a member of Rivers Point Row, LLC ("RPRLLC") prior to its dissolution.
5. I was an authorized agent of RPRLLC prior to its dissolution.
6. I am authorized to speak and act on behalf RPRLLC.
7. On or about May 4, 2004, RPRLLC recorded a Master Deed at Book G493, Page 1 that created the Rivers Point Row Horizontal Property Regime.
8. I, along with John and Linda Derbyshire were directors of Rivers Point Row Property Owners Association ("POA") from its creation on May 4, 2004 until July of 2005 at the earliest when the homeowners established a quorum.

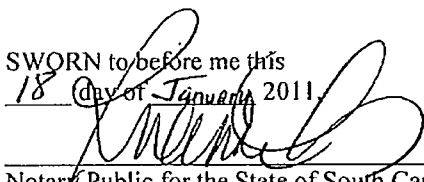
9. Article III, Section 4 of the Master Deed describes the property submitted to the Master deed. Specifically, subsection (a) of Article III, Section 4 states that "[a]ll improvements are in place except that Building 2 has not been built and the Phasing is to be as described in Exhibit H and Exhibit D, herein.
10. Pursuant to the Master Deed, amendments thereto, and resolutions of the POA, Building 2 was to be built within three years from the date of recording the Master Deed, which is May 4, 2007.
11. On May 11, 2005, RPRLLC signed a corporate resolution that authorized RPRLLC to enter into a contract with Palms for the Building 2 lot.
12. On May 12, 2005, the directors of POA signed a resolution authorizing and approving said contract with Palms.
13. On May 12, 2005, RPRLLC conveyed the Building 2 lot to Palms pursuant to the Master Deed, any amendments thereto, and resolutions of the POA.
14. The conveyance from RPRLLC to Palms was proper because as noted above, the Master Deed provided for the construction of Building 2.
15. Thereafter, POA challenged said conveyance by filing of this lawsuit.
16. As a result of said challenge, Palms has been unable to construct Building 2 within the time permitted by the Master Deed.
17. Article VI, Section 1, Subsection O, of the Master Deed recorded May 4, 2004 in the Charleston County RMC in Book G493, Page 001 provides "[i]n any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof."
18. Article II, Section 1, Subsection I defines the Declarant as RPRLLC.
19. Article II, Section 1, Subsection c defines the Association as the POA.
20. This is an action to enforce the provisions of the Declaration or the Bylaws as defined in Article VI, Section 1, Subsection O, of the Master Deed.
21. Palms is subject to the Declaration by virtue of the deed from RPRLLC to Palms dated May 12, 2005.

22. As a result of the suit filed by the POA and Palms to enforce provisions of the Declaration and Bylaws, RPRLLC has and will continue to incur costs, disbursements, and attorneys' fees.

FURTHER THIS AFFIANT SAYETH NOT.


John Hagerty for Rivers Point Row, LLC

SWORN to before me this
18 day of January 2011.


Notary Public for the State of South Carolina
My Commission Expires: 2/22/10

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,)

Plaintiff,)

v.)

PALMS PROPERTIES, LLC,)

Defendant.)

PALMS PROPERTIES, LLC,)

Third Party Plaintiff,)

v.)

RIVERS POINT ROW, LLC and
JOSEPH F. HAND, JR.,)

Third Party Defendants.)

THIRD-PARTY DEFENDANT RIVERS POINT
ROW, LLC'S ANSWER TO THIRD-PARTY
PLAINTIFF'S AMENDED COMPLAINT
AS TO THIRD-PARTY DEFENDANTS

2011 MAR 28 PM 2:42
JULIE J. ARMSTRONG
CLERK OF COURT

Third-Party Defendant, Rivers Point Row, LLC (hereinafter "RPRLC"), answering
Third-Party Plaintiff's Amended Complaint as to Third-Party Defendants states as follows:

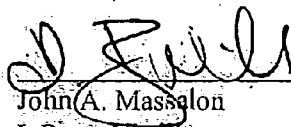
FOR A FIRST DEFENSE

1. RPRLC denies each and every allegation of Third-Party Plaintiffs' Amended Third-Party Complaint not hereinafter specifically admitted.
2. RPRLC hereby specifically incorporates by reference its Answer to Third-Party Plaintiff's previously Amended Complaint as to Third-Party Defendants.
3. Regarding RPRLC, the allegations of Third-Party Plaintiff's Amended Complaint as to Third-Party Defendants are identical to the allegations of its original Third-Party Complaint.
4. As such, RPRLC requires no additional denials, admissions, affirmative defenses, and/or

counterclaims.

5. To the extent the Third-Party Plaintiff's Amended Complaint as to Third-Party Defendants may contain different or additional allegations as to RPRLLC, said allegations are denied, and strict proof is demanded thereof.

WHEREFORE, having fully answered Third-Party Plaintiff's Amended Complaint as to Third-Party Defendants, RPRLLC prays that Third-Party Plaintiffs' Amended Complaint as to Third-Party Defendants be dismissed with costs of this action, the relief sought by RPRLLC's counterclaims be granted, and for such other and further relief as this Court may deem just and proper.



John A. Massalon

I. Ryan Neville

WILLS MASSALON & ALLEN LLC

Post Office Box 859

Charleston, South Carolina 29402

(843) 727-1144

ATTORNEYS FOR THIRD PARTY DEFENDANT
RIVERS POINT ROW, LLC

CHARLESTON, SC

March 28, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 28, 2011, copies of the attached pleading were placed in envelopes, with first-class postage prepaid, and mailed to:

J. Thomas Mikell, Esquire
Law Office of J. Thomas Mikell, PC
PO Box 1727
Beaufort, South Carolina 29907
(843) 524-2110
ATTORNEYS FOR PLAINTIFF

Joseph K. Qualey, Esquire
Qualey Law Firm
23 Broad Street
Charleston, SC 29401

ATTORNEY FOR THIRD PARTY DEFENDANT
JOSEPH HAND, JR.

Dan David, Esquire
David & Schwartz, PA
757 St. Andrews Boulevard
Charleston, South Carolina 29407
(843) 571-1893

ATTORNEYS FOR DEFENDANT
AND THIRD PARTY PLAINTIFF
PALMS PROPERTIES, LLC


WILLS MASSALON & ALLEN LLC

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 MAR 28 PM 2:42

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERY,
Individually,

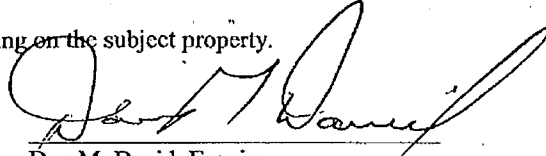
Third Party Defendants.

MOTION TO AMEND ANSWER TO
PLAINTIFF'S COMPLAINT &
COMPLAINT AS TO 3RD PARTY
DEFENDANTS
(SECOND AMENDMENT)

FILED
2011 JUL 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

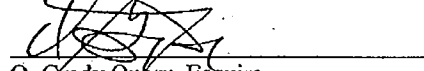
YOU WILL PLEASE TAKE NOTICE that the Defendant and Third Party Plaintiff, by and through its undersigned attorney, will move before the Presiding Judge of the Common Pleas Court, Ninth Judicial Circuit, on the tenth (10) day after service hereof, at the Charleston County Judicial Center, Charleston, South Carolina, or as soon thereafter as counsel may be heard, for an order granting Defendant and Third Party Plaintiff leave to amend its Complaint to add John Derbyshire, Linda Derbyshire and John Hagerty as Third-Party Defendants, and to further amend the Complaint to reflect the addition.

A copy of the proposed Second Amended Answer to Plaintiff's Complaint and Complaint as to Third Party Defendants is attached as Exhibit "A" to this motion. Said motion is based upon the evidence that the Third-Party Defendants created a pretextual right to convey property by resolution based upon their right to construct a building on the subject property.



Dan M. David, Esquire
Attorney at Law
147 Wappoo Creek Drive, Suite 101
Charleston, South Carolina 29412
Telephone: 843-571-1893
Facsimile: 843-571-5062

QUERY, SAUTTER, GLISERMAN & PRICE, LLC



O. Grady Query, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500

Attorneys for Defendant/Third-Party Plaintiff
Palms Properties, LLC

Charleston, South Carolina
Dated: 7-13-11

08-2279

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a copy of the foregoing Motion to Amend Answer to Plaintiff's Complaint and Complaint as to Third Party Defendants upon J. Thomas Mikell, attorney for the Plaintiff, and Ryan Neville and John A. Massalon, attorneys for Third-Party Defendant Rivers Point Row, LLC, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Ryan Neville, Esquire
John A. Massalon, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

J. Thomas Mikell, Esquire
P.O. Box 1727
Beaufort, SC 29907

FILED
2011 JUL 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Dated this the 13th day of July 2011.

Tracy Abner

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERTY,
Individually,

Third Party Defendants.

SECOND AMENDED
ANSWER TO PLAINTIFF'S COMPLAINT
AND COMPLAINT AS TO 3RD PARTY
DEFENDANTS

Defendant Palms Properties, LLC ("Palms Properties") answers the Complaint of Plaintiff Rivers Point Row Horizontal Property Regime a/k/a River Point Row Property Owners Association, Inc. ("Rivers Point POA"). Except as admitted below, Palms Properties denies each and every allegation set forth in the Complaint.

1. Defendant Palms Properties admits the allegations in Paragraph 1 to the extent that they allege that Palms Properties is a resident of Charleston County which conducts its principle business activities in Charleston County and that Plaintiff Rivers Point is a resident of South

Carolina, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to where Plaintiff Rivers Point POA conducts its principal business activities and therefore denies the same.

2. Defendant Palms Properties admits the allegations of Paragraph 2 of the Plaintiff's Complaint.

3. Defendant Palms Properties admits the allegations of Paragraph 3 of the Plaintiff's Complaint.

4. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 4 as to whether or not the said Master Deed effectively creates a Horizontal Property Regime in that Defendant does not have sufficient knowledge or belief as to whether said Master Deed fully and completely comports with each and every requirement of "the Act" and therefore denies the same.

5. Defendant Palms Properties admits the allegations in Paragraph 5 to the extent that they allege that a plat of said property was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

6. Defendant Palms Properties admits the allegations in Paragraph 6 to the extent that they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

7. Defendant Palms Properties admits the allegations in Paragraph 7 to the extent that

they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a valid and lawful horizontal property regime was effectively created upon the property and therefore denies the same. Defendant denies each and every other allegation set forth in Paragraph 7.

8. Defendant Palms Properties admits the allegations of Paragraph 8 of the Plaintiff's Complaint.

9. Defendant Palms Properties admits the allegations of Paragraph 9 of the Plaintiff's Complaint.

10. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 10 as to the exact time and date of when the said survey was taken and therefore denies the same.

11. Defendant Palms Properties admits the allegations of Paragraph 11 of the Plaintiff's Complaint.

12. Defendant denies the allegations of Paragraph 12.

13. Defendant admits the allegations of Paragraph 13.

14. Defendant denies that said conveyance of property to Defendant Palms Properties was "erroneous" and/or "invalid." Defendant admits those other portions of Paragraph 14 that are not hereby denied.

FOR A FIRST DEFENSE
(Failure to State a Claim)

15. The Complaint fails to state facts sufficient to constitute any causes of action against Defendant Palms Properties and, therefore, the Complaint must be dismissed pursuant to Rule

12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Third Parties' Conduct)

16. Any harm suffered by Plaintiffs resulted from acts of third parties over which Defendant Palms Properties had no control.

17. Palms Properties acted in good faith in attempting to purchase the parcel of real estate offered for sale by Third Party Defendant Rivers Point Row, LLC, and Linda Derbyshire and John Derbyshire and John Hagerty and every action by Palms Properties in furtherance of the purchase was done in rightful reliance upon the representations of the Third-Party Defendants that they held fee simple title to the property.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND AS FURTHER
AFFIRMATIVE DEFENSE AND THIRD PARTY COMPLAINT

18. Palms Properties LLC ("Palms Properties"), as Third-Party Plaintiff hereby makes its Third-Party Complaint against Rivers Point Row, LLC ("Rivers Point LLC") and John Derbyshire, Linda Derbyshire and John Hagerty, individually ("individually named defendants"), and respectfully alleges as follows:

PARTIES

19. Third-Party Plaintiff Palm Properties is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.

20. Upon information and belief, Third-Party Defendant Rivers Point LLC is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.

21. Upon information and belief, individual Defendant John Derbyshire is, upon

information and belief, a resident of Charleston County, State of South Carolina (hereinafter "John Derbyshire") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

22. Upon information and belief, individual Defendant Linda Derbyshire is, upon information and belief, a resident of Charleston County, State of South Carolina (hereinafter "Linda Derbyshire") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

23. Upon information and belief, individual Defendant John Hagerty is, upon information and belief, a resident of Charleston County, State of South Carolina (hereinafter "Hagerty") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

JURISDICTION

24. This court has personal and subject matter jurisdiction over the claims raised in the Third-Party Complaint.

VENUE

25. Pursuant to South Carolina Code Annotated §15-7-30(1976 & Supp. 2006), venue is proper in this court because Third-Party Defendant Rivers Point LLC is organized and conducts its principal business activities in Charleston County, South Carolina and individually named Defendants are residents of Charleston County.

FOR A FIRST CAUSE OF ACTION AGAINST RIVERS POINT LLC **(Breach of Contract)**

26. Third-Party Defendant Rivers Point LLC, by and through the actions of its Managing Member, John B. Hagerty, who was the President of Rivers Point POA, the above-mentioned First-Party Plaintiff Rivers Point POA at the time of the creation of the contract for sale of the land,

entered into a valid and binding contract with Palms Properties to deliver marketable title and Rivers Point LLC has breached its contract with Palms Properties by failing to deliver marketable title free of encumbrances, as Palms Properties has been forced to defend itself in the current litigation, which seeks to determine the validity of the aforementioned general warranty deed to Palms Properties and the power and legal right of Rivers Point LCC to convey the property in the first place.

27. As a direct and proximate result of Third-Party Defendant Rivers Point LLC's breach of contract, Rivers Point LLC has been drawn into this declaratory judgment action, incurring fees and expenses, and runs a risk of losing its property, has not received the benefit of its bargain, has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual and consequential damages as may be shown at trial.

FOR A SECOND CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Breach of Warranty Deed/ Indemnity)

28. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

29. Third-Party Plaintiff Palms Properties was granted the right to be indemnified by Rivers Point LLC by River Point LLC's issuance of a general warranty deed which was recorded in the Charleston County RMC Office in Book X541 at Page 464 on June 22, 2005 in the event that the title to said property was challenged by the grantor or any other party, as the aforementioned deed specifically and unambiguously states that the Grantor will "warrant and forever defend ... against every person whomsoever lawfully claiming or to claim" any part of the property conveyed. Palms Properties' right to indemnity includes the responsibility of Rivers Point LLC to defend and indemnify Palms Properties in the declaratory judgment action brought by Rivers Point POA.

30. Third-Party Plaintiff Palms Properties has made it known to Rivers Point LLC that

Palms Properties has been brought into litigation by the First-Party Plaintiff due to Rivers Point LLC's breach of general warranty deed and no action to defend Palms Properties has been taken at this point by Rivers Point LLC, Palms Properties has been forced to defend itself in the declaratory judgment action, incurring costs and expenses, despite the general warranties provided by Third-party Defendant Rivers Point LLC.

FOR A THIRD CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Fraud)

31. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

32. Third-Party Defendant Rivers Point LLC made a representation to Palms Properties that it held legal title and held the legal right to convey the property which is the subject of this litigation.

33. The representation of the property ownership and the legal right to convey made by Rivers Point LLC was false as the legal right of Rivers Point LLC to convey said property has been brought into question by the First-Party Plaintiff.

34. The false representation made by Rivers Point LLC was material to the contract entered by into Palms Properties and Rivers Point LLC as it was for the sale of said land and a condition of the contract required the sale to be legally valid.

35. Third-Party Defendant Rivers Point LLC held actual and/or constructive knowledge of the falsity of its legal ownership and right to convey said property to Palms Properties, or in the alternative, Rivers Point LLC acted with reckless disregard of the truth of the legal ownership and legal right to convey said property to Palms Properties.

36. Third-Party Defendant Rivers Point LLC, by entering into a contract for sale with

Palms Properties, intended that Palms Properties act upon the false representation of legal ownership and legal right to convey.

37. Third-Party Defendant Palms Properties had no knowledge of the falsity of the representation of Rivers Point LLC and relied on the false representation of legal ownership and legal right to convey the property, which Palms Properties had the right to rely upon.

38. As a proximate result of the fraudulent misrepresentation by Rivers Point LLC, Palms Properties has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual, consequential, and punitive damages as may be shown at trial.

FOR A FOURTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Negligent Misrepresentation)

39. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

40. Third-Party Defendant Rivers Point LLC made repealed false representations to Palms Properties regarding its legal ownership and legal right to convey said property.

41. Upon information and belief, Rivers Point LLC had and has a pecuniary interest in making the false representations as these false representations enabled it to make a profit of One Hundred Eighty Thousand Dollars (\$180,000) from Palms Properties in the sale of the said property, of which Rivers Point LLC claimed and promised by contract to hold legal ownership and of which it claimed to hold the legal right to convey.

42. As a party to the contract with Palms Properties, Rivers Point LLC had and has a duty of care to see that it communicated truthful information to Palms Properties regarding all aspects of the transaction.

43. Third-Party Defendant Rivers Point LLC breached its duty to Palms Properties by

failing to exercise due care by informing the Palms Properties of its inability to convey legal title to the property due to the language of the Rivers Point POA Master Deed and limitations on authority of parties, including the Developer, to convey the POA's property found therein.

44. Third-Party Plaintiff Palms Properties justifiably relied upon Rivers Point LLC's negligent misrepresentations as a material basis upon which Palms Properties entered into the contract for sale with River's Point LLC.

45. As a direct and proximate result of River's Point LLC's negligent misrepresentations, Palms Properties is entitled to actual damages in amounts to be proven at trial.

46. As the negligent misrepresentation made by Rivers Point LLC was caused by willful and wanton acts and omissions, Palms Properties is entitled to punitive damages to be proven at trial.

FOR A FIFTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Violation of the South Carolina Unfair Trade Practices Act)

47. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

48. The acts and omissions of Rivers Point, LLC as more fully set forth above constitute willful, unfair, unethical and deceptive acts and practices in the conduct of trade of commerce in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann § 39-5-10, et seq.

49. The acts and omissions of Rivers Point, LLC affect the public interest of the State of South Carolina in that they are capable of repetition.

50. As a direct and proximate result of Rivers Point LLC's willful violation of the South Carolina Unfair Trade Practices Act, Palms Properties has suffered actual damages in amounts to be proven at trial.

51. As a direct and proximate result of Rivers Point LLC's willful violation of the South

Carolina Unfair Trade Practices Act, Palms Properties is entitled to all remedies available to it under South Carolina's Unfair Trade Practices Act, including, but not limited to, actual damages, treble damages and attorney's fees.

FOR A SIXTH CAUSE OF ACTION AGAINST INDIVIDUAL DEFENDANT
JOHN DERBYSHIRE
(Fraud)

52. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

53. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, individual Third-Party Defendant John Derbyshire represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

54. That the representation by the individual Third-Party Defendant John Derbyshire that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

55. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property.

The individual Third-Party Defendant John Derbyshire knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false. That the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation, and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

56. The individual Third-Party Defendant John Derbyshire intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

57. The Third-Party Plaintiffs were unaware of the falsity of the representations made by the individual Third-Party Defendant John Derbyshire and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant John Derbyshire.

58. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant John Derbyshire in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

59. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant John Derbyshire which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

60. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant John Derbyshire, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided by the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

61. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A SEVENTH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Fraud)

62. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

63. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, the individual Third-Party Defendant Linda Derbyshire represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

64. That the representation by the individual Third-Party Defendant Linda Derbyshire that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

65. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property.

The individual Third-Party Defendant Linda Derbyshire knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false. That the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation, and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

66. The individual Third-Party Defendant Linda Derbyshire intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

67. The Third-Party Plaintiffs were unaware of the falsity of the representations made the individual Third-Party Defendant Linda Derbyshire and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant Linda Derbyshire.

68. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant Linda Derbyshire in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

69. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant Linda Derbyshire which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

70. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant Linda Derbyshire, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided for the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

71. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A EIGHTH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Fraud)

72. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

73. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, the individual Third-Party Defendant John Hagerty represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

74. That the representation by the individual Third-Party Defendant John Hagerty that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

75. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property.

The individual Third-Party Defendant John Hagerty knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false, that the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation, and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

76. The individual Third-Party Defendant John Hagerty intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

77. The Third-Party Plaintiffs were unaware of the falsity of the representations made the individual Third-Party Defendant John Hagerty and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant John Hagerty.

78. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant John Hagerty in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

79. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant John Hagerty which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

80. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant John Hagerty, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided for the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

81. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A NINTH CAUSE OF ACTION AGAINST JOHN DERBYSHIRE
(Negligent Misrepresentation)

82. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

83. The individual Third-Party Defendant John Derbyshire made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject property and had the right to transfer said property by General Warranty Deed.

84. The individual Third-Party Defendant John Derbyshire had a pecuniary interest in making the statement.

85. The individual Third-Party Defendant John Derbyshire owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

86. The individual Third-Party Defendant John Derbyshire breached that duty by failing to exercise due care.

87. Third Party Plaintiff justifiably relied on the representation.

88. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

89. Communication of the representation by the individual Third-Party Defendant John Derbyshire was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A TENTH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Negligent Misrepresentation)

90. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

91. The individual Third-Party Defendant Linda Derbyshire made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject property and had the right to transfer said property by General Warranty Deed.

92. The individual Third-Party Defendant Linda Derbyshire had a pecuniary interest in making the statement.

93. The individual Third-Party Defendant Linda Derbyshire owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

94. The individual Third-Party Defendant Linda Derbyshire breached that duty by failing to exercise due care.

95. Third Party Plaintiff justifiably relied on the representation.

96. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

97. Communication of the representation by the individual Third-Party Defendant Linda Derbyshire was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A ELEVENTH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Negligent Misrepresentation)

98. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

99. The individual Third-Party Defendant John Hagerty made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject

property and had the right to transfer said property by General Warranty Deed.

100. The individual Third-Party Defendant John Hagerty had a pecuniary interest in making the statement.

101. The individual Third-Party Defendant John Hagerty owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

102. The individual Third-Party Defendant John Hagerty breached that duty by failing to exercise due care.

103. Third Party Plaintiff justifiably relied on the representation.

104. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

105. Communication of the representation by individual Third-Party Defendant John Hagerty was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST JOHN DERBYSHIRE
(Unfair Trade Practices Act)

106. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

107. The actions on the part of the individual Third-Party Defendant John Derbyshire constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10 through 39-5-160, in that the individual Third-Party Defendant John Derbyshire, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

108. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant John Derbyshire of an unfair deceptive method, act or practice.

109. The individual Third-Party Defendant John Derbyshire's actions adversely effected public interest in that the actions on the part of the individual Third-Party Defendant John Derbyshire effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant John Derbyshire have a public impact in that the unfair conduct is capable of repetition.

110. The individual Third-Party Defendant John Derbyshire personally committed, participated in, directed and authorized the violation of the aforementioned Act.

111. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant John Derbyshire in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Unfair Trade Practices Act)

112. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

113. The actions on the part of the individual Third-Party Defendant Linda Derbyshire constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10 through 39-5-160, in that the individual Third-Party Defendant Linda Derbyshire, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of

competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

114. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant Linda Derbyshire of an unfair deceptive method, act or practice.

115. The individual Third-Party Defendant Linda Derbyshire's actions adversely effected public interest in that the actions on the part of the individual Third-Party Defendant Linda Derbyshire effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant Linda Derbyshire have a public impact in that the unfair conduct is capable of repetition.

116. The individual Third-Party Defendant Linda Derbyshire personally committed, participated in, directed and authorized the violation of the aforementioned Act.

117. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant Linda Derbyshire in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Unfair Trade Practices Act)

118. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

119. The actions on the part of the individual Third-Party Defendant John Hagerty constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10

through 39-5-160, in that the individual Third-Party Defendant John Hagerty, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

120. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant John Hagerty of an unfair deceptive method, act or practice.

121. The individual Third-Party Defendant John Hagerty's actions adversely effected public interest in that the actions on the part of the individual Third-Party Defendant John Hagerty effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant John Hagerty have a public impact in that the unfair conduct is capable of repetition.

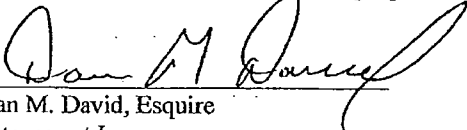
122. The individual Third-Party Defendant John Hagerty personally committed, participated in, directed and authorized the violation of the aforementioned Act.

123. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant John Hagerty in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

WHEREFORE, having fully answered the First-Party Plaintiff's Complaint, the First-Party Defendant/Third-Party Plaintiff, Palms Properties, prays that this Court enter the following relief:

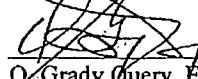
A) Dismissing the First-Party Plaintiff's Complaint;

- B) Awarding Defendant/Third-Party Plaintiff actual damages;
- C) Awarding Defendant/Third-Party Plaintiff punitive damages;
- D) Awarding Defendant/Third-Party Plaintiff treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act, and
- E) For any and all such further relief as this Court may deem just and proper.



Dan M. David, Esquire
Attorney at Law
147 Wappoo Creek Drive, Suite 101
Charleston, South Carolina 29412
Telephone: 843-571-1893
Facsimile: 843-571-5062

QUERY, SANTTER, GLISERMAN & PRICE, LLC



O. Grady Query, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500

Attorneys for Defendant/Third-Party Plaintiff
Palms Properties, LLC

Charleston, South Carolina
Dated: _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW)

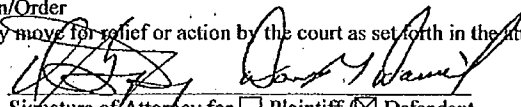
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

Plaintiff,)

PALMS PROPERTIES)

Defendant.)

Plaintiff's Attorney: J. THOMAS MIKELL, Bar No. _____ Address: PO BOX 1727, BEAUFORT, SC 29907 Phone: _____ Fax: _____ E-mail: _____ Other: _____		Defendant's Attorney: O. Grady Query, Bar No. 4610 Address: 147 Wappoo Creek Dr., Ste. 202, Chas SC Phone: 843-795-9500 Fax 843-762-1500 E-mail: gquery@qsglawyers.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Amend Answer to Plaintiff's Complaint & Complaint as to 3rd Party Defendants Estimated Time Needed: <u>20 minutes</u> Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted <u>7/13/11</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____ JUDGE CODE _____ Date: _____ CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERY,
Individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

THIRD-PARTY SUMMONS

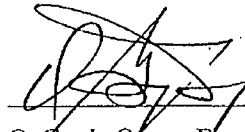
FILED
2012 FEB 28 PM 3:39
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint as to 3rd Party Defendants herein, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina, 29412, within thirty (30) days after the service hereof, exclusive of the day of such service, and, if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for the relief demanded in the Complaint.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the

service hereof, exclusive of the day of service, Judgment by Default will be entered against you for the relief demanded in the Complaint.



O. Grady Query, Esquire
Query Sautter Price & Forsythe, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412

Telephone: 843-795-9500

Facsimile: 843-762-1500

Attorneys for the Defendant and Third-Party
Plaintiff

Charleston, South Carolina
February 28, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS-PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERTY,
Individually,

Third Party Defendants.

SECOND AMENDED-
ANSWER TO PLAINTIFF'S COMPLAINT
AND COMPLAINT AS TO 3RD PARTY
DEFENDANTS

FILED
2012 FEB 28 PM 3:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendant Palms Properties, LLC ("Palms Properties") answers the Complaint of Plaintiff Rivers Point Row Horizontal Property Regime a/k/a River Point Row Property Owners Association, Inc. ("Rivers Point POA"). Except as admitted below, Palms Properties denies each and every allegation set forth in the Complaint.

1. Defendant Palms Properties admits the allegations in Paragraph 1 to the extent that they allege that Palms Properties is a resident of Charleston County which conducts its principle business activities in Charleston County and that Plaintiff Rivers Point is a resident of South

Carolina, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to where Plaintiff Rivers Point POA conducts its principal business activities and therefore denies the same.

2. Defendant Palms Properties admits the allegations of Paragraph 2 of the Plaintiff's Complaint.

3. Defendant Palms Properties admits the allegations of Paragraph 3 of the Plaintiff's Complaint.

4. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 4 as to whether or not the said Master Deed effectively creates a Horizontal Property Regime in that Defendant does not have sufficient knowledge or belief as to whether said Master Deed fully and completely comports with each and every requirement of "the Act" and therefore denies the same.

5. Defendant Palms Properties admits the allegations in Paragraph 5 to the extent that they allege that a plat of said property was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

6. Defendant Palms Properties admits the allegations in Paragraph 6 to the extent that they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a horizontal property regime was effectively created upon the property and therefore denies the same.

7. Defendant Palms Properties admits the allegations in Paragraph 7 to the extent that

they allege that a Master Deed was recorded in the Charleston County RMC Office, but Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations as to whether or not a valid and lawful horizontal property regime was effectively created upon the property and therefore denies the same. Defendant denies each and every other allegation set forth in Paragraph 7.

8. Defendant Palms Properties admits the allegations of Paragraph 8 of the Plaintiff's Complaint.

9. Defendant Palms Properties admits the allegations of Paragraph 9 of the Plaintiff's Complaint.

10. Defendant Palms Properties is without sufficient information and belief sufficient to form a belief as to the truth of allegations found in Plaintiff's paragraph 10 as to the exact time and date of when the said survey was taken and therefore denies the same.

11. Defendant Palms Properties admits the allegations of Paragraph 11 of the Plaintiff's Complaint.

12. Defendant denies the allegations of Paragraph 12.

13. Defendant admits the allegations of Paragraph 13.

14. Defendant denies that said conveyance of property to Defendant Palms Properties was "erroneous" and/or "invalid." Defendant admits those other portions of Paragraph 14 that are not hereby denied.

FOR A FIRST DEFENSE
(Failure to State a Claim)

15. The Complaint fails to state facts sufficient to constitute any causes of action against Defendant Palms Properties and, therefore, the Complaint must be dismissed pursuant to Rule

12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Third Parties' Conduct)

16. Any harm suffered by Plaintiffs resulted from acts of third parties over which Defendant Palms Properties had no control.

17. Palms Properties acted in good faith in attempting to purchase the parcel of real estate offered for sale by Third Party Defendant Rivers Point Row, LLC, and Linda Derbyshire and John Derbyshire and John Hagerty and every action by Palms Properties in furtherance of the purchase was done in rightful reliance upon the representations of the Third-Party Defendants that they held fee simple title to the property.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND AS FURTHER
AFFIRMATIVE DEFENSE AND THIRD PARTY COMPLAINT

18. Palms Properties LLC ("Palms Properties"), as Third-Party Plaintiff hereby makes its Third-Party Complaint against Rivers Point Row, LLC ("Rivers Point LLC") and John Derbyshire, Linda Derbyshire and John Hagerty, individually ("individually named defendants"), and respectfully alleges as follows:

PARTIES

19. Third-Party Plaintiff Palm Properties is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.

20. Upon information and belief, Third-Party Defendant Rivers Point LLC is a Limited Liability Company operating under the laws of the State of South Carolina and conducts its principal business activities in Charleston County.

21. Upon information and belief, individual Defendant John Derbyshire is, upon

information and belief, a resident of Charleston County, State of South Carolina (hereinafter "John Derbyshire") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

22. Upon information and belief, individual Defendant Linda Derbyshire is, upon information and belief, a resident of Charleston County, State of South Carolina (hereinafter "Linda Derbyshire") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

23. Upon information and belief, individual Defendant John Hagerty is, upon information and belief, a resident of Charleston County, State of South Carolina (hereinafter "Hagerty") and was at all times pertinent hereto a member and a controlling person of Rivers Point Row, LLC.

JURISDICTION

24. This court has personal and subject matter jurisdiction over the claims raised in the Third-Party Complaint.

VENUE

25. Pursuant to South Carolina Code Annotated §15-7-30(1976 & Supp. 2006), venue is proper in this court because Third-Party Defendant Rivers Point LLC is organized and conducts its principal business activities in Charleston County, South Carolina and individually named Defendants are residents of Charleston County.

FOR A FIRST CAUSE OF ACTION AGAINST RIVERS POINT LLC **(Breach of Contract)**

26. Third-Party Defendant Rivers Point LLC, by and through the actions of its Managing Member, John B. Hagerty, who was the President of Rivers Point POA, the above-mentioned First-Party Plaintiff Rivers Point POA at the time of the creation of the contract for sale of the land,

entered into a valid and binding contract with Palms Properties to deliver marketable title and Rivers Point LLC has breached its contract with Palms Properties by failing to deliver marketable title free of encumbrances, as Palms Properties has been forced to defend itself in the current litigation, which seeks to determine the validity of the aforementioned general warranty deed to Palms Properties and the power and legal right of Rivers Point LLC to convey the property in the first place.

27. As a direct and proximate result of Third-Party Defendant Rivers Point LLC's breach of contract, Rivers Point LLC has been drawn into this declaratory judgment action, incurring fees and expenses, and runs a risk of losing its property, has not received the benefit of its bargain, has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual and consequential damages as may be shown at trial.

FOR A SECOND CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Breach of Warranty Deed/ Indemnity)

28. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

29. Third-Party Plaintiff Palms Properties was granted the right to be indemnified by Rivers Point LLC by River Point LLC's issuance of a general warranty deed which was recorded in the Charleston County RMC Office in Book X541 at Page 464 on June 22, 2005 in the event that the title to said property was challenged by the grantor or any other party, as the aforementioned deed specifically and unambiguously states that the Grantor will "warrant and forever defend ... against every person whomsoever lawfully claiming or to claim" any part of the property conveyed. Palms Properties' right to indemnity includes the responsibility of Rivers Point LLC to defend and indemnify Palms Properties in the declaratory judgment action brought by Rivers Point POA.

30. Third-Party Plaintiff Palms Properties has made it known to Rivers Point LLC that

Palms Properties has been brought into litigation by the First-Party Plaintiff due to Rivers Point LLC's breach of general warranty deed and no action to defend Palms Properties has been taken at this point by Rivers Point LLC, Palms Properties has been forced to defend itself in the declaratory judgment action, incurring costs and expenses, despite the general warranties provided by Third-party Defendant Rivers Point LLC.

FOR A THIRD CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Fraud)

31. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

32. Third-Party Defendant Rivers Point LLC made a representation to Palms Properties that it held legal title and held the legal right to convey the property which is the subject of this litigation.

33. The representation of the property ownership and the legal right to convey made by Rivers Point LLC was false as the legal right of Rivers Point LLC to convey said property has been brought into question by the First-Party Plaintiff.

34. The false representation made by Rivers Point LLC was material to the contract entered by into Palms Properties and Rivers Point LLC as it was for the sale of said land and a condition of the contract required the sale to be legally valid.

35. Third-Party Defendant Rivers Point LLC held actual and/or constructive knowledge of the falsity of its legal ownership and right to convey said property to Palms Properties, or in the alternative, Rivers Point LLC acted with reckless disregard of the truth of the legal ownership and legal right to convey said property to Palms Properties.

36. Third-Party Defendant Rivers Point LLC, by entering into a contract for sale with

Palms Properties, intended that Palms Properties act upon the false representation of legal ownership and legal right to convey.

37. Third-Party Defendant Palms Properties had no knowledge of the falsity of the representation of Rivers Point LLC and relied on the false representation of legal ownership and legal right to convey the property, which Palms Properties had the right to rely upon.

38. As a proximate result of the fraudulent misrepresentation by Rivers Point LLC, Palms Properties has suffered the inability to deliver clear and marketable title to any third-party purchaser, and has suffered such other actual, consequential, and punitive damages as may be shown at trial.

FOR A FOURTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Negligent Misrepresentation)

39. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

40. Third-Party Defendant Rivers Point LLC made repeated false representations to Palms Properties regarding its legal ownership and legal right to convey said property.

41. Upon information and belief, Rivers Point LLC had and has a pecuniary interest in making the false representations as these false representations enabled it to make a profit of One Hundred Eighty Thousand Dollars (\$180,000) from Palms Properties in the sale of the said property, of which Rivers Point LLC claimed and promised by contract to hold legal ownership and of which it claimed to hold the legal right to convey.

42. As a party to the contract with Palms Properties, Rivers Point LLC had and has a duty of care to see that it communicated truthful information to Palms Properties regarding all aspects of the transaction.

43. Third-Party Defendant Rivers Point LLC breached its duty to Palms Properties by

failing to exercise due care by informing the Palms Properties of its inability to convey legal title to the property due to the language of the Rivers Point POA Master Deed and limitations on authority of parties, including the Developer, to convey the POA's property found therein.

44. Third-Party Plaintiff Palms Properties justifiably relied upon Rivers Point LLC's negligent misrepresentations as a material basis upon which Palms Properties entered into the contract for sale with River's Point LLC.

45. As a direct and proximate result of River's Point LLC's negligent misrepresentations, Palms Properties is entitled to actual damages in amounts to be proven at trial.

46. As the negligent misrepresentation made by Rivers Point LLC was caused by willful and wanton acts and omissions, Palms Properties is entitled to punitive damages to be proven at trial.

FOR A FIFTH CAUSE OF ACTION AGAINST RIVERS POINT LLC
(Violation of the South Carolina Unfair Trade Practices Act)

47. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

48. The acts and omissions of Rivers Point, LLC as more fully set forth above constitute willful, unfair, unethical and deceptive acts and practices in the conduct of trade of commerce in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann § 39-5-10, et seq.

49. The acts and omissions of Rivers Point, LLC affect the public interest of the State of South Carolina in that they are capable of repetition.

50. As a direct and proximate result of Rivers Point LLC's willful violation of the South Carolina Unfair Trade Practices Act, Palms Properties has suffered actual damages in amounts to be proven at trial.

51. As a direct and proximate result of Rivers Point LLC's willful violation of the South

Carolina Unfair Trade Practices Act, Palms Properties is entitled to all remedies available to it under South Carolina's Unfair Trade Practices Act, including, but not limited to, actual damages, treble damages and attorney's fees.

FOR A SIXTH CAUSE OF ACTION AGAINST INDIVIDUAL DEFENDANT
JOHN DERBYSHIRE
(Fraud)

52. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein:

53. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, individual Third-Party Defendant John Derbyshire represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

54. That the representation by the individual Third-Party Defendant John Derbyshire that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

55. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property. The individual Third-Party Defendant John Derbyshire knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false. That the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation; and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

56. The individual Third-Party Defendant John Derbyshire intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

57. The Third-Party Plaintiffs were unaware of the falsity of the representations made by the individual Third-Party Defendant John Derbyshire and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant John Derbyshire.

58. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant John Derbyshire in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

59. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant John Derbyshire which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

60. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant John Derbyshire, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided by the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

61. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A SEVENTH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Fraud)

62. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

63. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, the individual Third-Party Defendant Linda Derbyshire represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

64. That the representation by the individual Third-Party Defendant Linda Derbyshire that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

65. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property. The individual Third-Party Defendant Linda Derbyshire knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false. That the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation, and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

66. The individual Third-Party Defendant Linda Derbyshire intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

67. The Third-Party Plaintiffs were unaware of the falsity of the representations made the individual Third-Party Defendant Linda Derbyshire and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant Linda Derbyshire.

68. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant Linda Derbyshire in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

69. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant Linda Derbyshire which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

70. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant Linda Derbyshire, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided for the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

71. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A EIGHTH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Fraud)

72. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

73. In order to induce the Third-Party Plaintiff to enter into a contract to purchase certain real property and to purchase that real property for valid consideration in the amount of \$180,000.00, the individual Third-Party Defendant John Hagerty represented that the Third-Party Defendant Rivers Point Row, LLC, were the fee simple title holders to the aforementioned real property and that the Third-Party Defendant Rivers Point Row, LLC could convey good title for said real property pursuant to a South Carolina General Warranty Deed.

74. That the representation by the individual Third-Party Defendant John Hagerty that the Third-Party Defendant LLC held fee simple title to the subject real property and could convey said real property by General Warranty Deed was false.

75. That the representation of ownership and ability to convey by General Warranty Deed the aforementioned real property was material and was, in fact the essential motivation for the Third-Party Plaintiffs to enter into the contract and to, in fact, purchase the aforementioned real property. The individual Third-Party Defendant John Hagerty knew that the representation regarding ownership and ability to transfer ownership by General Warranty Deed was false, that the Third-Party Defendants were sophisticated business people, having been involved in many real estate transactions and the Third-Party Defendant LLC was in the specific business of owning and

developing certain real property that is the subject of this litigation, and were, therefore, reckless in their representation regarding fee simple ownership and the ability to transfer by General Warranty Deed the aforementioned property.

76. The individual Third-Party Defendant John Hagerty intended that the Third-Party Plaintiff would rely upon the representations and the influence to contract for and purchase the said real property.

77. The Third-Party Plaintiffs were unaware of the falsity of the representations made the individual Third-Party Defendant John Hagerty and the Third-Party Plaintiffs lacked sufficient information to determine that falsity of the representations, which information was in the possession of and known to the individual Third-Party Defendant John Hagerty.

78. The Third-Party Plaintiff relied upon the representations of the individual Third-Party Defendant John Hagerty in entering into the contract to purchase the aforementioned real property and in paying the consideration and accepting title by General Warranty Deed to the aforementioned real property.

79. Third-Party Plaintiffs had the right to rely upon the representations made by the individual Third-Party Defendant John Hagerty which were made in order to induce the Third-Party Plaintiffs to enter into the contract for the purchase of the aforementioned real property and to pay the purchase price for the said real property.

80. As a direct and proximate result of the reliance of the Third-Party Plaintiff on the representations made by the individual Third-Party Defendant John Hagerty, the Third-Party Plaintiffs incurred damages by the loss of the purchase price, the loss of the use of the funds provided for the purchase price, the cost of the funds utilized for the purchase price, loss of profit, loss of business advantage, loss of the use and enjoyment of the real property, which would have

resulted from fee simple ownership granted by General Warranty Deed.

81. Palms Properties is entitled to actual, consequential and punitive damages in an amount to be proven at trial.

FOR A NINTH CAUSE OF ACTION AGAINST JOHN DERBYSHIRE
(Negligent Misrepresentation)

82. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

83. The individual Third-Party Defendant John Derbyshire made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject property and had the right to transfer said property by General Warranty Deed.

84. The individual Third-Party Defendant John Derbyshire had a pecuniary interest in making the statement.

85. The individual Third-Party Defendant John Derbyshire owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

86. The individual Third-Party Defendant John Derbyshire breached that duty by failing to exercise due care.

87. Third Party Plaintiff justifiably relied on the representation.

88. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

89. Communication of the representation by the individual Third-Party Defendant John Derbyshire was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A TENTH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Negligent Misrepresentation)

90. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

91. The individual Third-Party Defendant Linda Derbyshire made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject property and had the right to transfer said property by General Warranty Deed.

92. The individual Third-Party Defendant Linda Derbyshire had a pecuniary interest in making the statement.

93. The individual Third-Party Defendant Linda Derbyshire owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

94. The individual Third-Party Defendant Linda Derbyshire breached that duty by failing to exercise due care.

95. Third Party Plaintiff justifiably relied on the representation.

96. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

97. Communication of the representation by the individual Third-Party Defendant Linda Derbyshire was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A ELEVENTH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Negligent Misrepresentation)

98. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

99. The individual Third-Party Defendant John Hagerty made a false representation to the Third-Party Plaintiff by representing that Rivers Point Row, LLC held fee simple title to the subject

property and had the right to transfer said property by General Warranty Deed.

100. The individual Third-Party Defendant John Hagerty had a pecuniary interest in making the statement.

101. The individual Third-Party Defendant John Hagerty owed a duty of care to see that he communicated truthful information to the Third Party Plaintiff.

102. The individual Third-Party Defendant John Hagerty breached that duty by failing to exercise due care.

103. Third Party Plaintiff justifiably relied on the representation.

104. Third Party Plaintiff suffered a pecuniary loss as a proximate result of his reliance upon the representation.

105. Communication of the representation by individual Third-Party Defendant John Hagerty was reckless, willful and wanton, and/or grossly negligent and the Third Party Plaintiff is entitled to punitive damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST JOHN DERBYSHIRE
(Unfair Trade Practices Act)

106. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

107. The actions on the part of the individual Third-Party Defendant John Derbyshire constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10 through 39-5-160, in that the individual Third-Party Defendant John Derbyshire, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

108. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant John Derbyshire of an unfair deceptive method, act or practice.

109. The individual Third-Party Defendant John Derbyshire's actions adversely effected public interest in that the actions on the part of the individual Third-Party Defendant John Derbyshire effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant John Derbyshire have

a public impact in that the unfair conduct is capable of repetition.

110. The individual Third-Party Defendant John Derbyshire personally committed, participated in, directed and authorized the violation of the aforementioned Act.

111. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant John Derbyshire in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST LINDA DERBYSHIRE
(Unfair Trade Practices Act)

112. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

113. The actions on the part of the individual Third-Party Defendant Linda Derbyshire constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10 through 39-5-160, in that the individual Third-Party Defendant Linda Derbyshire, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of

competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

114. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant Linda Derbyshire of an unfair deceptive method, act or practice.

115. The individual Third-Party Defendant Linda Derbyshire's actions adversely effected public interest in that the actions on the party of the individual Third-Party Defendant Linda Derbyshire effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant Linda Derbyshire have a public impact in that the unfair conduct is capable of repetition.

116. The individual Third-Party Defendant Linda Derbyshire personally committed, participated in, directed and authorized the violation of the aforementioned Act.

117. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant Linda Derbyshire in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

FOR A TWELVETH CAUSE OF ACTION AGAINST JOHN HAGERTY
(Unfair Trade Practices Act)

118. Defendant/Third-Party Plaintiff Palms Properties repeats and realleges its responses contained above as if fully restated verbatim herein.

119. The actions on the part of the individual Third-Party Defendant John Hagerty constituted a violation of the Unfair Trade Practices Act of South Carolina, S.C. Code § 39-5-10

through 39-5-160; in that the individual Third-Party Defendant John Hagerty, by making false representations regarding its ability to convey title to the subject property, utilized unfair methods of competition and unfair or deceptive acts or practices in the conduct of the trade or commerce of selling real property and said actions are unlawful.

120. Third Party Plaintiff suffered an ascertainable loss of money or property as a result of the use or employment by the individual Third-Party Defendant John Hagerty of an unfair deceptive method, act or practice.

121. The individual Third-Party Defendant John Hagerty's actions adversely effected public interest in that the actions on the party of the individual Third-Party Defendant John Hagerty effectively reduced the advantages to the public of fair and honest competition in the real estate market and the acts on the part of the individual Third-Party Defendant John Hagerty have a public impact in that the unfair conduct is capable of repetition.

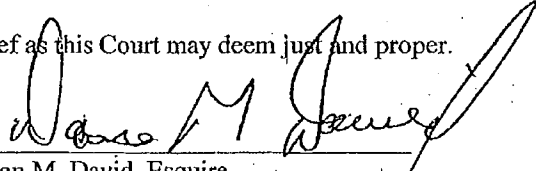
122. The individual Third-Party Defendant John Hagerty personally committed, participated in, directed and authorized the violation of the aforementioned Act.

123. Therefore Third Party Plaintiff is entitled to judgment against the individual Third-Party Defendant John Hagerty in the amount of \$180,000.00 plus interest from the time of the transaction together with reasonable attorney's fees and costs and as a result of the knowing and willful violation involved in the false representations, the Third-Party Plaintiff is entitled to treble damages.

WHEREFORE, having fully answered the First-Party Plaintiff's Complaint, the First-Party Defendant/Third-Party Plaintiff, Palms Properties, prays that this Court enter the following relief:

A) Dismissing the First-Party Plaintiff's Complaint;

- B) Awarding Defendant/Third-Party Plaintiff actual damages;
- C) Awarding Defendant/Third-Party Plaintiff punitive damages;
- D) Awarding Defendant/Third-Party Plaintiff treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act, and
- E) For any and all such further relief as this Court may deem just and proper.


Dan M. David, Esquire

Attorney at Law

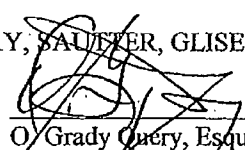
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QUERY, SAUTTER, GLISERMAN & PRICE, LLC


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Attorneys for Defendant/Third-Party Plaintiff
Palms Properties, LLC

Charleston, South Carolina

Dated: 2.28.12

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

PALMS PROPERTIES, LLC,

Defendant.

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

v.

RIVERS POINT ROW, LLC

Third Party Defendant.

THIRD-PARTY DEFENDANT RIVERS
POINT ROW, LLC'S ANSWER TO
THIRD PARTY PLAINTIFF'S
AMENDED THIRD-PARTY COMPLAINT
AND AMENDED COUNTERCLAIMS

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Answering Third-Party Plaintiff's Amended Third-Party Complaint, Third-Party Defendants Rivers Point Row, LLC (hereinafter "RPRLLC"), John Derbyshire, Lind Derbyshire, and John Hagerty make the following defenses and allege Counterclaims as follows:

DEFENSE

1. Third-Party Defendants deny each and every allegation of Palms' Third Party Complaint not hereinafter specifically admitted.
2. The allegations of paragraphs one through seventeen, which are in response to the Complaint of Plaintiff POA, pertain to parties other than Third-Party Defendants, and therefore, no response by Third-Party Defendants is required. To the extent any of these allegations pertain to Third-Party Defendants, they are denied and strict proof is demanded of the same.

3. Paragraph eighteen contains no allegations of fact or conclusions of law, and as such, it requires no response from Third-Party Defendants.
4. Third-Party Defendants lack knowledge or information sufficient to form a belief as to allegations of Paragraph nineteen, deny the same, and demand strict proof thereof.
5. Third-Party Defendants admit only so much of Paragraph twenty as it alleges that RPRLLC used to be a limited liability company operating under the laws of the State of South Carolina with its principal place of business in Charleston County. It denies the remaining allegations of said paragraph and demands strict proof of the same.
6. Third-Party Defendants admit the allegations of Paragraphs twenty-one through twenty-three.
7. Paragraphs twenty-four and twenty-five are conclusions of law, and as such, require no response from Third-Party Defendants.
8. Third-Party Defendants admit only so much of paragraph twenty-six as alleges that John B. Hagerty acting on behalf of RPRLLC entered into a contract with Palms. Third-Party Defendants deny the remaining allegations of Paragraph twenty-six and demand strict proof of the same.
9. Third-Party Defendants deny the allegations of Paragraph twenty-seven and demand strict proof of the same.
10. Answering the allegations of Paragraph twenty-eight, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
11. Answering the allegations of paragraph twenty-nine Third-Party Defendants crave reference to the deed identified therein and deny so much of paragraph twenty-nine as alleges that Third-Party Defendants must indemnify Palms. As to the remaining allegations of said paragraph, Third-Party Defendants are without information or belief sufficient to either admit or deny those allegations, deny the same and demand strict proof thereof
12. Third Party Defendants admit only so much of Paragraph thirty as alleges that it is aware that Plaintiff in this action had filed suit against Palms. It denies the remaining allegations of Paragraph 30.
13. Answering the allegations of Paragraph thirty-one, Third-Party Defendants repeat and

- reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
14. Third-Party Defendants deny the allegations of Paragraphs thirty-two through thirty-eight and demand strict proof of the same.
 15. Answering the allegations of Paragraph thirty-nine, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
 16. Third-Party Defendants deny the allegations of Paragraph forty.
 17. Third-Party Defendants admit only so much of Paragraph forty-one as alleges that RPRLLC made a profit on the sale of land to Palms and deny the remaining allegations of Paragraph forty-one.
 18. The allegations of Paragraph forty-two constitute conclusions of law that they are required neither to admit nor deny.
 19. Third-Party Defendants deny the allegations of paragraphs forty-three through forty-six,
 20. Answering the allegations of Paragraph forty-seven, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
 21. Third-Party Defendants deny the allegations of Paragraph forty-eight through fifty-one and demand strict proof of the same.
 22. Answering the allegations of Paragraph fifty-two, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
 23. Third-Party Defendants deny the allegations of Paragraphs fifty-three through sixty-one and demand strict proof of the same.
 24. Answering the allegations of Paragraph sixty-two Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
 25. Third-Party Defendants deny the allegations of Paragraph sixty-three through seventy-one and demand strict proof of the same.
 26. Answering the allegations of Paragraph seventy-two, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
 27. Third-Party Defendants deny the allegations of Paragraph seventy-three through eighty-one and demand strict proof of the same.
 28. Answering the allegations of Paragraph eighty-two, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.

29. Third-Party Defendants deny the allegations of Paragraph eighty-three through eighty-nine and demand strict proof of the same.
30. Answering the allegations of Paragraph ninety, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
31. Third-Party Defendants deny the allegations of Paragraph ninety-one through ninety-seven and demand strict proof of the same.
32. Answering the allegations of Paragraph ninety-eight, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
33. Third-Party Defendants deny the allegations of Paragraph ninety-nine through one hundred five and demand strict proof of the same.
34. Answering the allegations of Paragraph one hundred six, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
35. Third-Party Defendants deny the allegations of Paragraph one hundred seven through one hundred eleven and demand strict proof of the same.
36. Answering the allegations of Paragraph one hundred twelve, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
37. Third-Party Defendants deny the allegations of Paragraph one hundred thirteen through one hundred seventeen demand strict proof of the same.
38. Answering the allegations of Paragraph one hundred eighteen, Third-Party Defendants repeat and reiterate the allegations of the foregoing paragraphs as fully as if repeated herein verbatim.
39. Third-Party Defendants deny the allegations of Paragraph one hundred nineteen through one hundred twenty-three demand strict proof of the same.

FOR A SECOND DEFENSE

40. Palms' Third Party Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

41. Palms' Third Party Complaint is barred by the doctrine of estoppel.

FOR A FOURTH DEFENSE

42. Palms' Third Party Complaint is barred by the doctrine of ratification.

FOR A FIFTH DEFENSE

43. Palms' Third Party Complaint is barred by the doctrine of laches.

FOR A SIXTH DEFENSE

44. Palms' Third Party Complaint is barred by the doctrine of waiver.

FOR A SEVENTH DEFENSE

45. Palms' Third Party Complaint is barred by the statute of limitations.

FOR AN EIGHTH DEFENSE

46. Punitive Damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003), and the cases upon which it is based.

FOR A NINTH DEFENSE

47. Palms has failed to plead fraud with sufficient particularity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A TENTH DEFENSE

48. Individual members/managers of an LLC are not personally liable for the "debts, obligations and liabilities" of the LLC.

FOR AN ELEVENTH DEFENSE

49. Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S. Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A TWELFTH DEFENSE

50. Palms' claims might be barred or otherwise reduced due to its failure to mitigate damages as required by law.

FOR A THIRTEENTH DEFENSE

51. Palms' claims might be barred by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE

52. Palms' waived its right to a jury trial.

FOR A FIFTEENTH DEFENSE

53. Third-Party Defendant specifically reserves any additional and/or affirmative defenses as might be available to it or revealed to it during the course of the investigation and/or discovery in this case.

**COUNTERCLAIMS AGAINST PLAINTIFF RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME a/k/a RIVERS POINT ROW PROPERTY OWNERS
ASSOCIATION, INC. AND PALMS PROPERTIES, LLC**

JURISDICTION AND VENUE

54. The foregoing is hereby incorporated by reference verbatim.
55. Third Party Defendant, RPRLLC, was a limited liability company operating under the laws of the State of South Carolina, and its principal place of business is in Charleston County.
56. Third-Party Defendant John Derbyshire is a citizen and resident of Charleston County.
57. Third-Party Defendant Linda Derbyshire is a citizen and resident of Charleston County.
58. Third-Party Defendant John Hagerty is a citizen and resident of Charleston County.
59. Upon information and belief, Plaintiff, POA, is a non-profit corporation organized and existing under the laws of the State of South Carolina.
60. Upon information and belief, Defendant and Third Party Plaintiff, Palms, is a limited liability company organized and existing under the laws of the State of South Carolina, and its principal place of business is in Charleston County.
61. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

FOR A FIRST COUNTERCLAIM
(Attorneys' Fees)

62. Article VI, Section 1, Subsection O, of the Master Deed recorded May 4, 2004 in the Charleston County RMC in Book G493, Page 001 provides "[i]n any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof."
63. Article II, Section 1, Subsection I defines the Declarant as RPRLLC.
64. Article II, Section 1, Subsection c defines the Association as the POA, which is the Plaintiff in this action.
65. This is an action to enforce the provisions of the Declaration or the Bylaws as defined in Article VI, Section 1, Subsection O, of the Master Deed recorded May 4, 2004 in the

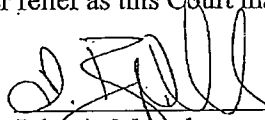
Charleston County RMC in Book G493, Page 001.

66. Defendant and Third Party Plaintiff, Palms is subject to the Declaration by virtue of the deed from RPRLLC to Palms dated May 12, 2005.
67. As a result of the suit filed by the POA and Palms to enforce provisions of the Declaration and Bylaws, RPRLLC has and will continue to incur costs, disbursements, and attorneys' fees.
68. Pursuant to Article VI, Section 1, Subsection O of the Master Deed, RPRLLC is entitled to a judgment against the POA and/or Palms for the costs and disbursements incurred by RPRLLC in this action, including a reasonable attorneys' fee, in an amount to be determined by the finder of fact.

FOR A SECOND COUNTERCLAIM
(Declaratory Judgment)

69. The foregoing is hereby incorporated by reference verbatim.
70. RPRLLC intended to convey the Property described in the Deed recorded in Book X541 at Page 464 at the Charleston County Register of Mesne Conveyance (herein "the Property") to Palms pursuant to the terms of the Master Deed recorded in Book G493 at Page 001 at the Charleston County Register of Mesne Conveyance and any amendments thereto (herein "the Master Deed").
71. Upon information and belief, Palms intended to acquire the Property from RPRLLC per the terms of the Master Deed.
72. If the subject Deed is declared invalid or otherwise defective by the Court, it is because the Property was not conveyed per the terms of the Master Deed.
73. Therefore, the terms of the Deed would have to of been a mutual mistake thereby necessitating reformation of the Deed so that it evidences the intentions of RPRLLC and Palms to convey the Property per the terms of the Master Deed.
74. Accordingly, RPRLLC requests that if this Court declares the Deed invalid or otherwise defective, it further declares that the Deed be reformed so that it conveys the Property per the terms of the Master Deed.

WHEREFORE, having fully answered Palms' Third Party Complaint and alleged counterclaims against POA and Palms, RPRLLC, prays that Palms' Third Party Complaint be dismissed and for costs, disbursements, expenses, and attorneys' fees be paid by POA and/or Palms, and for such other and further relief as this Court may deem just and proper.



John A. Massalon
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WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR THIRD PARTY DEFENDANT
RIVERS POINT ROW, LLC

CHARLESTON, SC

March 19, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 19, 2012, copies of the attached pleading were placed in envelopes, with first-class postage prepaid, and mailed to:

Michael J. Buhmeyer, Esq.
4107 Perrine Street
Charleston, SC 29414

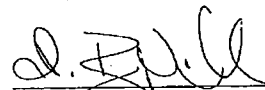
ATTORNEYS FOR PLAINTIFF

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and

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ATTORNEYS FOR DEFENDANT
AND THIRD PARTY PLAINTIFF
PALMS PROPERTIES, LLC



WILLS MASSALON & ALLEN LLC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

Rivers Point Row Horizontal Property
Regime, a/k/a Rivers Point Row
Property Owners Association, Inc.,

Plaintiff,

v.

Palms Properties, LLC,

Defendant.

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

Palms Properties, LLC,

Third Party Plaintiff,)

v.

Rivers Point Row, LLC,

Third Party Defendant.

FILED
2012 MAY -1 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above named, by and through their undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Charleston County, South Carolina, on the tenth (10th) day after service hereof, or as soon there after as the parties might be heard for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment on the grounds that there exists no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law. In considering the evidence in the light most favorable to the non-moving party, Defendant has not pled, provided evidence of or raised any issue of fact in this case to Plaintiff's counsel or the

presiding court to oppose Plaintiff's allegations that the deed conveyed to the Defendant by the Third-Party Defendant in this case that is the subject of the Plaintiff's Complaint and Declaratory Judgment action should not be found in violation of the Horizontal Property Regime Act of South Carolina and the filed Master Deed placing the property under the Act prior to the transfer, declared invalid and erroneous as a matter of law, and stricken from the real property Register of Deeds in Charleston County, South Carolina.

This motion will be supported by the pleadings, discovery, oral arguments, and any affidavits and memorandums of law that may be filed with or prior to the hearing of this motion.

By:



Michael V. Buhmeyer, Esq.

4107 Perrine Street

Charleston, SC 29414

Ph: (843) 408-5937

ATTORNEY FOR PLAINTIFFS

Charleston, South Carolina
April 30, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF MAILING

Name of Case: Rivers Point Row Horizontal Property Regime, et al
vs. Palms Properties, LLC

Case Number: 2008-CP-10-2279

Date: April 30, 2011

Document(s): Plaintiff's Motion for Summary Judgment; Affidavit of
Plaintiff's Attorney.

Addressee(s): Dan M. David, Esq.
P.O. Box 32097
Charleston, SC 29417

O. Grady Query, Esq.
Query, Sautter, Gliserman & Price, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

John A. Massalon and I. Ryan Neville
Attorneys for Third Party Defendants
Wills Massalon & Allen, LLC
PO Box 859
Charleston, SC 29402

BY

JULIE J. ARMSTRONG
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The undersigned hereby certifies that (s)he placed true and accurate copies of the Document(s) named above to the Addressee(s) named above on the date shown above in an envelope with sufficient prepaid first class postage affixed thereon and deposited the same to the U.S. Postal Service for delivery to the same named Addressee(s).

/s/

Printed Name

Title

Michael J. Behmeyer
Attorney For Plaintiff
(First Party)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

9TH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

RIVERS POINT HORIZONTAL
PROPERTY REGIME, et al.

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

PALMS PROPERTIES, LLC

Defendant.)

Plaintiff's Attorney: Michael J. Buhmeyer, Bar No. 76677 Address: 4107 Perrine Street Charleston, SC 29414 Phone: (843) 408-5937 Fax _____ E-mail: mbuhmeyer1@bellsouth.net Other: _____		Defendant's Attorney: O. Grady Query, Bar No. 4610 Address: 147 Wappoo Creek Dr., Ste 202 Chas SC 29412 Phone: (843) 795-9500 Fax _____ E-mail: gquery@qsglawyers.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		04/30/2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25- ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order ☐ Other:		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
_____)

Rivers Point Row Horizontal Property)
Regime, a/k/a Rivers Point Row)
Property Owners Association, Inc.,)
)
Plaintiff,)

v.)

Palms Properties, LLC,)
)
Defendant.)
_____)

Palms Properties, LLC,)
)
Third Party Plaintiff,)

v.)

Rivers Point Row, LLC,)
)
Third Party Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

AFFIDAVIT

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAY 23 AM 9:29

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Personally appeared before a Notary Public of South Carolina the undersigned
affiant, who upon oath, deposes and declares the following facts:

1. My name is Daniel C. Forsberg.
2. I am 62 years old and am a resident of Charleston County, S.C.
3. I have a B.S. Degree in Civil Engineering from The Citadel (1976).
4. I also have an A.S Degree in Mechanical Engineering from Trident
Technical College (1969).

5. I am the holder of these professional licenses:
 - a. Professional Engineer, South Carolina (#8402).
 - b. Professional Surveyor, South Carolina (#8402).
 - c. Professional Engineer, Georgia (#13,935).
 - d. Professional Surveyor, Georgia (#2553).
 - e. Professional Engineer, North Carolina (#29509).
6. I am now or previously have been a member of these professional organizations:
 - a. Civil Engineering Club – Charleston.
 - b. S.C. Professional Land Surveyors Association.
7. I have been or currently am a director or officer in these professional organizations:

Coastal Chapter – SC Professional Land Surveyors
8. I have examined these documents regarding the condominium project known as Rivers Point Row on James Island in Charleston County, S.C. at the Register of Deeds Office of Charleston County, S.C.:
 - a. Deed Book F 493 Page 759 of the Charleston County RMC records from Intercontinental Fund III Rivers Point SC, LLC to Rivers Point Row, LLC of 8.49 acres.
 - b. Plat Book EB Page 405 that is the 8.49 acres sold in Deed Book F 493 Page 759.
 - c. Master Deed in Book G 493 at Page 001 recorded May 4, 2004 to create Rivers Point Row Horizontal Property Regime.
 - d. Plat Book EB at Page 405 prepared by E.M. Seabrook, Jr., SCRLS, on July 3, 1996, referred to in the Master Deed as the land that constitutes the named Horizontal Property Regime.
 - e. Exhibit A (in two pages) to the Master Deed in Book G 493 at Page 001 which is a metes and bounds description of the 8.49 acres.
 - f. The definition of "Common Area" in Article II-1-(g) of the Master Deed in Book G 493 at Page 001 which means all of the 8.49 acres less the units.
 - g. Article III Section 1 of the Master Deed in Book G 493 Page 001 which submits the 8.49 acres described on Exhibit A to the Horizontal Property Regime Act. This was recorded on May 4, 2004.
 - h. Article III Section 4(a) of the Master Deed in Book G 493 Page 001 which states that all buildings are in place but Building 2 that has not been built.

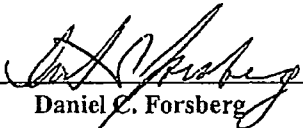
- i. Article III Section 4(e) of the Master Deed in Book G 493 Page 001 which again defines the Common Area as the entire property being 8.49 acres on Exhibit A and every part thereof other than the Units.
 - j. Exhibit C to the Master Deed in Book G 493 Page 001 consisting of 12 pages that defines the Units and the buildings that are in the Regime.
 - k. A First Amendment to the Master Deed in Book R 495 Page 385 recorded May 24, 2004.
 - l. A Second Amendment to the Master Deed in Book X 541 Page 561 recorded on June 22, 2005.
 - m. A deed to Palms Properties, LLC in Book X 541 at Page 464 recorded on June 22, 2005.
 - n. Plat Book EH at Page 904 which describes 0.38 acres referred to in Book X 541 Page 464.
 - o. Plat Book EJ at Page 869 recorded June 23, 2006 which describes 0.387 acres.
9. After reviewing the documents set forth above, I am of these opinions:
- a. The parcel of real property described as 8.49 acres that is described in Plat Book EB at Page 405 is the parcel of real property stated on Attachment A to Deed Book G 493 Page 001 recorded May 4, 2004 to be the real property of the horizontal property regime known as Rivers Point Row.
 - b. The 8.49 acres to which the Rivers Point Row Horizontal Property Regime applies as stated in the Master Deed in Book G 493 Page 001 is the same 8.49 acres that was originally deeded to Rivers Point Row, LLC in Book F 493 Page 759.
 - c. To the best of my knowledge there has not been any other recorded amendments to the description of the 8.49 acres of real property originally stated in Attachment A to the Master Deed in Deed Book G 493 at Page 001 since the recording of Plat Book EB at Page 405.
 - d. There is not a word description stated in the Master Deed recorded in Book G 493 Page 001 which defines the location of a Building 2 nor is there a word description which defines the location of Building 2 stated in the recorded First and Second Amendments to the Master Deed.
 - e. There is not a description of Building 2 set forth in the building plan attached to the Master Deed.
 - f. After reviewing the Master Deed recorded in Deed Book G 493 at Page 001, the plans attached to that Master Deed, and the two

Amendments to the Master Deed, it is not possible for me to be able to determine (i) a description or plans for a Building 2, or, (ii) a location for Building 2.

Executed on Dec 21, 2011.

By: Daniel C. Forsberg

Signature of Affiant: _____


Daniel C. Forsberg

Sworn to before me on 21st Dec., 2011

By: Mary F. Hughes Notary Public for South Carolina

/s: Mary F. Hughes (SEAL)

My Commission Expires: 10-6-14

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CERTIFICATE OF MAILING

Name of Case: Rivers Point Row Horizontal Property Regime, et al
vs. Palms Properties, LLC

Case Number: 2008-CP-10-2279

Date: May 2, 2012

Document(s): Affidavit of Daniel C. Forsberg in Support
Plaintiff's Motion for Summary Judgment

Addressee(s): Dan M. David, Esq.
P.O. Box 32097
Charleston, SC 29417

O. Grady Query, Esq.
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147 Wappoo Creek Drive, Suite 202
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John A. Massalon and I. Ryan Neville
Attorneys for Third Party Defendants
Wills Massalon & Allen, LLC
PO Box 859
Charleston, SC 29402

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JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that (s)he placed true and accurate copies of the Document(s) named above to the Addressee(s) named above on the date shown above in an envelope with sufficient prepaid first class postage affixed thereon and deposited the same to the U.S. Postal Service for delivery to the same named Addressee(s).

/s/ *MMB*

Printed Name Michael J. Budinger

Title Attorney For 1st Party Plaintiff

Westlaw.

494 S.E.2d 465
329 S.C. 206, 494 S.E.2d 465
(Cite as: 329 S.C. 206, 494 S.E.2d 465)

Page 1

H

Court of Appeals of South Carolina.
Alirezia REYHANI, Respondent,
v.

STONE CREEK COVE CONDOMINIUM II HORIZONTAL PROPERTY REGIME, Louis T. Smiles and Debra L. Smiles, Georgia Lou Huff, Rebecca M. Chamblee and Jones M. Chamblee, Ward Van Duzer and Judith Van Duzer, Keith Holmquist and Shirley M. Holmquist, Elaine W. Epstein, Julia K. Mohny, John J. Cannon and Janet H. Cannon, Russell K. Street, S.S. Smith Lumber Co., Inc., Louise R. Floyd and John C. Floyd, Claude D. Calloway and Dianna C. Calloway, T.G. Lekorenos and Barbara M. Lekorenos, G.E. Moore, Jr. and James A. Barmore, Norman J. Bundy and Norma K. Bundy, and James S. Belk, and Stone Creek Cove Homeowners' Association, a Nonprofit Corporation, Appellants.
No. 2763.

Heard Nov. 5, 1997.

Decided Dec. 8, 1997.

Rehearing Denied Jan. 22, 1998

Alleged owner of tract brought action seeking declaration that he possessed fee simple title. Defendants, including property owners in horizontal property regime, homeowners association, and regime itself, counterclaimed seeking declaration that they had fee simple title to tract. The Court of Common Pleas, Anderson County, Ellis B. Drew, Jr., Master-In-Equity, found that plaintiff owned tract in fee simple, and defendants appealed. The Court of Appeals, Cureton, J., held that provision of agreement on which plaintiff relied did not apply.

Reversed and remanded

West Headnotes

[1] Declaratory Judgment 118A ⚡ 253

118A Declaratory Judgment

118AIII Proceedings

118AIII(A) In General

118Ak252 Nature and Form

118Ak253 k Legal or Equitable Most

Cited Cases

Actions for declaratory judgment are neither legal nor equitable; rather, nature of action depends on underlying issues

[2] Appeal and Error 30 ⚡ 847(1)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k844 Review Dependent on Mode of Trial in Lower Court

30k847 Trial in Equitable Actions

30k847(1) k. In General. Most

Cited Cases

Deeds 120 ⚡ 90

120 Deeds

120III Construction and Operation

120III(A) General Rules of Construction

120k90 k. Application to Deeds in General. Most Cited Cases

Interpretation of deed was equitable matter, and thus, appellate court reviewed evidence to determine facts in accordance with its view of preponderance of evidence.

[3] Contracts 95 ⚡ 147(1)

95 Contracts

95II Construction and Operation

95II(A) General Rules of Construction

95k147 Intention of Parties

95k147(1) k. In General. Most Cited

Cases

Contracts 95 ⚡ 147(3)

95 Contracts

9511 Construction and Operation
9511(A) General Rules of Construction
95k147 Intention of Parties

95k147(3) k. Construing Whole Contract Together Most Cited Cases
Purpose of all rules of contract construction is to ascertain intention of parties, and that intention must be gathered from entire agreement and not from any one particular phrase thereof

[4] Condominium 89A ⚡3

89A Condominium

89Ak3 k. Creation; Declarations. Most Cited Cases

Provision of agreement between mortgagee and homeowners association, amending master deed for subdivision development so as to allow mortgagee to develop certain property for single or multi-family purposes, did not apply to horizontal property regime constituted by condominium units; provision referred to portions of development "designated as single family lots and properties that have not been developed," and another provision related specifically to future development of additional phases of regime.

[5] Condominium 89A ⚡3

89A Condominium

89Ak3 k. Creation, Declarations. Most Cited Cases

Agreement between alleged tract owner's predecessor and homeowners' association could not have given predecessor or owner right to combine any of condominium units or common elements of horizontal property regime into tract; agreement provided that it "shall in no way affect the terms, conditions and provisions as set forth in" prior judicial order incorporating earlier agreement between association and mortgagee, which did not allow mortgagee to develop regime for single or multi-family purposes.

****466 *207** Harold P. Threlkeld, Anderson, for appellants.

John J. Stathakis, of Epps, Nicholson & Stathakis, and Karl L. Kenyon, of Kenyon & Lusk, Anderson, for respondent.

CURETON, Judge.

Respondent, Alirezia Reyhani (Reyhani), sought a declaration that he possesses fee simple title to a lot of land. The ***208** appellants, which include property owners in the Stone Creek Cove Condominium II Horizontal Property Regime, the homeowners association, and the regime itself ("Regime II"), counterclaimed seeking a declaration that they have fee simple title to the same land. The master to whom this action was referred, found Reyhani owned the property in fee simple. We reverse and remand.

The sole issue presented on appeal is whether the master erred in finding that Reyhani has fee simple title to the property.

Facts

The property to which Reyhani claims title, consists of 1.076 acres in a residential development on Lake Hartwell called Stone Creek Cove. Stone Creek Cove was a subdivision development consisting of 175 acres. The plan of development included both single family residential lots and condominium units. In March 1974, the original developer filed a Master Deed in which he submitted 5.526 acres of that land to Regime II, one of several Horizontal Regimes in the development. The 1.076 acres in dispute is part of the 5.526 acres. As best we can tell from the sparse record before us, Regime II was to contain 38 units, to be developed in three phases. Only sixteen condominium units have been built in the regime, all apparently in Phase One.

NCNB held a mortgage on the entire 175 acres, less the units that had been released from its mortgage. It foreclosed on its mortgage which resulted in extensive litigation. On May 20, 1977, Judge Rodney Peoples issued a final order concluding the litigation. Under the terms of his order, and as to Regime

II, the Master Deed was to be amended to incorporate the provisions of an agreement entered into by NCNB and the homeowners association. Of particular interest is paragraph 9(b) of the agreement, which provides:

All owners of units in this Property Regime will consent to an amendment of the Master Deed, to provide for an increase of the percentage interest of each unit, such that all properties and improvements dedicated under the Master Deed are owned by the existing sixteen units which have been completed in the Regime. Percentages will be based *209 on the evaluation points granted each of the existing units by the Master Deed. The amendment will also grant to [NCNB] the assignable right at any time and from time to time prior to April 1, 1982, to elect to proceed with the development of Phases 2 and 3 of the Regime, Phase 2 to consist of a maximum of twelve units and Phase 3 a maximum of ten units... In the event development is not commenced by the time indicated above, it will be conclusively presumed that the right of further development has been abandoned, and the property dedicated as to any phase not elected will constitute**467 general common elements of the Regime. In the event there is an election to construct additional units, the percentage interest appurtenant to each unit will automatically change to the percentage interest in said general common elements and limited common elements to set forth in the amendment to be recorded at the time of the election, within the limitations set forth for the additional phases.

After entry of Judge Peeples's order, the tract consisting of approximately 171 acres was sold at a public sale to NCNB.

While the record does not contain the building or plot plans showing the location of buildings, other improvements and common areas, the Master Deed does state that the buildings and common elements are fully shown on two exhibits attached to the Master Deed. Additionally, the record does not contain the Amended Master Deed, but the appellants

refer to it. Moreover, the master's order concludes there was full compliance with the order of Judge Peeples, which would include the requirement that the Master Deed be amended to incorporate pertinent provisions of the agreement referred to above. There has been no appeal from that finding in the master's order.

Law/Analysis

[1][2] Actions for declaratory judgment are neither legal nor equitable, instead, the nature of the action depends on the underlying issues. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). The interpretation of a deed is an equitable matter; therefore, this court reviews the evidence to determine the facts in accordance with our view of the preponderance of the evidence. *210 *Heritage Federal Sav. & Loan v. Eagle Lake & Golf*, 318 S.C. 535, 458 S.E.2d 561 (Ct.App.1995) (case depended mostly on interpretation of master deed and allied documents). Moreover, the master saw his function in the matter as "primarily an interpretation of these documents that have been submitted." As voluntary contracts, restrictive covenants will be enforced according to their terms unless they are indefinite or contravene public policy. 17 S.C. Juris Covenants § 100 (1993) (citing *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (1987)).

Horizontal property regimes are governed by the South Carolina Horizontal Property Act. S.C. Code Ann. § 27-31-10-300 (Rev.1991 & Supp.1996). Section 27-31-20 defines "general common elements" in part as "[t]he land whether leased or in fee simple and whether or not submerged on which the apartment or building stands" and "all other elements of the property rationally of common use or necessary to its existence, upkeep, and safety." Section 27-31-110 requires a plot or building plan be filed with the master deed showing all improvements and common elements.

The appellants argue that they have title to the

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 (Cite as: 329 S.C. 206, 494 S.E.2d 465)

property as a common element through the Master Deed and nothing which occurred after the recordation of the Master Deed, including the judge's order and the agreement, divested them of that ownership. They also argue the development rights to the property expired under the terms of the amended Master Deed, and therefore, the property became a general common element of the Regime. Thus, they contend the property in question could not have been sold as separate property of the developer or its successor. They cite *Heritage Federal Sav. & Loan v. Eagle Lake & Golf*, 318 S.C. 535, 458 S.E.2d 561 (Ct.App.1995) (Clubhouse appeared in legal description of property submitted to regime as a common element; one plat showed it as an improvement; therefore, clubhouse was a common element.).

Reyhani cites language in paragraph 8 of the 1977 agreement, which allowed NCNB "the assignable right to further develop the properties being foreclosed on" and the right to file a supplemental or amended plat of the subdivision:

by which certain portions of the property being foreclosed against which are now designated as single family lots may *211 be converted to multi-family properties and properties which have not been developed, however identified on the plat, may be developed for either single family or multi-family purposes.

Reyhani also argues he acquired his land in accordance with development permitted by **468 the provisions of the 1977 agreement and Judge Peoples' order. Reyhani also points to the fact that the Board of Directors of the homeowner's association was aware of the transfer of the property to him and acknowledged the same.

Discussion

The appellants are correct that once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of

their interests in the common elements by the actions of the developer. S.C Code Ann §§ 27-31-70, -130 (Rev 1991 & Supp 1996), 4 S.C Juris *Condominiums* § 18 (1991) The record before us contains the Master Deed showing the property in question was submitted to the regime. The record, however, does not contain the plot or building plans that show the location of the condominium units and common elements. The Master Deed, however, defines common elements as "all of the project except all units." Additionally, the Master Deed defines the "project" as "the real property and the buildings and other improvements on the real property." Accordingly, the appellants are correct that at the time the regime was created, the entire 5.526 acre tract was either designated as one of 38 condominium units or as a common element. The effect of the 1977 agreement and Judge Peoples's order thus becomes the question at hand.

[3][4] The appellants argue the agreement and order have no effect. On the other hand, Reyhani argues and the master held that the agreement and order are the basis for his fee simple title to the lot. Reyhani specifically claims that paragraph 8 of the above mentioned agreement gave his predecessors the right to further develop the property at issue. From a fair reading of paragraph 8, we are convinced that it does not apply to the regime in question. That provision refers to those portions of the 171 acre tract then "designated as single family lots and properties that have not been developed." The *212 38 condominium units described in the Master Deed as constituting the regime in issue are neither single family lots nor undeveloped properties.^{FN1} Moreover, once designated as condominium units, such units may not be converted by a developer into single family residential lots by the simple act of filing an amended plat. Manifestly, this paragraph must necessarily have referred to portions of the 171 acre tract that had not been submitted to this condominium regime. Finally, an interpretation of paragraph 8 in the manner suggested by Reyhani would conflict with the more specific provisions of paragraph 9(b) which relates specifically to the fu-

ture development of Phases 2 and 3 of the regime. The purpose of all rules of contract construction is to ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof. *Thomas-McCam, Inc. v. Siter*, 268 S.C. 193, 232 S.E.2d 728 (1977). Documents will be interpreted so as to give effect to all of their provisions, if practical. 17A Am Jur 2d *Contracts* § 385 (1991). Here, we think paragraphs 8 and 9 of the agreement can be reconciled by applying paragraph 8 to the future development of the entire subdivision except for the established regimes, and paragraph 9(b) to the future development of Phases 2 and 3 of the regime in question.

FN1. The 1977 agreement defines the property involved as consisting of "lots, condominium units, undeveloped property, three condominium regimes, certain common properties, and various improvements." Further, paragraph 8 is captioned "Further Subdivision Development," and thus it applies to the whole 175 acre planned subdivision, not just the one regime in question.

At the time of the agreement, Phase One of the regime had been built. We interpret paragraph 9(b), as the parties' agreement that Phases 2 and 3 could be completed by NCNB, its successors and assigns, provided the same was done by April 1, 1982. The provision further states that in the event development is not "commenced" by April 1, 1982, development rights would be "conclusively presumed" to have been abandoned and the properties dedicated to such would become common elements of the regime.

The appellants also argue that "[b]y the terms of the Master Deed, as amended, development rights in the Condominium property has(sic) expired." Whether or not Reyhani's predecessors *213 in interest complied with paragraph 9(b) and commenced "development" of Phases 2 and 3 by April 1, 1982 **469 depends on what the agreement

means by the term "development." We are assisted in this determination to some extent by paragraph 10(f) of the agreement which states

Property, including present undeveloped lots, which is developed multi-family will become developed property at such time as all improvements are completed and ready for occupancy. each residential unit to become an assessable unit.

As to the condominium units in question, it is clear that the completion of development of them includes the building of the condominium structures and other improvements. Conversely, the commencement of development would consist of any substantial work directed toward the building of the structures. See *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct App. 1986). There was testimony by the president of the homeowners' association that concrete was poured at some point, but we are given no hint as to where it was poured or the date it was done.

[5] At this point we would ordinarily remand to the trial court for a factual development of the issue of when and if development has been commenced. We need not do that here because, in any event, Reyhani does not base his ownership rights on compliance with paragraph 9(b) of the 1977 agreement. Rather he bases his ownership rights on compliance with paragraph 8(a) of the 1977 agreement and a June 17, 1988 agreement between his predecessor Marassett Limited Partnership and the homeowners' association. The 1988 agreement does not indicate the parties agreed to a conversion of any portion of the land designated as condominium units or common elements in Phases 2 and 3 to single family residential lots; in fact, at that time Marassett was only negotiating to purchase the remaining 22 condominium units in Phases 2 and 3 which the parties referred to as "developed properties." While there is some suggestion that Marassett may have intended after acquisition to convert some of the 22 units in Phases 2 and 3 into "building lots," the agreement, nevertheless, concludes with the understanding that it "shall in no way affect the terms, condi-

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tions and provisions as set forth in" Judge Peebles's 1977 order and the 1977 agreement incorporated *214 therein. We therefore hold that the 1988 agreement, which was not assented to by the condominium unit owners, nor effected by an amendment to the Master Deed, could not have given Marassett or its successors in interest the right to combine any of the 22 condominium units or common elements of the regime into the 1.076 acre tract now claimed to be owned by Reyhani.

FN2 Apparently, Reyhani's lot was carved from the 5.526 tract in 1989.

Accordingly, we conclude the master erred in holding that compliance with paragraph 8(a) of the 1977 agreement, as incorporated into Judge Peebles' order, gave Reyhani fee simple title to the 1.076 acre tract in question. The order of the trial court is therefore reversed and this matter remanded to the trial court for entry of an order consistent with this opinion.

REVERSED AND REMANDED.

HOWELL, C.J. and HOWARD, J., concur.
S.C. App., 1997.
Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime
329 S.C. 206, 494 S.E.2d 465

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

Rivers Point Row Horizontal Property
Regime, a/k/a Rivers Point Row
Property Owners Association, Inc.,

Plaintiff,

v.

Palms Properties, LLC,

Defendant.

MEMORANDUM OF LAW IN SUPPORT
OF SUMMARY JUDGMENT

Palms Properties, LLC,

Third Party Plaintiff,

v.

Rivers Point Row, LLC,

Third Party Defendant.

FILED
2012 MAY 25 AM 11:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The First Party Plaintiff to this legal action respectfully submits the following Memorandum of Law in support of its Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure filed on May 1, 2012. (See Exhibit "A" Plaintiff's Notice of Motion and Motion for Summary Judgment). For reasons which will be fully explained below, the First Party Plaintiff is entitled to judgment in its favor as a matter of law, and respectfully requests this Court to grant its Motion, issuing an Order consistent with the relief prayed for in its declaratory judgment action as originally filed on April 25, 2008.

FACTUAL BACKGROUND

The facts are a matter of public record and not in dispute. The case before the court was brought by Plaintiff Rivers Point Row Horizontal Property Regime et al. under the Uniform

Declaratory Judgments Act, S.C. Code §15-53-30 (1976), as amended, and Rule 57, SCRCP, to obtain judicial determination of the validity of a deed recorded in the Charleston County RMC Office at Book X541 Page 464 on June 22, 2005. (See Exhibit "B" Warranty Deed). This deed was executed on May 12, 2005 by Rivers Point Row, LLC subsequent to closing of a 0.38 acre parcel of real property which was sold to First Party Defendants in this action, Palms Properties, LLC. This property is a portion within an 8.49 acre parcel previously deeded under a Master Deed to the Plaintiff and recorded in the Charleston County RMC Office at Book G493 Page 001 on May 4, 2004 by the same Rivers Point Row, LLC as developer. (See Exhibit "C" Master Deed of Rivers Point Row Horizontal Property Regime). This Master Deed was recorded pursuant to the Horizontal Property Act of South Carolina, S.C. Code §27-31-10 et seq. (1976), as amended, and created a horizontal property regime in Charleston County, S.C. known as Rivers Point Row Horizontal Property Regime, the Plaintiff to this action. At that time the entire 8.49 acre parcel became a horizontal property regime subject to the terms and provisions of the South Carolina Horizontal Property Act and the Master Deed as filed. Two subsequent amendments to the Master Deed have been recorded and executed, the first recorded on May 24, 2004, and the second recorded on June 22, 2005. (See Exhibit "D" First and Second Amendments to Master Deed).

The 8.49 acre parcel is described on a plat prepared by Lewis S. Seabrook, SCRLS, on July 3, 1996, recorded in the Charleston County RMC Office at Plat Book EB Page 405. No separate subdivided parcel was noted in this plat. The 0.38 acre parcel described as Tract B2 and the subject of this action was also surveyed by Mr. Seabrook, shown as subdivided out of the original 8.49 acre parcel, and recorded in the Charleston County RMC Office at Plat Book EH Page 904 on May 4, 2005. This property was later resurveyed and a revised filing was made at Plat Book EJ Page 869 on June 23, 2006. (See Exhibit "E" containing plats referenced above).

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2011). Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP) provides that "a motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law". In

determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing the motion. Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 924 (2011). Also, in opposing a motion for summary judgment, a party cannot rely on unadmitted allegations of its pleadings to create a genuine issue of material fact. Campbell v. Beacon Manu. Co., Inc., 313 S.C. 451, 454, 438 S.E.2d 271, 272 (Ct. App. 1993).

ARGUMENT

A. **Third Party Defendant Rivers Point Row LLC, as “developer”, deeded to Plaintiff the entire 8.49 acre tract by recordation of the Rivers Point Row Master Deed containing all existing units and common areas as a horizontal property regime, and in so doing the developer retained no right thereafter to subdivide and transfer by deed any part of the tract to Palms Properties, LLC or any third party purchaser for value.**

Horizontal property regimes are governed by the South Carolina Horizontal Property Act (the “Act”). S.C. Code Ann. §§ 27-31-10 to 300 (1991 & Supp. 2011). The Master Deed of Rivers Point Row recorded on May 4, 2004 in Charleston County created this particular horizontal property regime and caused the entire property as described in Exhibit A of the Master Deed to be subject to the terms of the deed and statutes of the Act. Two amendments to the Master Deed were subsequently recorded, but neither changed or altered vestment of deeded ownership of any part of the property with regard to the Plaintiff. Certain sections of the Act provide that once common elements are set aside and vested in the co-owners of property subject to a Master Deed, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer. Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 211, 494 S.E.2d 465, 468 (Ct. App. 1997) (citing S.C. Code Ann. §§ 27-31-70, -130 (1991 & Supp. 2011); 4 S.C.Juris. Condominiums §18 (1991)).

In *Reyhani*, the facts are similar to this case, in that a deed in fee simple for part of a property subject to a Master Deed as a common element was transferred from a mortgagee (NCNB) to a third party purchaser for value (Reyhani) after the mortgagee’s recovery of the property through foreclosure from the original developer. Our Appeals Court held that absent an agreement assented to by the condominium owners or an amendment to the Master Deed allowing transfer, no successors in interest could acquire the right to hold fee a simple deed to a part of the tract previously submitted by the deed as common elements and that the property be returned to the regime. *Reyhani*, 329 S.C. at 214, 494 S.E.2d at 469. Once a property transfer is

made to a horizontal property regime under a master deed by the record owner, unless specifically reserved, the owner has no remaining right to convey any part of the property to a third party purchaser. (See generally Exhibit "F" Dep. Of Pl. Expert William J. Cook, at 23-28).

As in the Reyhani case, this case presents no agreement assented to by the unit owners or deed amendment sufficient to allow the developer to subsequently deed part of the common elements to a third party for value after submitting the same property as part of a larger tract to the regime. When reading and interpreting the original Master Deed and all subsequent amendments in a light most favorable to the adverse parties to this suit, it is impossible to construe that the developer reserved or legally obtained a right to subdivide and sell a subdivided portion of the deeded property in fee simple to a third party purchaser for value as was done by Rivers Point Row, LLC to Palms Properties, LLC.

B. The Master Deed and Amendments thereto make reference to construction of a building after recordation of the deed by reserving a right to do so in favor of the developer, but the description of the building with regard to location and type of construction fails to meet the requirements set forth for such a reservation of right in accordance with the Act.

Section 27-31-100 of the Act states that the master deed creating and establishing the horizontal property regime shall express the following particulars:

- (a) The description of the land whether leased or in fee simple, and the building or buildings in existence or to be constructed, if applicable, expressing their respective areas;
- (b) The general description and number of each apartment, expressing its area, location, and any other data necessary for its identification. (emphasis added)

Article III Section 4(a) of the Master Deed as filed generally describes a "Building 2" that did not exist at the time and made reference to Exhibit H therein for "phasing" of this construction in accordance with its terms. Exhibit H reserved a right to build this same "Building 2" in favor of the developer, to be built as described therein within three years from the recording of the Master Deed. The Exhibit contains no description of the location where the building was to be built, only that it would be built "making use of the existing common areas...". See Exhibit H of Master Deed at (iii). Two subsequent amendments to the Master Deed were recorded, each particularly addressing Exhibit H but in no way further defining Building 2 or its proposed location. See generally First and Second Amendments to Master Deed of Rivers Point Row Horizontal Property Regime (Exhibit "D" herein). None of the deed documents involving the

Plaintiff refer to or authorize the sale of any part of the property to bring about or cause this "Building 2" to come into existence, nor reference assignment of the right to construction of "Building 2" in any fashion by the original developer, Rivers Point Row, LLC, to Palms Properties, LLC, or any other third party for this purpose.

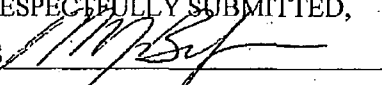
Article II Section 1(g) of the Master Deed defines "Common Area" or "Common Element" to be "[g]eneral common elements as defined in the Act and more specifically defined in Article III, Section 4 of this Master Deed. It includes all of the property and improvements thereon other than the Units." The Act itself provides sundry definitions under §27-31-20(f)(1-7) and in pertinent part includes as general common elements "[t]he land whether leased or in fee simple and whether or not submerged on which the apartment or building stands..." (part 1); and "[a]ll other elements of the property, in existence or to be constructed or installed, rationally of common use ..." (part 7). Article III Section 4(e) of the Master Deed as referred to further provides that the "Common Area consists of the entire property and every part thereof, other than the units." The Master Deed also defines what constitutes the "property" in Article II Section 1(v) as "the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, as described in Exhibit A".

In considering the contents of the Master Deed and both amendments thereto, no determination can be made as to where "Building 2" was to be located on the common area of the property other than that it was to be built making some unspecified use of the common area. (Exhibit "G" Aff. of Daniel C. Forsberg at ¶9.) The only other information referring to "Building 2" in these documents describes the total number of units (8) to be constructed, and the time frame for completion (3 years after deed recordation). See Master Deed for Rivers Point Row and First and Second Amendments, with reference to Exhibit H (Exhibits "C" and "D" herein). The deed contains no particulars of the building with regard to either physical description or location on the property. (Forsberg Aff. ¶9.) Therefore, this reservation of right by the developer is insufficient as a matter of law as it does not comport with the statutory requirements of the Act and should be disregarded, causing all property to be inclusive as common elements when and as originally deceded to the regime and further being subject only to the definitions and restrictions as set forth in the Master Deed with regard to the common elements. (See generally Exhibit "F" Dep. Of Pl. Expert William J. Cook, at 23-28).

CONCLUSION

The developer's recording of the Master Deed transferred fee simple ownership of the entire subject tract from the developer to the Plaintiff, and the developer did not reserve a right in the Deed as originally filed or obtain a right through subsequent deed amendment or other collateral agreement with the unit owners to subdivide and sell to the Defendant, or any other third party, any portion of the property deeded to Plaintiff in the Master Deed. The deed reserved only a right for the developer Rivers Point Row LLC to build an undefined "Building 2" on an unspecified part of the common area of the tract within three years after the recording of the deed. This right as reserved was insufficient as it did not meet the statutory requirements of the Act with regard to definiteness of description and location. Further, no wording of the deed, any amendment to it or other collateral agreement evidences that this right was to be assignable or transferrable from the developer to a third party via a deeded sale of part of the regimes' property or by any other attempt to transfer the right as it existed. Defendant Palms Properties LLC cannot legally hold valid legal fee simple title to any part of the property subject to the previously recorded Master Deed of Rivers Point Row Horizontal Property Regime, and any purported transaction initiated by the developer which attempts to effectuate this transfer is void as a legal nullity. Therefore, the Plaintiff requests that the Court declare the Deed recorded at Book X541 Page 464 to be invalid as a matter of law and issue a decree directing the Register of Deeds of Charleston County to strike this erroneous deed recording from the County records.

RESPECTFULLY SUBMITTED,

/s/ 

Michael J. Buhmeyer (SC Bar #76677)
4107 Perrine Street
Charleston, South Carolina, 29414-6076
Telephone: (843) 408-5937
Facsimile: (843) 571-0174
Email: mbuhmeyer1@bellsouth.net
ATTORNEY FOR FIRST PARTY
PLAINTIFF RIVERS POINT ROW
HORIZONTAL PROPERTY REGIME
a/k/a RIVERS POINT ROW PROPERTY
OWNERS ASSOCIATION, INC.

Charleston, South Carolina
May 25, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF SERVICE

Name of Case: Rivers Point Row Horizontal Property Regime, et al
vs. Palms Properties, LLC
Case Number: 2008-CP-10-2279
Date: May 25, 2012
Document(s): Plaintiff's Memorandum in Support of Summary Judgment,
attached Exhibits "A", "B", "C", "D", "E", "F", and "G".
Addressee(s): Dan M. David, Esq.
P.O. Box 32097
Charleston, SC 29417

O. Grady Query, Esq.
Query, Sautter, Gliserman & Price, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

John A. Massalon and I. Ryan Neville
Attorneys for Third Party Defendants
Wills Massalon & Allen, LLC
PO Box 859
Charleston, SC 29402

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAY 25 AM 11:04

FILED

The undersigned hereby certifies that (s)he packaged true and accurate copies of the Document(s) named above to the Addressee(s) named above on the date shown above and deposited the same with the U.S. Postal Service to the named Addressee(s) with sufficient postage prepaid to ensure delivery.

/s/ 

Printed Name

Michael J. Buhney

Title

Plaintiff's Attorney

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

RIVERS POINT HORIZONTAL
PROPERTY REGIME, et al.)

Plaintiff,)

vs.)

PALMS PROPERTIES, LLC)

Defendant.)

IN THE COURT OF COMMON PLEAS
9TH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: Michael J. Buhmeyer, Bar No. 76677 Address: 4107 Perrine Street Charleston, SC 29414 Phone: (843) 408-5937 Fax _____ E-mail: mbuhmeyer1@bellsouth.net Other: _____		Defendant's Attorney: O. Grady Query, Bar No. 4610 Address: 147 Wappoo Creek Dr., Ste 202 Chas SC 29412 Phone: (843) 795-9500 Fax _____ E-mail: gquery@qsglawyers.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		04/30/2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			

EXHIBI

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

Rivers Point Row Horizontal Property
Regime, a/k/a Rivers Point Row
Property Owners Association, Inc.,)

Plaintiff,)

v.)

Palms Properties, LLC,)

Defendant.)

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

Palms Properties, LLC,)

Third Party Plaintiff,)

v.)

Rivers Point Row, LLC,)

Third Party Defendant.)

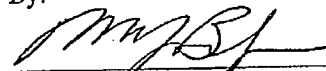
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2012 MAY -1 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above named, by and through their undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Charleston County, South Carolina, on the tenth (10th) day after service hereof, or as soon there after as the parties might be heard for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment on the grounds that there exists no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law. In considering the evidence in the light most favorable to the non-moving party, Defendant has not pled, provided evidence of or raised any issue of fact in this case to Plaintiff's counsel or the

presiding court to oppose Plaintiff's allegations that the deed conveyed to the Defendant by the Third-Party Defendant in this case that is the subject of the Plaintiff's Complaint and Declaratory Judgment action should not be found in violation of the Horizontal Property Regime Act of South Carolina and the filed Master Deed placing the property under the Act prior to the transfer, declared invalid and erroneous as a matter of law, and stricken from the real property Register of Deeds in Charleston County, South Carolina.

This motion will be supported by the pleadings, discovery, oral arguments, and any affidavits and memorandums of law that may be filed with or prior to the hearing of this motion.

By:



Michael V. Buhmeyer, Esq.

4107 Perrine Street

Charleston, SC 29414

Ph: (843) 408-5937

ATTORNEY FOR PLAINTIFFS

Charleston, South Carolina
April 30, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Rivers Point Row Horizontal Property
Regime, a/k/a Rivers Point Row
Property Owners Association, Inc.,

Plaintiff,

v.

Palms Properties, LLC,

Defendant.

Palms Properties, LLC,

Third Party Plaintiff,

v.

Rivers Point Row, LLC,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-2279

AFFIDAVIT OF FIRST PARTY
PLAINTIFF'S COUNSEL

FILED
2012 MAY -1 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Personally appeared before me, Michael J. Buhmeyer, who, upon oath, deposes and declares as follows:

1. He is the attorney and counsel of record for the Plaintiffs in this case; and
2. Since this is a Motion for Summary Judgment, he hereby certifies that consultation with the Defendant(s) in this matter would serve no useful purpose.

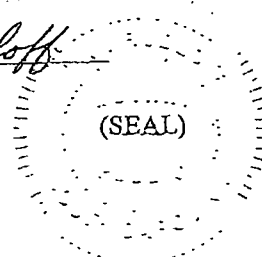
IS *[Signature]* Affiant

Sworn to before me on April 30, 2012 (Date)

By: Leah Rudloff
Notary Public for South Carolina

IS *[Signature]*

My Commission Expires: March 31, 2014



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CERTIFICATE OF MAILING

Name of Case: Rivers Point Row Horizontal Property Regime, et al
vs. Palms Properties, LLC

Case Number: 2008-CP-10-2279

Date: April 30, 2012

Document(s): Plaintiff's Motion for Summary Judgment; Affidavit of
Plaintiff's Attorney.

Addressee(s): Dan M. David, Esq.
P.O. Box 32097
Charleston, SC 29417

O. Grady Query, Esq.
Query, Sautter, Gliserman & Price, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

John A. Massalon and I. Ryan Neville
Attorneys for Third Party Defendants
Wills Massalon & Allen, LLC
PO Box 859
Charleston, SC 29402

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAY -1 PM 1:17

FILED

The undersigned hereby certifies that (s)he placed true and accurate copies of the Document(s) named above to the Addressee(s) named above on the date shown above in an envelope with sufficient prepaid first class postage affixed thereon and deposited the same to the U.S. Postal Service for delivery to the same named Addressee(s).

/S

Printed Name

Title

Michael J. Buhmeyer
Attorney For Plaintiff
(First Party)

Common Pleas
Clerk : Julie Armstrong
Charleston County Judicial Center
Charleston, SC 29401
(843) 958-5000

Received From: Buhmeyer, Michael James	Date: 5/ 2/2012
Attorney At Law	Receipt #: 495578
Charleston, SC 29414	Clerk: coccnp
Paying for: Rivers Point Row Horizontal Prop	
Transaction Type: Payment	Reference #: 1009
Payment Type: Check	Comment:
	Non-Refundable
Total Paid: \$25.00	

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2008CP1002279	Rivers Point Row Horizontal Property Regime Etc , plaintiff, et al VS Palms Properties Llc Etc , defendant, et al	\$25.00	\$25.00	\$0.00
				
Total Cases: 1		\$25.00	\$25.00	\$0.00

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Prepared by and Return to: Hand Law Offices, LLC
106 Wappoo Creek Drive, Suite 3-B
Charleston, SC 29412
Tax Map No. #TMS# 425-07-03-371

Please do not write above this line - Reserved for Register of Deeds Office

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WARRANTY DEED

WHEREAS Rivers Point Row, LLC, grantor herein, held a special meeting on the 1st Day of May, 2005 and at said meeting it was duly resolved that John B. Hagerty, Member, shall have authority to execute any and all agreements and documents on behalf of said Company to effectuate and complete the sale of the hereinbelow-described property pursuant to that Agreement to Buy and Sell by and between Rivers Point Row, LLC, as Seller and Greg Beall-Palms Properties, LLC, as Buyer, and

WHEREAS, this conveyance shall be subject to that certain Master Deed of Rivers Point Row dated May 4, 2004 in Book G-493, page 004 as amended by that First Amendment to Master Deed dated May 24, 2004 and recorded May 24, 2004 in Book R-485, page 385

KNOW ALL MEN BY THESE PRESENTS THAT RIVERS POINT ROW, LLC (hereinafter referred to as "Grantor") for and in consideration of the sum of ONE HUNDRED EIGHTY THOUSAND AND 00/100 (\$180,000.00) Dollars to it paid by PALMS PROPERTIES, LLC (hereinafter referred to as "Grantee") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said Grantee its heirs, successors, and assigns forever

ALL that piece, parcel or tract of land, together with any buildings or improvements thereon, situate, lying and being on James Island in the County of Charleston, State of South Carolina, shown and designated as Tract B2 on a plat entitled PLAT SHOWING THE SUBDIVISION OF TRACT B OWNED BY RIVERS POINT ROW, LLC INTO TRACT B1 CONTAINING 8.10 ACRES AND TRACT B2 CONTAINING 0.38 ACRE; by E.M. Seabrook, Jr., Inc., dated May 2, 2005 and recorded in Plat Book EH, Page 904

BEING a portion of the property conveyed to Rivers Point Row, LLC by Intercontinental Fund III Rivers Point SC, LLC a Massachusetts Limited Liability dated 05/04/04 and recorded 05/04/04 in the RMC Office for Charleston County in Deed Book G-493, page 759

TMS# 425-07-00-371

RECORDED
MAY 11 2005
BY [Signature]

8X X541PG465

This conveyance is made subject to Easements, Restrictions, Covenants and Conditions of record, including matters shown on recorded plats.

Grantee: 1067 Blue Marlin Drive
Charleston, SC 29412

TOGETHER with all and singular, the rights, members, appurtenances and appurtenances to the said premises belonging or in anywise incident or appertaining

DO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor successors, executors and administrators to warrant and forever defend all and singular the said premises unto the said Grantee, its successors, and assigns against Grantor and Grantor successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof

WITNESS our Hand and Seal this 12th day of May, in the year of our Lord 2005

Signed, Sealed and Delivered
in the Presence of

1st Witness

Rivers Point Row, LLC

BY: John B. Hagarty
John B. Hagarty/Member

2nd Witness (Notary)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Personally appeared before me the undersigned and made oath that she saw the within named Grantor sign, seal and as its act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

Beverly
1st Witness

SWORN to before me this
12th day of May, 2005

Notary Public for the Charleston
My Commission Expires

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLOTTE)

AFFIDAVIT

Date of Transfer of Title
Closing Date 5/12/05

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says

1. I am over the age of 18 and I understand such information

2. The property is being transferred by RIVERS PARK HOME LLC ON 5/12/05
TO PLAINS PROPERTIES, LLC

3. Check one of the following. The DEED is
(a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or as a transfer to a trust or as distribution to a trust beneficiary
(c) ☐ EXEMPT from the deed recording fee because (exception # _____)
(If exempt, please skip items 4-5, and go to item 7 of this affidavit)

4. Check one of the following if either 3(a) or item 3(b) above has been checked
(a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 10,000.00
(b) ☐ The fee is computed on the fair market value of the realty which is \$ _____
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____

5. Check YES or NO ☒ to the following: Alien or encumbrance existed on the land, tenement, or realty before transfer and remained on the land, tenement or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____

6. The DEED Recording fee is computed as follows
(a) ☒ the amount listed in item 4 above
(b) ☐ the amount listed in item 5 above (no amount place zero)
(c) ☐ subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Closing Attorney

8. Check if Property other than Real Property is being transferred on this Deed
(a) ☐ Mobile Home
(b) ☐ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT Estate of _____
deceased CASE NUMBER _____ Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina, that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

SWORN to before me this 12 day of MAY, 2005
Notary Public for SC
My Commission Expires 5/12/05

Signed
Grantor, Grantee or Legal Representative

Type or Print Name here

31 X541 PG467

RECORDER'S PAGE

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the Original Document

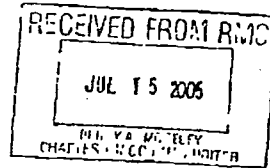


Hand Low Offices, LLC
135 Wappoo Creek Drive Suite 3A
Charleston, SC 29412

Recording
Fee 10.00
State
Fee 468.00
County
Fee 198.00
Postage _____
Total 676.00

C

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X541- 404
2005 JUN 22 PM 3:41
CHARLES LYBRAND
REGISTER
CHARLESTON COUNTY SC



PID VERIFIED BY ASSESSOR	
REP	<u>288</u>
DATE	<u>7/15/05</u>

843) 258-1830 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

BKG 493PG001

**MASTER DEED
OF
RIVERS POINT ROW
HORIZONTAL PROPERTY REGIME**

Charleston, South Carolina

Developer:

Rivers Point Row, LLC

Prepared by:

John B. Hagerty, Esquire

Law Offices of
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Suite 600, 151 Meeting Street
Charleston, South Carolina 29401
(843) 853-5200

EXHIBIT "C"

RIVERS POINT ROW MASTER DEED

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STATE OF SOUTH CAROLINA)
)
(COUNTY OF CHARLESTON)

MASTER DEED

RIVERS POINT ROW HORIZONTAL PROPERTY REGIME

Rivers Point Row, LLC a South Carolina limited liability company, (sometimes hereinafter referred to as "Declarant") having its principal place of business in the County of Charleston, South Carolina, makes and grants this MASTER DEED dated May 24, 2004 to establish a plan of condominium ownership for the Property described herein.

WHEREAS, Declarant is the fee simple owner of that certain tract of land and the holder of certain permits described in Exhibit A hereto and incorporated herein by reference (the Land"); and

WHEREAS, the Declarant, being about to sell and convey condominium Units located as more particularly described herein, desires to (a) establish a horizontal property regime pursuant to the Act, as defined below; (b) assure to the Owners of such Units and their heirs, successors and assigns that the use, benefit and enjoyment of the Common Area, as defined herein, will be administered in an orderly manner; and (c) subject the Property to certain restrictions, reservations, servitudes, covenants, agreements, easements, liens and charges, as hereinafter set forth; and

WHEREAS, there has been incorporated an Association of Unit Owners known as RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC., for the purposes of maintaining and administering the Common Area connected with and appertaining to the condominium Units, providing for the disposition of various matters relating to the Units and their Co-owners, and such other purposes as are set forth in this Master Deed.

NOW THEREFORE, in consideration of the premises contained herein, Declarant grants and covenants as follows:

ARTICLE I

Section 1. Property Subject to Master Deed. The Property described in Article II shall be subject to the provisions set forth in this Master Deed, which provisions shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and upon the Unit Owners and their heirs, successors and assigns, respectively.

ARTICLE II

Section 1. Definitions. Those definitions contained in Section 27-31-20 of the Act, as defined herein, are incorporated in this Master Deed unless it clear from the context that a definition in the Act is contradictory to the following definitions: in which event the following definition shall apply except where the definition of the Act is mandatory.

(a) "Act" means the Horizontal Property Act, Section 27-31-20 et seq. of the 1976 Code of Laws of South Carolina, as amended from time to time. References to specific sections of the Act contained herein refer to the sections as designated at the time of recordation of this Master Deed.

(b) "Apartment" means a "Unit", as defined herein.

(c) "Association" means Rivers Point Row Property Owners Association, Inc., the South Carolina not-for-profit corporation whose members consist of all the persons, corporations, limited liability companies, partnerships, associations, trusts or other legal entities, or any combination thereof, which own a Unit.

(d) "Board of Directors" means the Board of Directors of the Association.

(e) "Building" means a structure or structures, containing in the aggregate two or more Units, comprising a part of the Property.

(f) "Co-owner" or "Owner" or "Unit Owner" means a Person which owns a Unit.

(g) "Common Area" or "Common Element" means "General common elements as defined in the Act and more specifically defined in Article III, Section 4 of this Master Deed. It includes all of the Property and improvements thereon other than the Units.

(h) "Common Expense" means all liabilities or expenditures made or incurred by or on behalf of the Association, as more specifically defined in Article VI, Section 1 of this Master Deed.

(i) "Common Charge" means those monetary charges levied against the Unit owners to pay for the Common Expenses.

(j) "Common Interest" means the percentage of undivided interest in the Common Area appertaining to each Unit, as expressed in the Master Deed. Any specified percentage of the Common Interest means such percentage of the undivided interests in the aggregate.

(k) "Condominium" or "condominium ownership" means the form of ownership intended by the Master Deed, that is, ownership by Owners of Individual Units, with a common right to share the Common Area.

(l) "Declarant" means Rivers Point Row, LLC a South Carolina limited liability company, its successors and assigns. Declarant may assign its rights as Declarant upon a written assignment signed by the Declarant and the assignee and duly recorded in the R.M.C. Office for Charleston County, South Carolina. Conveyance of a deed to a Unit or the existence of a mortgage on a Unit or the Property shall not be deemed to make the grantee of such deed or mortgage a "Declarant."

(m) "Elevations" means the drawing(s) showing the external vertical characteristics of a Building or improvements on the Property, or the vertical location of Units in such improvements, which drawing(s) are attached hereto and by this reference made a part hereof. (See Exhibit "C".)

(n) "Floor Plan" means the plans for the Building(s) which show the dimensions, area and location of each Unit therein, which plans are attached hereto and by this reference made a part hereof (See Exhibit "C")

(o) "Joint Owner" means a Person which owns a Unit with any other entity and the combination of which constitutes a Unit Owner. Where a Person is a Joint Owner of a Unit, the Association may establish such rules and procedures as it deems appropriate to govern which Joint Owner or Owners has the right to act on behalf of the Unit Owner for the Unit.

(p) "Limited Common Area" and/or "Limited Common Areas" means that Common Area which is specified in this Master Deed or the Exhibits thereto as being reserved for the use of a certain number of Units to the exclusion of the other Units.

(q) "Majority of Co-owners" or "Majority of Owners" means fifty one percent (51%) or more of the Common Interests, as calculated on the basic value of the Property as a whole, computed in accordance with the provisions of Section 27-31-60 of the Act, and as shown in Exhibit "F" to this Master Deed. "Value" as shown herein is set forth for the sole purpose of the Act and does necessarily relate to current or future property value or sales price.

(r) "Master Deed" means this Master Deed.

(s) "Operation of the Property" means and includes the administration and operation of the Property and the maintenance, repair, and replacement of, and the making of any additions and improvements to the Common Area.

(t) "Plot Plan" means the plat(s) or survey(s) of the Property showing the horizontal location of any Building or other significant improvements on the Property, said Plot Plan being attached hereto, and by this reference made a part hereof (See Exhibit "B".)

(u) "Person" means an individual, firm, corporation, limited liability company, partnership, association, trust or other legal entity.

(v) "Property" means the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, as described in Exhibit A:

(w) "Regime" means the Rivers Point Row Horizontal Property Regime created by the recodation of this Master Deed, as set forth in Section 27-31-30 of the Act.

(x) "Unit" means an "Apartment" as that term is used in the Act, and includes one or more rooms and adjoining patio and/or balcony designated as part thereof, and

occupying one or more floors or a part or parts thereof, designed or intended for independent use as a single family dwelling, as set forth on the Unit Plans; provided, however, that the term excludes any elements excluded pursuant to Article III, Section 4, below.

(y) "To record" means to record in accordance with the provisions of the Act, Sections 30-5-30 through 30-5-200 and 30-7-10 through 30-9-80, or other applicable recording statutes.

ARTICLE III

Section 1 Submission of the Property to the Act. Declarant, as the owner in fee simple of the Property, by recording this Master Deed, submits the Property to the provisions of the Act. In order to implement the horizontal property regime plan of ownership for the Property, Declarant covenants and agrees to and hereby does subdivide the above described Property vertically and horizontally into the freehold estates referred to herein as Units.

Section 2. Unit Plans.

(a) Documents Included in Unit Plans. In accordance with Section 27-31-110 of the Act, attached hereto and made a part of this Master Deed are the following documents constituting the "Unit Plans"

- (a) Site Plan/Survey (Exhibit B).
- (b) Unit Plans, Floor Plans, Elevation Plans and Photographs (Exhibit C).
- (c) Unit Sizes and Designations (Exhibit D)

(b) Information in Each Document. The Plot Plan shows the location of the Buildings and significant improvements in relation to the Land. The Unit Plans show Unit types, dimensions and the intended use of various spaces within the Unit. The Building Floor Plans show the location of the Units within the Buildings; the designation of each Unit; and the location of corridors, stairwells, storage areas and some of the areas which are intended as Common Area. The Elevations show the typical exterior dimensions of each type of end Unit and interior Unit. The Unit Sizes and Designations show the number of Units in each Building and the size and designation of each Unit. The Unit Plans are certified by an engineer or architect licensed to practice in South Carolina.

Section 3. Allocation of Common Interests. The allocation of Common Interests among the Units is shown on Exhibit D, incorporated herein by reference.

Section 4. Description of Rivers Point Row

(a) General Description and Phasing. The Rivers Point Row project, with its present Units and Common Area, consists of the Property, as described in Exhibit "A" with improvements as follows:

Three Buildings (Buildings 1, 15 and 17) on the Property each building containing Eight one bedroom Garden Units for a total of Twenty Four one bedroom Garden Units each containing face to face of interior wall surface dimensions of 675 square feet; Four Buildings (Buildings 4, 5, 6, and 16) on the Property each building containing Eight two bedroom Garden Units for a total of Thirty Two two bedroom Garden Units each containing face to face of interior wall surface dimensions of 883 square feet; Ten Buildings (Buildings 3, 7, 8, 9, 10, 11, 12, 13, 14 and 18) on the Property of which Eight buildings contain Eight two bedroom Townhouse Units and of which Two buildings contain Six two bedroom Townhouse Units for a total of Seventy Six two bedroom Townhouse Units each containing face to face of interior wall surface dimensions of 908 square feet, for a total of One Hundred Thirty Two (132) Units at Rivers Point Row; uncovered parking on the Property; a swimming pool, a tennis court, a Club House Building and a volleyball court. In this Master Deed, the first residential floor above the ground level is referred to as the "first floor" and the second residential floor above the ground level is referred to as the "second floor."

All improvements are in place except that Building 2 has not been built and the Phasing is to be as described in Exhibit H and Exhibit D, herein.

(b) The Unit sizes and designations are shown in Exhibit C.

(c) Description of Parking Areas. The Property contains the vehicle parking areas for the use of Unit Owners and for guest parking summarized in (a), above. The parking areas are subject to those rules and regulations promulgated by the Association.

(d) Limits of Units. Unless otherwise expressly stated or otherwise shown in the Unit Plans, the horizontal boundary of each Unit ends at the centerline of any non-structural element which separates two Units, at the exterior side of any nonstructural element which separates a Unit from Common Area, and at the exterior of exterior doors, windows, and glass walls and the frames thereof. Unless otherwise expressly stated or otherwise shown in the Unit Plans, the upper vertical boundary of a Unit ends at the point at which a ceiling becomes a structural element supporting a space above the Unit (e.g. the Unit contains any suspended ceiling material or panel and any spackling application, paint or other application which is not an essential element of the structural component). Unless otherwise expressly stated or otherwise shown in the Unit Plans, the lower vertical boundary of a Unit ends at the point at which the floor becomes a structural element supporting the Unit (e.g. the Unit contains the carpeting, tile, wood flooring, paint, matting, etc. on top of the structural element). A Unit shall not be deemed to include perimeter walls of the Building or interior or exterior load-bearing walls, columns or similar load-bearing elements; the structural elements of floors and ceilings which support the Unit or adjacent Units; pipes, wiring, conduits, channels, ducts or other utility lines running through the boundaries of the Unit which are utilized for or serve more than one Unit; or personal property and assets held and maintained for the joint use and enjoyment of all the Unit Owners. A Unit shall be deemed to include (i) all other walls, columns, partitions, floors and ceilings within its perimeter walls which are not load-bearing, including plaster, paint, wallpaper or the like; (ii) carpeting, floor covering and window covering within the perimeter walls of the Unit; (iii) appliances, hardware, doors, heating and air conditioning components, built-in fixtures and similar elements which serve

only the Unit; and (iv) pipes, wiring, conduits, channels, ducts, chases or other utility lines within the perimeter walls of the Unit which serve only the Unit.

(e) Common Area and Easements for Access to Common Area. The Common Area consists of the entire Property and every part thereof, other than the Units.

(f) Limited Common Area. The Limited Common Areas are generally shown on the Unit Plans. The use of the Limited Common Area is restricted exclusively to the Unit to which such Limited Common Area is adjacent unless otherwise expressly stated herein or otherwise shown in the Unit Plans. Unless otherwise expressly stated herein, for all purposes other than use (e.g. approval of modifications, repair, insurance, and governance), the Limited Common Area is deemed to be a part of the Common Area. [See Article VI, Section 1 (c).]

(g) Disputes Regarding What Is Common Area or Unit. If a dispute arises between Unit Owners or between a Unit Owner or Unit Owners and others as to what portion of the Property constitutes a Unit, Common Area or Limited Common Area, the Board of Directors of the Association shall have the authority to determine the proper designation of the disputed area, after such consultation with others as it may determine to be appropriate, provided that such determination shall be set forth in writing, shall be made in good faith, and shall not be clearly inconsistent with this Master Deed.

Section 5. Determining Common Interests. For the purpose of determining the total Common Interests, the Common Interest of each Unit, and the percentages for purposes of voting on all matters requiring a vote by the Owners, the percentages as provided in Exhibit D shall govern from time to time.

Section 6. Easements Reserved. The Declarant reserves for itself, its successors and assigns (i) non-exclusive easements through Units, Common Area, and Limited Common Area as may reasonably be required for conduits, pipes, ducts, plumbing, wiring and other facilities for furnishing utility services to the Common Area and to Units other than a Unit or Limited Common Area through which it passes; and for lateral and subjacent support in every portion of a Unit which contributes to the support of the improvements; and (ii) easements in, over, across, under and upon the Property as may be required, in its sole discretion, to provide ingress and egress necessary and convenient for the construction and development of improvements on the Property, including all utility lines and facilities; and storage, staging, assembly, supervision, protection and construction during development or construction of the improvements. Declarant shall have a transferable, perpetual power and authority to grant and accept easements to and from any private entity or public authority, agency, public service district, public or private utility or other Person, upon, over, under and across the Common Area for constructing, installing, maintaining, repairing, inspecting and replacing television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to, storm and sanitary sewer systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant without notice to or consent by the Association. The rights of the Declarant to grant easements shall automatically be assigned to the Association

upon conveyance by the Declarant of the last Unit in the Regime to another Person, other than a mortgagee.

ARTICLE IV

Section 1. Administration of Regime by Association. In order to provide for the effective and efficient administration of the Regime by the Unit Owners, a nonprofit corporation known and designated as RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC. ("the Association") has been organized. The Association shall administer the operation and management of the Regime and undertake and perform all acts and duties incident thereto in accordance with the provisions of this Master Deed, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations promulgated by the Association from time to time. A copy of the Bylaws are annexed hereto and made a part hereof as Exhibit F.

Section 2. Membership and Voting.

(a) Membership. The Owner of each Unit shall automatically be a member of the Association upon its acquisition of an ownership interest in title to any Unit. The Owner of a Unit shall have rights in the Association in the same proportion as its Common Interest. The membership of an Owner shall terminate automatically upon conveyance of title to the Unit, regardless of the means by which such conveyance of title occurs. No Person holding any lien, mortgage or other encumbrance upon any Unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Regime, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Master Deed, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulation governing the use of the Units, Common Area, and Limited Common Area, as the Board of Directors of the Association may deem to be in the best interest of the Regime.

(b) Voting. The Owner of each Unit shall have the right to cast the number of votes attributable to the Common Interest of such Unit. Votes may be cast in person or by proxy at all meetings of the Association. The holder of a proxy need not be an Owner.

Section 3. Association Governance: Board of Directors. The Board of Directors of the Association (the "Board of Directors") shall function in accordance with this Declaration and the Bylaws. The Bylaws may be amended, from time to time, only as provided herein. The Board of Directors shall constitute the final administrative authority of the Association, and, unless modified by a vote of owners owning a majority of the Common Interests, all decisions of the Board of Directors shall be binding upon the Association and the Owners; provided, however, that the Owners may not modify or invalidate any provision of this Master Deed or the Bylaws except by amending the applicable provision. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

Section 4. Selection of Board of Directors. Prior to Loss of the Controlling Interest (as defined below), the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as determined by the Declarant from time-to-time. Said individuals need not be Owners of Units. Following Loss of the Controlling Interest by the Declarant, the Board of Directors shall consist of such number of individuals as may be selected in accordance with the Bylaws. "Loss of the Controlling Interest" shall occur at the earlier of (i) the conveyance by Declarant of ownership of three fourths (3/4ths) of all Units (other than conveyance to a mortgagee pursuant to the terms of a mortgage or in lieu of enforcement of the terms of a mortgage), or (ii) the date on which the Declarant notifies the Unit Owners in writing that it is relinquishing the Controlling Interest.

Section 5. Rules and Regulations. The Board of Directors shall have the authority from time-to-time to adopt rules and regulations governing the use, administration and operation of the Property, subject to the terms of this Declaration and the Bylaws. The initial Rules and Regulations are set forth in Exhibit E, attached hereto and incorporated herein by reference.

Section 6. Indemnification. The members of the Board of Directors, the officers of the Association as may be elected by the Board of Directors, and such other officers or employees of the Association or the Managing Agent of the Association as the Board of Directors shall specify by written resolution from time-to-time, shall not be liable to the owners or the Association for any mistake in judgment or acts or omissions unless such act or omission was made in bad faith or was the result of gross negligence. The Association shall indemnify and hold harmless such non-labile Persons against all liabilities to others arising out of any action or agreement made by such Persons on behalf of the Association unless such action or agreement was made in bad faith or with gross negligence.

Section 7. Working Capital. At the time that title is conveyed to an owner by the Declarant, the Owner shall contribute to a working capital reserve established by the Association the sum of \$250.00 Dollars. Such funds shall be used solely for initial operating and capital expenses of the Regime.

Section 8. Insurance.

(a) Type of Insurance. If such insurance is available at reasonable cost, the Board of Directors shall endeavor to obtain insurance coverage, in such amounts as it shall reasonably determine, for the Property, excepting personal property of a owner located within the Unit owned by such Owner. The insurance shall, to the extent feasible, cover the insurable interests of the Association and the owners of Units, and any mortgagees of the Association and the Owners of Units. To the extent feasible at reasonable cost, such insurance coverage shall be obtained:

(i) against loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based upon current replacement cost);

(ii) against such risks as vandalism, theft and malicious mischief;

(iii) for comprehensive general public liability and, if applicable, automobile liability insurance for any vehicles owned or leased by the Association, covering loss or damages resulting from accident or occurrences on or about the Property or elsewhere;

(iv) for worker compensation or other mandatory insurance;

(v) for fidelity insurance covering any employees or officers of the Association or Managing Agent having access to any substantial funds of the Association;

(vi) for officers and directors, providing coverage against claims brought against the Board of Directors or officers of the Association acting in such capacity; and for

(vii) such other insurance as the Board of Directors shall determine to be reasonable and desirable from time-to-time.

(b) Other Insurance Criteria. All insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association. The insurance coverage shall, if feasible, provide that;

(i) the interest of the Association shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association;

(ii) the coverage shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to the Association;

(iii) subrogation shall be waived with respect to the Association and its Board of Directors, employees and agents, and Owners, members of their household and mortgagees; and

(iv) there shall be a cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(c) Insurance Premiums. The Association shall collect and enforce the payment of a share of the premium for such insurance from each Unit Owner as a part of the Common Expenses; provided, however, where the insurer allocates the insurance premium(s) among the Units based on current insured values for the Units which differ from the allocation of Common Interests among the Unit Owners pursuant to this Declaration, then each Unit Owner shall pay that portion of the premium(s) as shall be determined by the insurer or the Board of Directors to be allocable to the Unit of the Unit Owner. No Unit Owner may elect not to pay its proportionate share of the insurance obtained by the Association for the Property and the Unit.

(d) Insurance to Be Purchased Directly by Unit Owner. Each Unit Owner shall purchase liability insurance for accidents occurring in its own Unit and shall be responsible for purchasing Insurance on all personal property in the Unit; provided, however, that the Board of Directors, in its sole discretion, may assist the Unit Owners by obtaining

information regarding personal property insurance which may be available through the insurer(s) selected by the Board of Directors for insuring of the Property.

(c) Insurance Trustee. The Board of Directors may, at its discretion, retain any bank, trust company or South Carolina law firm to act as trustee, agent or depository (the "Insurance Trustee") on its behalf for the purpose of receiving or distributing any insurance proceeds. If no Insurance Trustee is retained, the powers of the Insurance Trustee set forth in this Section 8 shall be vested in the Board of Directors. The Insurance Trustee shall receive the proceeds from the casualty insurance policies held by it, and shall hold such proceeds in trust for the Association, Unit Owners, and any mortgagees, as applicable. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of the policies, nor for the failure to collect any insurance proceeds. The fees and reasonable expenses of the Insurance Trustee shall be a Common Expense. Unless otherwise waived by the Board of Directors, the Board of Directors or any Insurance Trustee appointed by the Board of Directors is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association.

(f) Rights of Mortgagees Regarding Reconstruction. No mortgagee shall have any right to participate in the determination of whether property is to be rebuilt, nor shall any mortgagee have the right to require that the Insurance Trustee, the Board of Directors, or any Owner apply insurance proceeds to repayment of its loan except in accordance with the following provisions. If insurance proceeds are sufficient to pay for the cost of reconstruction and repair of all damaged portions of the Property, or if the insurance proceeds are insufficient but additional funds are committed by special assessment or any other manner within ninety (90) days after the costs of restoration and repair are determined, then no mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan.

(g) Use of Insurance Proceeds If Damage Only to Units. If a loss occurs only to any improvements within any Unit(s), without any loss to any improvements within the Common Area, the Insurance Trustee shall immediately pay all proceeds received because of such loss directly to the Owners of the Unit damaged, and their approved first mortgagees, if any, as their interest may appear, or to the first mortgagee only if required by any condominium rider to a mortgage, and it shall be the duty of these Owners to use such proceeds to effect necessary repair to the Unit. The Insurance Trustee may rely upon the written statement of the Association as to whether or not a loss has been incurred to the Units or Common Area or both.

(h) Use of Insurance Proceeds If Damage to Units and Common Area Is Less Than \$20,000.00. If a loss of \$20,000.00 or less occurs to improvements within one or more Units and to improvements within the contiguous Common-Area (including Limited Common Area), or to improvements within the Common Area alone, the Insurance Trustee shall pay the proceeds received as a result of such loss to the Association. Upon receipt of such proceeds, the Association will promptly contract for the necessary repairs to the improvements within the Common Area and within the damaged Units; provided, however, that if the necessary repairs to the improvements with the damaged Units are repairs which can be accomplished without detrimentally affecting other Owners or the Common Area, then the

Association may allow the Owner of the Unit to contract directly for the repair of the Improvements within the Unit. Unless the Board of Directors shall determine that the insurance proceeds are sufficient to repair all of the damage to the Common Area and within the Units, the proceeds shall be applied first to repair the Improvements within the Common Area, and the balance of the funds shall be apportioned to repair improvements within the damaged Units, in proportion to the loss sustained to improvements within all the damaged Units, as estimated by the insurance carrier. In such event, the Owners of Units containing damaged improvements shall be subject to a special assessment and shall contribute to the Association the remaining funds necessary to repair the improvements within their Units. If any Owner(s) of Units containing damaged improvements refuses to pay such assessment, then the majority of Owners of Units so damaged may proceed with the reconstruction at the expense of all Owners benefited thereby.

(i) Use of Insurance Proceeds If Damage to Units and Common Area Is More Than \$20,000.00. If a loss of more than \$20,000.00 occurs to improvements within one or more Units and to improvements within contiguous Common Area (including Limited Common Area), or to improvements within the Common Area alone, the Insurance Trustee shall hold all insurance proceeds and any and all other funds paid as hereinafter provided in trust, and shall distribute the same as follows:

(i) The Board of Directors of the Association shall cause to be obtained detailed estimates and/or bids for the cost of rebuilding and reconstructing the damage and for the purpose of determining whether insurance proceeds are sufficient to pay for the same.

(ii) If the insurance proceeds are sufficient to rebuild and reconstruct all the damaged improvements within the Common Area and within the Units, or upon the collection of the necessary funds that are described in subparagraph (iii) of this paragraph, then:

1. If the casualty loss necessitates reconstruction of more than two-thirds in value of the improvements on the Property, as determined by the Board of Directors, then the insurance proceeds shall be disbursed pro-rata, in accordance with their respective Common Interests, to the Owners and their respective mortgagees, and in such proportions as the Board of Directors in its sole discretion may determine. This paragraph may be waived, altered or amended with the consent of such percentage of the Owners as are required to amend this Declaration.
2. If the casualty loss necessitates reconstruction of two-thirds or less in value of the improvements on the Property, as determined by the Board of Directors, then the damaged improvements shall be completely repaired and restored.

(iii) If the insurance proceeds are not sufficient to repair or replace all the improvements within the Common Area and within the Units so that special assessments shall be required to complete repair or replacement, then:

1. If the casualty loss necessitates reconstruction of more than two-thirds in value of the improvements on the Property, as determined by the Board of Directors, then the insurance proceeds shall be disbursed, prorata, in accordance with their respective Common Interests, to the Owners and their respective mortgagees, and in such proportions as the Board of Directors in its sole discretion may determine. This paragraph may be waived, altered or amended with the consent of such percentage of the Owners as are required to amend this Declaration.
2. If the casualty loss necessitates reconstruction of two-thirds or less in value of the improvements on the Property, as determined by the Board of Directors, then the Board of Directors shall meet and shall determine the amount of and terms of a special assessment against the Units and the owners thereof to obtain the necessary funds to repair the improvements. Such assessment need not be uniform as to all Units, but may be in accordance with such factors as the Board of Directors of the Association shall consider to be fair and equitable under the circumstances; whereupon the Board of Directors of the Association, having determined the amount of such assessment, shall immediately levy such assessment setting forth the date of payment of the same, and the funds received shall be delivered to the trustee and disbursed as provided in the preceding paragraph. If any Owner or Owners of Units containing damaged improvements refuses or refuse to pay such assessment, then the majority of Owners of Units so damaged may proceed with reconstruction at the expense of all Owners benefited thereby.

(j) Use of Excess Funds After Reconstruction. If funds remain in the hands of the Insurance Trustee after complete repair and reconstruction and after the Insurance Trustee's fee and other fees or costs have been paid, such funds shall be distributed (i) first, to the Unit Owners who made contributions in proportion to their contributions, until all contributions (and such interest thereon, if any, as the Board of Directors determines is appropriate and reasonable) have been repaid, and (ii) second, to the Unit Owners in proportion to their Common Interests.

(k) Contract Administration During Reconstruction.

(i) The Insurance Trustee or Board of Directors, as appropriate, shall endeavor to require all payees to deliver paid bills and waivers of mechanics liens and execute any affidavit required by law or by the Association, or any approved first mortgagee named on a mortgage endorsement. The Board of Directors shall negotiate and obtain one or more contractors willing to do the work on a fixed price basis, or some other reasonable terms under the circumstances, which said contractor shall post performance and payment bonds. The Insurance Trustee shall disburse the insurance proceeds and other funds held in trust in accordance with the progress payments specified in the construction contract between the Association and the contractor.

(ii) Any repair, rebuilding, or reconstruction shall be substantially in accordance with the architectural plans and specifications for the original Building or as the Building was last constructed, or according to plans approved by the Board of Directors.

Section 9. Condemnation. If the Property or any part thereof shall be taken or condemned by any authority having a power of eminent domain, any compensation therefor shall be payable to such bank, trust company or law firm authorized to do business in South Carolina as the Board of Directors shall designate as Trustee for all Unit Owners and mortgagees affected thereby, according to the loss or damages to their respective Units, and, to the extent feasible, shall be used promptly by the Board of Directors for restoring or replacing such improvements on the remaining Property. In so doing, the Board of Directors shall follow the concepts and procedures set forth in the preceding Section 8, as applicable. If the Board of Directors determines that such restoration or replacement is impracticable, the Association shall, with the proceeds received from such condemnation or taking, remove all necessary remains of such improvements so taken or condemned, restore the Site thereof to good and orderly condition, and equitably distribute any remaining proceeds from such condemnation or taking to the Unit Owners or mortgagees affected thereby, according to the loss or damage to their respective Units.

ARTICLE V

Section 1. Notice of Sale or Lease. If an Owner sells, leases, or otherwise conveys a Unit, the conveying or leasing Owner shall promptly furnish to the Association, in writing, the name and address of such purchaser, lessee, or transferee; if a lease, the term of the lease; and the forwarding address of the conveying or leasing Owner. The Association may require a conveying or transferee Owner to provide a certified copy of the instrument by which the Unit was obtained.

Section 2. Acquisition by Devise or Inheritance. When any Person receives title to a Unit by devise or inheritance, or by any other method not heretofore considered, it shall be the responsibility of such Person to notify the Association that such transfer has occurred and to provide the information set forth in Section 1, above.

Section 3. Notice Procedure. Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and (a) personally delivered or (b) sent postage or delivery charges prepaid either (i) by United States mail, certified, return receipt requested, in which case notice shall be deemed to occur on the certified date of delivery or rejection of delivery or (ii) if within the United States, by First Class United States mail, in which case notice shall be deemed to occur three (3) calendar days after date of postmark, or (iii) by any recognized express delivery service which provides evidence of delivery, in which case notice shall be deemed to occur on the date of delivery.

All notices to Owners shall be delivered or sent to such address as has been designated in writing to the Association, or if no address had been so designated, at the addresses of such Owners respective Unit.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Rivers Point Row Property Owners Association, Inc.
21 Rivers Point Row
Charleston, SC 29412

or to such other address as the Association may from time to time notify the Owners and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

Rivers Point Row, LLC
c/o John B. Hagerty
Nelson Mullins Riley & Scarborough, L.L.P.
Suite 600, 151 Meeting Street
Charleston, SC 29401

or to such other address as Declarant may from time to time notify the Association.

All notices to mortgagees shall be delivered or sent to such addresses as such mortgagees special in writing to the Association.

Section 4. General Maintenance and Repair.

(a) All maintenance of and repairs to any Unit (other than maintenance of and repairs to any Common Area contained therein which are not necessitated by the negligence, misuse or neglect of the Owner of such Unit or such Owner's invitees or licensees), including internal installations for the sole benefit of such Unit, such as telephones, air conditioners, heating elements, plumbing lines and fixtures, electric fixtures, doors, windows, lamps, etc., shall be made by the Owner of such Unit. All maintenance and repair shall be performed promptly and diligently by each Owner obligated to do same. Each Owner shall be responsible for all damages to any Unit and/or the Common Area caused by his failure to maintain or make repairs. An Owner shall reimburse the Association or another Owner, as applicable, for any expenditures incurred in repairing or replacing any Common Area or other Unit damaged through his neglect, including any deductible paid by the Association or the other Owner prior to receipt of any insurance proceeds for such damage.

(b) All maintenance, repairs and replacements to the Common Area and Limited Common Area, whether located inside or outside of the Units (other than maintenance of and repairs to the Common Area contained therein which are necessitated by the negligence.

misuse or neglect of the Owner of such Unit or such Owner's invitees or licensees) shall be made by the Association and be charged to all the Unit Owners as a Common Expense.

(c) The Association shall have access to each Unit and Limited Common Area from time to time during reasonable hours, as determined by the Board of Directors, for the maintenance, repair or replacement of any Common Area, or for making emergency repairs therein to prevent damage to the Common Area or to another Unit.

Section 5. Alterations or Improvements by Board. Additions, alterations, or improvements included within the Association budget or costing Five Thousand (\$5,000.00) Dollars or less may be performed by the Board of Directors without approval of the Unit Owners, and the cost thereof shall constitute part of the Common Expense. Additions, alterations or improvements not included within the approved budget and costing more than Five Thousand (\$5,000.00) Dollars must be approved by the Board of Directors and by a vote representing fifty one (51%) percent of the Common Interests of the Unit Owners.

Section 6. Maintenance and Decoration of Unit Interiors. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit, and such Unit Owner may decorate, and shall maintain, such interior surfaces in good condition, at his sole expense. Such use, decoration and maintenance, including the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Association. The interior surfaces of all windows forming part of the perimeter wall of a Unit shall be cleaned by the Unit Owner. Decorating of Common Area (other than interior surfaces within the Units as above provided), and any redecorating of Units made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Area by the Association, shall be furnished by the Association as part of the Common Expense.

Section 7. Unit Mortgages. Each Unit Owner shall have the right, subject to the provisions hereto, to make a separate mortgage or encumbrance on his Unit. No Unit Owners shall have the right to make or create, or cause to be made or created, any mortgage, encumbrance or other lien on or affecting the Property or any part hereof except his Unit.

Section 8. Encroachments. If any Unit shall encroach upon any Common Area for any reason not caused by the purposed or negligent act of the Unit Owner(s), or agents of such Owner(s), then an easement appurtenant to such Unit shall exist for the continuance of such encroachment on the Common Area for so long as such encroachment shall naturally exist. If any portion of the Common Area shall encroach upon any Unit then an easement shall exist for the continuance of such encroachment of the Common Area into any Unit for so long as such encroachment shall naturally exist.

Section 9. Real Estate Taxes and Assessments. It is intended that real estate taxes, assessments and similar charges shall be separately assessed against each Unit Owner for his Unit and his Common Interest in the Common Area, as provided in the Act. If, for the year in which this Master Deed is recorded, such taxes, assessments or charges are not separately

taxed to each Unit Owner, but are taxed or assessed on the Property as a whole, then each Unit owner shall pay his proportionate share thereof in accordance with his respective Common Interest. The Board of Directors of the Association shall determine the amount due and notify each Unit Owner as to the real estate taxes payable by such Owner

ARTICLE VI

Section 1. Regular Assessments and Budget. Assessments shall be computed and assessed against all Units as follows:

(a) Fiscal Year and Annual Budget. The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for assessments to all Owners (the "Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year. If the Board fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase of the then current calendar year over the preceding calendar year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items), or its successor index, as determined by the Board of Directors. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. Within ninety (90) days following the close of the Association's fiscal year, or such later date as the Board of Directors determines is warranted, the Board of Directors shall cause an unaudited financial statement of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon request, a copy of the Annual Report shall be provided to any Owner of any Unit.

(b) Determining the Budget. The Budget and the Assessments shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Area and the operation of the Association. Such estimated expenses and costs may include, among other things, the following; expenses of management, including compensation of any management agent; taxes and special assessments; insurance premiums; repairs and maintenance; wages and personnel expenses for Association employees; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities which may be incurred by the Association. Such expenses and costs shall constitute the Common Expenses.

(c) Application of Assessments. Except as expressly stated below, the Owner of each Unit shall pay that percentage of the Assessments as the Owner's Common

Interest bears to all Common Interests. (See Exhibit D.) A different allocation may apply for (i) property insurance premiums to the extent that the insurance premium(s) are based on an allocation of current insured values for the Units which differs from the allocation of Common Interests (See Article IV, Section 8(c)), (ii) any Special Assessments allocable to specific Unit Owners, and (iii) any costs of constructing, repairing or maintaining any improvement to a Limited Common Area (such as screens, windows, awnings, panels, tiles, etc.) which is not part of the original improvements in or to the Limited Common Area, but have been added by a current or previous Owner of the Unit.

(d) When Assessments for Units Begin. Assessments for new Units shall commence on the first day of the calendar month following the date that the Building containing the Unit has been subjected to this Master Deed. The applicable Assessment for such Unit shall be pro-rated and shall be payable for the balance of the current fiscal year.

(e) Assessments for Units Owned by Declarant. Declarant and Affiliates of Declarant shall pay Assessments on Units owned by them in the same manner as other Unit Owners. Until the end of the first full calendar year of operation of the Association, the Declarant may, in its sole discretion, also elect to contribute to the Association some or all of any amount by which the actual expenditures of the Association exceed the Assessments collected by the Association during such period.

(f) Notice of Assessments. Unless the Board of Directors elects a longer payment period, the Assessments shall be due and payable monthly in advance. Unless otherwise determined by the Board of Directors, the Association shall, by December 15, furnish to each Unit Owner a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the periodic Assessment payable by such Owner. After a Unit owner has been notified of the amount of the periodic Assessment, no further notice of the Assessment due shall be required.

(g) Payment of Assessments. Unless otherwise expressly approved by the Board of Directors, Assessments shall be due and payable prior to the first day of the period to which they apply.

(h) Special Assessments. In addition to the regular Assessments authorized above, the Board of Directors may levy during any fiscal year one or more Special Assessments which cumulatively do not exceed Two Hundred Dollars (\$200.00) per one percent (1%) interest in the cumulative Common Interests. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. Any other Special Assessment levied by the Board of Directors shall have the approval of Units representing a majority of the Common Interests. Meetings of Owners for the purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners of the Units, in accordance with the notice procedure set forth in Article V, Section 3. The meeting shall occur no earlier than seven (7) days after the date of mailing or delivery. The notice shall state generally the purpose and amount of the proposed Special Assessment. Owners may be represented at such meetings by written proxy, which

proxy may be held by any Person. Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with Article V, Section 3.

(i) Effect of Non-Payment of Assessments. Any Assessment (including any Special Assessment) which is not paid to the Association when due by an Owner shall be delinquent. The Board of Directors may levy an administrative charge not to exceed five percent (5%) of the amount due, plus interest of one (1%) percent per month of the unpaid Assessment from the date when due. Such charges shall be added to and collected in the same manner as the Assessment. The Board of Directors may in its discretion waive all or any portion of such charges or interest if it determines, in its sole discretion, that the failure to pay the Assessment or charge when due was caused by circumstances beyond the control of the Owner. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

(j) Creation of Lien and Personal Obligation for Assessments. Assessments, including Special Assessments, interest and charges thereon, and costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due and, unless expressly agreed by the Board of Directors of the Association, also of any subsequent Owner, (ii) a charge on the Unit to which such assessments are applicable and (iii) a continuing lien upon each Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may but shall not be required to, prepare a written notice of lien setting forth the amount of the unpaid Assessment or Special Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any managing agent of the Association and may be recorded in the R.M.C. office for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced as set forth in this Master Deed or otherwise permitted by law.

(k) Subordination of the Lien: Mortgagee Rights. The lien of the Assessments provided for herein shall be subordinate to the lien of any unpaid taxes and any recorded mortgage on the applicable Unit. Sale or transfer of any Unit shall not affect the lien of the Assessments. However, pursuant to Section 27-3 1-210(b) of the Act, if a mortgagee of any mortgage of record or other purchaser of a Unit obtains title at a foreclosure sale, the Person acquiring title shall not be liable for Assessments allocable to the Unit which accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale. Such unpaid Assessments shall be deemed Common-Expenses collectible from all Unit Owners, including the Person acquiring title, its successors and assigns, in accordance with their respective Common Interests.

(l) Remedies. The Association may bring an action at law against the delinquent Owner personally for the collection of any delinquent Assessment or Special Assessment, or foreclose the lien against the delinquent owners Unit in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The

Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the subject Unit.

(m) Abatement of violations by Unit Owners. All Units shall be utilized, resided in and operated in accordance with the provisions of this Master Deed, the Bylaws, and the rules and regulations promulgated from time-to-time by the Association. The violation or breach of any such provision shall give the Board of Directors the right (which right may be delegated to any management agent of the Association), in addition to other rights set forth in this Master Deed or permitted by law, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach

(n) Discharge of Mechanics Liens. The Board of Directors may cause to be discharged any mechanic's lien or other encumbrance which in the opinion of the Board of Directors may constitute a lien against the Common Area. Where less than all of the Owners are responsible for the existence of said lien, the Owners responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

(o) Attorneys Fees and Costs. In any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof

(p) Statement of Account. Upon payment of a reasonable fee determined by the Board of Directors and upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

(i) The amount of unpaid annual Assessment or Special Assessment, if any, applicable to such Unit.

(ii) The amount of the current annual Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due.

(iii) The amount of any credit for advance payments of, annual Assessments or Special Assessments.

ARTICLE VII

Section 1. Compliance and Conflict. This Master Deed is intended to comply with the Act. If any provision of this Master Deed conflicts with a mandatory provision of the Act, the provisions of the Act will apply and control. If such invalidates any provision of this Master Deed, such invalidation will not affect any of the other provisions contained herein, and they shall remain in full force and effect.

Section 2. Amendments by Association. Amendments to this Master Deed, other than those authorized by Section 4, below, shall be adopted, upon the vote of at least two-thirds (2/3rds) of the Common interests, in accordance with the procedure set forth in the Bylaws; provided, however, that no amendment which imposes a greater economic or legal burden on Declarant than exists under the current provisions of this Master Deed shall be valid unless it is approved, in writing, by Declarant.

Section 3. Amendments by Declarant. Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Master Deed without the consent of the Association, any Owner, any easement grantee, or any mortgagee if in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with this Master Deed; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any Units subject to this Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to this Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to this Master Deed; (v) enable any insurer to provide insurance required by this Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration, or (vii) clarify any provision of this Master Deed or eliminate any conflict between provisions of this Master Deed.

Section 4. Title. Every Unit Owner shall promptly cause to be duly recorded with the R.M.C. Office for Charleston County the deed or other document conveying the Unit to such Owner. Upon request of the Board of Directors, the owner shall file a true copy of such evidence of title with the Board of Directors or its designee.

Section 5. Management Agreement. Any agreement for management of the Association or the Common Area, or any other contract providing for services of the Declarant or an affiliate of the Declarant shall not exceed three (3) years and shall be on terms which are reasonably comparable to those which would be available from another entity of equal qualifications. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee on not less than ninety (90) days written notice.

Section 6. Right of Declarant to Sell, Lease and Repair Units and Common Areas. So long as Declarant or any affiliate of Declarant shall own any Unit, whether by reacquisition or otherwise, the Declarant or affiliate shall have the absolute right to lease, sell or mortgage any such Unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interest, and as to the lease, sale or mortgage of any Unit by the Declarant. This provision of the Master Deed may not be suspended or superseded by any amendment unless consented thereto, in writing, by the Declarant. Declarant shall have the right to transact on the Property any business necessary to consummate sale of Units, including, but not limited to, the right to maintain models, have signs, employees in the office, use the Common Area and to show Units, and may assign this commercial usage right to such other persons or entities as it may choose. Declarant has the further right, but not the

obligation to continue to make repairs and improvements to Common Areas without cost to the Association.

Section 7. Applicable Law. This Master Deed and the Bylaws shall be construed in accordance with the laws of the State of South Carolina. Any provisions of the Act which are required to be incorporated herein but which are not specifically set forth herein shall be deemed to be incorporated herein by reference. In all cases, the provisions set forth or provided for in this Master Deed shall be construed together and given that interpretation which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be extended by implication as to make them fully effective. The captions herein as to the contents of various portions of the Master Deed are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Master Deed shall be the date of its filing for record in the R.M.C. office for Charleston County, South Carolina.

Section 8. Interpretation. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to any Person, as defined herein, shall in all cases be assumed as though in each case fully expressed

IN WITNESS WHEREOF, the Declarant has hereunto set its Hand and Seal this 4th day of May, 2004.

Witnesses:

William J. McLean
William McLean

Rivers Point Row, LLC

By: Dea B. Sargent
Its: Manager

BKG 493PG025

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
S.C. §30-5-30

I HEMMID F McLEAN a Notary Public for South Carolina do hereby certify that John B. Hagerty, Managing Member of Rivers Point Row, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 4th day of May, 2004.

Hemmid F McLean
Notary Public for South Carolina
My Commission Expires: 11-13-12

BKG 493PG026

EXHIBIT "A"
Real Estate Description
Exhibit A

Property Description

ALL that piece, parcel, or tract of land, situate, lying and being on James Island in the City of Charleston, Charleston County, South Carolina, being more particularly described as follows, to wit:

To find the BEGINNING POINT, start at the point of intersection of the Southwest side of Rivers Point Row, and the Southeast side of Folly Road (S.C. Highway No. 171) thence S 57° 42'E two hundred seventy-eight and 21/100ths (278.21') feet to a 5/8" IRF which is the point of beginning. Said tract butting and bounding as follows: Beginning at said point of beginning and thence bounded by Rivers Point Row S 57° 42'E four hundred seventy-one and 89/100ths (471.89') feet to a point; thence, bounded by Rivers Point Home Owners Association Tract "A-1" S 47° 42'E one hundred forty-four and 29/100ths (144.29') feet to a 1" IPF, thence, bounded by Rivers Point Home Owners Association Tract and Epworth Methodist Church S 18° 56' W three hundred eighty and 19/100ths (380.19') feet to a 5/8" IRF, thence, bounded by Epworth Methodist Church N 70° 53' W one hundred thirty-five and no/100th (134.00') feet to a 5/8" IRF; thence, bounded by Epworth Methodist Church S 19° 06' 18" W one hundred nine and 74/100ths (109.74) feet to a 1" IPF; thence, bounded by Epworth Methodist Church, John Edward Hickman and Mitchell D. McCullers, N 71° 20' 54" W two hundred twenty-nine and 80/100ths (229.80') feet to a 1" IPF; thence bounded by James Island Public Service District and The Southern Bell Telephone and Telegraph Company N 70° 36' 01" W three hundred eighty-six and 82/100ths (386.82') feet to a 5/8" IRF; thence bounded by Alva M. Boroughs and Sanders Brothers Construction Co., N 32° 32' 15" E six hundred forty-eight and 11/100ths (648.11') feet to the BEGINNING POINT; all as shown on Plat prepared by E. M. Seabrook, Jr., Inc. No. C00045, dated July 3, 1996, entitled "Tract B, Rivers Point, City of Charleston, S.C." and recorded in the RMC Office for Charleston County in Plat Book EB at Page 405.

TMS # 425-07-00-139

ALSO

AN EASEMENT, appurtenant to and running with Tract B, designated as "44' Drainage Easement" on the aforesaid Plat prepared by E. M. Seabrook, Jr., Inc., No. C00045, dated July 3, 1996, last revised September 26, 1997, over and across the following described property:

COMMENCE at the point of intersection of the Southwest right-of-way of Rivers Point Row, and the Southeast right-of-way of Folly Road (S.C. Highway No. 171) thence run S 57° 42'E

BKG 493PG027

seven hundred fifty and 10/100ths (750.10') feet to a point, thence run S 47° 42'E on hundred forty-four and 29/100ths (144.29') feet to a 1" IPF; thence turn and run S 18° 56'W two hundred sixty-four and 93/100ths (264.93) feet to a point which is the point of beginning. Form the point of beginning thus described turn and run S 71° 20'E four hundred one and 20/100ths (401.20') feet to a point; thence turn and run S 28° 52'W twenty-one and 63/100ths (21.63') feet to a point, thence turn and run S 44° 19'E twenty-eight and 88/100ths (28.88') feet to a point on the right-of-way of Oyster Pt. Row; thence turn and run N 54° 59' 55"E for a chord distance of sixty and no/100th (60.00') feet to a point; thence turn and run N 40° 06'49" W fifty-seven and 99/100ths (57.99') feet to a point; thence N 71° 20'W four hundred eight and 86/100th (408.86') feet to a point; thence turn and run S 18° 56'W forty-four and no/100ths (44.00) feet to the point of beginning.

BEING the identical property conveyed to the Grantor herein by deed of
dated _____ and recorded in the RMC Office
for Charleston County in Book _____, Page _____.

BKG 49256028

EXHIBIT "B"

Site Plan/Survey

See attached survey of Rivers Point Row Horizontal Property Regime, Rivers Point, owned by Rivers Point Row, LLC, James Island, Charleston, South Carolina, made by E.M. Seabrook, Jr., Inc. dated July 3, 1996 ^{Revised} March 18, 2004.

EXHIBIT "C"

The Units and Building are shown in the Exhibit C on the site plan, the floor plans, the elevation plans and the photographs of the buildings. The charts shown herein reflect the type of unit and the dimensions of each unit. Any square footages shown in this Exhibit C are approximate square footages. The basic construction of these buildings are wood frame, dry wall interiors, wood composition and brick veneer siding and tab shingles. The common elements and limited common elements have been depicted on the Unit Plans. There are shown on the site plan the location of the clubhouse, swimming pool, tennis court and other common elements.

The unit types are as follows:

- 76 - 2 bedroom, Townhouse Units
- 32 - 2 bedroom, Garden Units
- 24 - 1 bedroom, Garden Units

Refer to the site plan, floor plans, elevation plans, charts and photographs in this Exhibit C for a more complete description of the unit types.

HORIZONTAL PROPERTY REGIME RIVERS POINT ROW CONDOMINIUMS

MG 493PG031

SCHEDULE OF SHEETS

- A1 FLOOR PLAN / ELEVATIONS - ONE BEDROOM GARDEN UNITS
- A2 FLOOR PLAN / ELEVATIONS - TWO BEDROOM GARDEN UNITS
- A-3 FLOOR PLAN / ELEVATIONS - TOWNHOUSE UNITS
- A-4 DIMENSIONS CHART
- A-5 PHOTOGRAPHS - BUILDINGS 1 - 4
- A-6 PHOTOGRAPHS - BUILDINGS 5 - 8
- A-7 PHOTOGRAPHS - BUILDINGS 9 - 12
- A-8 PHOTOGRAPHS - BUILDINGS 13 - 16
- A-9 PHOTOGRAPHS - BUILDINGS 17 - 18
- A-10 FLOOR PLAN / PHOTOGRAPHS - CLUBHOUSE

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

ARCHITECT'S CERTIFICATION

I certify to the best of my knowledge, information and belief, that the floor plans, measurements, and photographs attached hereto as a portion of EXHIBIT "A" accurately and truthfully depict the buildings and units of RIVERS POINT ROW CONDOMINIUM HORIZONTAL PROPERTY REGIME in accordance with the requirements of Title 17, Chapter 31, Code of Laws of South Carolina, 1992.

[Signature]

Robert Earl Epps
Registered Architect / S.C. 2001
1 Phoenician Street
Charleston, South Carolina 29401

PREPARED FOR
RIVERS POINT ROW CONDOMINIUMS, LLC

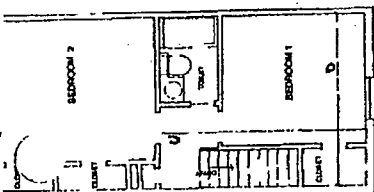
HORIZONTAL PROPERTY REGIME
RIVERS POINT ROW CONDOMINIUMS

21 RIVERS POINT ROW
CITY OF CHARLESTON
CHARLESTON COUNTY
SOUTH CAROLINA 29412

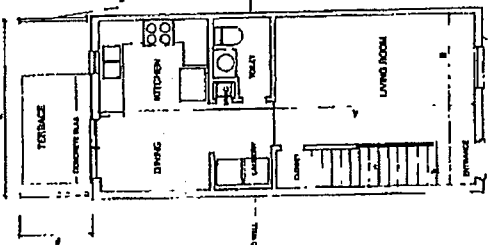
DRAWINGS / DIMENSIONS / PHOTOGRAPHS
PREPARED BY

EPPE
EDWARDS
ARCHITECTS

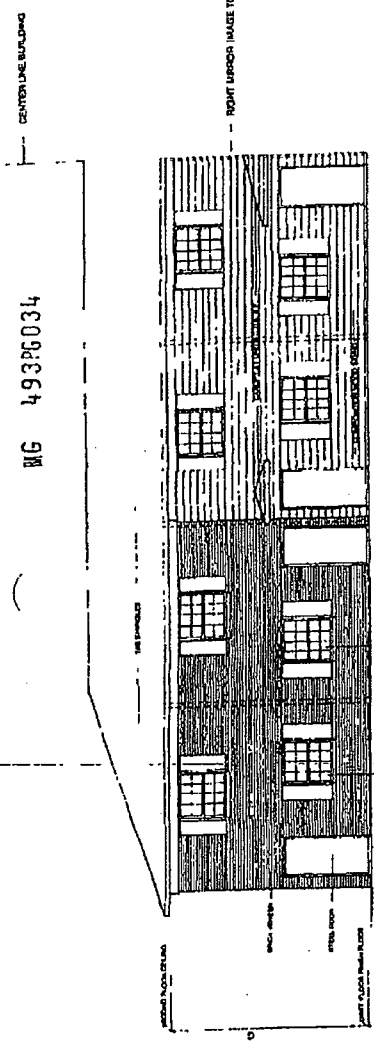
1 PHOENIX STREET
CHARLESTON, SOUTH CAROLINA 29401



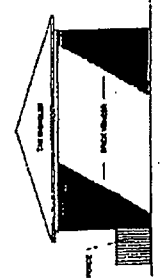
Townhouse Building / Typical Unit
Second Floor Plan



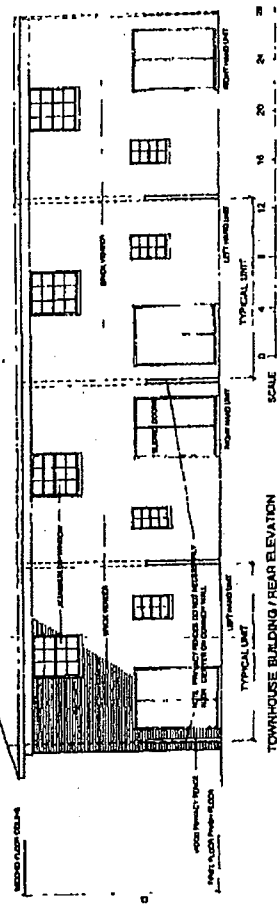
Townhouse Building / Typical Unit
First Floor Plan



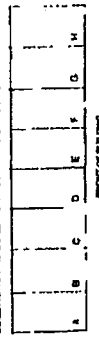
Townhouse Building / Front Elevation



Left Side Elevation (Right Side Similar)



Townhouse Building / Rear Elevation



KEY PLAN

NOTE: SEE SHEET NO. 4 FOR CHART DIMENSIONS

NOTE: SEE SHEET NO. 4 FOR CHART DIMENSIONS

ALL TOWNHOUSE BUILDINGS CONTAIN 4 UNITS
BUILT BY THE CITY OF CHARLESTON
BUILDING 13 AND BUILDING 14 CONTAIN 4 UNITS EACH

SEAL
CITY OF CHARLESTON
SOUTH CAROLINA 29412

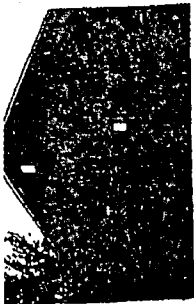
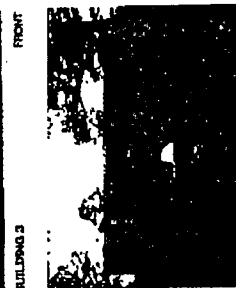
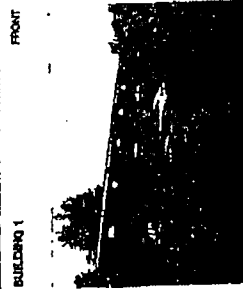
DESIGNED BY
ARCHITECTS
CHARLESTON, SOUTH CAROLINA 29401

DATE: NO. 2 OF 10 DATE: APRIL 1, 2004

HORIZONTAL PROPERTY REQUIRE
RANKS POINT NON CONFORMING
IN RANKS POINT ROW
CITY OF CHARLESTON
SOUTH CAROLINA 29412

DESIGNED BY
ARCHITECTS
CHARLESTON, SOUTH CAROLINA 29401

DATE: NO. 2 OF 10 DATE: APRIL 1, 2004



LEFT SIDE
BXG 493PG036

[illegible]

HORIZONTAL PROPERTY REGIME
EVERY POINT NOW CONDOMINIUMS

RYERS POINT FISH CONDOMINIUMS
71 RYERS POINT ROW
CITY OF CHARLOTTE
CHARLOTTE COUNTY
SOUTH CAROLINA 29413

SPRING
FORWARD
ARCHITECTS

1 PINEBURY STREET
CHARLOTTE, SOUTH CAROLINA 28207

INTERNO 5 OF 10 ARCH APRIL 8 2004

TO BE PAID TO THE CITY OF CHARLOTTE
FOR THE CITY OF CHARLOTTE
FOR THE CITY OF CHARLOTTE

CHARLESTON COUNTY
SOUTH CAROLINA 29405

DATE

Abstract

USPDC

! PROPERTY STINGS
OWNS WITH YOUR EARS

Page 5 of 10 Date April 8, 2006

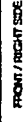


HORIZONTAL PROPERTY REGIME

ESTABLISHED BY THE
CITY OF DENVER
FOR THE YEAR 1900

11-26-2006
 11-26-2006
 11-26-2006

1. **RESEARCH**
 2. **DESIGN**
 3. **ANALYSIS**
 4. **INTERPRETATION**
 5. **CONCLUSION**
 6. **RECOMMENDATION**
 7. **DISCUSSION**
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 243. **ABSTRACT**





BIG 493P03B



HORIZONTAL PROPERTY RESUME
 RIVERS FRONT ROW COMMUNITIES
 31 NORTH RIVER ROW
 CITY OF CHANDLER
 CHANDLER, ARIZONA
 85004-4000

DATE
 ADDRESS
 CHANDLER, ARIZONA
 85004-4000

Use the information on this card to help you find the information you need.



HORIZONTAL PROPERTY REGIME
OWNERS: 80/20 ROW CONDOMINIUM
 11 POND POINT ROW
 CITY OF CHARLOTTE
 CHARLOTTE COUNTY
 SOUTH CAROLINA 29212

DATE
RECEIVED
NOV 11 1964

PROPERTY OF
DEFENSE INFORMATION SYSTEMS
INST NO 8 OF 10 DATE APRIL 8 2008



B&G 493PG040

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HORIZONTAL PROPERTY RESUME

THURGOOD LAWSON LLP

ATTORNEYS AT LAW

2000 CALLE DEL MAR

CHARLOTTE, NORTH CAROLINA 28202

TEL: 704.333.1000

FAX: 704.333.1001

WWW.TLAWFIRM.COM

THURGOOD LAWSON LLP

CHARLOTTE, NORTH CAROLINA 28202

DATE: 10/15/2014



LEFT SIDE



LEFT SIDE / REAR



REAR



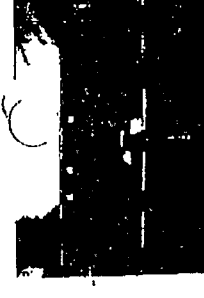
REAR



FRONT SIDE



RIGHT SIDE



FRONT



FRONT

BUILDING 18



CLUB HOUSE / FRONT



CLUB HOUSE / RIGHT SIDE

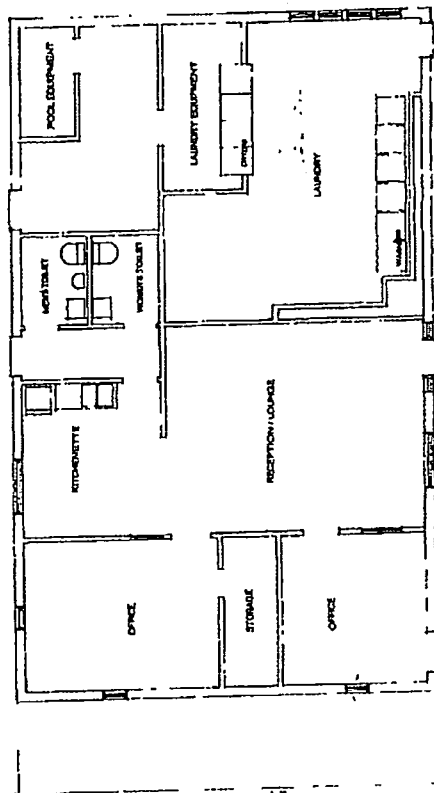


CLUB HOUSE / REAR



CLUB HOUSE / LEFT SIDE

BKG 493PG041



CLUB HOUSE BUILDING FLOOR PLAN

THIS PLAN IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT. THE ARCHITECT ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR FOR THE RESULTS OF ANY CONSTRUCTION BASED ON THIS PLAN.



HORIZONTAL PROPERTY REGIME
RIVER POINT TOWN CONDOMINIUMS
7110 RIVER POINT TOWN
CHARLESTON COUNTY
SOUTH CAROLINA 29405

DATE: 01/15/2004
PROJECT: 1100
CONSULTANT: 1100-1100-1100
SHEET: 10 OF 10

DKG 4926042

EXHIBIT D

SCHEDULE OF ASSIGNED VALUES AND PERCENTAGE INTEREST

Each Unit Owner owns, in addition to his, her or its Unit, an interest in the Common Areas of the Property, which percentage ownership interest has been determined and computed by taking as a basis the value of each individual Unit in relation to the value of the Units as a whole. Such percentage interest in the Common Areas of each Unit Owner shall vary.

The value set forth are based on the following:

32 - 2BR Garden Units @	\$95,000.00
76 - 2BR Townhouse Units @	\$105,000.00
24 1BR Garden Units @	\$83,000.00

The basis for determining value is for the sole purpose of complying with the Act and does not necessarily reflect the market value of the Unit or the property of the regime and shall in no way inhibit or restrict the fixing of a different value or sales price by a Unit Owner to his, her or its Unit in any type of acts or contracts.

UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
<u>Townhouse Units</u>				
3-A	\$105,000.00	0.81%	\$105,000.00	0.76%
3-B	\$105,000.00	0.81%	\$105,000.00	0.76%
3-C	\$105,000.00	0.81%	\$105,000.00	0.76%
3-D	\$105,000.00	0.81%	\$105,000.00	0.76%
3-E	\$105,000.00	0.81%	\$105,000.00	0.76%
3-F	\$105,000.00	0.81%	\$105,000.00	0.76%
3-G	\$105,000.00	0.81%	\$105,000.00	0.76%
3-H	\$105,000.00	0.81%	\$105,000.00	0.76%
7-A	\$105,000.00	0.81%	\$105,000.00	0.76%
7-B	\$105,000.00	0.81%	\$105,000.00	0.76%
7-C	\$105,000.00	0.81%	\$105,000.00	0.76%
7-D	\$105,000.00	0.81%	\$105,000.00	0.76%
7-E	\$105,000.00	0.81%	\$105,000.00	0.76%
7-F	\$105,000.00	0.81%	\$105,000.00	0.76%
7-G	\$105,000.00	0.81%	\$105,000.00	0.76%
7-H	\$105,000.00	0.81%	\$105,000.00	0.76%
8-A	\$105,000.00	0.81%	\$105,000.00	0.76%
8-B	\$105,000.00	0.81%	\$105,000.00	0.76%
8-C	\$105,000.00	0.81%	\$105,000.00	0.76%
8-D	\$105,000.00	0.81%	\$105,000.00	0.76%
8-E	\$105,000.00	0.81%	\$105,000.00	0.76%
8-F	\$105,000.00	0.81%	\$105,000.00	0.76%
8-G	\$105,000.00	0.81%	\$105,000.00	0.76%
8-H	\$105,000.00	0.81%	\$105,000.00	0.76%

516 6.91.0043

UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
Townhouse Units				
9-A	\$105,000.00	0.81%	\$105,000.00	0.76%
9-B	\$105,000.00	0.81%	\$105,000.00	0.76%
9-C	\$105,000.00	0.81%	\$105,000.00	0.76%
9-D	\$105,000.00	0.81%	\$105,000.00	0.76%
9-E	\$105,000.00	0.81%	\$105,000.00	0.76%
9-F	\$105,000.00	0.81%	\$105,000.00	0.76%
9-G	\$105,000.00	0.81%	\$105,000.00	0.76%
9-H	\$105,000.00	0.81%	\$105,000.00	0.76%
10-A	\$105,000.00	0.81%	\$105,000.00	0.76%
10-B	\$105,000.00	0.81%	\$105,000.00	0.76%
10-C	\$105,000.00	0.81%	\$105,000.00	0.76%
10-D	\$105,000.00	0.81%	\$105,000.00	0.76%
10-E	\$105,000.00	0.81%	\$105,000.00	0.76%
10-F	\$105,000.00	0.81%	\$105,000.00	0.76%
10-G	\$105,000.00	0.81%	\$105,000.00	0.76%
10-H	\$105,000.00	0.81%	\$105,000.00	0.76%
11-A	\$105,000.00	0.81%	\$105,000.00	0.76%
11-B	\$105,000.00	0.81%	\$105,000.00	0.76%
11-C	\$105,000.00	0.81%	\$105,000.00	0.76%
11-D	\$105,000.00	0.81%	\$105,000.00	0.76%
11-E	\$105,000.00	0.81%	\$105,000.00	0.76%
11-F	\$105,000.00	0.81%	\$105,000.00	0.76%
11-G	\$105,000.00	0.81%	\$105,000.00	0.76%
11-H	\$105,000.00	0.81%	\$105,000.00	0.76%
12-A	\$105,000.00	0.81%	\$105,000.00	0.76%
12-B	\$105,000.00	0.81%	\$105,000.00	0.76%
12-C	\$105,000.00	0.81%	\$105,000.00	0.76%
12-D	\$105,000.00	0.81%	\$105,000.00	0.76%
12-E	\$105,000.00	0.81%	\$105,000.00	0.76%
12-F	\$105,000.00	0.81%	\$105,000.00	0.76%
12-G	\$105,000.00	0.81%	\$105,000.00	0.76%
12-H	\$105,000.00	0.81%	\$105,000.00	0.76%
13-A	\$105,000.00	0.81%	\$105,000.00	0.76%
13-B	\$105,000.00	0.81%	\$105,000.00	0.76%
13-C	\$105,000.00	0.81%	\$105,000.00	0.76%
13-D	\$105,000.00	0.81%	\$105,000.00	0.76%
13-E	\$105,000.00	0.81%	\$105,000.00	0.76%
13-F	\$105,000.00	0.81%	\$105,000.00	0.76%
14-A	\$105,000.00	0.81%	\$105,000.00	0.76%
14-B	\$105,000.00	0.81%	\$105,000.00	0.76%
14-C	\$105,000.00	0.81%	\$105,000.00	0.76%
14-D	\$105,000.00	0.81%	\$105,000.00	0.76%
14-E	\$105,000.00	0.81%	\$105,000.00	0.76%
14-F	\$105,000.00	0.81%	\$105,000.00	0.76%

SAG 1-92-0044

UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
<u>Townhouse Units</u>				
18-A	\$105,000.00	0.81%	\$105,000.00	0.76%
18-B	\$105,000.00	0.81%	\$105,000.00	0.76%
18-C	\$105,000.00	0.81%	\$105,000.00	0.76%
18-D	\$105,000.00	0.81%	\$105,000.00	0.76%
18-E	\$105,000.00	0.81%	\$105,000.00	0.76%
18-F	\$105,000.00	0.81%	\$105,000.00	0.76%
18-G	\$105,000.00	0.81%	\$105,000.00	0.76%
18-H	\$105,000.00	0.81%	\$105,000.00	0.76%

Garden Units, 2 Bedroom	VALUE	% per Act	Value After Building 2	% After Building 2
4-A	\$95,000.00	0.73%	\$95,000.00	0.69%
4-B	\$95,000.00	0.73%	\$95,000.00	0.69%
4-C	\$95,000.00	0.73%	\$95,000.00	0.69%
4-D	\$95,000.00	0.73%	\$95,000.00	0.69%
4-E	\$95,000.00	0.73%	\$95,000.00	0.69%
4-F	\$95,000.00	0.73%	\$95,000.00	0.69%
4-G	\$95,000.00	0.73%	\$95,000.00	0.69%
4-H	\$95,000.00	0.73%	\$95,000.00	0.69%
5-A	\$95,000.00	0.73%	\$95,000.00	0.69%
5-B	\$95,000.00	0.73%	\$95,000.00	0.69%
5-C	\$95,000.00	0.73%	\$95,000.00	0.69%
5-D	\$95,000.00	0.73%	\$95,000.00	0.69%
5-E	\$95,000.00	0.73%	\$95,000.00	0.69%
5-F	\$95,000.00	0.73%	\$95,000.00	0.69%
5-G	\$95,000.00	0.73%	\$95,000.00	0.69%
5-H	\$95,000.00	0.73%	\$95,000.00	0.69%
6-A	\$95,000.00	0.73%	\$95,000.00	0.69%
6-B	\$95,000.00	0.73%	\$95,000.00	0.69%
6-C	\$95,000.00	0.73%	\$95,000.00	0.69%
6-D	\$95,000.00	0.73%	\$95,000.00	0.69%
6-E	\$95,000.00	0.73%	\$95,000.00	0.69%
6-F	\$95,000.00	0.73%	\$95,000.00	0.69%
6-G	\$95,000.00	0.73%	\$95,000.00	0.69%
6-H	\$95,000.00	0.73%	\$95,000.00	0.69%
16-A	\$95,000.00	0.73%	\$95,000.00	0.69%
16-B	\$95,000.00	0.73%	\$95,000.00	0.69%
16-C	\$95,000.00	0.73%	\$95,000.00	0.69%
16-D	\$95,000.00	0.73%	\$95,000.00	0.69%
16-E	\$95,000.00	0.73%	\$95,000.00	0.69%
16-F	\$95,000.00	0.73%	\$95,000.00	0.69%
16-G	\$95,000.00	0.73%	\$95,000.00	0.69%
16-H	\$95,000.00	0.73%	\$95,000.00	0.69%

FIG - 9306045

UNIT	VALUE	% Per Act	Value After Building 2	% After Building 2
Garden Units				
1 Bedroom				
1-A	\$83,000.00	0.64%	\$83,000.00	0.60%
1-B	\$83,000.00	0.64%	\$83,000.00	0.60%
1-C	\$83,000.00	0.64%	\$83,000.00	0.60%
1-D	\$83,000.00	0.64%	\$83,000.00	0.60%
1-E	\$83,000.00	0.64%	\$83,000.00	0.60%
1-F	\$83,000.00	0.64%	\$83,000.00	0.60%
1-G	\$83,000.00	0.64%	\$83,000.00	0.60%
1-H	\$83,000.00	0.64%	\$83,000.00	0.60%
15-A	\$83,000.00	0.64%	\$83,000.00	0.60%
15-B	\$83,000.00	0.64%	\$83,000.00	0.60%
15-C	\$83,000.00	0.64%	\$83,000.00	0.60%
15-D	\$83,000.00	0.64%	\$83,000.00	0.60%
15-E	\$83,000.00	0.64%	\$83,000.00	0.60%
15-F	\$83,000.00	0.64%	\$83,000.00	0.60%
15-G	\$83,000.00	0.64%	\$83,000.00	0.60%
15-H	\$83,000.00	0.64%	\$83,000.00	0.60%
17-A	\$83,000.00	0.64%	\$83,000.00	0.60%
17-B	\$83,000.00	0.64%	\$83,000.00	0.60%
17-C	\$83,000.00	0.64%	\$83,000.00	0.60%
17-D	\$83,000.00	0.64%	\$83,000.00	0.60%
17-E	\$83,000.00	0.64%	\$83,000.00	0.60%
17-F	\$83,000.00	0.64%	\$83,000.00	0.60%
17-G	\$83,000.00	0.64%	\$83,000.00	0.60%
17-H	\$83,000.00	0.64%	\$83,000.00	0.60%
Townhouse Units				
2-A	n/a	n/a	\$105,000.00	0.76%
2-B	n/a	n/a	\$105,000.00	0.76%
2-C	n/a	n/a	\$105,000.00	0.76%
2-D	n/a	n/a	\$105,000.00	0.76%
2-E	n/a	n/a	\$105,000.00	0.76%
2-F	n/a	n/a	\$105,000.00	0.76%
2-G	n/a	n/a	\$105,000.00	0.76%
2-H	n/a	n/a	\$105,000.00	0.76%
TOTAL	\$13,012,000.00	100.00%	\$13,852,000.00	100.00%

EXHIBIT "E"
RULES AND REGULATIONS

RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.

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In order to create a congenial, safe and dignified living atmosphere which is respectful of the concerns of Rivers Point Row Owners, these Rules and Regulations have been adopted. These Rules and Regulations supplement the Master Deed of the Regime and the Bylaws of the Association. They apply to Owners and their families, tenants, guests, agents, invitees, contractors, employees and others.

(a) Residential and Business Usage. All Units shall be utilized for single family residential purposes only. No business or business activity shall be carried on upon any Unit at any time; provided, however, that (i) nothing herein shall prevent Declarant or its designee, or any entity approved by the Board of Directors, from using any Unit owned by Declarant or leased by Declarant from carrying on business related to the development, sale, leasing, or management of the Property and (ii) to the extent allowed by applicable zoning laws, a private office may be maintained in a Unit as long as such use is incidental to the primary residential use of the Unit, does not violate any applicable law, does not involve any exterior signage or advertising of the Unit as a place of business, and does not contribute to parking, traffic or security problems, all in the opinion of the Board of Directors.

(b) Prohibited Uses. A Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will, in the sole opinion of the Board of Directors, (i) increase the insurance rates on his Unit or the Common Area, (ii) obstruct or interfere with the rights of

other Unit Owners, or the Association or (iii) annoy other Unit Owners by unreasonable noises or otherwise. A Unit Owner shall not commit or permit any nuisance, immoral, improper, offensive or illegal act in his Unit or on the Common Area

(c) Owner Responsible for Conduct of Others in Unit. Each Unit Owner shall be deemed responsible to the Association for the conduct of members of his household and his tenants, agents, invitees, guests, and pets while on Rivers Point Row property, but the responsibility of the Unit Owner shall not relieve any member of his household or any of his tenants, agents, invitees, or guests from any liability to the Association or to a Unit Owner for their own acts.

(d) Access to Rivers Point Row. Access to Rivers Point Row property for personal guests or invitees may be authorized by Unit Owners, Unit tenants and immediate family members of such Owners or tenants and who are age 18 or older. All access is subject to these Rules and Regulations. Personal guests and invitees may not authorize access for others unless approved by the Board of Directors or any management agent for Rivers Point Row. Only persons with proper authorization may remain on Rivers Point Row. Any guest or invitee may be required to provide the management agent, the Board of Directors, or law enforcement officials with proper identification and the name and telephone number of the person who authorized his access.

(e) Access to Amenities. Access to Rivers Point Row amenities, such as the pool area, is limited to Unit Owners, Unit tenants, immediate family members of such Owners or tenants, and personal guests who are accompanied by a Unit Owner, tenant or immediate family member of such Owner or tenant.

(f) Obeying Laws All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed

(g) Pets. A Unit Owner may keep a domestic pet in his Unit under the regulations promulgated by the Association from time to time. A Unit Owner may not keep any other animals, livestock or poultry, nor may any of the same be raised, bred, or kept upon any portion of the Property, including any balcony or patio. All pets shall be housed within the Unit. Pets must not constitute a nuisance or cause unsanitary conditions. Incessant barking or howling of a dog which is clearly audible in another Unit shall be a nuisance, unless otherwise expressly determined by the Board of Directors. No pet shall be permitted to leave its excrement on any portion of the Common Areas or Area of Common Responsibility or the Unit of another Owner and any owner of such pet shall immediately remove the same. The Board of Directors shall have the right to determine, in its sole discretion, whether a particular pet meets the criteria set forth above, and, if not, it may require the owner of the pet to remove such pet from the Property.

(h) Signs and Antennas. Unless otherwise expressly permitted in writing by the Board of Directors, an Owner (i) shall place no sign, advertisement or notice on the Common Area, Limited Common Area, or his Unit, and (ii) shall erect no antennas or aerials

upon any part of his Unit or the Common Area which is visible from another Unit or the Common Area.

(i) Approval of External or Structural Modifications.

(1) Unless otherwise expressly permitted in writing by the Board of Directors, no modification of a Unit or Limited Common Area which would be visible from any other Unit or any portion of the Common Area, and no modification of a structural element of a Unit or the Common Area, shall be permitted until two (2) sets of plans showing the nature, shape, dimensions, materials, color and location thereof have been submitted to and approved by the Board of Directors or its designee.

(2) The Board of Directors or its designee shall have four (4) calendar weeks from receipt of all required information to review the submitted information. It may approve, reject or modify the proposed plans based on its perception of the consistency and harmony of the plans with the Master Deed, the design of Rivers Point Row, and other practical and aesthetic factors deemed appropriate by the Board of Directors. Other Owners shall be given the opportunity to examine such plans upon prior written request during reasonable business at a location identified by the Board of Directors. If notice of approval, disapproval, proposed modification or request for additional information, is received by the submitting Owner within such four (4) calendar week period, the plans shall be deemed approved.

(3) Compliance with the above procedures is not a substitute for compliance with other applicable building, zoning, subdivision and development standards ordinances and codes. The Association and Board of Directors shall not be responsible for any defects in any plans or specifications approved by the Board of Directors, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant nor any member of the Board of Directors shall be liable for damages to anyone submitting plans or specifications for approval, or to any person affected by a mistake of judgment, negligence or non-feasance arising out of, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications.

(j) Trash. Trash, garbage or other waste shall be placed in dumpsters at times and places designated by the Board of Directors. Except when moving household garbage or waste to the dumpsters or other designated pickup areas, it shall be kept in closed,

sanitary containers inside the Unit. No trash, garbage or other waste shall be left on decks or porches or in Common Areas not expressly intended for such storage. All biodegradable garbage shall be placed in a sealed plastic bag before placing it in the dumpster.

(k) Obstruction of Common Areas. Unless otherwise expressly approved by the Board of Directors, corridors, stairs roads and common avenues of ingress and egress shall be used for no purpose other than normal transit through them. No Owner or agent, servant, tenant, family member or invitees of an Owner shall park any vehicle or place or cause to be placed in the roads and common avenues, or encumber any corridors or stairs with furniture, packages or obstructions of any kind.

(l) Parking and Vehicles. Unless expressly approved by the Board of Directors or the management agent:

(1) the Owner(s) or tenants of a Unit and their guests or invitees may not occupy more than two (2) parking spaces, except that guests may park in areas designated for guest parking;

(2) no parking shall be permitted on streets or driveways unless clearly marked as parking spaces;

(3) no boat, boat trailer or unlicensed, unsafe or inoperable vehicle may be parked on the property;

(4) no house trailer, mobile home, or bus, and no recreational motor vehicle, truck or commercial vehicle over 3/4 ton capacity shall be parked on the property; provided that such vehicles which will fit into a designated parking space shall be permitted on the property for loading, unloading or maintenance services during normal business hours;

(5) no washing of vehicles is permitted on the Common Area and vehicle repairs shall be limited to minor emergency repairs, such as a dead battery or flat tire.

(6) vehicles violating these Rules may be towed at the sole cost and risk of the person violating the Rule.

(m) Firearms and Fireworks. The use of firearms, pellet or air guns, and bows and arrows is prohibited on Rivers Point Row property. Fireworks are permitted only if expressly approved by the Board of Directors and if performed in a safe manner under the supervision of an adult.

(n) Swimming Pool Rules. The following pool rules apply:

- (1) There is no life guard on duty. Swim at your own risk. No children under the age of 13 are allowed in the pool area unless accompanied by an adult.
- (2) Pool hours are between 6:30 A.M. until 10.00 P.M. Persons in the pool at other hours may be requested to leave. The pool may be closed periodically for maintenance, in which event notice of closure shall be posted.
- (3) Health and safety rules posted in the pool area shall be observed.
- (4) Any Owner, resident or guest who wishes to use the pool area for a group function or party consisting of more than eight (8) people must obtain written permission from the Board of Directors or the management agent. Written permission will be granted on a first-come, first served basis except where permission is requested for a series of functions, in which case the Board of Directors or management agent reserves the right to determine the appropriate usage. At any function, the person hosting the party shall (i) be responsible for cleaning up before departure, (ii) be responsible for the conduct of their guests, and (iii) be in attendance at all times.
- (5) Unless expressly approved by the Board of Directors, approval of a pool party shall not result in excluding other authorized persons from using the pool in the normal manner.
- (6) No pets are authorized in the enclosed pool area. Pets shall not be tied or left unattended in common areas while using the pool.
- (7) Except at approved functions, food is permitted only in any designated areas. No glass containers are allowed in the enclosed pool area.
- (8) No radios, cassette or compact disk players, phonographs, etc. are allowed in the pool area unless a headphone is used. Live entertainment is permitted only as part of an approved function and only if expressly approved.
- (9) Inflatable or floating paraphernalia are not permitted in the pool except as swimming aids.
- (o) Solicitations. Persons soliciting contributions or the purchase of goods or services, and persons seeking to distribute materials, brochures or information shall not be allowed access to Rivers Point Row property unless (1) expressly required by law or the Board

of Directors or (2) expressly invited, by name, as a guest of a specific Unit Owner or tenant, in which the person invited shall limit their solicitation to the person(s) expressly inviting them.

(p) Hanging of Clothing on Railings or Decks. Beach towels, bathing suits, clothing, etc. shall not be hung on decks and railings so as to be visible to a person in any other Unit or anywhere on Rivers Point Row property.

(q) Waiver of violations by Board. The Board of Directors may, for good cause, as determined in its sole discretion, waive violations of these use provision or other rules and regulations promulgated from time to time. Such waiver shall be in writing.

(r) Fines for Violations. Without waiver of any other rights which the Association or any Owner may have under the Master Deed or applicable law, the Board of Directors may impose a fine of up to \$100 for each violation of these Rules and Regulations. Payment of the fine may be enforced in the same manner as any other Assessment.

EXHIBIT F

BYLAWS OF

RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Rivers Point Row Property Owners Association, Inc., a South Carolina nonprofit corporation, hereby adopts the following Bylaws for such corporation

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.1. Name. The name of the nonprofit corporation is "Rivers Point Row Property Owners Association, Inc.", hereinafter referred to as the 'Association'.

1.2. Offices. The principal offices of the Association shall be in Charleston County, South Carolina.

ARTICLE II

DEFINITIONS

2.1. Definitions. Except as otherwise provided herein or required by the context hereof, all terms defined in the Master Deed of the Rivers Point Row Horizontal Property Regime (the "Master Deed") shall have the same defined meanings when used in these Bylaws.

ARTICLE III

MEMBERS

3.1. Members. Members shall be those Persons defined in Article IV, Section 2 of the Master Deed. As set forth in such section, a member shall have the right to cast the number of votes attributable to the Common Interest of all Units owned by such Member.

3.2. Annual and Regular Meetings. The first meeting of the Members shall be held within one (1) year from the date of recordation of the Master Deed. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Other regular meetings of the Members, if any, shall be held on such dates as the Board of Directors may determine. Meetings may be held in South Carolina at such location as is determined by the Board of Directors.

3.3. Special Meetings. Special meetings of the Members may be called (a) by or at the request of the Board of Directors or the President or (b) if Members owning at least

twenty five percent (25%) of the total Common Interests (as defined in the Master Deed) deliver to the President or Secretary of the Association, a written and signed demand for such a meeting describing the purpose for which it will be held. The close of business on the thirtieth (30th) day before delivery of the demand for a special meeting shall be the record date for determining whether the twenty five percent (25%) requirement has been met. The special meeting shall be held within thirty (30) days of the delivery of the written demand. Special meetings shall be held in South Carolina at such location as is determined by the President or the Board of Directors. The notice of the special meeting shall state the date, time, location and purpose(s) of the meeting. Only those matters that are within the purpose(s) described in the meeting notice shall be addressed at the special meeting.

3.4. Notice of Meetings. Notice to Members of meetings shall be in accordance with Section 10.1. Notice of meetings shall be mailed by first class or registered mail or personally delivered no less than ten (10) and no more than sixty (60) days before the meeting date.

3.5. Waiver of Notice of Meeting. Attendance of a Member at a meeting shall be deemed waiver of notice of the meeting unless the Member objects at the beginning of the meeting to holding the meeting or transacting business at the meeting, and proper notice of the meeting was not given to the Member(s).

3.6. Quorum and Vote Required. The presence in person or by proxy of Members owning at least fifty one percent (51%) of the total Common Interests (as defined in the Master Deed) shall constitute a quorum in accordance with the Act, as defined in the Master Deed, the vote of Members owning at least fifty one percent (51%) of the total Common Interests (as defined in the Master Deed) shall be required for any action which is determined by the Members.

3.7. Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if the Association delivers a written ballot, setting forth the proposed action and providing an opportunity to vote for or against such action, to every Member entitled to vote on the matter. Approval of such action shall be deemed to occur when the number of votes cast by ballot equals or exceeds those that would otherwise be required. Any solicitation for votes by a written ballot shall (a) state the number of responses required to meet the quorum requirements and the percentage of approvals necessary to approve the matter (other than election of directors) and (b) specify the time by which the ballot must be received by the Association in order to be counted.

3.8. Proxies. Votes may be cast in person or by proxy at all meetings. The holder of a proxy need not be a Member. Unless otherwise stated in the proxy, the proxy is valid for a period of one (1) year from the date of the proxy. The proxy may be revoked if the Member attends the meeting and votes in person or a written notice of revocation is delivered to the President or Secretary of the Association.

ARTICLE IV

BOARD OF DIRECTORS

4.1. General Powers. As set forth in Article IV, Section 3 of the Master Deed, the Property, affairs, and business of the Association shall be managed by its Board of Directors. The Board may exercise all of the powers of the Association, whether derived from law, the Master Deed, the Articles of Incorporation, or these Bylaws, except such powers as are expressly vested in another Person by such sources. The Board, in addition to other powers, shall have authority to make decisions regarding the care, upkeep and surveillance of the Property, the Common Area and Limited Common Area; and to designate and dismiss personnel as necessary for the proper functioning of such area. The Board may by written contract delegate, in whole or in part, to a Management Agent such of its duties, responsibilities, function, and powers, or those of any officer, as are properly delegable. The Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association.

4.2. Number Tenure, and Qualifications

4.2.1. For so long as Declarant owns a Controlling Interest (see Article IV, Section 4 of the Master Deed), the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as designated by Declarant from time-to-time. Such Directors need not be Members.

4.2.2. At such time as the Declarant no longer owns a Controlling interest, or such earlier time as the Declarant records a document waiving its authority to designate the Board, the successor Board shall be selected as follows;

A. The successor Board shall consist of not less than three (3) nor more than five (5) Persons. Each director shall be a Member or, if the Member is an organization, a person approved or designated by such Organization. The current Board of the Association shall constitute a Nominating Committee to nominate competent and responsible Persons to serve as Directors of the Association. The President or Secretary of the Association shall cause written notice to be given, in accordance with Section 10.1, to all Members that a meeting shall be held at a designated time and place in Charleston County not earlier than seven (7) days after the date such notice is given for election of Directors. The notice shall contain the names of those persons recommended by the Nominating Committee, but shall note that other nominations may be made by Members at the meeting.

B. At the meeting and each subsequent election of Directors, each Member, personally or by written proxy in form approved by the then existing Board, shall be entitled to cast all of the votes as are allocable to the Units owned by such Member. The number

of votes allocable to each Unit shall be the same as the Common Interest allocable to such Unit, as defined in the Master Deed.

C. After giving the Members (or proxy holders) attending such meeting the opportunity to nominate other Persons, with a second by another Member or proxy holder, the Directors shall be elected by written ballot. Each Member shall be authorized to vote for as many nominees as the number of Directors to be elected (i.e. if three Directors are being elected, then the Member may cast his votes for three nominees). Those nominees receiving the highest number of votes shall be the Directors.

D. In subsequent elections for Directors, the same procedure as set forth above shall be followed.

4.3. Annual and Regular Meetings. The first meeting of the Board of Directors shall be held within one (1) year from the date of recordation of the Master Deed. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Regular meetings of the Board of Directors shall be held on such dates as the Board of Directors may determine.

4.4. Special Meetings. Special meetings of the Board may be called by or at the request of two Directors, or if there are less than three Directors, then any Director. The Director(s) calling a special meeting of the Board may fix any place within Charleston County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. The notice shall state the date, time and place of the meeting, but it shall not be necessary to state the purpose. Notice shall be in accordance with Section 10.1, provided that notice may also be given by facsimile transmission if the Director given such notice has provided a facsimile number to the Association and the sender retains a record of its electronic receipt.

4.5. Quorum. Telephonic Meetings and Manner of Acting. A majority of the number of Directors then holding office shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means which permits all participating Directors to communicate simultaneously (such as a telephone conference call). The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. A Director who is present at a meeting shall be deemed to have assented to the action taken at such meeting unless (a) the Director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting; or (b) the Director votes against the action and the vote is entered in the minutes of the meeting, or (c) the Director abstains and the abstention is entered in the minutes of the meeting. The Directors shall act only as a Board and individual Directors shall have no powers as such.

4.6. Waiver of Notice of Meeting. Attendance of a Director at a meeting shall be deemed waiver of notice of the meeting unless the Director objects to the calling of the meeting before the business is put to a vote, and proper notice of the meeting was not given.

4.7. Compensation. No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacities as Directors.

4.8. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1. and 4.2.2., above).

4.9. Vacancies. If a vacancy shall occur in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by vote of the remaining Directors. If a vacancy shall occur in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors. Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

4.10. Action of Directors Without Meeting. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors and filed with the records of the Board.

ARTICLE V

OFFICERS

5. 1. Number. The officers of the Association shall be a President, a Vice President, a Secretary-Treasurer (with the responsibilities of Secretary and Treasurer set forth below), and such other officers, including Assistant Secretaries, as may from time to time be appointed by the Board.

5.2. Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold any two or more of such offices, except that the President may not also be the Secretary-Treasurer. No individual holding two or more offices shall act in or execute any instrument in the capacity of more than one office. During the

period that the Declarant owns a Controlling Interest (see Article IV, Section 4 of the Master Deed), it is not necessary that an officer be a Director or a Member.

5.3. Subordinate Officers and Agents. The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or a Member.

5.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.5. Vacancies and Newly Created Offices. If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular special meeting.

5.6. The President. The President shall preside at meetings of the Board and at meetings of Members called by the Association. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

5.7. The Vice President. The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him.

5.8. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Master Deed, or any resolution of the Board may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

5.9. The Treasurer. The Treasurer shall have custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President or the Board to do so, report the state of the finances of the Association. He shall perform such other duties as the Board may require of him.

5.10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

ARTICLE VI
COMMITTEES

6.1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer or a Member.

6.2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

6.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5. Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII

INDEMNIFICATION

7.1. Indemnification. The Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2. Determination. To the extent that a Director, officer, employee, or agent of the Association had been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in completion therewith. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of a quorum consisting of Directors excluding the Person whose indemnification is being considered.

7.3. Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board (excluding the Person whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.4. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Master Deed, Articles of Incorporation, Bylaws, agreements, vote of disinterested members of Directors, or applicable law. The indemnification authorized by this Article shall apply to all present and future Directors.

BKG 493PG060

officers, employees, and agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons

7.5. Insurance. The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his Status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified

7.6 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

ARTICLE VIII

FISCAL YEAR AND SEAL

8.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2. Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the word "Seal."

ARTICLE IX

RULES AND REGULATIONS

9.1. Rules and Regulations. In accordance with Article IV, Section 5 of the Master Deed, the Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Master Deed, or these Bylaws. Upon request of any Member, such Member shall be provided a copy of the rules and regulations or the Master Deed, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.

ARTICLE X

NOTICES

10.1. Notices. Unless otherwise expressly stated in these Bylaws, notices required hereunder shall be deemed given when in writing and delivered by hand or three (3)

calendar days after being deposited in the United States Mail, First Class, postage prepaid.
(See Section 3.4 for notices to Members of meetings.)

All notices to Members shall be delivered or sent to such address as has been designated in writing to the Association, or if no address had been so designated, at the addresses of a Unit owned by such Member.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Rivers Point Row Property Owners Association, Inc.

21 Rivers Point Row

Charleston, SC 29412

or to such other address as the Association may from time to time notify the Members and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

Rivers Point Row, LLC

c/o John B. Hagerty

Nelson Mullins Riley & Scarborough, L.L.P.

Suite 600, 151 Meeting Street

Charleston, SC 29401

or to such other address as Declarant may from time to time notify the Association.

All notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

ARTICLE XI

AMENDMENT OF BYLAWS

11.1. Amendment by Association. The Bylaws may be amended by a vote of the Members representing at least fifty-one percent (51%) of the Common Interests. Notice of a meeting of the Association to vote on the proposed amendment(s) shall to be given to Members in the same manner that is set forth in Section 3.4, above. The notice shall contain a general description of the proposed change and purpose of the proposed change. No

amendment shall be valid if it is materially different from that set forth in the notice or inconsistent with the Master Deed or Articles of Incorporation of the Association, as amended. No amendment to the Bylaws which imposes a greater economic or legal burden on Declarant than exists under the current provisions of these Bylaws shall be valid unless it is approved, in writing, by Declarant. Upon amendment of the Bylaws, such amendment shall be recorded within a reasonable period of time in the R.M.C. Office for Charleston County, South Carolina.

11.2. Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Member or any mortgagee if, in Declarant's opinion, such amendment is necessary to; (i) bring any provision of the Bylaws or the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Master Deed or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Master Deed; (v) enable any insurer to provide insurance required by the Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration; or (vii) clarify any provision of the Bylaws or the Master Deed or eliminate any conflict between provisions of the Bylaws or the Master Deed.

The foregoing was adopted as By-Laws of the Rivers Point Row Property Owners Association, Inc. at the first meeting of the Board of Directors on the ____ day of ____, 2004.

Rivers Point Row property Owners Association, Inc.

By: _____

Its: _____

EXG 4980066

Exhibit H

Phasing

Declarant reserves the right to build Building 2 at a future date as follows: (i) containing a maximum of 8 Townhouse Units; (ii) to be built within three years from the recording of the Master Deed; (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

A chart showing the percentage interest in the Common Areas of each original Unit Owner at the point at which the additional 8 Units are built is as follows:

2 Bedroom Townhouse Units	From .81	To .76
2 Bedroom Garden Units	From .73	To .69
1 Bedroom Garden Units	From .64	To .60

RECORDER'S PAGE

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the original document.



Nelson Mullins Riley & Scarborough
POST OFFICE BOX 1806
CHARLESTON, S.C. 29402

Nelson Mullins Riley & Scarborough
POST OFFICE BOX 1806
CHARLESTON, S.C. 29402

BKG 493 57

Recording

Fee 72.00

State

Fee

County

Fee

Postage

TOTAL 72.00

A

FILED

G 493 001

2004 MAY -4 PM 4:34

CHARLES E. DAVIS
REGISTER
CHARLESTON COUNTY SC

**PID VERIFIED
BY ASSESSOR**

REPTR

DATE 5/10/04

RECEIVED FROM RMC

MAY 10 2004

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 Courthouse Square Charleston, SC 29401

STATE OF SOUTH CAROLINA)
) FIRST AMENDMENT TO MASTER DEED
 COUNTY OF CHARLESTON)

WHEREAS, RIVERS POINT ROW, LLC has heretofore executed and recorded that certain Master Deed for Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded at Book G493, Page 001 (the "Master Deed") wherein it submitted that certain property known as Rivers Point Row to the Rivers Point Row Horizontal Property Regime under the terms of the Master Deed; and

WHEREAS, the undersigned Rivers Point Row, LLC is the owner of all the units in said Horizontal Property Regime and wishes to amend said Master Deed as set forth herein.

KNOW ALL MEN BY THESE PRESENTS that RIVERS POINT ROW, LLC does hereby amend that certain Master Deed of Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded May 4, 2004 in Book G493, Page 001, Charleston County RMC Office (the "Master Deed") as follows:

- 1 Article II Section 1 (q) is deleted in its entirety and replaced with the following:

(q) "Majority of Co-owners" or "Majority of Owners" means fifty one percent (51%) or more of the Common Interests, as calculated on the basic value of the Property as a whole, computed in accordance with the provisions of Section 27-31-60 of the Act, and as shown in Exhibit "D" to this Master Deed. "Value" as shown herein is set forth for the sole purpose of the Act and does necessarily relate to current or future property value or sales price.

2. Article IV Section 7 is deleted in its entirety and replaced with the following:

Section 7. Working Capital. At the time that title is conveyed to an owner by the Declarant, the Owner shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for initial operating and capital expenses of the Regime.

forth in the Bylaws, by Unit Owners that represent at least two thirds (2/3rds) of the Common interests and by eligible Unit Mortgagees who represent at least 51% of the votes of the Unit Owners that are subject to Unit Mortgages; provided, however, that no amendment which imposes a greater economic or legal burden on Declarant than exists under the current provisions of this Master Deed shall be valid unless it is approved, in writing, by Declarant and that Unit Mortgagees must reply to any request for an amendment to the Master Deed within thirty days or be deemed to have approved the request.

- 9 Bylaws Section 11.2 is deleted in its entirety and replaced with the following:

11.2 Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Member or any mortgagee if, in Declarant's opinion, such amendment is necessary to; (i) bring any provision of the Bylaws or the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Master Deed or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Master Deed; (v) enable any insurer to provide insurance required by the Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration; or (vii) clarify any provision of the Bylaws or the Master Deed or eliminate any conflict between provisions of the Bylaws or the Master Deed. Otherwise, any action to amend the Bylaws must be agreed upon by Unit Owners that represent at least two thirds (2/3rds) of the Common interests and by eligible Unit Mortgagees who represent at least 51% of the votes of the Unit Owners that are subject to Unit Mortgages.

10. Exhibit H is deleted in its entirety and replaced with the following:

Declarant reserves the right to build Building 2 at a future date as follows: (i) containing a maximum of 8 Townhouse Units; (ii) to be built within three years from the recording of the Master Deed; (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

A chart showing the percentage interest in the Common Areas of each original Unit Owner at the point at which the additional 8 Units are built is as indicated in Exhibit D showing the % after Building 2 and the proposed Townhouse units 2 A-H.

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the original document.



Nelson Mullins Riley & Scarborough
POST OFFICE BOX 1806
CHARLESTON, S.C. 29402

R 495PG391

Recording _____
Fee 12.00
State _____
Fee _____
County _____
Fee _____
Postage _____
TOTAL 12.00
C

FILED

R495-385

2004 MAY 24 PM 3: 01

C. W. BRAND
REGISTER
CHARLESTON COUNTY SC

RECEIVED FROM RMC

MAY 26 2004

PEGGY A. MOSELEY
CHARLESTON COUNTY VAULT

**PID VERIFIED
BY ASSESSOR**

REP LMG

DATE 5/26/04

(843) 958-4800 2 Courthouse Square Charleston, SC 29401

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) SECOND AMENDMENT TO MASTER DEED

WHEREAS, RIVERS POINT ROW, LLC has heretofore executed and recorded that certain Master Deed for Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded at Book G 493, Page 001 (the "Master Deed") wherein it submitted that certain property known as Rivers Point Row to the Rivers Point Row Horizontal Property Regime under the terms of the Master Deed, which Master Deed was amended by that certain First Amendment to Master Deed dated May 24, 2004 and recorded at Book R 495, Page 385 (the "First Amendment"); and

WHEREAS, the undersigned Rivers Point Row, LLC wishes to clarify certain provisions of this Master Deed and therefore wishes to amend said Master Deed, as amended, as set forth herein in this Second Amendment.

KNOW ALL MEN BY THESE PRESENTS that RIVERS POINT ROW, LLC does hereby amend that certain Master Deed of Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded Book G 493, Page 001, Charleston County RMC Office (the "Master Deed"), as amended, as follows:

1. Article IV Section 7 is deleted in its entirety and replaced with the following:

Section 7. Capital Contributions

- a. At the time that title is conveyed to a Buyer by the Declarant, the Buyer shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for initial operating and capital expenses of the Regime.

- b. Subsequent to the initial sale of a Unit, any and every time that title is conveyed by an Owner to a subsequent owner, the subsequent Owner shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for the capital expenses of the Regime.

2. The following provisions of the Master Deed including (i) Section 4. Description of Rivers Point Row (a) General Description and Phasing, (ii) Exhibit D, % After Building 2, and (iii) Exhibit H, Phasing are hereby clarified by confirming that Declarant shall cause the building of Building 2 as follows: (i) containing a maximum of 8 Townhouse Units ("New Townhouse Units"); (ii) built within three years from the recording of the Master Deed, and (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

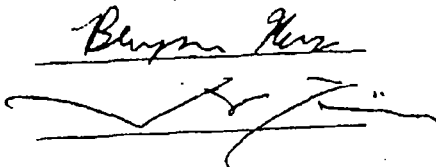
The following chart shows the percentage interest in the Common Areas of each original Unit Owner as well as the Owners of the New Townhouse Units at the point at which the additional 8 Units are built and added to the Regime:

2 Bedroom Townhouse Units	From .81	To .76
2 Bedroom Garden Units	From .73	To .69
1 Bedroom Garden Units	From .64	To .60
8 New Townhouse Units	76	

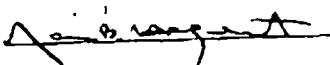
3. Except as specifically amended herein, said Master Deed shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to Master Deed this 12th day of May, 2005.

WITNESSES:



RIVERS POINT ROW, LLC, a
South Carolina limited liability company

By: 
Its: manager

RECORDER'S PAGE

Is page must remain with
the Original Document

Hand Low Offices, LLC
105 Wappoo Creek Drive Suite 5B
Charleston, SC 29412



BK X541PG564

Recording
Fee 10.00
State -
Fee -
County -
Fee -
Postage -
Total 10.00

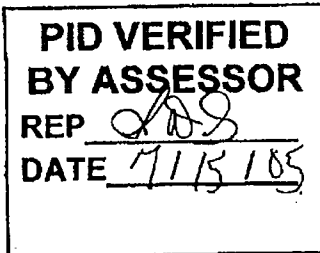
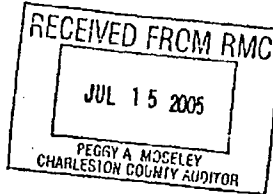
C

FILED

X541-561

2005 JUN 22 PM 3:39

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC



ENGINEERING DIVISION
CITY OF CHARLESTON
PLAN APPROVED 10-24-96
CITY ENGINEER
P & Z BGA
ZONING

403 25 Oct 1965
 5 25 - 93
 42 25 - 93

NOT PLATS AND DEEDS
1. UNRECORDED SURVEY BY JOHN HARTIN SARGE
DATED MAY 23, 1980
2. PLAT BY STE ENGINEERING, INC. DATED APRIL 1972
RECORDED IN PLAT BOOK # FJ 88
3. PLAT BY STE ENGINEERING, INC. DATED AUGUST 25, 1978
RECORDED IN PLAT BOOK # PAGE 21
4. PLAT BY JOHN HARTIN SARGE DATED MAY 15, 1979
RECORDED IN PLAT BOOK # PAGE 81
5. 1968 PLAT 131 BLANKET EASEMENT TO S.E. & G.
6. 0121 PLAT 131 BLANKET EASEMENT TO SOUTHWEST FELL

LETING
177 - IRON PIPE FOUND
178 - IRON REBAR SET

ALVA M. BOROUGHS
NO 12-14-20-19

SOUTHERN BELL
TELEPHONE AND TELEGRAPH
TOL 02-08-02-007



I hereby state that to the best of my knowledge, information, and belief, the contents hereof are true and correct and that the requirements of the Missouri Statutes issued for the President of the Land Surveying in South Carolina, and clearly and amply the requirements for a Class A survey as specified therein.

James E. Harrison

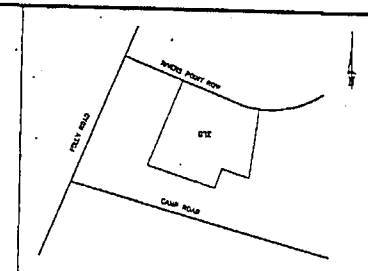
JAMES E. HARRISON
CIVIL ENGINEER & LAND SURVEYOR
C. 1, P.O. BOX 10800
P. O. BOX 108
MT. PLEASANT, S. C. 29465
OCTOBER-1966



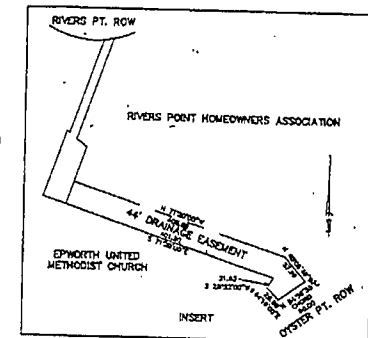
EXHIBIT "E"

Copy of Plat- Subject Tract
Plat Book EB Page 405
Recorded July 3, 1996

THESE DRAWINGS ARE THE PROPERTY OF THE ENGINEER AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT OF THE ENGINEER. VIOLATORS ARE SUBJECT TO LEGAL ACTION.



LOCATION MAP - HQ 3741



NOTE:
ALL BUILDINGS ARE 2 STORY BRICK
EXCEPT OFFICE (1 STORY BRICK)

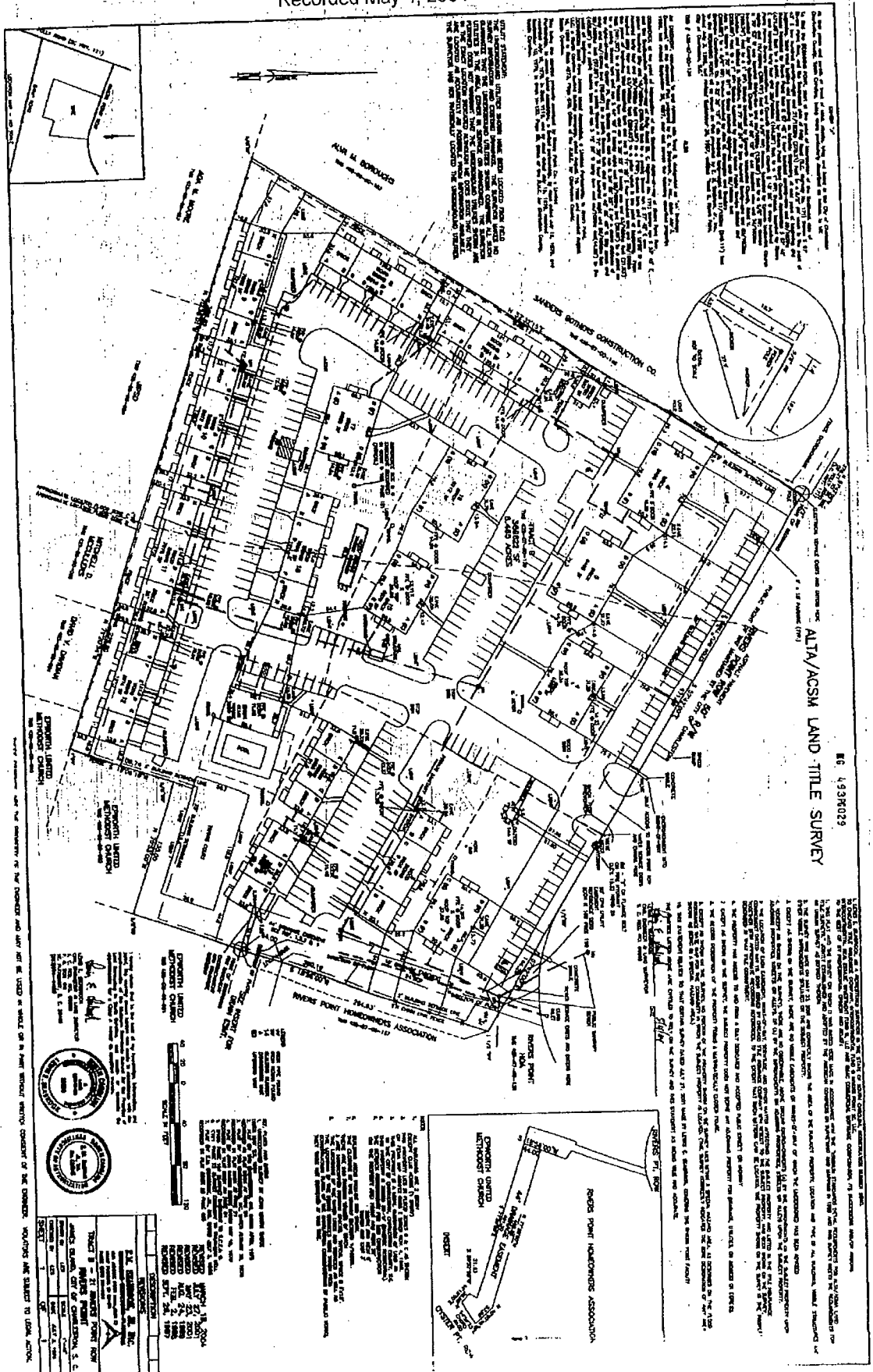
NOTE: THIS PROPERTY LIES IN FLOOD ZONES B & C AS SHOWN
ON FEMA MAP 48341Z DDDO E DATED NOV. 4, 1982.

ABOUT TO BE CONVEYED TO
DICKINSON, LOGAN, TODD & BARBER, INC.



DESCRIPTION			
REVISIONS			
F.M. FRANKBROOK, JR. INC. ENGINEERS-ARCHITECTS-PLANNERS 100 JORDAN ROAD, SUITE 100 WYATT, ALABAMA 36090 PHONE (205) 891-1000			
			
TRACT B			
RIVERS POINT			
CITY OF CHARLESTON, S. C.			
DRAWN BY	LES	SCALE	1"=40'
CHECKED BY	LES	DATE	AUG. 7, 1996
SHEET	1	OF	1

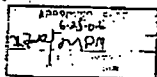
Copy of Survey- Site/Plot Plan
Deed Book G493 Page 029
Recorded May 4, 2004



K U588P625

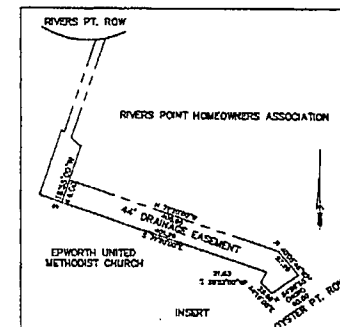
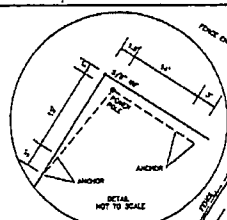
CITY OF CHARLESTON
CHARLESTON COUNTY, S. C.

PLAT SHOWING A RESURVEY OF TRACT B1 CONTAINING 8.10 ACRES
OWNED BY RIVERS POINT ROW, LLC
AND TRACT B2 CONTAINING 0.387 ACRE
OWNED BY PALMS PROPERTIES, LLC



Charleston, South Carolina
Office of the Surveyor General
Plat Book EJ Page 869
ALL - as shown in the Plat Book EJ Page 869 and being a full
copy filed in the Surveyor General's Office in Charleston, S.C.
Original plat filed July 1, 2006 in the Surveyor General's Office in Charleston, S.C.
Surveyor General

UTILITY STATEMENT:
THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD
SURVEY INFORMATION AND EXISTING RECORDS. THE SURVEYOR MAKES NO
GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH
UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR
FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE
IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES STATE THAT THEY
ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE.
THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.



- NOTES:
1. ALL BUILDINGS ARE 2 STORY EXCEPT CLAR HOUSE (1 STORY).
 2. THIS PROPERTY USE IN PLATS SHOWN IS - AREA OUTSIDE ROW YEAR PLATS SHOWN IS - AREA OF 200 YEAR PLATS ON 140 YEAR PLATS WITH DEPTHS LESS THAN 10 FEET ON DRAINAGE AREA USED FOR THE EXISTING SALE OF AREA PROTECTED BY LINES AND AS SHOWN IN PLAT BOOK EJ PAGE 869 AND AS SHOWN IN PLAT BOOK EJ PAGE 869.
 3. THERE ARE 200 REGULAR PARKING SPACES AND 100 UNREGULAR PARKING SPACES ON THIS PROPERTY.
 4. THE LOCATION OF THE WATER LINES AND SEWER LINES AS WELL AS THE LOCATION OF THE OTHER UTILITIES SHOWN FROM CONSTRUCTION PLANS AND THE CHARLESTON CONVEYANCES OF PUBLIC WORKS.
 5. THERE ARE 100 UNITS LOCATED IN TRACT B1.
 6. THIS PLAT SUPERSEDES PLAT B1 BY T. M. JAMESON, JR., INC. DATED JULY 3, 1998, LAST REVISED MARCH 15, 2004, RECORDED IN THE CHARLESTON COUNTY ARCHIVE IN PLAT BOOK EJ PAGE 869.

REF. PLATS AND DEEDS:
1. UNRECORDED SURVEY BY JOHN MARTIN SANCHEZ DATED MAY 21, 1998.
2. PLAT BY J. J. JAMESON, INC. DATED APRIL 1979 RECORDED IN PLAT BOOK EJ PAGE 869.
3. PLAT BY J. J. JAMESON, INC. DATED APRIL 23, 1979 RECORDED IN PLAT BOOK EJ PAGE 869.
4. PLAT BY JOHN MARTIN SANCHEZ DATED MAY 21, 1998 RECORDED IN PLAT BOOK EJ PAGE 869.
5. DEED FROM J. J. JAMESON, INC. TO S. C. C. CITY PAGE 101 BLANKET LICENSE TO TRADITION BELL.
6. PLAT BY L. M. JAMESON, JR., INC. DATED JULY 3, 1998 RECORDED IN PLAT BOOK EJ PAGE 869.
7. PLAT BY L. M. JAMESON, JR., INC. DATED JULY 3, 1998, LAST REVISED MARCH 15, 2004, RECORDED IN PLAT BOOK EJ PAGE 869.



REVISED JUNE 2006

DESCRIPTION	
REVISIONS	
R.M. SEABROOK, JR. INC.	
OWNERS - RIVERS POINT ROW, LLC	
TRACT B - 21 RIVERS POINT ROW	
RIVERS POINT	
JAMES ISLAND, CITY OF CHARLESTON, S. C.	
DRAWN BY	UTS
CHECKED BY	UTS
DATE	JULY 3, 1998
SHEET	1 OF 1



I hereby certify that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the American Surveying and Mapping Act of 1946, and that the survey was made in accordance with the requirements for a Class A survey as specified therein.

John Martin Sanchez
JOHN MARTIN SANCHEZ
A PROFESSIONAL SURVEYOR
S. C. REG. NO. 00000
J. J. JAMESON, JR., INC. 2840
(803) 584-4444

EXHIBIT "E"
Copy of Plat- Revised
Plat Book EJ Page 869
Recorded June 23, 2006

Charles F. Zander
Kaplan Meier Observatory

APPROVED PLAT
DATE 5-4-05
Theresa M. [Signature]
ENGINEER'S OFFICE
CITY OF OMAHA

PLAT SHOWING THE SUBDIVISION OF TRACT B
OWNED BY RIVERS POINT ROW, LLC
INTO TRACT B1 CONTAINING 8.10 ACRES AND
TRACT B2 CONTAINING 0.38 ACRE

UTILITY STATEMENT: THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES STATE THAT THEY ARE LOCATED AS NEARLY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

- NOTES:
1. ALL BUILDINGS ARE 2 STORY
DROPT CLIMB HERE IS STORY
THIS PROPERTY LIES IN FLOOD ZONE E - AREA QUOTED 230
VOLUME FLOOD ZONE E - AREA OF 300 VOLUME OF 160 VOLUME
DRAIN WITH NORTH DRAINAGE
LESS THAN ONE SQUARE MILE OF AREA PROTECTED BY DRY
AND AC. COL. 101. ALL AS SHOWN OF FEMA MAP 450161 0177;
DATED 1/1/79.
THERE ARE 144 FARMING SITES OF WHICH
AND UNIMPROVED FARMING SITES. TYPICAL SIZE IS 81/2 AC.
2. THE LOCATIONS OF THE MAJOR LINES AND SURFACES AS WELL AS
THE LOCATION OF THE MAJOR LINES AND SURFACES AS WELL AS
CONSTRUCTION PLANS OF THE CHANGELING COMMUNICATIONS OF PEOPLE WORKING
THEY WERE NOT ELIMINATED AT THE TIME
THERE ARE UNITS OF THE AREA.

NOT PLATS AND DEEDS
1. UNRECORDED SURVEY OF JOHN MARTIN SABOE
DATED MAY 22, 1980
2. PLAT BY STS. ENGINEERING, INC. DATED APRIL 1975
RECORDED IN PLAT BOOK NO. PAGE 51
3. PLAT BY STS. ENGINEERING, INC. DATED AUGUST 25, 1979
RECORDED IN PLAT BOOK NO. PAGE 21
4. PLAT BY JOHN MARTIN SABOE DATED MAY 17, 1979
RECORDED IN PLAT BOOK NO. PAGE 51
5. OTHER PLAT 131 QUAKERTOWN TOWNSHIP TO S.E. 1/4 &
6. 1/4 SEC. 10 TOWNSHIP 26 NORTH R. 10 EASTION T26 S.
7. 1/4 SEC. 10 TOWNSHIP 26 NORTH R. 10 EASTION T26 S.
8. 1/4 SEC. 10 TOWNSHIP 26 NORTH R. 10 EASTION T26 S.
9. 1/4 SEC. 10 TOWNSHIP 26 NORTH R. 10 EASTION T26 S.
10. 1/4 SEC. 10 TOWNSHIP 26 NORTH R. 10 EASTION T26 S.

REVISED MARCH 18, 2004
REVISED JULY 27, 2001
REVISED MAY 23, 2001
REVISED AUG. 24, 1999
REVISED FEB. 2, 1998
REVISED SEPT. 26, 1997

EPWORTH UNITED
METHODIST CHURCH

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 Uniform Standards Manual for the Practice of Land Surveyors in South Carolina, and that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Uniform Standards Manual for the Practice of Land Surveyors in South Carolina, and that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Uniform Standards Manual for the Practice of Land Surveyors in South Carolina.

LEWIS E. SEABROOK
CIVIL ENGINEER & LAND SURV.
P. O. BOX 98
MT. PLEASANT, S. C. 29425
(803) 636-1408



DESCRIPTION			
REVISIONS			
E.M. SEABROOK, JR. INC. ENGINEERS-SURVEYORS-PLANNERS 1041 JENNIFER DRIVE BLVD. #100 WEST PALM BEACH, FL 33411 PHONE 561-833-6644			
			
TRACT B - 21 RIVERS POINT ROW RIVERS POINT JAMES ISLAND, CITY OF CHARLESTON, S. C.			
DRAWN BY	UCS	SCALE	1"=40'
CHECKED BY	UCS	DATE	JULY 3, 1986
SHEET	1	OF	1

226

McCarn Court Reporting, Inc.

Post Office Box 778
Folly Beach, South Carolina 29439
Telephone (843) 795-0104 Facsimile (843) 795-0108
lamccarn@comcast.net

October 14, 2009

VIA USPS CERTIFIED MAIL

Charleston School of Law
Attn: William J. Cook, Esq.
Post Office Box 535
Charleston, South Carolina 29402

Re: Rivers Point Row Horizontal Property Regime -vs- Palms Properties, LLC

Deposition date: October 2, 2009

Enclosed please find a copy of the deposition transcript given in the above-referenced matter. You will also find an Errata Sheet and a self-addressed envelope.

As you are aware, this is a verbatim transcript. If, however, you feel it necessary to make any corrections or changes, you may do so, on the Errata Sheet, indicating page and line number. You must state your reason for making the change.

Upon completion of this, please sign and date the Errata Sheet and return it in the envelope provided. You may retain the copy of the transcript for your file. If this office has not received your Errata Sheet within 30 days from the above date, signature will be considered waived. Thirty days will be November 13, 2009. If you have any questions regarding this matter, please do not hesitate to contact me.

Thank you for your prompt attention to this matter.

Sincerely,

Lisa A. McCarn

cc: John A. Massalon, Esq.
Dan M. David, Esq.
J. Thomas Mikell, Esq. ✓

EXHIBIT F

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL)
PROPERTY REGIME, a/k/a RIVERS)
POINT ROW PROPERTY OWNERS)
ASSOCIATION, INC.,)
Plaintiff,)

-v-

PALMS PROPERTIES, LLC,)
Defendant.)

PALMS PROPERTIES, LLC,)
Third-Party Plaintiff,)

-vs-

RIVERS POINT ROW, LLC and)
JOSEPH F. HAND, JR.,)
Third-Party Defendants.)

DEPOSITION OF:
WILLIAM J. COOK
OCTOBER 2, 2009

McCarn Court Reporting, Inc.
P.O. Box 778
Folly Beach, SC 29439

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A-P-P-E-A-R-A-N-C-E-S Court Reporter Lisa A. McCarn For the Plaintiff Mikell, Weidner, Wegmann & Harper By J. Thomas Mikell 14 Professional Village Circle Beaufort, SC 29907 For the Defendant and Third-Party Plaintiff David S. Schwartz By Dan H. David and J. Scott Falle 757 St. Andrews Boulevard Charleston, SC 29407 For the Third-Party Defendants Kills & Massalon By John A. Massalon and I. Ryan Neville 134 Masting Street, Suite 100 Charleston, SC 29401 INDEX TO EXAMINATIONS <table><thead><tr><th></th><th>Page</th></tr></thead><tbody><tr><td>Mr. Massalon</td><td>3, 48</td></tr><tr><td>Mr. David</td><td>37, 52</td></tr><tr><td>Mr. Mikell</td><td>46, 51</td></tr><tr><td>Reporter's Certificate</td><td>53</td></tr><tr><td>Errata Sheet</td><td>54</td></tr></tbody></table> INDEX TO EXHIBITS <table><thead><tr><th></th><th>Page marked</th></tr></thead><tbody><tr><td>No. 1 Action of The Directors, 5/12/05</td><td>31</td></tr></tbody></table>			Page	Mr. Massalon	3, 48	Mr. David	37, 52	Mr. Mikell	46, 51	Reporter's Certificate	53	Errata Sheet	54		Page marked	No. 1 Action of The Directors, 5/12/05	31	1 Q Let me just get a little bit of background 2 about you, first. Your current occupation is what? 3 A I'm a law professor. 4 Q And how long have you been doing that? 5 A I am now in my fourth year teaching full 6 time. I taught two years as an adjunct before that. 7 Q Okay. All at the Charleston School of Law? 8 A Correct. And I have a resume, if you'd like 9 a copy of it? 10 Q That would be great. 11 MR MIKELL I sent it to you guys yesterday. 12 THE WITNESS I made some copies. 13 MR MIKELL He sent it to me yesterday, so I 14 sent it to you guys. 15 MR MASSALON All right. I'm sure I got it. 16 I was doing some other things yesterday and probably 17 just didn't realize I got it. Give me just a second 18 to look over this. 19 THE WITNESS Yeah, sure. 20 BY MR MASSALON 21 Q This resume says that you teach property law, 22 constitutional law, historic preservation law, and 23 appellate practice? 24 A Correct. 25 Q That's what you teach currently?	
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1 WILLIAM J. COOK, 2 having been duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. MASSALON: 5 Q All right. Would you state your name for us, 6 please? 7 A William J. Cook. 8 Q And you and I have met many times before? 9 A Yes. 10 Q I'll give you just a couple of broad 11 instructions, before we get started. As you know, we 12 represent the Third-Party Defendant in this lawsuit. 13 And you've been identified to us as an expert witness. 14 And so I'm going to be asking you some questions about 15 your opinion, okay? 16 And if you'll just do a few things for me: 17 First of all, if you don't hear or understand one of 18 my questions, let me know. Okay? 19 A Sure. 20 Q The second is, if you will, please keep your 21 responses verbal. Try to avoid head nods and things 22 so that we can get the record down clearly. And then, 23 last, if you need a break, let me know and I'll stop 24 for you. Okay? 25 A Okay. Absolutely.		1 A Yes. Property is a full-year course. 2 Historic preservation and appellate advocacy are 3 elective courses that I teach once a year. And I'm 4 also teaching constitution law right now, as well. 5 Q Has that always been true during your tenure 6 at the Charleston Law School, or is that just your 7 current teaching load? 8 A That has been my teaching load, since I've 9 been there. 10 Q Full time? 11 A Correct. 12 Q All right. 13 A Property is my main focus. 14 Q Got you. I was just flipping through to see 15 if I had any other questions, rather than covering all 16 of this. Now, other than the work that you do 17 teaching at the law school, do you represent clients 18 in any cases? 19 A Not as an attorney of record. I have 20 consulted on occasion. And I've been retained as an 21 expert witness on a few other cases. 22 Q So when you started teaching full time, you 23 stopped representing clients in court, would that be 24 fair? 25 A Correct.																	

2 (Pages 2 to 5)

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1 Q Now, other than this case, how many times 2 have you served as an expert witness in litigation? 3 A I would say -- 4 Q Do you have a list? 5 A Yeah Well, I only listed the two times 6 where the cases went to trial and I was qualified by 7 the court So there are two there One was a case, 8 the first one, I was serving as an expert witness on 9 issues related to historic preservation and land-use 10 law And I served as the expert for the Historic 11 Charleston Foundation and the Preservation Society of 12 Charleston in a dispute over some proposed development 13 on Marion Square 14 And the second case that went to trial, where 15 I was qualified as an expert involved the 16 interpretation of colonial deeds and land grants And 17 that involved title to marsh lands out on Folly Beach 18 I've also worked as -- or was hired as an expert in a 19 premise-of-liability case involving an injury at a 20 Wal-Mart in Jasper County, but I've not been deposed 21 in that case, yet 22 Q So would I be correct in understanding that 23 this is the fourth time you've served as expert on 24 litigation? 25 A I'd say fifth	1 A I typically charge \$250 per hour 2 Q And when you say "typically", is that what 3 you're charging in this case? 4 A Yes, yes. 5 Q And is that the same for document review, 6 deposition testimony, court testimony? 7 A Yes. 8 Q Before coming here today, do you know how 9 much or about how much time you had spent working on 10 this case? 11 A I would say between three and four hours 12 Q Have you billed and been paid for that time? 13 A No. Not as of yet, no 14 Q Now, in the cases in which you've served as 15 an expert, have you worked for plaintiffs, defendants 16 or both? 17 A Both times involved plaintiffs One, right, 18 one the foundation was a party plaintiff, as well as 19 the preservation society And in the second, 20 Professor Grant also was a plaintiff 21 Q Do you remember when you got involved in this 22 case? 23 A Yes Initially, I had my first conversation 24 with Mr Mikell, at some point last year And we have 25 had meetings in person since then and some telephone
Page 7	Page 9
1 Q Okay 2 A Consulting as an expert witness on a 3 constitutional law issue involving possible preemption 4 of some recent ordinances passed by the City of Myrtle 5 Beach and evaluating their potential conflict with 6 state traffic laws 7 Q Okay. And the two that you've got listed 8 here under Expert Qualifications, you said you were 9 qualified as an expert in both of those cases? 10 A Correct Judge Scarborough was the presiding 11 judge in the Historic Charleston Foundation matter 12 And Judge Young was the presiding judge in the grant 13 matter 14 Q And do you remember the attorneys you worked 15 for first in the Historic Charleston case? 16 A Sure I was retained by Edward Pritchard 17 and -- 18 Q How about in any others? 19 A Sorry Professor Kirk Grant, who was a 20 professor at the Charleston School of Law 21 Q And in the other cases that you've told us 22 about, you haven't given depositions or testified in 23 those two? 24 A Correct, that's correct 25 Q How do you charge for your time as an expert?	1 conversations about the matter 2 Q Do you use written retainer agreements? 3 A I typically do I usually -- I don't usually 4 have a formal written agreement I usually confirm it 5 in an e-mail 6 Q Okay Did you do that in this case? 7 A Yes, I did 8 Q You said you sent some stuff, but I didn't 9 see it Have you provided us with a copy of that? 10 MR MIKELL I just got it yesterday 11 MR MASSALON. And I don't know who I should 12 ask, but I would like to get a copy from one of you 13 THE WITNESS. Of course 14 MR MIKELL Okay 15 BY MR MASSALON 16 Q Now, when we see that e-mail or letter or 17 whatever it actually is, would that have been written 18 at or about the time you got hired? 19 A No It's written subsequent to that, within 20 the last couple of weeks 21 Q Why was it that there was such a time delay? 22 A Well, I had my initial conversation with Mr 23 Mikell, you know, say about a year ago I don't 24 remember exactly when Professor Gerry Finkel had 25 referred me to him And we had a meeting at my office

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1 about the general issues in the case. 2 We looked at a couple of plats. I didn't 3 receive any documents, at that time. And I believe, 4 when the deposition notice was scheduled, I had a 5 conversation with Mr. Mikell. We discussed 6 transmitting relevant documents to me for me to 7 review, which I did. And -- 8 Q Well, actually, what I was kind of driving at 9 is this. In terms of figuring out when it was you 10 were initially contacted -- 11 A Sure. 12 Q -- what I was trying to get to was, when you 13 initially got contacted, did you write and confirm the 14 engagement or was it sometime after that? 15 A I had confirmed the engagement, but I wasn't 16 particularly concerned about the fee amount, given the 17 nature of the referral. 18 Q Okay. And what does that mean? 19 A Well, it means that Mr. Mikell was referred 20 to me by a colleague and a friend, and I wasn't 21 necessarily concerned about getting paid. I assumed 22 that we would negotiate a reasonable rate. And I 23 presented my -- the rate that I charge, and that was 24 acceptable. 25 Q Now, what was it that you were hired to do?	1 that initial conversation? 2 A No, I do not. 3 Q If you made any, would you still have them? 4 A Probably not. To the extent that I'd made 5 them, it would have been to record the appointment and 6 really nothing else. 7 Q You said the next thing you did was met in 8 your office? 9 A Correct. 10 Q Okay. Did you receive some documents about 11 the case, at that time? 12 A Not prior to the meeting. 13 Q Did you get them at the meeting? 14 A Correct. 15 Q Can you give me a list of the documents that 16 you received? 17 A Sure. Well, I brought them with me. 18 Q Okay. Well, you can either tell me or you 19 can show them to me, and I can read out the list, 20 whichever one? 21 A Sure. I received, in addition to the 22 deposition notice, the subpoena duces tecum, the 23 summons and complaint, and the related pleadings. 24 Q And when you say "related pleadings", you 25 mean what?
Page 11	Page 13
1 A I was hired to evaluate the validity of a 2 deed from Rivers Point, LLC to Palms Properties. 3 Q And for my purposes, since we've got a Rivers 4 Point Row Homeowners Association and a Rivers Point 5 Row, LLC, to keep from confusing myself, would it be 6 acceptable to you if I called the Homeowners 7 Association the HOA and the Rivers Point Row, LLC the 8 LLC? 9 A Sure. 10 Q And that way, as I said, I hopefully will not 11 confuse myself or you. 12 A Okay. 13 Q Now, when you got this assignment, you said 14 you initially talked with Mr. Mikell over the phone? 15 A Correct, and then we met in person. 16 Q Well, what I was going to ask you, before we 17 get to the in-person meeting. When you spoke with him 18 over the phone, did he give you any substantive 19 information about the case, or did you just set up a 20 meeting to talk about the case? 21 A He described the matter generally. It was a 22 matter involving deed interpretation, and we set up a 23 meeting to talk about the case. When he was next in 24 Charleston, we met. 25 Q Do you recall whether you made any notes of	1 A The answer to the Plaintiff's complaint. The 2 complaint, the answer, the LLC's answer to Palm 3 Properties' complaint and counterclaims as to 4 Plaintiffs, Rivers Point Row Horizontal Property 5 Regime and Palms Properties. 6 Q Okay. 7 A The reply by the Plaintiff to the 8 counterclaim of Rivers Point Row, LLC and the 9 First-Party Defendant and Third-Party Plaintiff Palms 10 Properties, LLC's reply. In addition to the 11 pleadings, I received a copy of the Horizontal 12 Property Act, the timeline, various notes prepared by 13 Mr. Mikell with some accompanying documents. 14 Q The notes that you got from Mr. Mikell, are 15 those in hand or? 16 A Yes. 17 Q Okay. And the documents that you got from 18 him relate to the notes he gave you? 19 A Correct. 20 Q Okay. 21 A There is also a copy of a portion of a 22 publication entitled Condominium Law in South 23 Carolina, 2nd Edition by Douglas Scott MacGregor, 24 Esquire, a copy of a reported opinion from the South 25 Carolina Court of Appeals. The caption is Re

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1 Reyhani, R-E-Y-H-A-N-I, versus Stonacreek Cove 2 There's a copy of the Master Deed of Rivers 3 Point Row Horizontal Property Regime, which includes 4 two plats associated with the master deed. There is 5 also -- there are two amendments to the master deed 6 There is a warranty deed from the LLC to Greg 7 Beall-Palms Properties 8 There are two additional plats concerning the 9 property And there's another document entitled 10 Horizontal Property Regime Rivers Point Row 11 Condominiums Schedule of Sheets. 12 Q And the plats, and I know this is a little 13 tedious, but it helps for me to know just what you've 14 got 15 A Sure 16 Q You mentioned that you had, at one point, you 17 had a couple of plats and then you said two more 18 plats? 19 A Yes 20 Q Do you mind looking at those plats and 21 telling me the dates on them, please? 22 A The first one is dated July 3, 1996 23 Q Okay 24 A And I can give you the location -- 25 Q Sure, that would be great	1 A I received them like this. 2 Q Okay And you received them from Mr Mikell? 3 A Correct 4 Q Now, was this information that he brought to 5 you, or did you request some or of all this 6 specifically? 7 A I requested some of it, the pleadings, the 8 plats, any deeds. I mean, I've done my own research 9 that doesn't appear in the notebook, things from 10 Westlaw, for example, my own knowledge 11 Q And I will get to that in a minute. 12 A Okay 13 Q What I was just trying to figure out is. The 14 information in the notebook, is it pretty much in the 15 same form as it was when you got it? 16 A Correct 17 MR MASSALON And again, I don't know if I'm 18 getting a copy of that, but I would like copies of all 19 that just to make sure my file is complete 20 MR MIKELL Sure 21 BY MR MASSALON 22 Q All right Now, other than the information 23 that you've received, and I'm confining this question 24 here just for clarity's sake to the meeting that you 25 had initially in your office, did you receive any
Page 15	Page 17
1 A -- and identification information EB -- 2 sorry, 405-EB. 3 Q Okay 4 A This was prepared by E M Seabrook, Jr 5 Q Okay 6 A The second one, the date -- another document 7 prepared by E M Seabrook, Jr. It has a signed date 8 of May 4, 2004 9 Q Okay 10 A I can give you a TMS Number to help identify 11 it? 12 Q Sure 13 A The TMS is 425-07-00-139. The third plat is 14 dated 6/25/06 It is recorded in plat book -- I think 15 it's E1 Page 869 And the final one has a -- let's 16 see There's an approval date of 5/4/05, and the TMS 17 Number on this plat is 425-07-0037 18 MR. MIKELL Just so the list is complete I 19 believe there's also a deed in there to the LLC that 20 you didn't mention? 21 THE WITNESS Correct, correct Thank you 22 BY MR MASSALON 23 Q Thanks It doesn't necessarily appear in the 24 record, but all of these documents are in a notebook 25 Did you get them like that or did somebody --	1 other information that you recall orally from Mr 2 Mikell? Did he tell you anything else about the case 3 that wouldn't be reflected in here? 4 A No 5 Q Did you make notes of that initial meeting? 6 A No, I did not 7 Q Was anybody with you, other than just the two 8 of you? 9 A No 10 Q Not a research assistant or anything like 11 that? 12 A No 13 Q Okay And when or about when was it that you 14 got all this information? 15 A I'd say a couple of weeks ago, the notebook 16 Q Right. And did you say you had, if I 17 remember right, two meetings with Mr Mikell? 18 A More recently 19 Q So after you got this, you met with him 20 again? 21 A Correct 22 Q What was the purpose of that meeting? 23 A To discuss any questions that I might have 24 Q All right About the information or 25 something else?

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Page 18	Page 20
1 A About the information related to the case 2 contained in the notebook 3 Q What do you remember about that meeting? 4 A I recall that I examined the initial or the 5 original title to the real estate that ultimately 6 became the regime I read over the plats with him. 7 We had some general discussions as to my understanding 8 of the law in this particular area 9 Q Anything else you remember? 10 A No 11 Q But just for timing purposes, how long was it 12 between the first meeting and the second meeting? 13 A We probably met -- it was probably a matter 14 of days 15 Q Prior to the first in-person meeting that you 16 had, you mentioned that you had collected some 17 information on your own Did you do any research or 18 any investigation between the time you got the first 19 call and your first meeting? 20 A Very limited I wasn't sure if the case 21 would proceed, and I was out of town for the summer 22 And so, no, I didn't do a lot of additional research 23 following our meeting. 24 Q You said, at some point, you collected some 25 information That, I assume, that was after the first	1 A First of all, the South Carolina Horizontal 2 Property Act I mentioned already the South Carolina 3 Jurisprudence article on condominiums or horizontal 4 property regimes I don't remember how it -- how it's 5 titled I reviewed case law from our state appellant 6 courts, regarding the interpretation of deeds 7 I reviewed general property notes that I use 8 in my class that I've taken from various textbooks and 9 treatises. One of those treatises that I use fairly 10 frequently is a document called -- a book called 11 Understanding Property Law by John Sprankling, 12 S-P-R-A-N-K-L-I-N-G. 13 Q Okay 14 A Two cases that, you know, I reviewed 15 thoroughly. One was the Reyhani opinion that I 16 mentioned earlier 17 Q Right 18 A It's in my notebook, but I'd also found that 19 independently Another case called Hobonny or 20 Hobonny, H-O-B-O-N-N-Y, Club 21 Q Okay 22 A Another case in related authority, the case 23 was Ward versus Woodward Hobonny had to deal with 24 deeds involving plats Ward was a construction of a 25 deed case dealing with ambiguities in deeds And
Page 19	Page 21
1 in-person meeting? 2 A I'd say before the meeting and following the 3 meeting 4 Q All right What was that? What information 5 did you get on your own? 6 A Case-law research I pulled South Carolina 7 Jurisprudence on condominium law 8 Q And do you have that information somewhere 9 either reproduced on a disk saved? 10 A I can provide it to you I actually read it 11 out of the book And I brought some notes from my 12 research with me today to use as a reference 13 Q What I'm interested to know is, in forming 14 whatever opinions you're going to tell me about in a 15 little bit, if you relied on any statutes, cases, you 16 know, treatises, anything like that That's really 17 what I'm driving at 18 A Sure 19 Q So if you've got a list, you can tell it to 20 me 21 A Okay 22 Q Or if you don't have a list, I'm happy for 23 you to provide it to me after the deposition 24 A I can tell it to you 25 Q Great	1 then, a series of cases that I denote the citations 2 for them about the need to reserve -- I mean, the need 3 to identify reserved portions of property 4 Q Other than this research that you mentioned, 5 in looking at -- well, you said you looked at the 6 South Carolina Horizontal Property Act Any specific 7 sections of it or just the whole act? 8 A Well, I did read the whole act 9 Q Let me ask you a slightly better question 10 than that 11 A I did it in sections 12 Q In forming your opinions, did you rely 13 particularly on any specific portions of the act? I 14 wasn't implying that you hadn't read the act I meant 15 to ask you -- 16 A I think, primarily, the key portions of the 17 act would be South Carolina Code Annotated, Section 18 27-31-30, 27-31-100, 27-31-110, 27-31-60, and finally 19 27-31-70 20 Q And a similar question for South Carolina 21 Jurisprudence or the article you said, do you have a 22 specific cite for that? 23 A No, but I'll provide it to you 24 Q Okay If you would or send it to Mr Mikell, 25 and he can send it to me

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Page 22	Page 24
1 A I will 2 Q And you mentioned a few cases that you relied 3 on specifically Just for purpose of completeness 4 Are those the primary cases that you used in forming 5 your opinions? 6 A Correct And I mean, again, there's other 7 authorities that state similar propositions, but those 8 would be the primary cases 9 Q And you mentioned the -- and I'll probably 10 mispronounce it, the Reyhani, Hobonny, and the Ward 11 cases? 12 A Yes I'll be happy to provide you copies of 13 those, as well 14 Q I think I can get those on my own 15 A Okay 16 Q Thanks, though. And in the Sprankling book, 17 the property law book, again, are there any specific 18 sections you relied on in forming your opinions? 19 A It's more kind of confirming my opinions I 20 mean, it's a hornbook, as you know -- 21 Q Right. 22 A -- dealing with black letter law I was 23 mainly checking it to see if South Carolina law was in 24 conformity with general black letter law, and it 25 appears to be	1 A No 2 Q Okay. Do you happen to have a copy of the 3 master deed with you? 4 A I do 5 Q Will you flip to that? 6 A Yes 7 Q Now, the sections that you were referring to, 8 I just want to get clear on that. 9 A Sure. 10 Q You said there's no description of Building 2 11 in the master deed or the plat, and the reservation or 12 the right by the developer to build Phase 2 doesn't 13 equate to ownership? 14 A Correct 15 Q Tell me, when you refer to the reservation of 16 the right to build in phases, what specifically are 17 you talking about in the master deed? 18 A I believe that would be Article 3, Section 19 4-A 20 Q At least on my copy, that starts at the 21 bottom of Page 4 of the master deed -- 22 A Correct 23 Q -- and goes to the top of Page 5? 24 A Correct, yes 25 Q Okay Now, you've told us what this
Page 23	Page 25
1 Q Did -- and I don't know if you've got one, 2 but if you have a law student or research assistant, 3 did anyone like that do any work to help you come up 4 with your opinions? 5 A Not at all 6 Q Okay Did you talk with any of the litigants 7 in the lawsuit, any representatives of the HOA, Mr 8 Beall, any representatives of the LLC? 9 A No. 10 Q Did you confer with any of your colleagues or 11 other attorneys about what you put in your opinions? 12 A No 13 Q All right If you would, let me get a list 14 of the opinions that you plan to offer. And then, 15 we'll go through and talk about them 16 A Okay. The first opinion would be that the 17 LLC did not own the property that it conveyed to Palms 18 Properties because it conveyed property that belonged 19 to the HOA or the regime 20 In support of that conclusion, there's no 21 description of Building 2 anywhere in the master deed 22 or on the plat that became part of the deed, and that 23 the reservation of a right to phase or build does not 24 equate with ownership 25 Q Okay Any other opinions, besides that?	1 reservation doesn't do Tell me, if you would, what 2 you think it does or what your opinion of what it does 3 do. What rights does that give the developer? 4 A Well, first of all, I've not been retained to 5 opine on the rights it does give the developer. But 6 as I interpret the paragraph, and it's a one-line 7 portion following that first paragraph, is that -- 8 well, it says, "All improvements are in place, except 9 that Building 2 has not been built and the phasing is 10 to be as described in Exhibit H and Exhibit D herein." 11 This clause appears to be anticipating some sort of 12 schedule or phasing 13 Q Now, have you considered, in forming the 14 opinions that you have in this case, whether that 15 right, meaning that right of the developer to build on 16 this piece of property, was assignable? 17 A I do not have an opinion about that 18 Q Okay 19 A I was not asked to evaluate that issue 20 Q If I ask you to evaluate it now, could you 21 form an opinion on it? 22 A Not necessarily I haven't researched the 23 assignability of rights to build I mean, I have an 24 opinion about what the outcome would be, holding aside 25 whether the right is assignable

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Page 26	Page 28
1 Q All right And I'm not sure I follow that 2 What does that mean? 3 A Well, I believe, in this case, there's no 4 right to assign any interest in the common areas 5 because the common areas had already been set when the 6 master deed was recorded. So to the extent there was 7 some ability to convey a right to build, it was a 8 nullity because there was nothing to convey 9 Q Well, I thought I understood you to say that 10 the developer in this Paragraph 3, Section 4-A 11 reserved the right to do something on that piece of 12 property? 13 A Correct It appears to suggest that there 14 will be some phasing at some point But again, we 15 can't -- I don't read this clause in isolation 16 Q Uh-huh. (Affirmative) 17 A I think, more importantly, in earlier parts 18 of the master deed, the term property is defined -- 19 Q Okay 20 A -- that preclude any kind of ownership right 21 from being subsequently transferred, in regards to 22 this particular parcel 23 Q So is it fair to say that, and I'm not trying 24 to say this for you I'm just trying to understand 25 what you're telling me That even if the developer	1 Q And which section of that specifically did 2 you look at? 3 A Well, I can't tell you specifically What I 4 do know is that, once property has already been 5 submitted to a regime and the regime owns it, that any 6 amendment would require unanimous consent of the unit 7 owners 8 Q Are you relying on a particular part of the 9 master deed for that or something else? 10 A It's just my knowledge of -- it's my 11 knowledge of the effect of filing a recordation of a 12 master deed that establishes the Horizontal Property 13 Regime 14 Q Okay So it's not based on this It's based 15 on the law, in general? And when I say this, I mean 16 the master deed 17 A I mean, yes, correct That is correct. 18 Q And again, I'm not trying to testify for you 19 I'm just trying to understand the basis for that 20 A Absolutely 21 Q And as I understand it, your basis for making 22 that statement is not anything you saw or didn't see 23 in the master deed It's what you know about the 24 general law? 25 A Well, I mean, I'm also basing my opinion on
Page 27	Page 29
1 reserved the right to build something on this piece of 2 property, the fact that the property, in your view, 3 had been conveyed to the HOA meant that the right, 4 whatever it was that was reserved, was a nullity? 5 A Correct 6 Q Okay So in your view then, this paragraph, 7 and again, I'm not suggesting an answer to you, I'm 8 just trying to make sure I understand it. That the 9 reservation in Article 3, Section 4-A is basically 10 meaningless? 11 A Correct 12 Q It doesn't allow the -- 13 A Correct, in terms of the deed that was 14 conveyed to Palms Properties 15 Q Taking the issue of the deed conveyed to 16 Palms Properties out of the mix, meaning pretend for a 17 minute that that didn't happen, does your view that 18 this section is a total nullity mean that it didn't 19 have the effect of reserving anything to the 20 developer? 21 A Yes 22 Q Now, in looking at the master deed, did you 23 spend any time looking at the provisions of the master 24 deed regarding amendment of the master deed? 25 A I did review those sections	1 how the master deed defines property in common areas 2 Q Did you look -- when you were reviewing the 3 master deed, at the portions of it that speak to the 4 governance of the HOA or the regime board? 5 A Okay Yes. 6 Q Yes, okay And would you agree with me that 7 the initial -- initially, the declarant, the LLC, had 8 the right to appoint the members of the HOA Board? 9 A I was not asked to opine on that I do know 10 that two amendments were made, but that is outside the 11 scope of why I was hired 12 Q Okay And so you don't have any opinion or 13 let me confirm that you don't have any opinions about 14 the governance of the HOA Board of Directors, while 15 the declarant was in control of it? 16 A No 17 Q And you don't have any opinions about whether 18 the appointment of the directors, during the LLC's 19 control of the board, was proper or improper? 20 A No 21 Q And you don't have any opinion about whether 22 any actions taken by the LLC, as directors of the HOA, 23 were valid or invalid? 24 A No, apart from the conveyance of property 25 that was already owned by the regime

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Page 30	Page 32
1 Q So your view is that the conveyance by the 2 LLC to Mr Beall or his company was invalid? 3 A Correct 4 Q But as far as any actions taken by the 5 developer as declarant or by the members of the LLC as 6 directors of the HOA Board, you don't have any opinion 7 about that one way or the other? 8 A No 9 Q Okay Were you asked to review any minutes 10 of the Board of Directors of the HOA? 11 A No, I was not 12 Q Okay. And let me show you, and I'm not going 13 to mark it because I don't know if you can identify it 14 or not, but I'm going to show you some minutes from a 15 May 12, 2005 meeting 16 A Okay 17 Q You haven't seen those? 18 A As I sit here right now, I don't remember I 19 don't recall seeing these Some of the figures look 20 the same I could look again in this notebook, if you 21 want me to verify? 22 Q If you don't mind, I actually could use just 23 a little more coffee, and I'd be interested to see if 24 you've reviewed that 25 (Short break)	1 just don't know? 2 A Yes, yes 3 Q My question for you is this Have you been 4 asked to consider or give any opinion about the effect 5 of that, meaning that approval or ratification on the 6 issues in this lawsuit? 7 A I have examined two amendments to the 8 document 9 Q You mean the master deed? 10 A I haven't seen this before. So I haven't 11 been asked to do anything related to this, but this 12 would not -- I mean, what I'm reading here would not 13 change my opinion 14 Q And why is that? 15 A Well, I mean, first of all, the property 16 wasn't the LLC's to convey at this point because the 17 property that was submitted with the master deed, 18 which include the common areas, that became the 19 property of the regime the day that the deed was 20 recorded 21 Q Now, the document that we've marked as 22 Exhibit No 1 is the minutes of a meeting of the 23 Homeowners Association Board of Directors, right? 24 A It says, "Action of The Directors of Rivers 25 Point Row Property Owners Association, Inc. Without a
Page 31	Page 33
1 BY MR MASSALON 2 Q While we were on a break, I asked you if 3 you'd take a look at some meeting minutes And you 4 said you'd check and see if you've seen them before? 5 A I have not. 6 Q Okay Well, let me ask you, if you would 7 then, and you can, of course, look at whatever you 8 want to on this 9 MR MASSALON Let me mark these 10 (Exhibit No 1 marked) 11 BY MR MASSALON 12 Q Look for me, if you would, at the very last 13 paragraph of that And of course, you can look at 14 whatever you want to in it, but the last paragraph is 15 what I'm most interested in 16 A Okay 17 Q And would you agree with me, and I'm not 18 asking you to agree with me on the meaning of it, but 19 would you agree with me that, in the last paragraph 20 there, the HOA Board of Directors voted to ratify the 21 conveyance from the LLC to Palms Properties? 22 A Well, the document states, "the Association 23 approves the Building 2 lot contract" 24 Q And do you understand that that is the 25 contract between the LLC and Palms Properties, or you	1 Meeting " 2 Q Okay All right So are you focusing there 3 on the "Without a Meeting" part or something else? 4 A I'm focusing at the title of the document 5 It's dated May 12, 2005 and says, "Without a Meeting" 6 Q Let me ask you this question, and then I'll 7 ask you a follow-up My question was or was something 8 like Is it your understanding that that document, 9 Exhibit No 1, are the minutes of a meeting of the HOA 10 Board of Directors? And you were saying there was no 11 meeting, it's just minutes of the HOA Board, is that 12 the point? 13 A Well, I'm not exactly sure how to interpret 14 the document, to be honest 15 Q Okay 16 A There's language on the document saying that 17 "the Association approves the Building 2 lot contract" 18 between the LLC and Palms Properties But the title 19 of the document suggests that there was not a meeting 20 held So I don't know what it is 21 Q Okay So your point was, it's not meeting 22 minutes It's minutes of something without a meeting? 23 A Correct 24 Q Okay Have you looked at the master deed 25 first to determine whether the HOA Board of Directors

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1 could take action without a meeting? 2 A I don't recall. 3 Q Based on your knowledge of the general 4 condominium regime law and corporate law, are you 5 going to express any opinions one way or the other 6 about whether the HOA Board needed to have a meeting 7 to take action of the kind shown in Exhibit No. 1 or 8 not? 9 A No 10 Q Okay 11 A But I mean, just to clarify: It's my 12 understanding that acquiescence of all of the unit 13 owners would be required, but I've not been asked to 14 opine about that 15 Q I got you. And so your understanding from 16 what, the master deed or the law in general that -- 17 A The Horizontal Property Act 18 Q And if the master deed said something 19 different than the Horizontal Property Regime Act on 20 that point, meaning on whether the unit owners would 21 have to acquiesce in a conveyance of common elements, 22 which one would go? 23 A I've not been asked to opine on that. My 24 initial inclination is that it would be a conflict 25 with the act, which requires unanimous acquiescence	1 A It's my understanding, it would require 2 unanimous consent 3 Q All right. Let's see. Give me just a 4 minute, if I can. I may not be done, but I'm close. 5 Let me flip over my notes real quick. I'm sorry? 6 A I was just going -- I mean, my thought is 7 that -- I mean, I'm comfortable that that opinion, as 8 we're sitting here right now, would be correct because 9 there's a general preference in the law to try to 10 avoid fragmentation. And I believe that's why the act 11 would have a unanimity requirement. 12 Q Were you asked to look at any title insurance 13 issues in this case? 14 A Not at all. 15 Q Okay. And you don't have any opinions about 16 whether there's any title insurance implicated? 17 A Not at all. 18 Q As we sit here today, and I'm not asking you 19 to predict the future, but as we sit here today, do 20 you anticipate doing any additional work or forming 21 any additional opinions in this case? 22 A No, I do not. 23 Q Okay. 24 A I mean, depending on the length of time that 25 might pass between a deposition and trial, I mean, I
Page 35	Page 37
1 Q And just to follow that up: Is it your view 2 that if the master deed or governing documents of the 3 regime, whether it be an amendment to the master deed 4 or something like that, if those governing documents 5 of the regime conflict with the act, it's your view 6 that the act governs? 7 A I can't opine that that would occur in every 8 case. 9 Q Okay. And but it is your opinion, as I 10 understand it, that even if the association or the 11 regime's Board of Directors ratified or acquiesced or 12 agreed, whatever you name it, to the conveyance from 13 the LLC to Palms Properties that that would not have 14 the legal effect of making this conveyance valid? Is 15 that a terrible question? 16 A If you could rephrase it, please? 17 Q Certainly. Is it your opinion, regardless of 18 the actions of the HOA Board, that without the 19 acquiescence of all the property owners of Rivers 20 Point Row, it could not be a valid conveyance from the 21 LLC to Palms? 22 A That is my understanding of the Horizontal 23 Property Act. Acquiescence is needed to change 24 ownership. 25 Q Would that be everybody or just the majority?	1 would certainly update, double check my research to 2 make sure there hadn't been any change, but I believe 3 that I've done what I need to do. 4 Q Sure. And like I said, I'm not asking you to 5 predict the future. I guess maybe a better question 6 is: Have you been asked to look into any issues or 7 form any opinions that, for whatever reason, you just 8 haven't done yet? 9 A No, I have not. 10 Q Have you requested any information that has 11 not been provided to you for whatever reason? 12 A No. 13 Q Okay. Are you aware of any information that 14 you asked or would like to have reviewed that's lost, 15 destroyed, missing, anything like that? 16 A No. 17 MR. MASSALON: All right. I think those are 18 all of the questions I've got. These fellows may have 19 something for you. 20 EXAMINATION 21 BY MR. DAVID 22 Q May I call you Will? 23 A Please. 24 Q My name is Dan David, and I represent Palms 25 Properties, a young guy and some of his family members

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1 by the name of Beall. And of course, the Homeowners 2 Association has brought a suit to set aside the 3 transfer of Rivers Point, LLC to Palms Properties 4 The master deed that you have reviewed, 5 generally speaking, under the Horizontal Property 6 Regime Act, would you say that the master deed is the 7 controlling document that governs the structure and 8 ownership of a particular unit that's identified in a 9 master deed? 10 A Yes, I would. 11 Q And whenever we think in terms of a 12 Horizontal Property Regime, that, I think, sometimes, 13 is identified as a fiction in the law, in that it is a 14 means to allow ownership to units that are basically 15 stacked on top of each other? 16 A I'm not aware that they've been described as 17 legal fictions, but I do know what you're referring to 18 in regards to the stacking description 19 Q Generally, the law provided, back, I guess if 20 we take it back to England, the concept of actually 21 going out onto the property and transferring a handful 22 of dirt to -- 23 A Correct 24 Q -- we have such archaic laws as that, coming 25 down to the development of plats and the right of a	1 to a horizontal or to a master deed I was referring 2 to a typical subdivision, lots only 3 A I have not been asked to opine on the 4 reasonableness of anyone's reliance on a plat 5 Q All right. Would you say that that is a 6 general statement of the law? 7 A It could be, but sometimes plats form a part 8 of the deed So one would also need to reference any 9 deed that was associated with the plat 10 Q And let me rephrase that. A person who takes 11 title to a particular lot that is shown on the plat by 12 a deed that refers to that particular plat, they would 13 own that property as it's identified on that plat, 14 would they not? 15 A I cannot opine as to whether Palms Properties 16 had a right to rely on that plat I wasn't asked to 17 do that But what I could -- and regardless of their 18 reliance, there would not be a valid transfer if the 19 transferor did not own the property that it was 20 conveying 21 Q Okay. I think you've answered the question 22 anyway Under the Horizontal Property Regime Act and 23 pursuant to this master deed, the language that is in 24 the master deed in the plat that was recorded that 25 would be referred to in this master deed, those are
Page 39	Page 41
1 particular individual to rely on the plat. And that 2 once that plat was recorded, that whatever was in that 3 plat controlled the interest that that particular 4 individual may own, is that a fair statement? 5 A Yes, as long as any description on the plat 6 is legally sufficient 7 Q So that if we had a particular lot that was 8 identified by some plat that was recorded, properly 9 recorded and approved by whatever the particular 10 governmental authority was, in Charleston County it 11 would be the County or the City Planning that would 12 stamp the plat, and it would be recorded, that any 13 person that purchased a lot pursuant to that plat 14 would have the right to rely on whatever was recorded 15 in that plat? 16 A I cannot agree with you -- 17 Q You cannot? 18 A -- on that statement 19 Q Tell me where I've made a mistake in that 20 A I think, as a general proposition, that could 21 be correct But where one is dealing with a 22 Horizontal Property Regime, it would be important to 23 compare any plat with the master deed that was 24 recorded initially 25 Q Let me back up a minute I was not referring	1 the controlling documents for anyone that would 2 purchase pursuant to this master deed, are they not? 3 A I'm sorry, if you could repeat the question? 4 I'm trying to pay attention 5 Q Well, let me ask it a different way If I 6 wanted to buy a lot in the Rivers Point Row Horizontal 7 Property Regime, if I had bought one, what 8 documents -- 9 MR MIKELL They don't sell lots. 10 BY MR DAVID 11 Q -- would I have that would convey the 12 interest to me of a particular unit? 13 A Well, I mean, you would have a title to a 14 unit -- 15 Q Okay 16 A -- that would be subject -- 17 Q How would they describe that unit? How would 18 it be identified? 19 A I think it would be reasonable to identify 20 the unit as being associated with a Horizontal 21 Property Regime 22 Q And that Horizontal Property Regime would 23 control what I could and could not do with my 24 particular unit? 25 A Absolutely

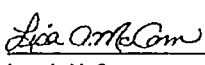
11 (Pages 38 to 41)

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1 Q Okay And there are certain covenants, 2 conditions and restrictions and certain limitations as 3 to what I can and cannot do with that property? 4 A Correct 5 Q And generally speaking, in order for me or 6 any particular unit owner in this Horizontal Property 7 Regime, once the master deed is recorded and the 8 property has been transferred, how would I go about 9 making any changes in my particular unit or any 10 conditions that related to my unit? 11 A Well, I mean, first of all, it would depend 12 on the bylaws of a particular Horizontal Property 13 Regime And it would also depend whether the 14 alternation -- whether the proposed alteration 15 involved a unit individually versus a common area, for 16 example And there could be different restrictions as 17 related to each. 18 Q If it involved a common area and the exterior 19 to the building, would it require all of the owners of 20 the property, who had purchased subject to the master 21 deed, to consent to any changes? 22 A It would require all unit owners to approve 23 any change in ownership, with respect to the common 24 property. 25 Q Is that generally true for most Horizontal	1 administrators to warrant and forever defend 2 Q If I understood your previous testimony, you 3 recited a case of Reyhani -- 4 A Yes 5 Q -- if I'm pronouncing that correctly, versus 6 Stonecreek Cove Condominiums? 7 A Yes 8 Q And that seems to be the controlling case, as 9 you understand it, for the law of the State of South 10 Carolina, at the present time? 11 A It appears to be right on point and still 12 controlling 13 Q And in that case, as in the case at hand, the 14 developer failed to properly reserve property that was 15 going to be later developed and conveyed all of the 16 property to the Homeowners Association either as 17 common elements or as units? 18 A Correct 19 Q And so in the particular case at hand, when 20 declarant conveyed the property, he failed to reserve 21 any future development? And when I say the case at 22 hand, the case we're here about today. 23 A He failed to reserve the right to convey 24 ownership to anything associated with the property 25 that had already been conveyed to the regime
Page 43	Page 45
1 Property Regimes? 2 A Yes 3 Q And that's pretty much established in the 4 Horizontal Property Regime Act? 5 A Correct 6 Q In the deed, have you had an opportunity to 7 look at the deed that was conveyed to Palms 8 Properties? 9 A Yes 10 Q Was that what we refer to as a general 11 warranty deed? 12 A It has the title of Warranty Deed There's 13 no indication that it's a general versus a special 14 warranty deed It appears to be a general warranty 15 deed, but I was not asked to evaluate the kind of 16 warranties that it conveyed 17 Q Generally speaking, a general warranty deed, 18 the person conveying title would be required to defend 19 the title against all persons whomsoever, is that a 20 fair statement? 21 A That's correct 22 Q And that was the language that was used in 23 this particular deed? 24 A Yes, sir And it says, and the grantor does 25 hereby bind grantors, its successors, executors and	1 Q Okay And did he attempt to correct that by 2 going back and getting the Board of Directors to 3 approve some subsequent conveyance? 4 A I don't know what the developer attempted to 5 do or what the motives were 6 Q From the -- I believe that you testified that 7 you had not looked at the minutes of any of the 8 meetings of the Board of Directors? 9 A Correct 10 Q Do you know if the members of the Board of 11 Directors were also part of the group of the 12 declarants? 13 A I have no idea 14 Q And if I understood your testimony correctly, 15 again, in your opinion, it would not have made any 16 difference what the Board of Directors did, once they 17 had conveyed the property to the Homeowners 18 Association? 19 A Correct, once the LLC had conveyed the 20 property, which took place upon the recordation of the 21 master deed 22 Q That they had lost control, at that 23 particular point in time? 24 A Correct 25 Q And in order for any changes to have been

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1 made, it would have required all of the then owners of 2 units in the Horizontal Property Regime? 3 A Any changes that would have affected 4 ownership, correct 5 Q Which, in this instance, the conveyance of 6 the property in question would have changed ownership 7 for all of the other unit owners? 8 A In my opinion, yes 9 MR DAVID I don't think I have anything 10 further 11 MR MIKELL Just a few points. 12 EXAMINATION 13 BY MR MIKELL 14 Q Will, the document that Mr Massalon 15 introduced, yeah, that one, can you tell me the date 16 on that document? 17 A Yes May 12, 2005 18 Q And what's the date of the recordation on the 19 master deed? 20 A I'll tell you in just a moment. The master 21 deed was executed and recorded on May 4, 2004 22 Q Approximately, a year prior to the document 23 that Mr Massalon gave you? 24 A Correct 25 Q And are you familiar with a case called	1 instead of acreage, that the deed into the developer 2 LLC was a basket that had ten apples in it And then 3 let's assume that the document, which is Exhibit A to 4 the master deed, which transfers that property, 5 whatever it is on that document, to the association 6 has ten apples in it 7 A Yes 8 Q What's left for the developer to convey to 9 anyone? 10 A Nothing. 11 MR MIKELL All right Thank you. 12 MR MASSALON I'm sorry, just a couple of 13 follow-ups 14 REEXAMINATION 15 BY MR MASSALON. 16 Q You mentioned -- and again, I don't want to 17 testify for you. I just want to clarify Do you have 18 an opinion that there is some part of this master deed 19 that is ambiguous? 20 A I mean, it does not appear ambiguous to me 21 Q But -- and I'm not trying to be clever 22 A Sure 23 Q I just want to clarify The fact that it's 24 not ambiguous to you is not necessarily the same thing 25 as whether it's ambiguous?
Page 47	Page 49
1 Concerned Citizens of Dunes West versus Georgia 2 Pacific Company, which establishes the legal issue in 3 South Carolina that the developer has a fiduciary duty 4 to the members and the association in a 5 common-interest entity? 6 A That case is familiar to me I do understand 7 that to be the holding of that case 8 Q Okay And do you know, in this document that 9 Mr Massalon gave you that's this exhibit here, who 10 the people are that executed that document? 11 A Yes, sir There are three signatures 12 Q And what are their names? 13 A The first one is John B Hagerty, as 14 Director The second is John W Derbyshire, Director, 15 and the last signature is Linda L Derbyshire, 16 Director 17 Q Do you have knowledge of whether or not these 18 folks are also the members of the developer LLC? 19 A I do not 20 Q Okay Would it surprise you to learn that 21 they are the same people, and they're signing there on 22 behalf of the association that they are the members of 23 the developer LLC? 24 A Possibly, yes. 25 Q Now, one other issue Let's assume that,	1 A Well, there's a difference 2 Q Okay 3 A The reason why I have the opinion that it's 4 not ambiguous is that nowhere is there any description 5 concerning a Building 2 of any type The term 6 Building 2 appears once in the master deed, but is 7 nowhere defined It is also not -- it does not appear 8 anywhere in graphic or written form on the plats that 9 form part of the master deed because they were filed 10 and recorded with it So to that extent, there's no 11 ambiguity 12 Q There's a reference to Building 2, but 13 there's just not a definition or any other reference 14 to it? 15 A Correct. 16 Q Is it fair to say that you don't know what 17 the reference to Building 2 means? 18 A That is fair because it's not defined 19 anywhere 20 Q Look for me, if you would, on Page 20 of the 21 master deed And I'm looking at Section 3, Amendments 22 by the Declarant 23 A Yes 24 Q And I don't know if you have reviewed that, 25 but if you haven't, take a second But my question is

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1 this Doesn't Section 3 allow the declarant to amend 2 the master deed without the consent of the association 3 or any owner, at the very bottom, to clarify any 4 provision of this master deed or eliminate any 5 conflict between the provisions of this master deed? 6 A I'm sorry, are you referring to the amendment 7 of the master deed? 8 Q Oh, I'm sorry, I'm referring to Article 7 -- 9 A Oh 10 Q -- Section 3 of the master deed I'm sorry, 11 and it's on Page 20 of my copy 12 A Okay. 13 Q Article 7, Section 3 14 A Yes 15 Q Okay And over on the next page, Section 3 16 speaks to "Amendments by Declarant"? 17 A Okay 18 Q And here's my question "Notwithstanding any 19 other provision herein or in the Bylaws, Declarant may 20 amend this Master Deed without the consent of the 21 Association, any Owner, any easement grantee, or any 22 mortgagee if in Declarant's opinion, such amendment is 23 necessary to" And then go down to Subparagraph vii, 24 "clarify any provision of this Master Deed or 25 eliminate any conflict between provisions of this	1 MR MIKELL. Thank you, sir 2 MR MASSALON That's it for me. 3 REEXAMINATION 4 BY MR DAVID: 5 Q It's your understanding that this particular 6 exhibit was added after the documents, after the 7 master deed was recorded or as part of it? 8 A It's with it 9 MR MIKELL No, it was part of the original 10 that was amended, but it's part of the original 11 THE WITNESS It was an exhibit to the master 12 deed 13 MR DAVID Okay I don't have anything 14 further. 15 (The deposition concluded at 10 39 a m) 16 17 * * * 18 19 20 21 22 23 24 25
Page 51	Page 53
1 Master Deed " 2 A This Section 3 does say that 3 Q The notes, and I don't know if I asked for 4 these or not, but it appears that you made some notes 5 of particular things I'd also like to get a copy of 6 those 7 A Of course 8 MR MASSALON That's it for me 9 REEXAMINATION 10 BY MR. MIKELL 11 Q The two amendments that you have -- 12 A Yes 13 Q -- to the master deed, do they, in any way, 14 grant the declarant the right to sell any of the 15 common property? 16 A No 17 Q In fact, look at Exhibit H, if you would, 18 please, in the master deed 19 A Yes 20 Q What's the title of it? 21 A Exhibit H, Phasing 22 Q Do you interpret the word phasing to grant 23 any rights of ownership or the right to convey 24 property? 25 A I do not	C-E-R-T-I-F-I-C-A-T-E I, Lisa A. McCarn, Court Reporter and Notary Public, certify that I did have WILLIAM J. COOK to appear before me at 9 15 a m on the 2nd day of October, 2009 at Wills & Massalon, 134 Meeting Street, Suite 100, Charleston, South Carolina, that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, that the foregoing pages constitute a true and accurate transcript of his testimony given at that time and place I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome IN WITNESS WHEREOF I have hereunto set my hand and seal this 10th day of October, 2009  Lisa A. McCarn Notary Public for South Carolina My Commission Expires August 17, 2015 

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William J. Cook
10/2/2009

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ERRATA SHEET

I have read the entire deposition To
the best of my knowledge, it contains a true and
accurate transcript of the proceedings at the time
and place herein mentioned. Any corrections that I
have are contained and described on this sheet

Signed the _____ day of _____, 2009,

William J Cook

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 08-CP-10-2279

RIVERS POINT ROW HORIZONTAL)
PROPERTY REGIME, a/k/a RIVERS)
POINT ROW PROPERTY OWNERS)
ASSOCIATION, INC.,)

Plaintiff,)

-v-)

PALMS PROPERTIES, LLC,)
Defendant.)

PALMS PROPERTIES, LLC,)
Third-Party Plaintiff,)

-vs-)

RIVERS POINT ROW, LLC and)
JOSEPH F. HAND, JR.,)
Third-Party Defendants.)

DEPOSITION OF:
WILLIAM J. COOK
OCTOBER 2, 2009

McCarn Court Reporting, Inc.
P.O. Box 778
Folly Beach, SC 29439

COPY

A-P-P-E-A-R-A-N-C-E-S

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1 WILLIAM J. COOK,

2 having been duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. MASSALON:

5 Q All right. Would you state your name for us,
6 please?

7 A William J. Cook.

8 Q And you and I have met many times before?

9 A Yes.

10 Q I'll give you just a couple of broad
11 instructions, before we get started. As you know, we
12 represent the Third-Party Defendant in this lawsuit.
13 And you've been identified to us as an expert witness.
14 And so I'm going to be asking you some questions about
15 your opinion, okay?

16 And if you'll just do a few things for me.
17 First of all, if you don't hear or understand one of
18 my questions, let me know. Okay?

19 A Sure.

20 Q The second is, if you will, please keep your
21 responses verbal. Try to avoid head nods and things
22 so that we can get the record down clearly. And then,
23 last, if you need a break, let me know and I'll stop
24 for you. Okay?

25 A Okay. Absolutely.

1 Q Let me just get a little bit of background
2 about you, first. Your current occupation is what?

3 A I'm a law professor.

4 Q And how long have you been doing that?

5 A I am now in my fourth year teaching full
6 time. I taught two years as an adjunct before that.

7 Q Okay. All at the Charleston School of Law?

8 A Correct. And I have a resume, if you'd like
9 a copy of it?

10 Q That would be great.

11 MR. MIKELL: I sent it to you guys yesterday.

12 THE WITNESS: I made some copies.

13 MR. MIKELL: He sent it to me yesterday, so I
14 sent it to you guys.

15 MR. MASSALON: All right. I'm sure I got it.
16 I was doing some other things yesterday and probably
17 just didn't realize I got it. Give me just a second
18 to look over this.

19 THE WITNESS: Yeah, sure.

20 BY MR. MASSALON:

21 Q This resume says that you teach property law,
22 constitutional law, historic preservation law, and
23 appellate practice?

24 A Correct.

25 Q That's what you teach currently?

1 A Yes. Property is a full-year course.

2 Historic preservation and appellate advocacy are
3 elective courses that I teach once a year. And I'm
4 also teaching constitution law right now, as well.

5 Q Has that always been true during your tenure
6 at the Charleston Law School, or is that just your
7 current teaching load?

8 A That has been my teaching load, since I've
9 been there.

10 Q Full time?

11 A Correct.

12 Q All right.

13 A Property is my main focus.

14 Q Got you. I was just flipping through to see
15 if I had any other questions, rather than covering all
16 of this. Now, other than the work that you do
17 teaching at the law school, do you represent clients
18 in any cases?

19 A Not as an attorney of record. I have
20 consulted on occasion. And I've been retained as an
21 expert witness on a few other cases.

22 Q So when you started teaching full time, you
23 stopped representing clients in court; would that be
24 fair?

25 A Correct.

1 Q Now, other than this case, how many times
2 have you served as an expert witness in litigation?

3 A I would say --

4 Q Do you have a list?

5 A Yeah. Well, I only listed the two times
6 where the cases went to trial and I was qualified by
7 the court. So there are two there. One was a case,
8 the first one, I was serving as an expert witness on
9 issues related to historic preservation and land-use
10 law. And I served as the expert for the Historic
11 Charleston Foundation and the Preservation Society of
12 Charleston in a dispute over some proposed development
13 on Marion Square.

14 And the second case that went to trial, where
15 I was qualified as an expert involved the
16 interpretation of colonial deeds and land grants. And
17 that involved title to marsh lands out on Folly Beach.
18 I've also worked as -- or was hired as an expert in a
19 premise-of-liability case involving an injury at a
20 Wal-Mart in Jasper County, but I've not been deposed
21 in that case, yet.

22 Q So would I be correct in understanding that
23 this is the fourth time you've served as expert on
24 litigation?

25 A I'd say fifth.

1 Q Okay.

2 A Consulting as an expert witness on a
3 constitutional law issue involving possible preemption
4 of some recent ordinances passed by the City of Myrtle
5 Beach and evaluating their potential conflict with
6 state traffic laws.

7 Q Okay. And the two that you've got listed
8 here under Expert Qualifications, you said you were
9 qualified as an expert in both of those cases?

10 A Correct. Judge Scarborough was the presiding
11 judge in the Historic Charleston Foundation matter.
12 And Judge Young was the presiding judge in the grant
13 matter.

14 Q And do you remember the attorneys you worked
15 for first in the Historic Charleston case?

16 A Sure. I was retained by Edward Pritchard
17 and --

18 Q How about in any others?

19 A Sorry. Professor Kirk Grant, who was a
20 professor at the Charleston School of Law.

21 Q And in the other cases that you've told us
22 about, you haven't given depositions or testified in
23 those two?

24 A Correct, that's correct.

25 Q How do you charge for your time as an expert?

1 A I typically charge \$250 per hour.

2 Q And when you say "typically", is that what
3 you're charging in this case?

4 A Yes, yes.

5 Q And is that the same for document review,
6 deposition testimony, court testimony?

7 A Yes.

8 Q Before coming here today, do you know how
9 much or about how much time you had spent working on
10 this case?

11 A I would say between three and four hours.

12 Q Have you billed and been paid for that time?

13 A No. Not as of yet, no.

14 Q Now, in the cases in which you've served as
15 an expert, have you worked for plaintiffs, defendants
16 or both?

17 A Both times involved plaintiffs. One, right,
18 one the foundation was a party plaintiff, as well as
19 the preservation society. And in the second,
20 Professor Grant also was a plaintiff.

21 Q Do you remember when you got involved in this
22 case?

23 A Yes. Initially, I had my first conversation
24 with Mr. Mikell, at some point last year. And we have
25 had meetings in person since then and some telephone