

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-002277

RECEIVED
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SC Court of Appeals

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

v.

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

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

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

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP-1002175

AMERICAN STAR DEVELOPMENT SC LLC
PLAINTIFF(S)

PULTEGROUP INC.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

MOTION TO CANCEL LIS PENDENS GRANTED. DEFENSE COUNSEL TO PREPARE FORMAL ORDER CONSISTENT WITH BRIEFING AND ORAL ARGUMENTS.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

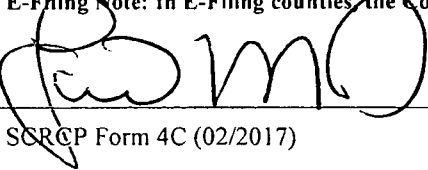
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

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



2155

9-25-18

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)_____

ATTORNEY(S) FOR THE DEFENDANT(S)_____
CLERK OF COURT**Court Reporter:**

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

V.

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

Defendants.

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

ORDER CANCELLING
LIS PENDENS

2018 NOV 19 AM 11:40
CLERK OF COURT
FILED

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

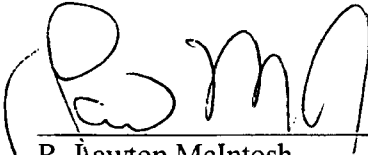
CONCLUSION

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

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

AND IT IS SO ORDERED!

November 14, 2018
Anderson, South Carolina



R. Lawton McIntosh
South Carolina Circuit Court Judge

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

AMERICAN STAR DEVELOPMENT
SC, LLC

Plaintiff,

vs.

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

Defendant.

LIS PENDENS

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

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

SEE ATTACHED EXHIBIT "A"

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

CHARLESTON, SC
April 6, 2018

E. Brandon Gaskins

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ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARCELE [TMS # 558-00-00-142]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

COMPLAINT

FILED
2018 MAR 26 PM 3:11
CLERK OF COURT

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

INTRODUCTION

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

THE PARTIES

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

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

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

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

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

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

VENUE AND JURISDICTION

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiffs pray as follows:

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

CHARLESTON, SC
April 26, 2018

E. Brandon Gaskins

E. Brandon Gaskins (State Bar No. 73274)

MOORE & VAN ALLEN, PLLC

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

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

WITNESSETH

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

1. Purchase and Sale of Property.

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

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

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

3. Earnest Money.

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

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

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

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

4. Closing.

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

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

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

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

5. Inspection Period.

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

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

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

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

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

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

8. Seller's Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Conditions Regarding Final Rezoning

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

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

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

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

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

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

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

13. Condemnation.

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

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

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

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

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

16. Prorations.

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

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

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

18. Default and Remedy.

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

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

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

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

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

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

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

AS TO BUYER:

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

WITH A COPY TO:

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

WITH A COPY TO:

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

AS TO SELLER:

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

AND WITH A COPY TO:

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

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

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

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

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

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

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

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

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

30. Underlying Agreements, Simultaneous Closing.

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

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

(b) Seller represents and warrants that:

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

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

31. Right of First Offer.

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

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

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

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

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

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

WITNESSES:

BUYER:

JWH ACQUISITIONS, LLC,
a Delaware limited liability company

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

WITNESSES:

SELLER:

AMERICAN STAR DEVELOPMENT
SC, LLC

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

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT "B"

REQUIRED INFORMATION MATERIALS

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

EXHIBIT "C"

PERMITTED EXCEPTIONS

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

EXHIBIT B

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

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

Plaintiffs,

vs.

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

Defendants.

AMENDED COMPLAINT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 MAY -1 PM 3:38

FILED

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

INTRODUCTION

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

THE PARTIES

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

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

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

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

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

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

VENUE AND JURISDICTION

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiffs pray as follows:

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

CHARLESTON, SC
May 1, 2018



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

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

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

WITNESSETH

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

1. Purchase and Sale of Property.

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

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

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

3. Earnest Money.

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

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

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

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

4. Closing.

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

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

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

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

5. Inspection Period.

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

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

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

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

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

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

8. Seller's Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Conditions Regarding Final Rezoning

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

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

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

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

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

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

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

13. Condemnation.

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

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

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

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

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

16. Prorations.

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

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

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

18. Default and Remedy.

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

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

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

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

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

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

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

AS TO BUYER:

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

WITH A COPY TO:

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

WITH A COPY TO:

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

AS TO SELLER:

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

AND WITH A COPY TO:

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

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

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

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

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

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

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

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

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

30. Underlying Agreements. Simultaneous Closing.

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

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

(b) Seller represents and warrants that:

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

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

31. Right of First Offer.

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

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

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

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

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

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

WITNESSES:

WITNESSES:

BUYER:

JWH ACQUISITIONS, LLC,
a Delaware limited liability company

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

SELLER:

AMERICAN STAR DEVELOPMENT
SC, LLC

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

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT "B"

REQUIRED INFORMATION MATERIALS

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

EXHIBIT "C"

PERMITTED EXCEPTIONS

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

EXHIBIT B

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

V.

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

Defendants.

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

ANSWER
AND COUNTERCLAIM

FILED
2018 JUN -6 PM 1:10
JULIE J ARMSTRONG
CLERK OF COURT

Defendant PulteGroup, Inc., expressly reserving and not waiving its objection to personal jurisdiction, and Defendant Pulte Home Corporation n/k/a Pulte Home Company, LLC ("Pulte" or "Defendants" or "Counterclaim Plaintiffs"), by and through their undersigned attorneys, answer the Amended Complaint of the Plaintiffs herein, alleging and stating as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified, or explained, is denied and proof thereof is demanded, including those in the prayer for relief.
2. As to the allegations contained in Paragraph 1 of the Amended Complaint that refer to written agreements, Defendants refer to the agreements referenced and deny any allegations inconsistent with the terms and conditions of those agreements. To the extent this Paragraph alleges conclusions of law, the Defendants are not required to admit or deny

the same. Defendants deny the factual allegations contained in Paragraph 1 of the Amended Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Amended Complaint upon information and belief.
4. Defendants admit the allegations of Paragraph 5 of the Amended Complaint in so far as they allege that Defendant PulteGroup is organized and existing under the laws of Michigan but deny the remaining allegations of Paragraph 5.
5. Defendants admit the allegations of Paragraph 6 of the Amended Complaint.
6. The allegations of paragraph 7 are not directed to these Defendants and therefore, do not require a response; to the extent any response is deemed required, Defendants admit the allegations upon information and belief.
7. Defendants admit the allegations of Paragraphs 8, 9, and 10 of the Amended Complaint in as much as they allege subject-matter jurisdiction and venue are proper in this court.
8. Defendants admit, upon information and belief, the allegations of Paragraphs 11 and 12 of the Amended Complaint.
9. In response to the allegations of Paragraphs 13, 14, and 15 of the Amended Complaint, Defendants crave reference to the referenced agreement and deny all allegations inconsistent therewith.
10. The allegations of Paragraphs 16 and 17 of the Amended Complaint are not directed to these Defendants and, therefore, do not require a response; to the extent any response is deemed required, Defendants crave reference to the described agreements and deny any allegation inconsistent therewith.

11. Defendants admit the allegations of Paragraphs 18, 19, and 20 in as much as they allege that JW Homes, LLC, JW Land Investment, LLC, and PulteGroup, Inc. entered into an asset purchase agreement ("APA") dated December 15, 2015. Defendants also admit that via deed dated January 14, 2016, Pulte Home Corporation acquired certain real property from JW Homes, LLC as reflected by the deed recorded at Book 0530 Page 301. With respect to the additional allegations of Paragraphs 18, 19, and 20 of the Amended Complaint, Defendants crave reference to the APA and deed, and deny any allegations inconsistent therewith. Defendants deny any remaining allegations of the Paragraphs.
12. The allegations contained in Paragraphs 21 and 22 of the Amended Complaint include conclusions of law which the Defendants are not required to admit or deny. To the extent the allegations of Paragraphs 21 and 22 of the Amended Complaint refer to the terms of the APA, Defendants crave reference to the APA and deny any allegations inconsistent therewith. Notwithstanding, Defendants deny the allegations contained in Paragraph 22 of the Amended Complaint that allege consolidation or merger of PulteGroup and JWH.
13. As to the allegations of Paragraph 23, Defendants admit that the sketch plans and plats for the development, as approved by the Town of Mount Pleasant, did not depict the Connection. Defendants further allege that Plaintiff American Star submitted the sketch plan without the Connection as part of its request for zoning and fully concurred in the sketch plan without the Connection.
14. As to the allegations of Paragraph 24, Defendants deny that American Star made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but admit that recently American Star made such demands even though American Star has known since early 2015 when it submitted the sketch plan to the Town

- of Mount Pleasant that it did not include the Connection and even though it has no legitimate plans to develop the Adjacent Property that is mostly ponds.
15. The allegations contained in Paragraphs 25 and 26 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 25 and 26 of the Amended Complaint.
16. In response to the allegations of Paragraph 27 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the Paragraphs realleged.
17. The allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint.
18. In response to the allegations of Paragraph 36 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the paragraphs realleged.
19. Defendants deny the allegations of Paragraph 37 and 38 of the Amended Complaint.
20. As to the allegations of Paragraph 39, Defendants admit that PHC has not proceeded to design and construct the Connection and further allege that for the reasons set forth in this Answer and Counterclaim, PHC has no legal obligation to design and construct the Connection.
21. Defendants deny the allegations of Paragraphs 40 and 41 of the Amended Complaint.

22. The allegations contained in Paragraph 42 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraph 42 of the Amended Complaint.
23. In response to the allegations of Paragraph 43 of the Amended Complaint, Defendants hereby reallege and reiterate as fully as if set forth herein Defendants' responses to the Paragraphs realleged.
24. The allegations contained in Paragraphs 44, 45, 46, and 47 of the Amended Complaint express conclusions of law which Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 44, 45, 46, and 47 of the Amended Complaint.
25. As to the allegations of Paragraphs 48, Defendants admit they have denied they are successors to JWH with respect to JWH's obligations under the Agreement, and crave reference to the terms and conditions of the APA that are controlling of the respective obligations of the parties.
26. The allegations contained in Paragraph 49 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraph 49 of the Amended Complaint.
27. In response to the allegations of Paragraph 50 of the Amended Complaint, Defendants hereby reallege and reiterate their previous allegations in response to the Paragraphs realleged.
28. The allegations of Paragraphs 51, 52, 53, and 54 of the Amended Complaint are not directed to these Defendants and, therefore, do not require a response; to the extent any response is deemed required, Defendants respond that the allegations contained in

Paragraphs 51, 52, 53, and 54 of the Amended Complaint express conclusions of law which the Defendants are not required to admit or deny. Notwithstanding, Defendants deny the allegations contained in Paragraphs 51, 52, 53, and 54 of the Amended Complaint.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

29. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

30. Defendants would show that the allegations of the Amended Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Personal Jurisdiction)

31. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

32. This court lacks personal jurisdiction over Defendant PulteGroup, Inc.

FOR AN ADDITIONAL DEFENSE
(Ripeness)

33. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

34. Defendants would show that Plaintiffs' claims are premature and nonjusticiable under the doctrine ripeness.

FOR AN ADDITIONAL DEFENSE
(Statute of Frauds)

35. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

36. Defendants would show that Plaintiffs' claims are barred by the statute of frauds.

FOR AN ADDITIONAL DEFENSE

(Mistake)

37. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

38. Defendants would show that Plaintiffs' claims are barred by the defense of mutual or unilateral mistake doctrine.

FOR AN ADDITIONAL DEFENSE

(Estoppel and Waiver)

39. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

40. Defendants would show that Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

FOR AN ADDITIONAL DEFENSE

(Laches)

41. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

42. Defendants would show that Plaintiffs' claims are barred by the doctrine of laches.

FOR AN ADDITIONAL DEFENSE

(Unclean Hands)

43. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

44. Defendants would show that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR AN ADDITIONAL DEFENSE
(Statute of Limitations)

45. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
46. Defendants would show that Plaintiffs' claims are barred by the applicable statute of limitations.

FOR AN ADDITIONAL DEFENSE
(No Standing)

47. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
48. Defendants would show, upon information and belief, that Plaintiffs KKMC Investments, LLC and 211, LLC, have no legal interest in the Adjoining Property, have suffered no damages, and have no standing.

FOR AN ADDITIONAL DEFENSE
(Setoff and Credit)

49. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
50. If any of the Plaintiffs is entitled to recover damages against the Defendants, which the Defendants expressly deny, Defendants are entitled to a setoff and credit for the full cost of developing the Adjoining Property including but not limited to permitting, site preparation, engineering, and infrastructure costs.

FOR AN ADDITIONAL DEFENSE
(Failure to Mitigate)

51. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
52. Defendants would show that Plaintiffs have failed to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(Ratification)

53. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
54. Through their knowledge, conduct, and actions, Plaintiffs ratified the sketch plan submitted and approved by the Town of Mount Pleasant, the absence of the Connection, and the other actions of the Defendants, and their claims are barred by such ratification.

FOR AN ADDITIONAL DEFENSE
(Right to Rely on Other Defenses and Right to Amend)

55. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.
56. Defendants reserve the right to rely upon the affirmative defenses raised in the pleadings of any other party to this action, and each and every such alleged affirmative defense set forth in those pleadings is hereby realleged and reiterated as fully as if set forth verbatim and incorporated herein. Additionally, Defendants reserve the right to amend this Answer and affirmative defenses after investigation, discovery, and further information are disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and Defendants are not waiving any defenses that may arise during investigation, discovery, and trial of this litigation.

FOR AN ADDITIONAL DEFENSE
AND BY WAY OF COUNTERCLAIM

57. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

58. American Star Development SC, LLC, KMMC Investments, LLC, and 211, LLC ("Counterclaim Defendants") are South Carolina limited liability companies with their principal place of business in Charleston County, South Carolina.

59. Counterclaim Plaintiffs were sued by Counterclaim Defendants in the above captioned action, and jurisdiction and venue are appropriate in this court.

60. Counterclaim Defendants have no intention of developing the Adjacent Property and have brought this action not to compel the design and construction of the Connection but are bringing this action instead for other purposes than the relief requested herein.

61. Upon information and belief, the primary purpose of the claims asserted by Counterclaim Defendants is to coerce Counterclaim Plaintiffs to purchase the two parcels owned by Counterclaim Defendants and identified as TMS# 578-00-00-005 and 578-00-00-006 described as the Adjacent Property.

62. By filing this action, Counterclaim Defendants have acted willfully and overtly in their use of the legal process aimed at an illegitimate collateral objective as described above.

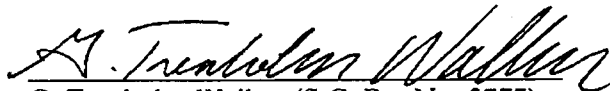
63. Counterclaim Plaintiffs are entitled to a judgment for actual damages, including attorney's fees, caused by Counterclaim Defendants' abuse of process and punitive damages.

WHEREFORE, having answered Plaintiffs' Amended Complaint and asserted the Counterclaim above, Defendants pray for the dismissal of Plaintiffs' Amended Complaint with prejudice pursuant to the defenses set forth above; for a trial by jury on all triable issues; for

judgment in an amount to be determined by a jury on their Counterclaim for all actual and punitive damages; that the costs of this action be taxed to a party other than Defendants; and for all such other relief as the Court deems equitable, just, and proper.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar No. 5777)

John P. Linton, Jr., (S.C. Bar No. 79130)

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LINTON@WGFLAW.COM

ATTORNEYS FOR DEFENDANTS
PULTEGROUP, INC., AND PULTE HOME
CORPORATION n/k/a PULTE HOME
COMPANY, LLC

June 5, 2018
Charleston, South Carolina

3:03pm

6/13

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

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

Plaintiffs,)

vs.)

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

Defendants.)

AMENDED LIS PENDENS

2018 JUN 13 PM 3:03
FILED
CLERK OF COURT

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

SEE ATTACHED EXHIBIT "A"

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



E. Brandon Gaskins (State Bar No. 73274)
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ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
June 13, 2018

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

V.

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

Defendants.

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

NOTICE OF MOTION AND
MOTION
TO CANCEL LIS PENDENS

FILED
2018 JUN 22 AM 11:30
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendant, Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte"), by and through its undersigned attorneys will move before the Presiding Judge of the Charleston County Court of Common Pleas on the tenth (10th) day after service, or as soon as counsel may be heard, for an Order canceling the Lis Pendens (2018-LP-10-336), as amended, filed by Plaintiff American Star Development SC, LLC ("American Star").

American Star filed a Summons and Complaint against the above captioned defendants on April 26, 2018 and an Amended Complaint (adding two additional Plaintiffs) on May 1, 2018. The Amended Complaint alleges PulteGroup, LLC and Pulte "have a contractual obligation to construct an access to road to American Star's property. . ." Am. Compl. ¶1. The Amended Complaint asserts cause of actions for breach of contract, equitable estoppel, and declaratory judgment. See Am. Compl. ¶¶27-54. American Star does not allege the action affects title to any real property.

American Star filed a Lis Pendens on April 26, 2018 and an Amended Lis Pendens on June 13, 2018 (collectively referenced as “the Lis Pendens”). The Lis Pendens purports to provide notice that “real estate [is] affected by” the action. The Lis Pendens lists 11 “affected” parcels identified by following tax map numbers: TMS#558-00-00-139; 558-00-00-140; 558-00-00-138; 558-00-00-141; 558-00-00-142; 558-00-00-143; 558-00-00-311; 558-00-00-310; 558-00-00-144; 558-00-00-172; and 578-00-00-004. However, there are no allegations in the Amended Complaint concerning title to any of these parcels. Therefore, the Court should enter an order cancelling the Lis Pendens.

South Carolina Code 15-11-10, only allows the filing of lis pendens in “an action *affecting the title to real property.*” (double emphasis added). Our Supreme Court has recognized a circuit court’s authority to cancel a lis pendens when the action does not affect the *title* to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the lis pendens does not ‘affect [] the title to real property’ as required under § 15–11–10, the lis pendens is not authorized by the statute and the statute does not limit the court’s power to cancel it.”).

The filing of a lis pendens is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat’l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid). In this case, the statutory requirements are not met because the allegations of the Amended Complaint do not assert that *title* to any real property is affected by the action.

The Lis Pendens purports to provide notice to third parties that 11 parcels owned by Pulte are affected by the case. However, based on the allegations of the Amended Complaint, the titles

to those 11 parcels are not affected by the case. Therefore, the filing of the Lis Pendens is improper and inconsistent with the purposes of the lis pendens statute:

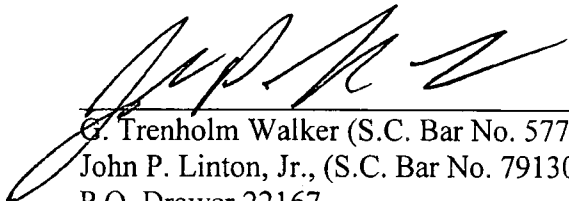
The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) (quoting 51 Am.Jur.2d Lis Pendens § 2 (2000)).

Therefore, for the reasons explained above, the Lis Pendens should be cancelled. This motion is supported by the pleadings and affidavits on file and any supplemental memorandums and affidavits that may be filed.

Respectfully submitted,

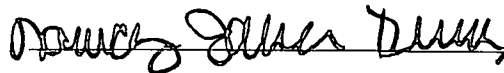
WALKER GRESSETTE FREEMAN & LINTON, LLC


G. Trenholm Walker (S.C. Bar No. 5777)
John P. Linton, Jr., (S.C. Bar No. 79130)
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WALKER@WGFLAW.COM
LINTON@WGFLAW.COM
ATTORNEYS FOR DEFENDANTS

June 21, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 21st day of June, 2018, in Charleston, South Carolina.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

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

**REPLY TO PULTEGROUP, INC.'S
ANSWER AND COUNTERCLAIM**

FILED
2018 JUN 28 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiffs American Star Development, SC, LLC ("American Star"), KKMC Investments, LLC, and 211, LLC (collectively, "Plaintiffs" or "Counterclaim Defendants"), replying to Defendants PulteGroup, Inc.'s and Pulte Home Corporation n/k/a Pulte Home Company, LLC's (collectively "Defendants") Answer and Counterclaim, allege and state as follows:

GENERAL DENIAL

1. Each and every allegation contained in the Answer and Counterclaim inconsistent with the allegations of the Amended Complaint and/or not hereinafter specifically admitted is denied, and strict and competent proof of such allegations is demanded.

REPLYING TO DEFENDANT'S FIRST DEFENSE

2. In response to the allegations contained in Paragraphs 1 through 28 of the Answer, Plaintiffs reassert the allegations of the Amended Complaint and incorporate the same herein as if restated verbatim. To the extent a response is required, Plaintiffs deny all allegations contained therein and demand strict proof thereof.

REPLYING TO DEFENDANTS' ADDITIONAL DEFENSES

3. Answering Paragraphs 29 through 56 of the Answer, the allegations contained in Paragraphs 29 through 56 constitute conclusions of law to which no answer is required. To the extent an answer is required, Plaintiffs deny that such additional defenses are applicable.

**REPLYING TO DEFENDANTS'
COUNTERCLAIM**

4. Responding to Paragraph 57 of the Counterclaim, Plaintiffs reassert the allegations of the Amended Complaint and the preceding Paragraphs of this Reply and incorporate the same herein as if restated verbatim.

5. Plaintiffs/Counterclaim Defendants admit Paragraph 58 of the Counterclaim.

6. Plaintiffs/Counterclaim Defendants admit Paragraph 59 of the Counterclaim.

7. Plaintiffs/Counterclaim Defendants deny Paragraph 60 of the Counterclaim.

8. Plaintiffs/Counterclaim Defendants deny Paragraph 61 of the Counterclaim.

9. Plaintiffs/Counterclaim Defendants deny Paragraph 62 of the Counterclaim.

10. Plaintiffs/Counterclaim Defendants deny Paragraph 63 of the Counterclaim.

11. Plaintiffs/Counterclaim Defendants deny that Defendants/Counterclaim Plaintiffs are entitled to any relief requested in their prayer for relief.

**FOR A FIRST AFFIRMATIVE DEFENSE
(Litigation Privilege)**

12. Defendants/Counterclaim Plaintiffs' counterclaim is barred because the acts complained of occurred during judicial proceedings and are protected by the litigation privilege.

WHEREFORE, having fully answered the Answer and Counterclaim of the Defendants,

Plaintiffs pray:

- a. that the counterclaims be dismissed with prejudice,
- b. for the relief demanded in the Amended Complaint,
- c. for the additional costs and expenses incurred in defending against these claims, and
- d. for such other and further relief as the Court may deem just and proper.

CHARLESTON, SC
June 28, 2018



E. Brandon Gaskins (State Bar No. 73274)
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ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KKMCC INVESTMENTS, LLC; AND
221, LLC,

Plaintiffs,

v.

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

Defendants.

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

ANSWER

FILED
2018 JUL -6 AM 10:31
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant JW Homes, LLC n/k/a RP Falcon Properties, LLC ("JWH"), by and through its undersigned attorneys, answer the Amended Complaint of the Plaintiffs herein, alleging and stating as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified, or explained, is denied and proof thereof demanded, including those in the prayer for relief.
2. Responding to the allegations contained in Paragraph 1 of the Amended Complaint that refer to written agreements, JWH refers to the agreements referenced and denies any allegations inconsistent with the terms and conditions of those agreements. To the extent this Paragraph alleges conclusions of law, JWH is not required to admit or deny the same. JWH admits that its predecessor in interest JWH Acquisitions, LLC entered into a purchase and sale agreement with American Star Development SC, LLC, that JWH Acquisitions, LLC assigned the purchase and sale agreement to JWH, that JWH closed on the purchase of the land

pursuant to that agreement, and that PulteGroup, Inc. purchased certain assets of JWH. JWH is without sufficient information to form a belief as to the truth of the remaining factual allegations contained in Paragraph 1 of the Amended Complaint.

3. JWH is without sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 2, 3, 4, 5, and 6 of the Amended Complaint.
4. JWH admits the allegations contained in Paragraph 7 of the Amended Complaint.
5. JWH admits the allegations contained in Paragraphs 8, 9, and 10 of the Amended Complaint in as much as they allege subject-matter jurisdiction and venue are proper in this Court and that the Court has personal jurisdiction over JWH. JWH is without sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 10 of the Amended Complaint.
6. JWH admits the allegations contained in Paragraph 11 of the Amended Complaint.
7. JWH is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Amended Complaint.
8. In response to the allegations contained in Paragraphs 13, 14, and 15 of the Amended Complaint, JWH makes reference to the referenced agreement and denies all allegations inconsistent therewith.
9. In response to the allegations contained in Paragraph 16 of the Amended Complaint, JWH admits JWH Acquisitions made the assignment to JWH as referenced and, on information and belief, admits American Star made the assignment to 211, LLC and KKMC Investments, LLC as referenced.
10. JWH admits the allegations contained in Paragraphs 17, 18, 19, 20 and 21 of the Amended Complaint.

11. JWH admits the allegations contained in Paragraph 22 of the Amended Complaint as they pertain to the APA and Agreement. JWH denies the allegations of Paragraph 22 of the Amended Complaint that allege the circumstances surrounding the Acquisition warrant the finding of a consolidation or merger of PulteGroup with JWH.
12. JWH admits the allegations contained in Paragraph 23 of the Amended Complaint and JWH further admits that the sketch plans for the development were submitted by American Star without the Connection as part of its zoning request and American Star fully concurred with the sketch plan that did not depict the Connection.
13. JWH is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 24 of the Amended Complaint.
14. The allegations contained in Paragraphs 25 and 26 of the Amended Complaint express conclusion of law with JWH is not required to admit or deny. Notwithstanding, JWH is without sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 25 and 26 of the Amended Complaint.
15. In response to the allegations of Paragraph 27 of the Amended Complaint, JWH hereby realleges and reiterates as fully as if set forth herein JWH's responses to the Paragraphs realleged.
16. The allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint are not directed to JWH and, therefore, do not require a response; to the extent any response is deemed required, JWH responds that the allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint express conclusions of law to which JWH is not required to admit or deny. Notwithstanding, JWH admits it took assignment of the Agreement from JWH Acquisitions, LLC and entered into the APA with

PulteGroup, JWH denies the allegations of Paragraph 29 of the Amended Complaint that allege the circumstances surrounding the Acquisition warrant the finding of a consolidation or merger of PulteGroup with JWH, and as to the remaining allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, and 35 of the Amended Complaint, JWH is without sufficient information to form a belief as to the truth of those allegations.

17. In response to the allegations of Paragraph 36 of the Amended Complaint, JWH hereby realleges and reiterates as fully as if set forth herein JWH's responses to the Paragraphs realleged.
18. The allegations contained in Paragraphs 37, 38, 39, 40, 41, and 42 of the Amended Complaint are not directed to JWH and, therefore, do not require a response; to the extent any response is deemed required, JWH responds that the allegations contained in Paragraphs 37, 38, 39, 40, 41, and 42 of the Amended Complaint express conclusions of law to which JWH is not required to admit or deny. Notwithstanding, JWH states that it is without sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 37, 38, 39, 40, 41, and 42 of the Amended Complaint.
19. In response to the allegations of Paragraph 43 of the Amended Complaint, JWH hereby realleges and reiterates as fully as if set forth herein JWH's responses to the Paragraphs realleged.
20. The allegations contained in Paragraphs 44, 45, 46, 47, 48, and 49 of the Amended Complaint are not directed to JWH and, therefore, do not require a response; to the extent any response is deemed required, JWH responds that the allegations contained in Paragraphs 44, 45, 46, 47, 48, and 49 of the Amended Complaint express conclusions of law to which JWH is not required to admit or deny. Notwithstanding, JWH admits it took assignment of

the Agreement from JWH Acquisitions, LLC and entered into the APA with PulteGroup, JWH denies the allegations of Paragraph 45 of the Amended Complaint that allege the circumstances surrounding the Acquisition warrant the finding of a consolidation or merger of PulteGroup with JWH, and as to the remaining allegations contained in Paragraphs 44, 45, 46, 47, 48, and 49 of the Amended Complaint, JWH is without sufficient information to form a belief as to the truth of those allegations.

21. In response to the allegations of Paragraph 50 of the Amended Complaint, JWH hereby realleges and reiterates as fully as if set forth herein JWH's responses to the Paragraphs realleged.

22. JWH denies the allegations contained in Paragraphs 51, 52, 53, and 54 of the Amended Complaint.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

23. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

24. JWH would show that the allegations of the Amended Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against it.

FOR AN ADDITIONAL DEFENSE
(Ripeness)

25. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

26. JWH would show that the Plaintiffs' claims are premature and nonjusticiable under the doctrine of ripeness.

FOR AN ADDITIONAL DEFENSE
(Waiver and Estoppel)

27. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

28. JWH would show that Plaintiff's claims are barred by the doctrines of waiver and estoppel.

FOR AN ADDITIONAL DEFENSE
(Release)

29. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

30. JWH would show that Plaintiffs' claims are barred by release.

FOR AN ADDITIONAL DEFENSE
(Laches)

31. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

32. JWH would show that Plaintiffs' claims are barred by the doctrine of laches.

FOR AN ADDITIONAL DEFENSE
(Unclean Hands)

33. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

34. JWH would show that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR AN ADDITIONAL DEFENSE
(Statute of Limitations)

35. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

36. JWH would show that Plaintiffs' claims are barred by the applicable statute of limitations.

FOR AN ADDITIONAL DEFENSE
(Failure to Mitigate)

37. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

38. JWH would show that Plaintiffs have failed to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(Ratification)

39. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

40. JWH would show that Plaintiffs' claims are barred by ratification, including through Plaintiffs' knowledge, conduct and actions, they ratified the absence of the Connection by, among other things, Plaintiffs submitting to the Town of Mount Pleasant a sketch plan which failed to describe or depict the Connection, and which the Town of Mount Pleasant approved.

FOR AN ADDITIONAL DEFENSE
(Right to Rely on Other Defenses and Right to Amend)

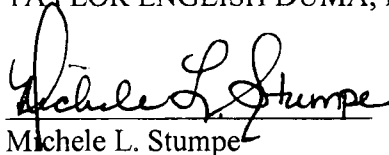
41. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

42. JWH reserves the right to rely upon the affirmative defenses raised in the pleadings of any other party to this action, and each and every such alleged affirmative defense set forth in those pleadings is hereby realleged and reiterated as if fully set forth herein. Additionally, JWH reserves the right to amend this Answer and affirmative defenses after investigation, discovery, and further information are disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and JWH is not waiving any defenses that may arise during investigation, discovery, and trial of this matter.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, JWH prays for the dismissal of Plaintiff's Amended Complaint with prejudice pursuant to the defenses set forth above; for a trial by jury on all triable issues; that the costs of this action be taxed to a party other than JWH; and for all such other relief as the Court deems equitable, just, and proper.

Respectfully Submitted this 5th day of July, 2018.

TAYLOR ENGLISH DUMA, LLP

A handwritten signature in black ink, appearing to read "Michele L. Stumpe", is written over a horizontal line.

Michele L. Stumpe
(S.C. Bar No. 66522)
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
(678) 336-7160

mstumpe@taylorenghish.com

**ATTORNEYS FOR DEFENDANT
JW HOMES, LLC**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

COURT FILE NO. 2018-CP-10-2175

SECOND AMENDED
LIS PENDENS

FILED
2018 AUG 28 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

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

SEE ATTACHED EXHIBIT "A"

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

E. Brandon Gaskins

E. Brandon Gaskins (State Bar No. 73274)

MOORE & VAN ALLEN, PLLC

78 Wentworth Street

P.O. Box 22828

Charleston, South Carolina 29413-2828

Telephone: (843) 579-7000

brandongaskins@mvalaw.com

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
August 28, 2018

EXHIBIT "A"
PROPERTY DESCRIPTION

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

V.

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

Defendants.

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

AMENDED NOTICE OF MOTION
AND
MOTION
TO CANCEL LIS PENDENS

FILED
2018 SEP 17 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendant, Pulte Home Corporation, n/k/a Pulte Home Company, ("Pulte"), by and through its undersigned attorneys will move before the Presiding Judge of the Charleston County Court of Common Pleas on the tenth (10th) day after service, or as soon as counsel may be heard, for an Order canceling the Lis Pendens (2018-LP-10-336), as amended, filed by Plaintiff American Star Development SC, LLC ("American Star").

American Star filed a Summons and Complaint against the above captioned defendants on April 26, 2018 and an Amended Complaint (adding two additional Plaintiffs) on May 1, 2018. The Amended Complaint alleges PulteGroup, LLC and Pulte "have a contractual obligation to construct an access to road to American Star's property . . ." Am. Compl. ¶1. The Amended Complaint asserts cause of actions for breach of contract, equitable estoppel, and declaratory judgment. See Am. Compl. ¶¶27-54. American Star does not allege the action affects title to any real property.

American Star filed a Lis Pendens on April 26, 2018, an Amended Lis Pendens on June 13, 2018, and a Second Amended Lis Pendens August 28, 2018 (collectively referenced as “the Lis Pendens”). The Lis Pendens purports to provide notice that “real estate [is] affected by” the action. The Lis Pendens lists 46 “affected” parcels identified by separate tax map numbers. However, there are no allegations in the Amended Complaint concerning title to any of these parcels, nor does the Lis Pendens claim that title is affected by the lawsuit. Therefore, the Court should enter an order cancelling the Lis Pendens.

South Carolina Code 15-11-10, only allows the filing of lis pendens in “an action *affecting the title to real property*.” (double emphasis added). Our Supreme Court has recognized a circuit court’s authority to cancel a lis pendens when the action does not affect the *title* to real property. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (“if the court finds that the lis pendens does not ‘affect [] the title to real property’ as required under § 15-11-10, the lis pendens is not authorized by the statute and the statute does not limit the court’s power to cancel it.”).

The filing of a lis pendens is an extraordinary privilege granted by statute and strict compliance with the statutory provisions is required. See South Carolina Nat’l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid). In this case, the statutory requirements are not met because the allegations of the Amended Complaint do not assert that *title* to any real property is affected by the action.

The Lis Pendens purports to provide notice to third parties that 11 parcels owned by Pulte are affected by the case. However, based on the allegations of the Amended Complaint, the titles

to those 11 parcels are not affected by the case. Therefore, the filing of the Lis Pendens is improper and inconsistent with the purposes of the lis pendens statute:

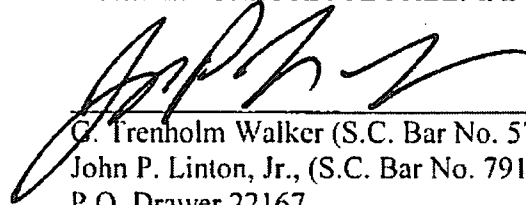
The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) (quoting 51 Am.Jur.2d Lis Pendens § 2 (2000)).

Therefore, for the reasons explained above, the Lis Pendens should be cancelled. This motion is supported by the pleadings and affidavits on file and any supplemental memorandums and affidavits that may be filed.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar No. 5777)

John P. Linton, Jr., (S.C. Bar No. 79130)

P.O. Drawer 22167

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WALKER@WGFLAW.COM

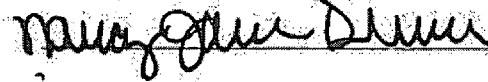
LINTON@WGFLAW.COM

ATTORNEYS FOR DEFENDANTS

September 17, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 17th day of Sept, 2018, in Charleston, South Carolina.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO. 2018-CP-10-2175

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

Plaintiffs,

) **PLAINTIFF'S RESPONSE TO PULTE**
) **HOME CORPORATION'S MOTION TO**
) **CANCEL LIS PENDENS**

vs.

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

Defendants.

FILED
2018 SEP 18 PM 4:38
JULIE L. ARMSTRONG
CLERK OF COURT

Plaintiffs American Star Development, SC, LLC ("American Star"), KKMC Investments, LLC, and 211, LLC (collectively, "Plaintiffs") submit this response in opposition to Defendant Pulte Home Corporation n/k/a Pulte Home Company, LLC's ("Pulte") Motion to Cancel Lis Pendens. Plaintiffs' Amended Complaint seeks declaratory relief regarding an encumbrance on real property and specific performance regarding an easement over real property. As a result, this action affects title to real property, and the lis pendens is appropriate under S.C. Code Ann. § 15-11-10. Therefore, the Court should deny Pulte's Motion to Cancel Lis Pendens.

FACTUAL AND PROCEDURAL BACKGROUND

On February 25, 2015, Plaintiff American Star and JWH Acquisitions, LLC entered into an Agreement for Purchase and Sale (the "Agreement") (attached as Ex. A), wherein American Star agreed to sell to JWH Acquisitions certain property located off of 6 Mile Road in the Town of Mount Pleasant, South Carolina (the "Primus Property"). (Am. Compl. ¶ 11.) American Star also owns property adjacent to the Primus Property (the "Adjacent Property"). (*Id.* at ¶ 12.)

The Primus Property is located within the Billy Swails Boulevard Phase 4B Project Area, which will complete what was originally named the Hungry Neck Boulevard corridor. (Ex. B – Town of Mount Pleasant Billy Swails Boulevard Phase – 4B Public Information Meeting Handout, Feb. 27, 2018.) The current schedule for Phase 4B anticipates the final design for the project to be completed in 2019 and for construction to begin in 2020. (*Id.*) Section 13(a) of the Agreement provides that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions and American Star. (Ex. A – § 13(a).) Under Section 13(a), the parties agreed to memorialize American Star’s interest in the condemnation proceeds by means of a recordable instrument, which was to be signed by the parties and recorded at the closing. (*Id.*)

In addition, pursuant to Section 31(a) of the Agreement, American Star granted JWH Acquisitions the right of first offer to negotiate to purchase certain parcels owned by American Star, including the Adjacent Property. (Ex. A, § 31(a).) Under Section 31(b) of the Agreement, JWH Acquisitions agreed to design and construct an access road through the Primus Property to provide vehicular and pedestrian access to connect the Primus Property to the Adjacent Property (the “Connection”). (*Id.* at § 31(b).)

Before the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Agreement to Defendant JW Homes, LLC (“JWH”), and the Primus Property was subsequently conveyed to JWH on July 31, 2015. (Am. Compl. ¶¶ 16-17.) Later that year, Defendant PulteGroup, Inc. (“PulteGroup”) entered into an asset purchase agreement (the “APA”), whereby PulteGroup would acquire substantially all of the assets of JWH. (*Id.* at ¶ 18.) Upon information and belief, the Primus Property was one of the assets of JWH to be acquired by PulteGroup pursuant to the APA. (*Id.*)

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

On January 14, 2016, PulteGroup acquired substantially all of JWH's assets pursuant to the APA. On that same day, JWH conveyed the Primus Property to Pulte. (*Id.* at ¶ 20.) Upon information and belief, the conveyance of the Primus Property to Pulte was pursuant to Section 4.2 of the APA, which required JWH to execute and deliver special warranty deeds for the acquired properties to PulteGroup or its affiliates, including Pulte. (*Id.*)

As a result of the agreements made in the APA and the related transactions conveying the Primus Property to Pulte, PulteGroup and Pulte expressly agreed to assume responsibility for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds. (*Id.* at ¶ 21.) In addition, American Star alleges that PulteGroup assumed JWH's obligations under the Agreement because the circumstances surrounding PulteGroup's acquisition warrant a finding of a consolidation or merger. (*Id.* at ¶ 22.) American Star has made repeated demands for Pulte and PulteGroup to design, seek approval for, and construct the Connection, but Pulte and PulteGroup have refused American Star's demands. (*Id.* at ¶ 24.)

As a result of the dispute regarding Pulte's and PulteGroup's obligations to construct the Connection and share condemnation proceeds, Plaintiffs filed a lis pendens on the Primus Property on April 6, 2018, providing notice of potential litigation regarding the Primus Property. Plaintiffs subsequently filed the present action on April 26, 2018, seeking specific performance

for Pulte and PulteGroup to design and construct the Connection and declaratory judgment that Pulte and/or PulteGroup is required to share condemnation proceeds.

Following commencement of the action, Pulte obtained approval of the final plat for a residential development on the Primus Property, resulting in the subdivision of said property. Thereafter, Plaintiffs filed an amended lis pendens on the subdivided lots within the Billy Swails Boulevard Phase 4B Project Area and over those lots which could serve as the site of the Connection. Pulte now moves for a cancellation of the lis pendens.

ARGUMENT

I. Actions affecting title to real property include actions to enforce encumbrances against real property, to establish easements over real property, and for specific performance relating to real property.

Under S.C. Code Ann. § 15-11-10, a lis pendens may be filed “[i]n an action affecting the title to real property . . . not more than twenty days before filing the complaint or at any time afterwards . . .” The purpose of a lis pendens is to inform potential purchasers that a particular piece of real property is subject to pending litigation. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). “A properly filed lis pendens binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation.” *South Carolina Nat’l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). Therefore, “an action ‘affecting the title to real property’ clearly allows the filing of a lis pendens by an interested party in order to protect their ownership interest in the property subject to the litigation.” *Pond Place Partners*, 351 S.C. at 17, 567 S.E.2d at 889.

A lis pendens may be canceled by “the court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated...on application of a person aggrieved and on good cause shown...may order the notice authorized by this chapter to

be cancelled..." S.C. Code Ann. § 15-11-40. "[A] lis pendens that meets the statutory requirement for filing may not be canceled during the pendency of litigation." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012). However, if the court finds that the lis pendens does not "affect the title to real property" as required under S.C. Code Ann. § 15-11-10, the lis pendens is not authorized by the statute and the statute does not limit the court's power to cancel it. *Id.*

In determining what actions "affect the title to real property," South Carolina courts have not limited a lis pendens to only those actions in which title to or ownership of real property is directly claimed. Rather, the "doctrine of lis pendens applies to all suits or actions which directly affect real property, and not only those which involve the question of title, but also those which are brought to establish an equitable estate, interest, or right in specific real property or to enforce any lien, charge, or encumbrance against it..." *Finley v. Hughes*, 106 F. Supp. 355, 356 (D.S.C. 1952); *see also* 54 C.J.S. *Lis Pendens* § 10 ("[A] lis pendens generally applies not only to those actions which involve the question of title, or a possessory interest, but also to litigation that does not seek to change the ownership of land in any way but does involve a determination of certain rights and liabilities incident to ownership.") As such, the South Carolina Court of Appeals has recognized that actions "affecting the title to real property" include actions to establish the existence of an easement, for specific performance, to establish a constructive trust, to quiet title, and to reform deeds, among others. *Pond Place Partners*, 351 S.C. at 17-18, 567 S.E.2d at 889.

II. The action seeking declaratory judgment of Plaintiffs' rights to condemnation proceeds affects title to real property because it seeks to enforce an encumbrance against the Primus Property.

The lis pendens on those lots of the Primus Property within the Billy Swails Boulevard Phase 4B Project Area is appropriate because it arises from an action affecting the title to real

property. Plaintiffs' third cause of action seeks a declaratory judgment that they have an interest in the proceeds from the condemnation of any portion of the Primus Property pursuant to Section 13(a) of the Agreement. Because this action asserts certain rights incident to ownership of real property, e.g. the right to proceeds in the event of a sale of the property through condemnation, it affects the title to real property.

Essentially, Plaintiffs' claim seeks a judicial declaration that they have an encumbrance on the Primus Property. "An encumbrance is a right or interest in the land granted 'which may subsist in third persons to the diminution in value of the estate although consistent with the passing of the fee.'" *Truck South, Inc. v. Patel*, 339 S.C. 40, 48, 528 S.E.2d 424, 428-429 (2000) (quoting *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984)). Put another way, an encumbrance is "[a] claim or liability that is attached to property or some other right that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest." *Id.* (quoting *Black's Law Dictionary* 547 (7th ed. 1999)).

Here, Plaintiffs' asserted right in the condemnation proceeds is a property right attached to the Primus Property, which meets the definition of an encumbrance. Because actions to establish an interest in specific real property or to enforce an encumbrance against it affect the title to real property, *see Finley*, 106 F. Supp. at 356, Plaintiffs' action seeking a declaration of their right to share proceeds from the sale of the Primus Property affects title. Therefore, the lis pendens over those lots to which Plaintiffs' asserted right attaches is proper under S.C. Code Ann. § 15-11-10.

Moreover, the lis pendens over those lots within the Billy Swails Boulevard Phase 4B Project Area is necessary to protect Plaintiffs' right to the condemnation proceeds and to inform potential purchasers that the Primus Property is subject to pending litigation. The lis pendens

effectively protects and provides notice of Plaintiffs' rights as a potential condemnee. The potential condemnation of portions of the Primus Property would be governed by the South Carolina Eminent Domain Procedure Act, which defines "condemnee" as "a person or other entity who has a record interest in or holds actual possession of property that is the subject of a condemnation action." S.C. Code Ann. § 28-2-30(6). Because Section 13(a) of the Agreement requires the parties to memorialize Plaintiffs' right to share in condemnation proceeds by recordable instrument, Plaintiffs assert a "record interest" in the Primus Property for purposes of condemnation and should be a "condemnee" under § 28-2-30(6). Pulte and PulteGroup have denied Plaintiffs' rights to record its interest in the Primus Property, and therefore, the lis pendens serves as the only means by which Plaintiffs can protect their rights as a potential condemnee against the condemnor and subsequent purchasers until the case is resolved. *See Pond Place Partners*, 351 S.C. at 29, 567 S.E.2d at 896 (ruling that lis pendens arising from declaratory judgment action challenging validity of restrictive covenants was authorized pending full adjudication of the action); *Osteen v. Bultman*, 94 S.C. 496, 500, 78 S.E. 445, 446 (1913) (stating that lis pendens related to action to enforce lien for costs incurred by grantor in constructing shared wall fixed the rights of parties so that subsequent conveyance was subject to those rights).

III. Plaintiffs' claim for specific performance of Pulte's obligation to construct the Connection and to establish an easement over the Primus Property affects title to real property.

The lis pendens on those lots of the Primus Property which could serve as the site of the Connection is appropriate because it arises from Plaintiffs' claim to establish an easement over the Primus Property and for specific performance of Pulte's obligation to construct the

Connection. Therefore, it arises from an action affecting the title to real property and is appropriate under S.C. Code Ann. § 15-11-10.

As stated in *Pond Place Partners*, actions “to establish the existence of an easement” and “for specific performance” are actions affecting the title to real property. *Id.* at 17-18, 567 S.E.2d at 889 (citing *Procacci v. Zacco*, 402 So.2d 425 (Fla. Dist. Ct. App. 1981)). “An easement is a right to which one person has to use the land of another for a specific purpose.” *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578 (2009). In this case, Plaintiffs seek specific performance of Pulte’s obligation to construct the Connection, which will serve as an easement over the Primus Property to provide access to the Adjacent Property owned by American Star.

In addition to South Carolina law recognizing actions to establish an easement and for specific performance regarding real property as actions affecting title to real property that will support a lis pendens, other jurisdictions similarly have acknowledged the propriety of a lis pendens in actions involving disputes over an easement or construction of an access road. *See, e.g., Schwab v. Seattle*, 64 Wn. App. 742, 826 P.2d 1089 (Wash. Ct. App. 1992) (ruling that a dispute concerning an easement affected title to land and the filing of lis pendens was proper); *Stinnet v. Dodson*, 575 So.2d 1350 (Fla. Ct. App. 1991) (reversing discharge of lis pendens filed in an action to enforce an easement); *Curry v. Orwig*, 429 N.E.2d (Ind. Ct. App. 1981) (declaring that lis pendens was justified in an action involving dispute over an easement); (*Kendall-Brief Co. v. Superior Court*, 60 Cal. App.3d 462 (Cal. Ct. App. 4th App. Dist. 1976) (affirming refusal to cancel lis pendens because pending action concerning easement of right-of-way affected title);

The case of *Smith v. Miller & Smith at Pembroke, LLC*, 84 Va. Cir. 64 (Cir. Ct. Fairfax Cty. 2011), provides the most comparable facts to the case *sub judice*. In that case, the plaintiff and defendant, who owned adjacent property, entered into an agreement under which the plaintiff

agreed to construct a roadway over the defendant's property that would provide access to plaintiff's property. *Id.* at 65. When the plaintiff failed to construct the road, the defendant brought suit for specific performance for delivery of the deed of trust establishing the easement and filed a lis pendens on the plaintiff's property. *Id.* at 66. Subsequently, the plaintiff filed suit for slander of title and abuse of process against the defendant for filing the lis pendens. *Id.* The *Smith* court dismissed the claims because the defendant had the right to secure the plaintiff's promise to construct the road and, therefore, had an "absolute right to file a lis pendens notifying potential purchasers about the pendency of the action." *Id.* at 68-69.

Like the defendant in *Smith*, Plaintiffs have the right to seek specific performance to establish the easement and have the road constructed. Moreover, like the lis pendens in *Smith*, the lis pendens filed on the Primus Property serves the important function of providing notice to potential purchasers of the pendency of the action affecting the property and the road to be constructed. Therefore, like the defendant in *Smith*, Plaintiffs have the absolute right to file a lis pendens regarding their action to secure the easement and the construction of the road.

CONCLUSION

For the foregoing reasons, Plaintiffs' actions affect the title to real property, and Pulte's Motion to Cancel Lis Pendens should be denied.



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ATTORNEYS FOR PLAINTIFFS

CHARLESTON, SC
September 18, 2018

EXHIBIT A

AGREEMENT FOR PURCHASE AND SALE

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

WITNESSETH

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

1. Purchase and Sale of Property:

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

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

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

3. Earnest Money.

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

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

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

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

4. Closing.

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

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

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

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

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

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

5. Inspection Period.

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

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

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

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

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

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

8. Seller's Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Conditions Regarding Final Rezoning

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

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

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

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

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

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

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

13. Condemnation.

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

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

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

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

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

16. Prorations.

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

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

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

18. Default and Remedy.

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

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

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

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

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

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

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

AS TO BUYER:

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

WITH A COPY TO:

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

WITH A COPY TO:

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

AS TO SELLER:

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

AND WITH A COPY TO:

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

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

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

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

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

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

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

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

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

30. Underlying Agreements, Simultaneous Closing.

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

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

(b) Seller represents and warrants that:

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

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

31. Right of First Offer.

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

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

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

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

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

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

WITNESSES:

BUYER:

JWH ACQUISITIONS, LLC,
a Delaware limited liability company

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

WITNESSES:

SELLER:

AMERICAN STAR DEVELOPMENT
SC, LLC

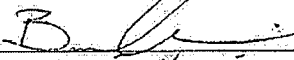
By: 
Name: Brian Harvin
Its: MEMBER-MANAGER
Date of Execution: 2/25/15

EXHIBIT "A"

PROPERTY DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT "B"

REQUIRED INFORMATION MATERIALS

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

EXHIBIT "C"

PERMITTED EXCEPTIONS

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

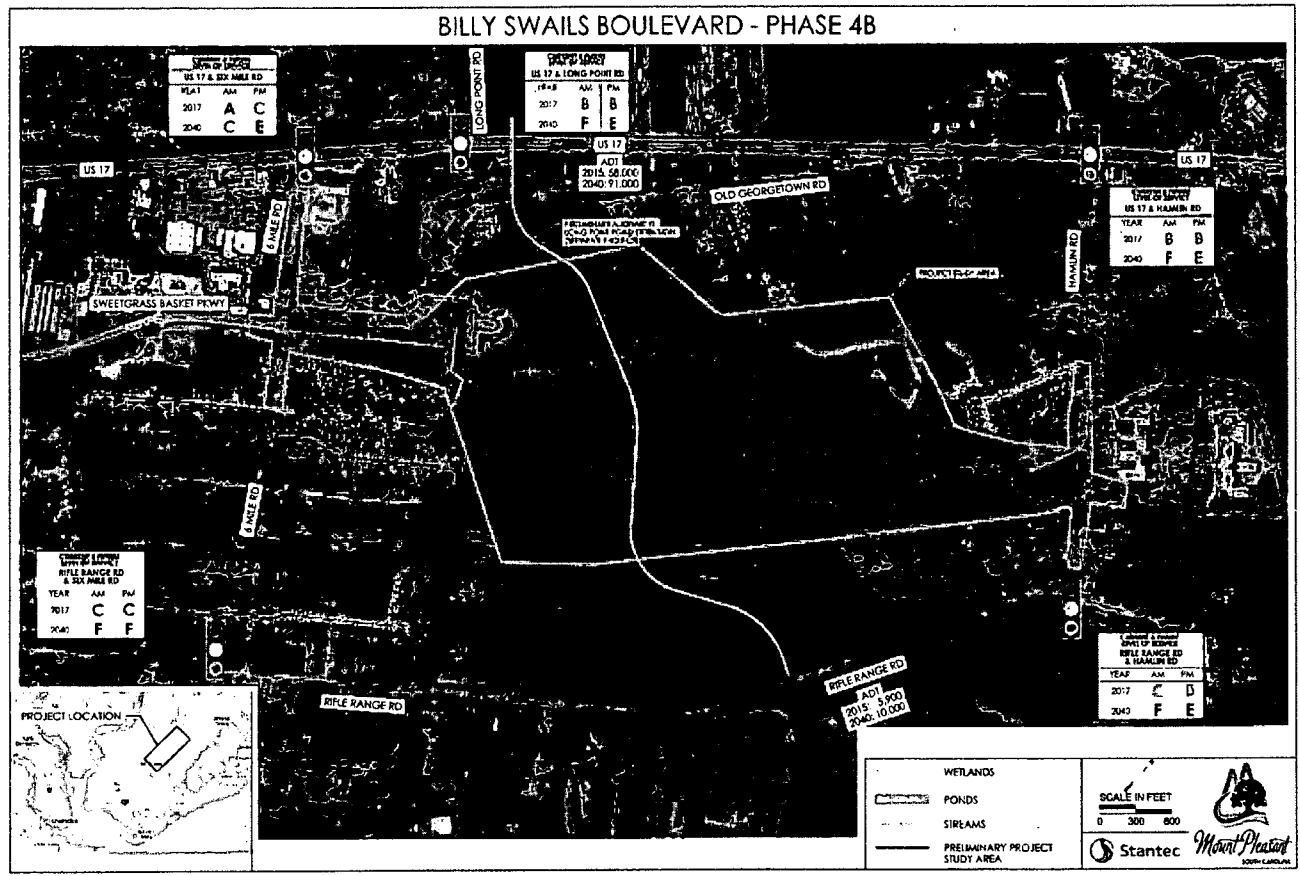
EXHIBIT B

Billy Swails Boulevard Phase - 4B

Public Information Meeting

February 27, 2018

The Town of Mount Pleasant (Town) and the South Carolina Department of Transportation (SCDOT) welcome you to this public meeting for the Billy Swails Boulevard – Phase 4B project. The purpose of the project is to enhance mobility for vehicle, pedestrian, and bicycle traffic and add capacity to the Town's transportation network. Traffic reached 58,000 vehicles per day on US Highway 17 south of SC Highway 41 in 2015, and is forecast to reach 91,000 vehicles per day by the year 2040. The Hungry Neck Boulevard corridor was developed by the Town to relieve traffic on US 17, beginning at the eastern end of I-526 and connecting back to US 17 via Porchers Bluff Road. Billy Swails Boulevard Phase 4B is the last unfinished segment of the Hungry Neck Boulevard corridor. The southern connection from I-526, and the connection point north of SC 41 where US 17 traffic volumes drop significantly, make the Hungry Neck Boulevard corridor a logical reliever to the most heavily travelled portion of US 17 in the Lowcountry.



Billy Swails Boulevard – Phase 4B will enhance bicycle and pedestrian mobility. Completed portions of the Hungry Neck Boulevard corridor from the Isle of Palms Connector (SC 517) north include sidewalks and either bike lanes or multiuse paths. The segment of this corridor north of Phase 4B includes an elementary school and a middle school. The segment south of Phase 4B includes large residential communities. Large retail and commercial developments are located south of SC 517. This mix of land uses encourages bicycle and pedestrian travel. There are sidewalks on the parallel segment of US 17, but no dedicated bike lanes. The parallel segment of Rifle Range Road does not include sidewalks or bike lanes.

THE PROPOSED PROJECT IS TO BE FUNDED USING BOTH FEDERAL AND LOCAL (TOWN) FUNDS.

The goal of this public meeting is to provide an opportunity to review and discuss individually, with representatives from the Town and SCDOT, proposed solutions for completing this corridor. The Town wants to receive feedback from you to help with the initial scoping process of the project. Another purpose of this meeting is to gather information from the public regarding historic or cultural resources in the area. The Town is currently collecting baseline data related to the natural and manmade environment. The information gathered, along with your input, will be used in project scoping to assist us in developing alternatives. The alternatives will be analyzed and presented to you at a future public meeting. After additional public feedback and study, a Preferred Alternative will be selected.



View of Sweetgrass Basket Parkway from Six Mile Road

SCHEDULE

SECOND PUBLIC MEETING	FALL 2018
FINAL DESIGN	2019
CONSTRUCTION BEGINS	2020



COMMENTS:

We encourage you to provide written comments on the forms provided so we may have a record of your suggestions for our consideration. The Town appreciates your attendance and strongly encourages you to provide input regarding this project in one of the following ways:

1. Complete the comment form and place it in the comment box provided.
2. Email comments to PLykins@tompsc.com
3. Mail your comments to:

Mr. Paul Lykins - Town of Mount Pleasant

100 Ann Edwards Lane, Building A, Mount Pleasant, SC 29464

Please submit comments regarding this project no later than March 14, 2018.

Additional information can be found at:

[HTTP://WWW.TOMPSC.COM/609/TRANSPORTATION-DEPARTMENT](http://www.tompsc.com/609/TRANSPORTATION-DEPARTMENT)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-CP-10-2175

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

v.

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

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

Of whom Pulte Home Corporation, n/k/a Pulte Home Company, LLC
are the Respondent.

NOTICE OF APPEAL

American Star Development SC, LLC ("Appellant") appeals the Order of the
Honorable R. Lawton McIntosh, dated November 14, 2018, and filed November 16,
2018, which granted the Motion to Cancel Lis Pendens filed by Defendants PulteGroup,
Inc. and Pulte Home Corporation, n/k/a Pulte Home Company, LLC. Appellant received
written notice of the entry of the Order on November 20, 2018.



E. Brandon Gaskins (S.C. Bar No. 72374)
Charles R. Scarminach (S.C. Bar No. 101582)
Moore & Van Allen PLLC
78 Wentworth Street
Charleston, SC 29401
PH. (843) 579-7038
FAX (843) 579-8738
E-mail: brandongaskins@mvalaw.com

December 20, 2018

charlesscarminach@mvalaw.com

Charleston, SC

*Attorneys for Appellant American Star
Development SC, LLC*

Other Counsel of Record:

G. Trenholm Walker, Esquire
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

*Attorneys for Defendants PulteGroup, Inc., and Pulte Home Corporation,
n/k/a Pulte Home Company, LLC*

Susan M. Gaddy, Esquire
The Gaddy Law Firm, LLC
1156 Bowman Rd., Ste. 200
Mt. Pleasant, SC 29464

Attorneys for Defendant JW Homes, LLC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-CP-10-2175

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

v.

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

Of whom American Star Development SC, LLC is the..... Appellant,

Of whom Pulte Home Corporation, n/k/a Pulte Home Company, LLC
are the Respondent.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the
foregoing matter with a copy of the foregoing **Notice of Appeal** by depositing the same
in the United States Mail with adequate postage affixed thereon to ensure delivery,
addressed as follows:

G. Trenholm Walker, Esquire
John P. Linton, Jr., Esquire
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

*Attorneys for Defendants PulteGroup, Inc., and Pulte Home Corporation,
n/k/a Pulte Home Company, LLC*

Susan M. Gaddy, Esquire
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December 20, 2018

Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

V.

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

Defendants.

ORDER CANCELLING
LIS PENDENS

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CLERK OF COURT

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

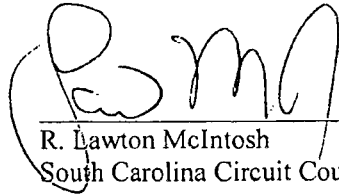
CONCLUSION

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

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

AND IT IS SO ORDERED!

November 14, 2018
Anderson, South Carolina



R. Lawton McIntosh
South Carolina Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

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

) **MOTION TO SUBSTITUTE PARTIES**
) **AND AMEND**
) **AMENDED COMPLAINT**

Pursuant to Rules 15(a) and (d) and 25(c) of the South Carolina Rules of Civil Procedure, Plaintiffs American Star Development, SC, LLC; KKMCI Investments, LLC; and 211, LLC, move to substitute parties and to amend the complaint to include additional allegations based on transactions, occurrences, and events which have happened since the date of the pleading and to clarify the parties, claims, and requested relief. The grounds for this motion are as follows:

1. Under Rule 15(a), SCRCF, a party may amend its pleading by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires and does not prejudice the other party. Rule 15 "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. The party opposing the amendment has the burden of establishing prejudice." *Id.*

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JULIE J. ARMSTRONG
CLERK OF COURT

2. Pursuant to Rule 15(d), the court may permit a party to “serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense.”

3. Rule 25(c), SCRCP, provides that “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.”

4. Plaintiffs’ proposed Second Amended Complaint, attached as Exhibit 1, seeks to amend the previously filed Amended Complaint by (a) substituting Plaintiffs with American Star SPE-2, LLC as the real party in interest as the owner of the Adjacent Property (as defined in the Amended Complaint) and pursuant to the assignment and transfer of Plaintiffs’ interest in the claims asserted in this action and in the purchase and sale agreement for the Primus Property (as defined in the Amended Complaint) under the Assignment of Claims and Agreement, attached as Exhibit 2; (b) clarifying Plaintiffs’ relationship to American Star SPE-2, LLC; and (3) clarifying the relief sought in the causes of action.

5. Defendants will not be prejudiced by the proposed amendments and substitution because the parties are in the early stages of discovery and Defendants have the ability to conduct further discovery into these matters prior to trial if they so choose.

6. Pursuant to Rule 11, SCRCP, Plaintiffs’ counsel affirms that prior to filing this motion that I have communicated with Defendants’ counsel and attempted in good faith to resolve the matter contained in this motion.

7. For the foregoing reasons, Plaintiffs request that the Court grant Plaintiffs' motion to substitute parties, amend its pleading, and file the attached Second Amended Complaint.

Respectfully submitted,



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Attorneys for Plaintiffs

Charleston, SC
March 5, 2019

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2018-CP-10-2175
	)	
AMERICAN STAR SPE-2, LLC;	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	SECOND AMENDED COMPLAINT
PULTEGROUP, INC.; PULTE HOME	)	
CORPORATION, N/K/A PULTE HOME	)	
COMPANY, LLC; AND RP FALCON	)	
PROPERTIES, LLC F/K/A JW HOMES,	)	
LLC,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

Plaintiff American Star SPE-2, LLC ("American Star"), complaining of Defendants PulteGroup, Inc. ("PulteGroup"); Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC"); and, alternatively, of Defendant RP Falcon Properties, LLC f/k/a JW Homes, LLC ("JWH"), alleges as follows:

INTRODUCTION

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

THE PARTIES

2. Plaintiff American Star is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina. The members of American Star SPE-2, LLC are KKMC Investments, LLC and 211, LLC. American Star is an affiliated entity of American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC.

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

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

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

VENUE AND JURISDICTION

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

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

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

FACTS

9. On February 25, 2015, American Star Development SC, LLC and JWH Acquisitions entered into an Agreement for Purchase and Sale (the "Agreement") (attached as

Exhibit A), wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, as described more particularly on Exhibit B (the "Primus Property").

10. Section 31(a) of the Agreement set forth American Star Development SC, LLC's intent to purchase property adjacent to the Primus Property (the "ROFO Parcels"), including two parcels bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property").

11. Pursuant to Section 31(a) of the Agreement, American Star Development SC, LLC granted JWH Acquisitions the right of first offer to negotiate to purchase the ROFO Parcels, including the Adjacent Property.

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

13. The parties intended for the Connection to be dedicated to the Town of Mount Pleasant and serve as a public easement for ingress/egress into the Adjacent Property.

14. As contemplated by the Agreement, American Star Development SC, LLC contracted to purchase the ROFO Parcels, including the Adjacent Property. Prior to purchasing the ROFO Parcels, American Star Development SC, LLC assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC Investments, LLC and 211, LLC, which purchased the Adjacent Property. KKMC Investments, LLC and 211, LLC later transferred the Adjacent Property to their affiliated company, American Star. American Star is the current owner of the Adjacent Property.

15. Section 13(a) of the Agreement acknowledged that a portion of the Primus Property may be taken by eminent domain for the extension of Hungryneck Boulevard. That section provided that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star Development SC, LLC. Section 13(a) further provides that American Star Development SC, LLC's interest in the condemnation proceeds is to be memorialized in a recorded instrument.

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

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

18. American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC have assigned their rights, obligations, and interest under the Agreement to American Star.

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

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

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

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

23. In addition to expressly assuming JWH's liabilities and obligations pursuant to the APA, PulteGroup assumed liability for JWH's obligations under the Agreement, including

the obligations to design and construct the Connection and to share condemnation proceeds, because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

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

25. American Star, through its principals, affiliated entities and counsel, have made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but PHC and PulteGroup have refused American Star's demands.

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

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

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

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

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

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

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

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

33. American Star, through its predecessors in interest, has performed its obligations under the Agreement, and American Star remain able and willing to perform their obligations under the Agreement.

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

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

36. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, American Star is entitled to specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection, which shall serve as a public easement providing access to the Adjacent Property, or alternatively, damages for the loss in value of the Adjacent Property.

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

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

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

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

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

41. American Star, through its predecessors in interest, lacked knowledge and the means of knowledge that PHC had no intention of designing, seeking approval for, and constructing the Connection.

42. American Star, through its predecessors in interest, relied on PHC's false representations to its prejudice.

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

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

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

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

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

47. The Agreement constitutes a valid and binding contract between American Star, by virtue of its status of assignee of American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC; and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

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

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

50. Plaintiffs are entitled to a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share the proceeds from any subsequent condemnation of the Primus Property or any portion thereof and that such obligation shall be memorialized in a recorded instrument. Plaintiffs are further entitled to a declaratory judgment that the obligation to share condemnation proceeds run with the property and is binding upon and assumed by subsequent purchasers of subdivided lots in the Primus Property, including any property owners' association created by PulteGroup and/or PHC in connection with the development of the Primus Property.

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

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

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

53. JWH breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

54. As a result of JWH's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

55. As a result of JWH's breach of Section 31(b) of the Agreement, American Star is entitled to damages for the loss in value of the Adjacent Property.

WHEREFORE, Plaintiffs pray as follows:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection, which shall serve as a public easement providing access to the Adjacent Property; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;
- b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof and that the obligation to share condemnation

proceeds run with the property and is binding upon and assumed by subsequent purchasers of subdivided lots in the Primus Property, including any property owners' association created by PulteGroup and/or PHC in connection with the development of the Primus Property; and that such declaratory order be recorded with the Charleston County Register of Deeds; and/or

- c. An award of all other appropriate relief as is just and proper under the circumstances.

CHARLESTON, SC

_____, 2019

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT 2

STATE OF SOUTH CAROLINA

) ASSIGNMENT OF CLAIMS AND
) AGREEMENT
)

COUNTY OF CHARLESTON

)

This Assignment of Claims and Agreement for Purchase and Sale (this "Agreement") is made and entered into as of this 27th day of February, 2019, by and between American Star Development SC, LLC ("American Star"), KKMC Investments, LLC ("KKMC"), and 211, LLC ("211"). (American Star, KKMC, and 211 are collectively referred to as "Assignors") and American Star SPE-2, LLC ("Assignee").

WITNESSETH:

WHEREAS, on February 25, 2015, American Star entered into an Agreement for Purchase and Sale (the "Purchase Agreement") with JWH Acquisitions, wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, (the "Primus Property");

WHEREAS, Section 31(a) of the Purchase Agreement sets forth American Star's intent to purchase property adjacent to the Primus Property (the "ROFO Parcels"), including two parcels bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property");

WHEREAS, Section 31(b) of the Purchase Agreement provides in consideration for American Star granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agrees to seek, design, and build a road through the Primus Property to provide vehicular and pedestrian access connecting the Primus Property to the Adjacent Property (the "Connection");

WHEREAS, Section 13(a) of the Purchase Agreement provides that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star and that such arrangement is to be memorialized in a recorded instrument;

WHEREAS, KKMC and 211 later transferred the Adjacent Property to their affiliated company, Assignee, and Assignee currently owns the Adjacent Property;

WHEREAS, prior to the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Purchase Agreement to JW Homes, LLC ("JWH"), and American Star assigned its rights, obligations, and interest under the Purchase Agreement to its affiliated entities, 211 and KKMC;

WHEREAS, on or about July 31, 2015, 211 and KKMC, as assignees of American Star under the Purchase Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Purchase Agreement;

WHEREAS, as contemplated by the Purchase Agreement, American Star contracted to purchase the ROFO Parcels, including the Adjacent Property, and prior to purchasing the ROFO Parcels, American Star assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC and 211, which purchased the Adjacent Property;

WHEREAS, PulteGroup, Inc. entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire assets and liabilities of JWH, including the Primus Property and related liabilities and obligations, such as the obligations to share proceeds related to the condemnation of any portion of the Primus Property and to build the Connection;

WHEREAS, pursuant to the APA, JWH conveyed the Primus Property to Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC");

WHEREAS, JWH, PHC, nor PulteGroup have sought, designed, or built the Connection, and PulteGroup and PHC have refused to honor the obligation to share condemnation proceeds as required under the Purchase Agreement;

WHEREAS, Assignors initiated an action in the Court of Common Pleas for Charleston County by filing a lis pendens, summons, and complaint naming PulteGroup, PHC, and JWH as defendants for claims relating to the Primus Property and the parties' rights, interests, and obligations under the Purchase Agreement, which action was assigned Civil Action No. 2018-CP-10-2175 (the "Legal Action");

WHEREAS, in the Legal Action, PHC has asserted a counterclaim against Assignors;

WHEREAS, Assignors and Assignee are affiliated entities and recognize that it is in their common interests to have one entity prosecute and defend the claims in the Legal Action;

NOW THEREFORE, for and in consideration of the payment of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignors and Assignee covenant and agree as follows:

1. **Recitals.** The Assignors and Assignee warrant that the foregoing recitals are true and correct and are an integral and material part of this Agreement, without which each would not have signed this Agreement.

2. **Transfer of Interests.** Assignors shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to the Purchase Agreement. Assignors further shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to any and all claims, counterclaims, actions, causes of action, lis pendens, appeals, defenses, demands, or offsets which Assignors have or may have against PulteGroup, PHC, JWH and their successors and assigns that arise out of or relate to the Legal Action, including those relating to the Connection, the Primus Property, and the Purchase Agreement. Assignors acknowledge and agree that Assignee is entitled to any and all recoveries and all amounts received from PulteGroup, PHC, JWH or their successors and assigns in connection with the Legal Action,

whether obtained through settlement, trial, or otherwise. Assignors further acknowledge and agree that Assignee shall have all control over the prosecution and defense strategy of the Legal Action and all claims, appeals, and defenses assigned hereunder, including without limitation, the right to decide upon the terms of any compromised resolution without approval from or prior consultation with Assignors; *provided, however, that* if requested by Assignee, Assignors shall cooperate with Assignee and provide such other and further documentation and/or witnesses as Assignee may request from time to time and which shall be necessary to prosecute the Claims.

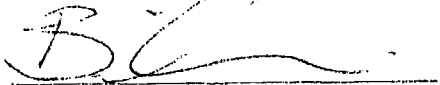
3. **Reinstatement.** Assignors and Assignee acknowledge that the parties will seek the dismissal and/or substitution of Assignors as parties in the Legal Action. If Assignors are not dismissed or substituted as plaintiffs in the Legal Action, then the transfer and assignment provided for in **Section 2** hereof shall be of no effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

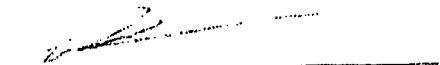
IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Claims and Contract to be executed and delivered as of the date first above written.

ASSIGNORS:

AMERICAN STAR DEVELOPMENT SC, LLC

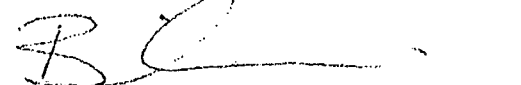


Name: Brian Harvin
Its: Member



Name: Pierce Cauthen
Its: Member

KKMC INVESTMENTS, LLC



Name: Brian Harvin
Its: Sole Member

211, LLC



Name: Pierce Cauthen
Its: Sole Member

ASSIGNEE:

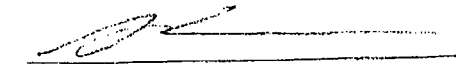
AMERICAN STAR SPE-2, LLC

By: KKMC Investments, LLC



Name: Brian Harvin
Its: Sole Member

By: 211, LLC



Name: Pierce Cauthen
Its: Sole Member

6-17-19
321pm

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	COURT FILE NO. 2018-CP-10-2175
	)	
AMERICAN STAR DEVELOPMENT	)	
SC, LLC; KKMC INVESTMENTS,	)	
LLC; AND 211, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PULTEGROUP, INC.; PULTE HOME	)	
CORPORATION, N/K/A PULTE	)	
HOME COMPANY, LLC; AND JW	)	
HOMES, LLC,	)	
	)	
Defendants.	)	

**THIRD AMENDED
LIS PENDENS**

FILED
2019 JUN 17 PM 2:15
JULIE J. FORSTROM
CLERK OF COURT

NOTICE IS HEREBY GIVEN THAT an action has been initiated and is pending in the Court of Common Pleas for Charleston County, South Carolina, by the above-named Plaintiffs, against the above-named Defendants, and that the real estate affected by such action is situated in the County and State aforesaid, and the following is a description thereof:

SEE ATTACHED EXHIBIT "A"

All lis pendens previously filed in this action are superseded and cancelled.

CHARLESTON, SC
June 17, 2019

E. Brandon Gaskins

E. Brandon Gaskins (State Bar No. 73274)
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
Telephone: (843) 579-7000
brandongaskins@mvalaw.com
ATTORNEYS FOR PLAINTIFFS

EXHIBIT "A"
PROPERTY DESCRIPTION

The following certain pieces, parcels or lots of land with the buildings and improvements thereon, situate, lying and being in Town of Mount Pleasant, Charleston County, South Carolina, being known and designated on a Plat made by Francis M. Harter III, S.C.P.L.S. of Atlas Surveying Chs, Inc., dated May 21, 2018, entitled "A FINAL PLAT OF THE OAKS AT PRIMUS TAX PARCEL NO. 578-00-00-004, 558-00-00-138 THROUGH 144, 558-00-00-310 & 311 PROPERTY OF PULTE GROUP THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA" recorded June 21, 2018 in Plat Book L18 at Pages 0336-0339 in the ROD Office for Charleston County:

<u>Lot No./Description</u>	<u>TMS No.</u>
"53"	577-05-00-207
"54"	577-05-00-208
"55"	577-05-00-209

Note: The said aforesaid plat is incorporated into this description by this reference, and the lot/piece has the size, shape, metes, bounds, location and dimensions as shown on the plat.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
American Star Development SC,	)	
LLC,	)	CASE NO. 2018-CP-10-02175
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
Pultegroup, Inc., et al,	)	
	)	
DEFENDANTS.	)	
	)	

September 21, 2018

Charleston, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh

A P P E A R A N C E S:

E. Brandon Gaskins, Esquire
For the Plaintiff

George Trenholm Walker, Esquire
For the Defense

John P. Linton, Jr., Esquire
For the Defense

Susan McDonald Gatty, Esquire
For the Defense

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING - Motion to Cancel Lis Pendens -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 25

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: American Star Development versus
2 Pultegroup. All right, this is a motion, counsel, a lis
3 pendens; is that correct?

4 MR. WALKER: Yes, Your Honor.

5 THE COURT: Is it your motion?

6 MR. WALKER: Yes, sir.

7 THE COURT: All right, sir. Be glad to hear from you.

8 MR. WALKER: Thank you very much. My name is Trenholm
9 Walker, and I am here with John Linton on behalf of the two
10 Pulte defendants. With us is Matt Raines who is from Pulte.

11 MS. GATTY: And I am Susan Gatty. I represent JW
12 Holmes which is another defendant who is not part of the
13 motion.

14 MR. WALKER: As Your Honor said, this is an action to
15 cancel a lis pendens. This complaint was filed in late May
16 of this year.

17 Pulte is the owner of property that was once owned by
18 the plaintiff, American Star. And the genesis of the
19 controversy is a contract that American Star entered with
20 our predecessor in title, JW Homes, back in 2015, February
21 of 2015.

22 And the first thing I want to do is just orient you to
23 the land and then we will get into the contract and the
24 basis of the claim and why we say it should be dismissed.

25 THE COURT: All right, sir.

1 MR. WALKER: This is property over in Mount Pleasant
2 that was in the county until it was annexed into Mount
3 Pleasant as part of this overall transaction in 2015.

4 And the status of the property today is reflected on
5 this aerial (display). And to give you an idea of the
6 relationship of the parcels we put in the subdivisions that
7 have been granted.

8 But to simplify, all of this property once was at
9 various times owned by American Star. American Star still
10 owns the parcel in the middle that is referred to in the
11 complaint as the adjacent land or the adjoining lands.

12 To your right is a parcel that it assembled and sold to
13 a developer called K-Hoff (ph). To the left is the parcel
14 in question, the long parcel that we are looking at. And
15 what you are seeing here is a final subdivision plat that
16 was approved by the Town of Mount Pleasant earlier this
17 year. And this is the subject property that has the lis
18 pendens on it (pointing).

19 And I have submitted to the court a copy of the final
20 plat and highlighted in yellow all of the lots that the lis
21 pendens is on.

22 And essentially the lis pendens covers - we refer to
23 the bottom - all of these lots except these two (pointing),
24 all of these lots (pointing), these lots (pointing) except
25 these two (pointing), and all of these lots (pointing).

1 The original lis pendens was on the initial parcels.
2 The current lis pendens is on over 40 of the lots.

3 Pulte is about to go to market and it is at market
4 right now. And as you can imagine this lis pendens is a
5 significant issue because it has created a huge problem with
6 the marketability of this property.

7 Now to back up a little more, if you would take a look
8 at the contract there really -- and the contract is attached
9 both to the motion -- or excuse me, the opposition that was
10 filed by American Star as well as the complaint. And this
11 is the basis of the claim for the lis pendens. The
12 complaint itself seeks a declaratory judgment that my client
13 Pulte has the obligation to construct a connector street
14 basically from American Star's property to the road system
15 here (pointing). It would be this small area right here
16 (pointing).

17 American Star's property is 95 percent a lake. All of
18 this outlined property that you see on the aerial, this dark
19 that you see (pointing), is a lake, not high ground.

20 American Star is claiming that under the contract that
21 was entered in 2015, which it is alleged Pulte assumed,
22 the -- Pulte has the obligation to design and construct a
23 road that leads to these roads (pointing). They are public
24 roads, the Town of Mount Pleasant.

25 Now what is really interesting in this is that the plan

1 that we see here, the lot plan, was part of the site plan
2 that was submitted by the plaintiff to the Town of Mount
3 Pleasant without the connector road, and the connection road
4 was never shown.

5 It was not shown in the site plan. It was not shown in
6 the sketch plan. It was not shown in the preliminary plan.
7 It was not shown in the -- preliminary plat but not shown in
8 the final plat.

9 The second basis for the lis pendens is you will see a
10 red area down here (pointing). And this is land that the
11 Town of Mount Pleasant has notified the public it is going
12 to be the extension of what is known as Billy Swails
13 Boulevard. It is Hungryneck and Billy Swails. It ends
14 right here across from this access (pointing). The Town has
15 given notice that it intends to acquire the right-of-way.

16 The first portion of this that is in the dark red has
17 already been acquired by the Town. And that is separated
18 from the lots by essentially a little open space area which
19 is a buffer between the lots and the future Billy Swails.

20 But if you go to the contract the contract says in
21 Paragraph 32 or provides in Paragraph 32 -- excuse me
22 thirty ---

23 THE COURT: I do not have that contract in front of me
24 for some reason. Do you have an extra copy I can look at,
25 please?

1 MR. GASKINS: Your Honor, it is -- I am sorry to
2 interrupt, but it is attached to the memorandum that we
3 submitted and was handed up to your law clerk earlier.

4 THE CLERK: Okay. I read a memorandum from you
5 yesterday.. To be honest with you I didn't read all of the
6 attachments to it.

7 MR. WALKER: It is way at the back of the contract,
8 Your Honor.

9 THE COURT: Exhibit A?

10 MR. WALKER: Yes, sir.

11 THE COURT: All right, sir, what paragraph am I looking
12 at?

13 MR. WALKER: There is thirty-one on Page 14 of the
14 contract.

15 THE COURT: All right, sir.

16 MR. WALKER: It is 31(B) that says in consideration for
17 granting the right of first offer and regardless of whether
18 the buyer and seller execute a contract for the purchase and
19 sale of the RFO parcels - and that would be the land that is
20 the lake, the lake land - buyer -- and that was JW Homes;
21 but let's assume for purposes of this argument it is Pulte,
22 my client. Agrees the access road, access road, through the
23 property not including the RFO parcels, to be constructed by
24 buyer and the property shall be designed and constructed
25 under standards applicable to public roads to provide

1 vehicular and pedestrian access to connect the property to
2 the ROFO parcel. And then there is the TMS number.

3 The connection. Buyers agrees that this connection
4 will be depicted on buyer's sketch plan for the property, as
5 distinguished from any sketch plan applicable to the
6 adjoining parcels, that is ultimately approved by the Town
7 and shall be designed and constructed as a continuation of
8 the access road serving the property.

9 It goes on to say that in Subpart C which is on the
10 next page near the bottom of Subpart C it says that if any
11 of these lots -- because this site plan had already been
12 submitted by American Star, not by my client, by American
13 Star to the Town. But it said if the connection road takes
14 any of these lots then at closing, at closing, there would
15 be a deduct of 114,000 per lot that was needed to construct
16 that street at closing.

17 Then it goes down to "D" to talk about when it might be
18 accessed. And the last sentence is also very important:
19 Buyer will have the right to block access through the
20 connection. Buyer - we are assuming for purposes of this
21 motion is Pulte - has the right to block access through the
22 connection until the ROFO parcels have paved streets that
23 are being used by normal passenger traffic in connection
24 with the purchase and sale of homes or in connection with
25 normal residential use.

1 Well, obviously we are a long way from having any homes
2 on this lake. And even if the road were constructed there
3 would be no obligation to open it.

4 And also I would like to point out, Your Honor, that
5 the only high ground that touches my client's property is
6 adjacent to only two lots, 54 and 55.

7 So here is our motion, Your Honor. The contract itself
8 doesn't mention the word easement. The complaint doesn't
9 mention the word easement.

10 The obligation in the contract is to show or depict the
11 connection on the sketch plan to design and construct the
12 road. There is no conveyance of an interest in property.
13 In fact, the purchase contract -- and I don't want to get
14 bogged down on all the terms.

15 But the purchase contract says it will be the property
16 will be conveyed free and clear of all liens and
17 encumbrances, charges against the land, with normal
18 language, except for the permitted exceptions. And the
19 permitted exceptions don't mention anything dealing with
20 this connector road or that it is an easement.

21 The statute governing lis pendens and the case law
22 requires that to sustain a lis pendens the plaintiff must
23 have an interest in the title.

24 The beginning language of 15-11-10 says in an action
25 affecting the title to real property. The plaintiff's

1 action in this case does not affect the real property.

2 They are not seeking to declare an easement. They are
3 seeking to adjudicate that my client has the obligation to
4 design and construct this connector street somewhere in here
5 (pointing) to this circular road that is a public road to
6 the Town of Mount Pleasant.

7 But regardless, they have not asserted any type of
8 interest in real property. Instead they have put a lien --
9 or a lis pendens on every lot, on the tail end probably 20
10 lots in the far end of the subdivision. And the only thing
11 we can think of is clearly is to gain leverage over our
12 client because they are going to market.

13 There was no contention by the plaintiff that Pulte had
14 the obligation to construct this road until say within six
15 months of the filing of the action.

16 But the legal issue before the court -- that is just
17 background. The legal issue is there is no interest in the
18 real property now.

19 The plaintiff has gone through several imaginative
20 arguments as to how it is an interest because they say,
21 well, their folks ultimately will have access.

22 Well, we would say that is not ripe yet. They haven't
23 built any houses. They haven't even filled in the lake. I
24 mean they have no -- they can't command that we construct it
25 and open it.

1 But it is not an action on an interest in real
2 property. And the fact that we had an obligation to
3 construct is different from an interest in real property.

4 In fact, if you look at the contract the lawyers were
5 very meticulous that they were not creating an interest in
6 real property.

7 So that is our case as to number-one basis for the
8 easement, which is the contractual obligation to design and
9 construct the connector street.

10 The second basis for this lis pendens is that the
11 contract in Paragraph 13 -- and I think Your Honor has it
12 before you. It is on Page 9, Your Honor. About a third of
13 the way down, condemnation.

14 And the second basis for the lis pendens is pitched on
15 Paragraph 13(A). And I won't belabor that and read the
16 whole thing.

17 The essence of that paragraph is that the buyer agreed
18 that should any of the sold property - and that would be the
19 property outlined in yellow - if any portion of that were
20 condemned by the Town for Billy Swails then assuming my
21 client stepped in the shoes of the interim buyer then my
22 client would have the obligation to pay 50 percent of the
23 net condemnation proceeds to Mr. Gaskins' client.

24 Again the contract is pretty clear that it is a right
25 to proceeds which is personalty, not a right to the title of

1 the property or an interest in the real property.

2 The plaintiff makes the argument that they are a
3 condemnee and cites the condemnation statute which clearly
4 we would say refutes their contention because it says that a
5 condemnee is a person with an interest in the real property.
6 It could be a leasehold. But not somebody who is entitled
7 to proceeds.

8 It would be tantamount to a real estate agent filing a
9 lis pendens because they have a commission from the sale of
10 the property. That is a right, contractual right; but it is
11 not an interest in real property.

12 The plaintiff in this case says, well, we don't have
13 any security. There is no obligation that it have security
14 for the -- for that contractual right. They can sue.

15 The contract did contain a provision, if you go to the
16 very end of that paragraph that we were looking at, 13A,
17 Your Honor, it did say that the parties shall memorialize
18 seller's interest in the condemnation proceeds by means of a
19 recordable instrument the form of which is to be agreed upon
20 during the buyer's inspection period and such instrument
21 shall be signed by the parties and recorded at closing.

22 Well, the buyer -- I mean, excuse me, the seller, the
23 current plaintiff, never insisted on it. Didn't do it.
24 There was never a recordable instrument that was agreed to.
25 There was no fight over it. No instrument has been recorded

1 because it was never agreed to and signed.

2 Nor is there any claim in this case for a specific
3 performance. Which would be a tough one to do because this
4 says it is to be recorded before closing. But in any event,
5 the ultimate right itself is to the proceeds and not to the
6 land.

7 And so for those reasons, Your Honor, we say that this
8 lis pendens which is filed on all of these properties, on
9 these 40 something lots, that it should be canceled, that
10 that doesn't prejudice the plaintiff at all.

11 They have claimed damages. They claim that if we don't
12 build this road this property is going to be diminished,
13 their lake is going to be diminished in value.

14 Well, if they have a right to damages they can't get
15 specific performance. The law is clear on that. And we
16 will get to that in another motion.

17 But there is no prejudice. They can still sue for
18 damages. And they had no right in the first place. And
19 they can sue us for any losses as a result of connecting the
20 road. And we have a ton of defenses to that, but we don't
21 get to them in this motion because this motion concentrates
22 on whether they have any interest in the real property.

23 Thank you, Your Honor. Mr. Linton is going to handle
24 the reply argument.

25 THE COURT: All right. Thank you.

1 All right, sir. Let me ask you on what basis do you
2 feel like you have the right -- I understand there are
3 potential fiats that may be involved, but to place a lis
4 pendens on the remaining lots which clearly would not be
5 involved in any alleged connector road whatsoever.

6 MR. GASKINS: Yes, Your Honor. And I will address
7 that. If you don't mind I think the best way to do that ---

8 THE COURT: If you will address it now I would
9 appreciate it.

10 MR. GASKINS: Yes, Your Honor. So the lots that would
11 not serve as a site for the connection the lis pendens has
12 been filed on -- concerning those properties. Because as
13 Mr. Walker stated, my client has an interest in the proceeds
14 from a condemnation, a potential condemnation by the Town of
15 Mount Pleasant for this connection -- or for the extension
16 of Hungry Neck Boulevard to Billy Swails Parkway.

17 And this is the property in question (pointing). This
18 is the Billy Swails Boulevard, Phase 4(B) project area
19 (pointing). And this is the Primus property that is in
20 question (pointing). This is my client's adjacent property
21 (pointing).

22 And as you can see, this portion of the development is
23 within the project area (pointing). After the final plat
24 was approved we amended the lis pendens to take out this
25 portion (pointing) of the development. Because we will

1 concede that we do not have an interest or -- an interest in
2 that property.

3 However, this is different. And I think it is
4 important to note that the test is not whether a party
5 filing a lis pendens has an interest in the property. That
6 is not the test.

7 The statute says, Section 15-11-10, that you have a
8 right to file if the action affects the title to real
9 property. Not that you have an interest in it, not that you
10 own it, but if the action affects title to real property.

11 And courts, South Carolina courts, interpreting this
12 provision have stated it is not limited just to direct
13 actions affecting ownership or affecting title; but they
14 also include those are which are brought to establish an
15 equitable estate's interest or right in specific real
16 property or to enforce any lien, charge, or encumbrance
17 against it.

18 And that is effectively what this is, it is an
19 encumbrance on that property. It is a claim on that
20 property. And this lis pendens serves the important
21 function of putting potential purchasers and potential
22 condemnors on notice of our interest.

23 That interest attaches to the property, therefore it
24 affects the title to the real property.

25 So Mr. Walker repeatedly stated, well, they don't have

1 an interest, they don't have an interest. We do have an
2 interest in the proceeds, but -- and that interest attaches
3 to the property and therefore it affects real property and
4 it is appropriate under the lis pendens statute, Your Honor.

5 THE COURT: Okay, sir.

6 MR. GASKINS: And I think it is very important -- now
7 Mr. Walker said, well, this is being done for leverage.
8 That is not true. This is being done to protect my client's
9 right and to protect potential purchasers.

10 If there are homebuyers or other companies who are
11 going to develop that, they need to know that. So this lis
12 pendens puts them on notice and protects my client's right
13 if they proceed with purchasing that property.

14 So this is not about leverage. This is about
15 protecting rights and protecting potential purchasers which
16 is the purpose of the lis pendens statute.

17 Turning to the connection. Regardless of whether the
18 complaint calls it an easement or not, that is effectively
19 what we are seeking. We are seeking specific performance of
20 a connection from this property (pointing) to that property
21 (pointing), to allow my clients to use that connection, to
22 use that land. That is the definition of an easement.

23 In the case law in South Carolina it is clear that an
24 easement is an action affecting title to property. Pond
25 Place Partners which is cited in the memorandum. So we

1 clearly have our action with regards to specific performance
2 for the connection and the access road affects title to
3 property and is appropriate.

4 Mr. Walker makes a lot of statements; well, this is a
5 lake. But that is really immaterial. My clients intend to
6 fill that lake as a non-jurisdictional wetland and develop
7 it or sell it to a developer. And their failure to have
8 access has a real impact on them. That is what this is
9 about.

10 And there's allusions to, well, this should have
11 happened at closing or this should have been recorded at
12 closing. And that is a good point.

13 That reminds me, on the condemnation issue Section 13
14 of the contract says this -- your right to the proceeds
15 shall be recorded. Recorded. An instrument recorded with
16 the register of deeds. That clearly affects the title to
17 the property.

18 But going back to Mr. Walker's arguments, well, this
19 should have happened at closing; those are arguments that go
20 to the merits of the action. Maybe they prevail. Maybe
21 they don't. But they are really immaterial to the issue
22 before you today, Your Honor.

23 THE COURT: Let me ask you this. Are there any parcels
24 that you placed liens on that are unassociated with any
25 supposed connector road or any parcel that would be subject

1 to this possible condemnation?

2 MR. GASKINS: No, sir. And I want to caveat that. I
3 am not -- I am not a dirt lawyer. So we specifically tried
4 not to ---

5 THE COURT: Well, you filed something affecting dirt,
6 so I want to -- yeah ---

7 MR. GASKINS: Yeah.

8 THE COURT: Because it looked to me initially
9 regardless of the merits of the motion from the other side
10 from Pulte that there was a significant number of lots
11 unassociated with any connector road or unassociated with
12 any condemnation. I may be wrong, because I haven't studied
13 it. But it just seemed like there were.

14 MR. GASKINS: Your Honor, if it was it was
15 unintentional. And I don't think they have alleged that.
16 We were specifically careful in identifying which lots ---

17 THE COURT: Okay.

18 MR. GASKINS: --- according to their new TMS
19 numbers ---

20 THE COURT: Right.

21 MR. GASKINS: --- were subject to the lis pendens. And
22 because it -- it does affect a large portion of the
23 property. So pretty much anything on the right side of the
24 property and everything on the back, because it is within
25 the project area. And then these lots (pointing) would be

1 potential sites for the connection.

2 So while it is 40 lots I believe all of those 40 lots
3 are within this project area or would serve as a site for
4 the connection.

5 THE COURT: Thank you, sir.

6 How do you address the contention that he raises that
7 in fact it was to be recordable form indicates that it does
8 affect the real property involved in this matter and whether
9 or not it is done that goes to the merits and not to the
10 interest involved?

11 MR. WALKER: The recording was that it had a right to
12 proceeds, not an interest in the real property. There's --
13 it just gave the world record notice of its right to
14 proceeds.

15 THE COURT: All right.

16 MR. WALKER: It is the same thing. It doesn't matter
17 whether it was recorded. We weren't going to record an
18 interest in the real property.

19 And we have got a case from I think it is Florida where
20 under very similar facts a party that had a contractual
21 right to half the proceeds from the sale of the property
22 filed a lis pendens. They said, no way. And I would be
23 happy to ---

24 THE COURT: Is their statute similar to ours?

25 MR. WALKER: Yes. And I can provide that at the end,

1 Your Honor.

2 THE COURT: Please do.

3 All right, sir.

4 MR. LINTON: Your Honor, John Linton. Nice to see you
5 again.

6 THE COURT: Good to see you.

7 MR. LINTON: Following up on that question you just
8 asked, one other important point about this sentence and the
9 contract that required a recording at closing is that the
10 plaintiffs have not moved to have anything recorded in this
11 case. They haven't moved to enforce anything that was or
12 should have been recorded. What they have brought a suit
13 for is to collect proceeds from a condemnation if one ever
14 happens.

15 And one of the most pertinent facts I think is that
16 they also sued JW Homes, the former owner of this property,
17 who has no interest in this property at all, for this same
18 reason.

19 It is obvious that these are personal claims because
20 they say that under this contract JW Homes transferred the
21 obligation to us. You can't -- and if there wasn't a
22 recording transfer I mean it is personal. And they have
23 alleged that as to JW Homes as an alternative claim.

24 And as to your question about the parcels and which
25 ones are covered by this potential condemnation what they

1 have shown you is a project area which was at one time
2 defined. What you see here in this red (pointing) for Billy
3 Swails Extension is what the DOT has determined is the
4 preferred path. This project has progressed beyond just
5 defining a project area. And it is very obvious that this
6 preferred path that has been decided was done with great
7 respect for the lots that Mount Pleasant has already adopted
8 an ordinance and approved this subdivision plat so that
9 these lots could be sold.

10 And so the idea that, oh, any of this property could be
11 subject to a condemnation one day is really not in tune with
12 the current facts about where this connection road or this
13 extension is planned for.

14 You also heard a lot of discussion from Mr. Gaskins
15 about what the complaint essentially is; it is basically an
16 easement, it is basically interest in property and that our
17 South Carolina statute for lis pendens says it just needs to
18 be affecting the title and so it was basically an easement,
19 we might as well get to keep a lis pendens on 46 parcels.

20 But the lis pendens statute - and we cited some cases
21 in our motion about this - is an extraordinary act having a
22 lis pendens on a piece of property. It ties up the whole
23 thing.

24 And our courts have said that it needs to be strictly
25 construed, the language of that statute. And it says

1 affecting title to real property. A personal interest in
2 condemnation proceeds doesn't affect title.

3 And what they are saying is we owe them damages or we
4 need to construct a road on our property. They are not
5 saying and they nowhere allege that they have an easement
6 over that. In Mount Pleasant the roads in a subdivision are
7 deemed to be public roads.

8 They are saying we should build them a road on our
9 property. They are not saying that they have an easement on
10 our property. And they have alleged a damages claim for
11 that as well.

12 And so for those reasons if you look at the complaint
13 instead of what it might essentially be it is very clear
14 that there is no interest in real property -- or title to
15 real property that has been alleged in this case or that
16 they are seeking.

17 So for that reason we would ask the court to grant the
18 motion and cancel the lis pendens in full.

19 THE COURT: All right. Thank you, sir.

20 MR. GASKINS: Your Honor, may I respond very briefly?

21 THE COURT: Yes, sir, you may.

22 MR. GASKINS: With regards to issues of what the road
23 is going to be and what DOT has approved that is entirely
24 speculative and it is not in the record. And if that is the
25 fact then the course of action is to file a dispositive

1 motion because the matter is moot. They haven't done that.

2 What we have is an action affecting interest -- or
3 affecting title to that property. And that interest
4 attaches to the property so it affects title.

5 And then, just to be clear, the action for the related
6 to the condemnation proceeds is not a claim for money
7 damages; it is a declaratory judgment action for the court
8 to declare our rights under Section 13(A) which says we have
9 a right to record this instrument and let the world know of
10 our interest in the future condemnation proceeds.

11 So that is the nature of the action, not a claim for
12 money damages.

13 MR. LINTON: Your Honor, the prayer for relief says
14 that it is a declaratory judgment. And it says that we have
15 an obligation to share with plaintiffs the proceeds from any
16 subsequent condemnation of the premise property or any
17 portion thereof.

18 It doesn't say we have an obligation to record an
19 instrument or that they have any interest in our title.
20 They say they want a DJ that we have to pay them. And that
21 is not an interest in real property and is protected under
22 the lis pendens statute.

23 THE COURT: All right. Thank you, gentlemen.

24 Let me read through these memoranda again.

25 Do you have that case from Florida?

1 MR. WALKER: I do. And I was looking at it, Your
2 Honor. And in that -- this case -- and I will provide it to
3 Your Honor. I still think it is dispositive -- or helpful.

4 The contract said that there would be no lien in the
5 real property. And we think it is similar here when they
6 sold it free and clear and didn't list it as a permitted
7 exception.

8 THE COURT: All right, sir.

9 MR. WALKER: And I will provide a copy to opposing
10 counsel.

11 THE COURT: Please do.

12 MR. WALKER: I have got it. Thank you, Your Honor.

13 THE COURT: Yes, sir. Thank you, gentlemen.

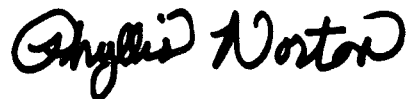
14 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on September 21, 2018.

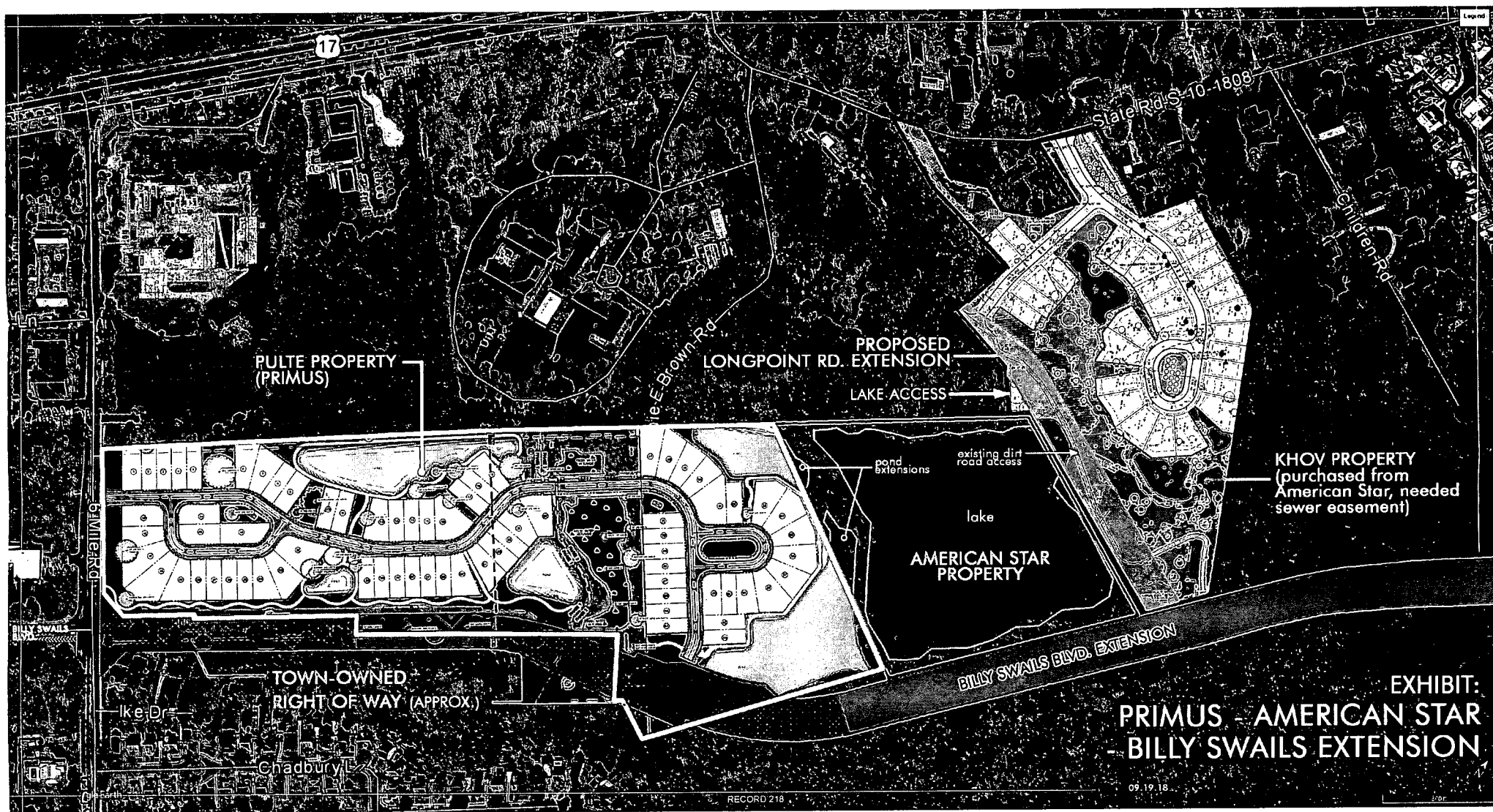
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: January 5, 2019

Certified Transcript Provided For: E. Brandon Gaskins
Certification Reference #2019-0105 Original



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-002277

American Star Development SC, LLC; KKMC Investments, LLC; and
211, LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC;
and JW Homes, LLC..... Defendants,

Of which American Star Development SC, LLC is the..... Appellant,

And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

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Charleston, South Carolina

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