

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

CASE NO.: 2019-000516

RECEIVED

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SC Court of Appeals

Palmetto Air Plantation Homeowners Association, Inc., ...Respondent

vs.

Kim E. Bevier, ...Appellant

RECORD ON APPEAL

Thomas E. Player, Jr.
PLAYER & MCMILLAN, LLC
305 North Main Street
Post Office Box 3690
Sumter, South Carolina 29151-3690
Telephone: (803) 775-2306
Facsimile: (803) 436-5960
Email: tommyplayer@playermcmillan.com
ATTORNEY FOR THE APPELLANT

Steven S. McKenzie,
2 North Brooks Street
Manning, South Carolina 29102
Telephone: (803) 435-8847
Facsimile: (803) 435-8915
Email: smckenzie@ccmlawsc.com
ATTORNEY FOR THE RESPONDENT

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NUMBER: 2017-CP-14-00127
	)	
PALMETTO AIR PLANTATION	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER FOR PARTIAL
	)	SUMMARY JUDGMENT.
KIM E. BEVIER,	)	
	)	
Defendant.	)	

This matter came before the Court pursuant to Plaintiff's motion for partial summary judgment. The parties submitted memorandums in support of their positions and stipulated that the matter be heard without oral argument. After reviewing the memorandums, deposition testimony and the Court file, the Court would rule as follows regarding the Plaintiff's motion for partial summary judgment.

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of

litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." S.C. *Prop. & Gas. Guar Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove...*, 2012 WL 10890587 ... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services of a fact finder." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

FACTUAL BACKGROUND

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said

lots are subject to the aforementioned Covenants ." The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following:

"Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let 's go back to your contention that the Covenants-I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) - he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the

Defendant page 53, lines 5-25).

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---! guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 **do not run** with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants* § 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants* §§ 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the

Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants* § 8. Restrictive covenants will be enforced unless they are indefinite or contravene public policy. See *Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller* 459 S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98,217 5.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the**

Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated

11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26."; At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018). On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

The Court would find that the Defendant had actual and constructive knowledge of the Covenants. Therefore this Court grants partial summary judgment to the Plaintiff regarding the Defendant's contention and defense that the Covenants herein do not "run" with the lots he purchased from the Plaintiff because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC. As a result, the Covenants referenced herein are enforceable against the Defendant and the Defendant's contention that they are unenforceable against him is without merit.

For the aforementioned reasons, partial summary judgment is granted in favor of the Plaintiff.

AND IT IS SO ORDERED.

R. FERRELL COTHRAN, JR.
PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

December_____, 2018



Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier
Case Number: 2017CP1400127
Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2018-12-14 11:23:25 page 10 of 10

ELECTRONICALLY FILED - 2018 Dec 17 11:40 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
Palmetto Air Plantation	)	
Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	C/A NO. 2017-CP-14-00127
Kim E. Bevier,	)	
	)	
Defendant.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRCP. The Defendant seeks an Order of this Court amending or altering its Order of December 17, 2018.

Pursuant to Rule 59 (f) SCRCP, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Defendant, this Court has determined that its original Order dated December 17, 2018, is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: _____

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit



Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier
Case Number: 2017CP1400127
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2019-02-28 08:46:55 page 2 of 2

ELECTRONICALLY FILED - 2019 Feb 28 10:16 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	2017-CP-14-00127
	)	
Palmetto Air Plantation Homeowners Association.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TEMPORARY RESTRAINING ORDER
	)	
Kim E. Bevier,	)	
	)	
Defendants.	)	
_____	)	

This matter came before this court by way of a motion that was heard by the Honorable Ralph Ferrell Cothran, Jr. on June 6th, 2017. The plaintiff appeared and was represented by Steve McKenzie of the Clarendon County Bar. The defendant also appeared and was represented by Tommy Player of the Sumter County Bar.

The motion before the court was for a temporary restraining order restraining the defendant from operating in commercial business activities out of his home located within Palmetto Air Plantation with a physical address of 1144 Mullet Drive, Manning, SC. A temporary restraining order restraining the Defendant from allowing his dog (Bullmastiff) to roam at large on Palmetto Air Plantation and to stop said animal from excessively barking. For an order awarding temporary attorney's fees and costs. For such other relief the court may deem just and necessary.

The court has carefully considered the facts and arguments raised by the parties and orders the following:

That defendant must stop advertising his home or any rooms on his property for rent via Air B&B or any other channels of advertisement. That defendant must not sign any future contracts with boarders or take on any new boarders without the explicit permission of the Palmetto Air Plantation Homeowners Association. That all issues regarding the subject property including the defendant's dog (bullmastiff) shall be held in abeyance until final disposition of the case. That attorney's

fees will be held in abeyance until the final disposition of the case.

AND IT IS SO ORDERED.

June ____, 2017

The Honorable R. Ferrell Cothran
Chief Administrative Judge
Third Judicial Circuit



Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier
Case Number: 2017CP1400127
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2017-06-09 11:40:22 page 3 of 3

STATE OF SOUTH CAROLINA,)
COUNTY OF CLARENDON')
PALMETTO AIR PLANTATION)
HOMEOWNERS ASSOCIATION, INC)
Plaintiff,)
vs.)
KIM E BEVIER)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

MANNING, South Carolina

/ Steven S. McKenzie

Plaintiff/Attorney for Plaintiff

Dated: March 12, 2017

Address: STEVEN S. MCKENZIE
COFFEY & MCKENZIE
ATTORNEYS FOR THE PLAINTIFFS
2 N. BROOKS STREET
MANNING, SC 29102
803-435-8847 TELEPHONE
803-435-8915 FACSIMILE

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
PALMETTO AIR PLANTATION)
HOMEOWNERS ASSOCIATION INC.,)
Plaintiff,)
vs)
KIM E. BEVIER,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

**COMPLAINT
(Non-Jury)**

The Plaintiff herein complaining of the acts and omissions of the Defendant would show upon this Honorable Court as follows:

1. That the Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.
2. The Defendant is a citizens and residents of the County of Clarendon, State of South Carolina.
3. The Plaintiff would show that this Court has jurisdiction over the subject matter and persons/entities involved in this action and venue is proper.
4. The Plaintiff would show that it is a corporation existing solely for the purpose to secure the values and amenities for the homeowners of land within the development known as Palmetto Air Plantation.
5. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions

Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants

6. The Plaintiff would show that the Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants has been using his home in Palmetto Air Plantation for a commercial endeavor in violation of said of Covenants. The Plaintiff would show that the Defendant has been put on notice of his violations of the Covenants by the Plaintiff and he has refused to stop commercial activity on property owned by him in Palmetto Air Plantation for commercial activity. The Plaintiff is informed and believes that the Defendant has been renting his home/rooms out to overnight guest through a business owned by him known as Air B&B. The Plaintiff would show that said business activities are strictly prohibited by the Covenants.

7. The Plaintiff would show that the Defendant is the owner of large breed dog (bullmastiff). The Plaintiff has received complaints from homeowners within Palmetto Air Plantation that the Defendant's dog has been running at-large, unrestrained and excessively barking. The Plaintiff would show that it has asked the Defendant to restrain the dog and stop the excessive barking. The Plaintiff would show that the dog is still not properly restrained and continues to excessively bark in violation of Sections 5.10 and 5.11 of the Covenants.

FOR A FIRST CAUSE OF ACTION
TEMPORARY/PERMANENT
RESTRAINING ORDER PURSUANT TO
SCRPC RULE 65.

8. Your Plaintiff would show that it is entitled to an Order of this Court granting the following relief under South Carolina Rules of Civil Procedure Rule 65:

9. An Order Restraining the Defendant from conducting business activity On, from, near any property owned by him within Palmetto Air Plantation in violation of the Restrictive Covenants of Palmetto Air Plantation both temporary and permanently.

FOR A SECOND CAUSE OF ACTION
REMOVAL OF THE BULLMASTIFF DOG
FROM PALMETTO AIR PLANTATION

10. The Plaintiff would show that the Defendant have violated the covenants by allowing a large breed dog, bullmastiff, to roam freely upon the property known as Palmetto Air Plantation. The Plaintiff would show that the animal in question is a large dog and intimidates and scares the residents of Palmetto Air Plantation and that the continued running at large of the animal is in violation of State and County laws as well as the Covenants of Palmetto Air Plantation.

11. The Plaintiff would show that the aforementioned animal barks excessively and that the Defendant has been requested by the Plaintiff to remove the dog so as not to disturb the peaceful enjoyment of Palmetto Air Plantation by the animal of the owners of adjacent property.

FOR A THIRD CAUSE OF ACTION
ATTORNEY'S FEES AND COSTS

12. The Plaintiff would show that the Defendant is fully aware of his violations

of the Covenants as outlined in this Complaint. The Defendant has been asked to comply with all of the complaints contained herein. Said notice to the Defendant has been provided to him verbally and in writing.

13. The Plaintiff is informed and believes that he is entitled to both attorney's fees and costs for the necessity to bring this action to enforce the Covenants of Palmetto Air Plantation.

WHEREFORE, having fully set forth their grounds for relief, the Defendants pray that this Honorable Court inquire herein and grant it the relief requested above.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

April 12, 2017

BY: _____
Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
(803) 435-8915 (facsimile)
smckenzie@ccmlawsc.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

VERIFICATION

JOE WITT and , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me)
this 13th day of April, 2017)
[Signature])
Notary Public for South Carolina)
My Commission expires: 3/29/23)

[Signature]
Signature of Petitioner

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

PALMETTO AIR PLANTATION)
HOMEOWNERS ASSOCIATIONS, INC.)

Plaintiff,)

vs.)

KIM E. BEVIER,)

Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO: 2017-CP-14-00127

**AMENDED
SUMMONS
NON-JURY**

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers, Coffey & McKenzie, PA, at their offices, No. 2 North Brooks Street, Manning, South Carolina, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

By: _____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)
smckenzie@ccmlawsc.com

June 28, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
PALMETTO AIR PLANTATION)
HOMEOWNERS ASSOCIATION INC.,)
Plaintiff,)
vs)
KIM E. BEVIER,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

**AMENDED
COMPLAINT
(Non-Jury)**

The Plaintiff herein complaining of the acts and omissions of the Defendant would show upon this Honorable Court as follows:

1. That the Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.
2. The Defendant is a citizens and residents of the County of Clarendon, State of South Carolina.
3. The Plaintiff would show that this Court has jurisdiction over the subject matter and persons/entities involved in this action and venue is proper.
4. The Plaintiff would show that it is a corporation existing solely for the purpose to secure the values and amenities for the homeowners of land within the development known as Palmetto Air Plantation.
5. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions

Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants

6. The Plaintiff would show that the Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants has been using his home in Palmetto Air Plantation for a commercial endeavor in violation of said of Covenants. The Plaintiff would show that the Defendant has been put on notice of his violations of the Covenants by the Plaintiff and he has refused to stop commercial activity on property owned by him in Palmetto Air Plantation for commercial activity. The Plaintiff is informed and believes that the Defendant has been renting his home/rooms out to overnight guest through a business owned by him known as Air B&B. The Plaintiff would show that said business activities are strictly prohibited by the Covenants.

7. The Plaintiff would show that the Defendant is the owner of large breed dog (bullmastiff). The Plaintiff has received complaints from homeowners within Palmetto Air Plantation that the Defendant's dog has been running at-large, unrestrained and excessively barking. The Plaintiff would show that it has asked the Defendant to restrain the dog and stop the excessive barking. The Plaintiff would show that the dog is still not properly restrained and continues to excessively bark in violation of Sections 5.10 and 5.11 of the Covenants. The Plaintiff is informed and believes that the Defendant may have installed an underground electrical fence in an attempt to curtail the dog's traversing

unrestrained travels. The Plaintiff would show that any fence installed by any homeowner is governed by Article V. Section 5.16. and that any fence installed on property of a homeowner must be approved by the Architectural Control Committee. The Plaintiff would show that the Defendant failed to receive prior approval for any fence located on his property.

8. The Plaintiff would show that the Defendant was issued a Clarendon County Building Permit for his property on March 30, 2010. Article IV. Section 4.12 of the Covenants states in pertinent part "....within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plan previously submitted and approved by the Board." The Plaintiff would show that the Defendant submitted to the Board a landscaping plan (Paula Bishop) to the Board that was approved, but the Defendant has failed to implement the plan.

FOR A FIRST CAUSE OF ACTION.
TEMPORARY/PERMANENT
RESTRAINING ORDER PURSUANT TO
SCRCP RULE 65.

9. The Plaintiff realleges and would incorporate paragraphs one through eight above as if fully set forth herein.

10. Your Plaintiff would show that it is entitled to an Order of this Court granting the following relief under South Carolina Rules of Civil Procedure Rule 65:

11. An Order Restraining the Defendant from conducting business activity On, from, near any property owned by him within Palmetto Air Plantation in violation of

the Restrictive Covenants of Palmetto Air Plantation both temporary and permanently.

FOR A SECOND CAUSE OF ACTION
REMOVAL OF THE BULLMASTIFF DOG
FROM PALMETTO AIR PLANTATION

12. The Plaintiff realleges and would incorporate paragraphs one through eleven above as if fully set forth herein.

13. The Plaintiff would show that the Defendant have violated the covenants by allowing a large breed dog, bullmastiff, to roam freely upon the property known as Palmetto Air Plantation. The Plaintiff would show that the animal in question is a large dog and intimidates and scares the residents of Palmetto Air Plantation and that the continued running at large of the animal is in violation of State and County laws as well as the Covenants of Palmetto Air Plantation.

14. The Plaintiff would show that the aforementioned animal barks excessively and that the Defendant has been requested by the Plaintiff to remove the dog so as not to disturb the peaceful enjoyment of Palmetto Air Plantation by the animal of the owners of adjacent property.

FOR A THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LANDSCAPING
PER THE COVENANTS

15. The Plaintiff realleges and would incorporate paragraphs one through fourteen above as if fully set forth herein.

16. The Plaintiff would show that the Defendant has failed to abide the Covenants by failing to provide landscaping to the two lots owned by him. The Plaintiff would further show that the Defendant provided a landscaping plan to the Board that was

approved. The Plaintiff would show that the landscaping was to be in place on the Defendant's two lots within one year of the issuance of the Building Permit by Clarendon County. The Plaintiff would show that the landscaping should have been in place no later than March 30, 2011.

17. The Plaintiff would show that because of the failure of the Defendant to abide the Covenants in failing to landscape his two lots, the Plaintiff is entitled to a penalty of \$100.00 per day per lot from March 30, 2011 until the Defendant landscapes his lots in accordance with the plan he submitted to the Board. The Plaintiff would show that Article IV. Section 4.12 provides for a \$100.00 per day assessment per lot for the Defendant's violation of the Covenants.

FOR A FOURTH CAUSE OF ACTION
ATTORNEY'S FEES AND COSTS

18. The Plaintiff realleges and would incorporate paragraphs one through seventeen above as if fully set forth herein.

19. The Plaintiff would show that the Defendant is fully aware of his violations of the Covenants as outlined in this Complaint. The Defendant has been asked to comply with all of the complaints contained herein. Said notice to the Defendant has been provided to him verbally and in writing.

20. The Plaintiff is informed and believes that it is entitled to both attorney's fees and costs for the necessity to bring this action to enforce the Covenants of Palmetto Air Plantation. The Plaintiff would show that Article XII. Section 12.4 of the Covenants allows the Board to recover the attorney's fees and costs against the Defendant for his violation of the Covenants.

WHEREFORE, having fully set forth their grounds for relief, the Defendants pray that this Honorable Court inquire herein and grant it the relief requested above.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

June 28, 2017

BY: _____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
(803) 435-8915 (facsimile)
smckenzie@ccmlawsc.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation	)	
Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER to AMENDED COMPLAINT
	)	
Kim E. Bevier,	)	
Defendant.	)	

The Defendant, answering the Amended Complaint, alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.
2. Paragraphs 1, 2, and 3, are admitted.
3. Paragraph 4 is denied.
4. Paragraph five is admitted.
5. As to the allegations of Paragraph 6, this Defendant admits only so much as alleges that his said property has been leased for overnight guests and that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants.
6. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he

permits the dog to run at large and denies that the dog barks excessively.

The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the Restrictive Covenants. The defendant denies that the underground electrical fence is subject to approval by the Architectural Control Committee.

7. So much of paragraph 8 is admitted as alleges that a building permit was issued to the defendant in 2010. The defendant further admits that the covenants require that the foundation landscaping be accomplished within one year and that the lawn be improved with grass. The defendant admits that he has been unable to fully implement the landscaping plan referred to therein but has installed foundation landscaping and the property has grass.
8. The Defendant denies the allegations of Paragraphs 10, 11, 13, 14, 16, 17.
9. So much of paragraph 19 is admitted as alleges are implies that the defendant was informed that he violated the covenants. The defendant denies that he was fully informed of any such violations since the defendant denies that he has violated the covenants.
10. Paragraph 20 is and is denied.

As a Second Defense

(Lashes)

11. The relief requested in the complaint is barred by the Doctrine of Lashes.

As a Third Defense

(Lack of Standing)

12. The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

13. The defendant is informed believes that the corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

As a Fifth Defense

(Unenforceable Penalty)

14. The penalty alleged in the complaint is unenforceable since it is not reasonably related to any damages sustained by the plaintiff.

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

July 7, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150 \\
803-775-2306 (office)
803-436-5960 (fax)
tommyplayer@playermcmillan.com
Attorney for the Defendant Kim E.
Bevier

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation	)	
Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SECOND AMENDED
	)	ANSWER to AMENDED COMPLAINT
	)	and
	)	COUNTERCLAIM
Kim E. Bevier,	)	
<u>Defendant.</u>	)	

The Defendant, by way of Second Amended Answer to the Amended Complaint
and by way of Counterclaim alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.
2. Paragraphs 1, 2, and 3, are admitted.
3. Paragraph 4 is denied.
4. Paragraph five is admitted only to the extent it alleges that the
"Declaration of Covenants, Conditions and Restrictions Palmetto Air
Plantation Clarendon County, South Carolina" were filed as alleged and that
the defendant purchased two lots as alleged. The allegation that the lots are
subject to the alleged covenants is denied.
5. As to the allegations of Paragraph 6, this Defendant admits only so much
as alleges that his said property has been leased for overnight guests and

that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants in that his property is not encumbered by said Covenants and that if such covenants were valid such usage would not be violation thereof.

6. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he permits the dog to run at large and denies that the dog barks excessively. The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the terms of the Restrictive Covenants, if valid, which is denied. The defendant denies that the installation of an underground electrical fence would require approval by the Architectural Control Committee if said covenants were valid, which is denied.
7. So much of paragraph 8 is admitted as alleges that a building permit was issued to the defendant in 2010. The defendant further admits that the covenants, if valid, which is denied, require that the foundation landscaping be accomplished within one year and that the lawn be improved with grass. The defendant admits that he submitted the plan as alleged but has been unable to fully implement the landscaping plan referred to therein but has installed foundation landscaping and the property has grass.
8. The Defendant denies the allegations of Paragraphs 10, 11, 13, 14, 16, and 17.

9. So much of paragraph 19 is admitted as alleges or implies that the defendant was informed that he violated the covenants. The defendant denies that he was fully informed of any such violations since the defendant denies that he has violated the covenants.

10. Paragraph 20 is and is denied.

As a Second Defense

(Lashes)

11. The relief requested in the complaint is barred by the Doctrine of Lashes.

As a Third Defense

(Lack of Standing)

12. The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

13. The defendant is informed believes that the Plaintiff corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

As a Fifth Defense

(Unenforceable Penalty)

14. The penalty alleged in the complaint is unenforceable in that it is not reasonably related to any damages sustained by the plaintiff.

As a Sixth Defense

(Statute of Limitations)

15. The Claims of Plaintiff are barred by the three year Statute of Limitations contained in SC Code Sections 15-2-530(1) and 15-2-530(3).

As a Seventh Defense

(Statute of Frauds)

16. The claims alleged by the Plaintiff are barred by SC Code § 32-3-10(4) in that no writing signed by Defendant subjects his property to the alleged Restrictive Covenants.

As an eighth Defense and Counterclaim

17. The Plaintiff claims the right to impose assessments, penalties, damages and liens against Defendant's property as a result of alleged violations of the covenants mentioned in the complaint. Should it be determined that the covenants are valid and that any such assessments, penalties, damages and liens are appropriate, the Defendant seeks a declaratory judgment as to the amount which may reasonably be imposed.

As a Ninth Defense and Counterclaim

(Attorney Fees and Costs)

18. The Defendant seeks attorney fees and costs incurred in defending this action.

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

October 25, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 (office)
803-436-5960 (fax)
tommyplayer@playermcmillan.com
Attorney for the Defendant Kim E.
Bevier

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

PALMETTO AIR PLANTATION
HOMEOWNER'S ASSOCIATION, INC.

Plaintiff,

vs.

KIM E. BEVIER,

**NOTICE OF MOTION AND MOTION
FOR TEMPORARY RESTRAINING
ORDER PURSUANT TO
SCRCP RULE 65.**

Defendant.

TO: THE DEFENDANT, KIM E. BEVIER, ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, through its attorneys, Coffey & McKenzie, PA, of the Clarendon County Bar, will move before the Presiding Circuit Court Judge of the Third Judicial Circuit, on the _____ day of _____, 2017, at _____ County _____ Courthouse located _____ at _____ for an Order:

1. Restraining the Defendant from operating in commercial business activities out his home located within Palmetto Air Plantation with a physical address of 1144 Mullet Drive, Manning South Carolina;
2. Restraining the Defendant from displaying allowing his dog (Bullmastiff) to roam at large on Palmetto Air Plantation and to stop said animal from excessively barking;
3. For an Order awarding temporary attorney's fees and costs;
4. For such other relief the Court may deem just and necessary.

COFFEY & MCKENZIE, PA

April 12, 2017

BY: _____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
(803) 435-8915 (facsimile)
Smckenzie @ccmlawsc.com

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

PALMETTO AIR PLANTATION
HOMEOWNER'S ASSOCIATION, INC.

Plaintiff,

AFFIDAVIT OF JOE WITT

vs.

KIM E. BEVIER,

Defendant.

_____)
SWORN TO and before me this ____ day of April, 2017, the deponent sayeth as follows:

My name is Joe Witt. I am the President of the Board of the Palmetto Air Plantation Homeowner's Association, Inc.

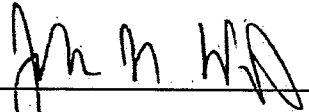
In late 2016, it came to the attention of the Board that the Defendant (Mr. Bevier) was operating a business through Air B&B out of his home. The sole purpose of the business is to rent out the home/rooms of Mr. Bevier located at 1144 Mullet Drive, Manning South Carolina. Said home and property owned by Mr. Bevier is located within Palmetto Air Plantation and is subject to the Restrictive Covenants in regards to all property located within Palmetto Air Plantation. The Defendant is well aware of this prohibition because he has been warned verbally by the Board and in writing by the Board through the Board's attorney. Since being warned, the Defendant has continued to rent out his home in violation of the Covenants. This past weekend (April 7, 2017 through April 10, 2017), the Defendant rented his home and/or rooms out of his home to guest.

This past Sunday (April 9, 2017) I personally observed the large breed dog (Bullmastiff) owned by the Defendant roaming free on the property under the supervision of Palmetto Air Plantation Homeowner's Association. The dog is very intimidating and can be aggressive. The Defendant has been warned verbally and in writing about the dog and the Defendant refuses to control the dog's barking and roaming.

As President of the Board of the Plaintiff in this matter, I would ask the Court for

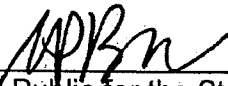
a restraining order that prohibits the Defendant from renting out his home for commercial purposes. I would ask that the Court restrain and enjoin the Defendant from allowing his dog to roam free on the property of Palmetto Air Plantation. I would ask the Court for an award of attorney's fees and costs for the necessity of bringing this action. I am attaching a copy of the Restrictive Covenants to my affidavit for review by the Court.

FURTHER the deponent sayeth not



Joe Witt

SWORN to and before me
this 13th day of April, 2017



Notary Public for the State of SC
My commission expires; 3/29/23

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation	)	
Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	MOTION TO AMEND/SUPPLEMENT
	)	
vs.	)	ANSWER to AMENDED COMPLAINT
	)	
Kim E. Bevier,	)	
Defendant.	)	

The Defendant, pursuant to Rule 15(a) SCRPC, hereby moves to amend the Answer to the Amended Complaint. The proposed Second Amended Answer to the Amended Complaint and Counterclaim and Defendant's Memorandum are annexed hereto and incorporated by reference. The substance of the amendment is to challenge the creation of, and burdening the defendant's property with, the restrictive covenants alleged in the complaint. Counsel certifies that a good faith effort to resolve this motion was made prior to filing.

October 25, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 (office)
803-436-5960 (fax)
tommyplayer@playermcmillan.com
Attorney for the Defendant Kim E.
Bevier

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NUMBER: 2017-CP-14-00127
	)	
PALMETTO AIR PLANTATION	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
KIM E. BEVIER,	)	
	)	
Defendant.	)	
_____	)	

TO: THOMAS W. PLAYER, JR., ESQUIRE, ATTORNEY FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through their undersigned attorney, will move before the Presiding Judge for the Third Judicial Circuit, at Manning, South Carolina on the tenth (10th) day after service hereof, or at such time and place as is convenient to the Court and counsel, for Judgment pursuant to Rule 12(c) and 56 of the *South Carolina Rules of Civil Procedure*. This motion is based upon the fact that there is no material issue of fact regarding the Defendant's assertion in his Second Amended Answer to Amended Complaint and Counter-claim that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina are not enforceable against the Defendant due to the fact that the Defendant's deed to the property does not apply to two lots purchased by the Defendant because the deed does not take exception to the restrictive covenants.

Said Motion is based upon the following:

1. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants").

Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ."

2. The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolinal were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."
3. The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";
4. Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on the date of closing, September 25, 2003. It States in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223.";
5. On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223.";
6. The Defendant served as a Board member for the Plaintiff at least twice since he purchased the property and just before this action started he was a board member of the HOA;

The Plaintiff would move for partial summary judgment as to the issue of, as a matter of law, does the absence of reference to the restrictive covenants in the deed from the Plaintiff to the Defendant make the restrictive covenants unenforceable as to the Defendant.

The motion will be supported by the pleadings of the parties, depositions, answers to discovery received, relevant South Carolina Statutory and Case law and any supporting affidavits filed prior to the Motion.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

STEVEN S. MCKENZIE
ATTORNEY FOR THE RESPONDENT, EVANS, SR.
2 NORTH BROOKS STREET
PO BOX 1292
MANNING, SOUTH CAROLINA 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)
smckenzie@ccmlawsc.com

Manning, South Carolina
June 13, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
Palmetto Air Plantation)
Homeowners Association, Inc.,)
Plaintiff,)
vs.)
Kim E. Bevier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-14-00127

DEFENDANT'S MOTION TO
RECONSIDER, MODIFY AND AMEND
JUDGMENT
RULE 59(e)

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the defendant hereby moves the court to reconsider and/or alter or amend its order granting partial summary judgment to the plaintiff, entered on December 17, 2018, upon the following grounds which were overlooked or not considered by the court:

1. The recording of a declaration of covenants, in and of itself, does not encumber property. The recording statutes exist to provide notice, actual or constructive. They do not validate or substitute for legal requirements for contract or property jurisprudence.
2. The conveyance of the property mentioned in the declaration, or any portions thereof, by the declarant without having limited any such conveyance, or one prior thereto, by the imposition of the covenants, is fatal to their existence as to those properties conveyed.
3. The doctrines of merger and unity of title prevent the creation of an encumbrance upon the property of the owner by the owner for the owner's benefit. An encumbrance upon the property can only come about in connection with a severance of title. Here there has never been a severance of title which included the imposition of the covenants.

The defendant incorporates by reference the memorandum submitted in opposition to the motion for partial summary judgment. For the reasons stated herein, the defendant submits that the order granting partial summary judgment should be modified so as to deny the motion for partial summary judgment.

December 21, 2018.

s/Thomas E. Player, Jr.
Attorney for the Defendant
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 (*office*)
803-436-5960 (*fax*)
tommyplayer@playermcmillan.com

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
PALMETTO AIR PLANTATION)
HOMEOWNERS ASSOCIATION, INC.,)
Plaintiff,)
vs.)
KIM E. BEVIER,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CASE NUMBER: 2017-CP-14-00127

**MEMORANDUM IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT.**

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt, Co., Inc.*, 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove...*, 2012 WL 10890587... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services

of a fact finder." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548,558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

FACTUAL BACKGROUND

The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants. The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded

in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let's go back to your contention that the Covenants—I want to get a clear understanding from you why the Covenants don't—are not applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) – he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the Defendant page 53, lines 5-25).

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---I guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my

property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

ARGUMENT

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 do not run with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants* § 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants* §§ 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants* § 8. Restrictive

covenants will be enforced unless they are indefinite or contravene public policy. See *Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller* 459 S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).**

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed

Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26."; At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary

Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018). On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

The Plaintiff would show that the Defendant had actual and constructive knowledge of the Covenants and would ask this Court for partial summary judgment as to the Defendant's contention that the Covenants do not "run" with the lots he purchased because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

STEVEN S. MCKENZIE
ATTORNEY FOR THE RESPONDENT, EVANS, SR.
2 NORTH BROOKS STREET
PO BOX 1292
MANNING, SOUTH CAROLINA 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)
smckenzie@ccmlawsc.com

Manning, South Carolina
July 19, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
Palmetto Air Plantation)
Homeowners Association, Inc.)
Plaintiff,)
vs.)
Kim E. Bevier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2017-CP-14-00127

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO SUMMARY JUDGEMENT**

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
Palmetto Air Plantation)
Homeowners Association, Inc.)
) **Plaintiff,**)
vs.)
Kim E. Bevier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2017-CP-14-00127

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
Palmetto Air Plantation)
Homeowners Association, Inc.,)
Plaintiff,)
vs.)
Kim E. Bevier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-14-00127

DEFENDANT'S MEMORANDUM IN
OPPOSITION TO SUMMARY
JUDGMENT

STATEMENT OF THE CASE

The complaint alleges a violation of real property restrictive covenants. The pleadings, as joined, raise the question as to whether Defendant's property is subject to the restrictive covenants. The Plaintiff's Motion for Partial Summary Judgment seeks a determination by the court that, as a matter of law, Defendant's property is subject to the restrictive covenants.

FACTS-TIMELINE

1. November 18, 1996. Plantation Air Plantation Subdivision is part of a 22.22 acre tract mentioned below and an 82.91 acre tract of land shown on a plat recorded in plat book A17 at page 6, conveyed to MidEastern Truck Wash, Inc. By Edward G. Gibbons on November 18, 1996, by deed recorded in the office of the Register of Deeds for Clarendon County (ROD) in Deed Book A-305 at Page 28 (Exhibit A). In connection with the purchase from Gibbons, a mortgage, recorded in book 287, page 208 was given to him.
2. May 9, 1997. The 22.22 acre tract was conveyed to MidEastern Truckwash, Inc. by Marion Moore, et al, by deed recorded in the office of the ROD in Deed Book A319 at Page 82 (Exhibit B). In connection with the purchase from Moore, a mortgage recorded in Book 301 at Page 297 to Joe P Moore, et al. was given to the grantors. The mortgage has the same legal description (22.22 acres) and was subsequently assigned to John C. Land, III, by assignment recorded in Book 301, at Page 297.
3. July 11, 2001, a document titled "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereafter DCCR) were filed

in the office of the ROD in Deed Book A435 at Page 223 (Exhibit C). MidEastern Truckwash, Inc. is the Declarant and designated in the ROD indexes as both the "from" and "to" party. It references Tax Map Parcel 223-00-02-005.

4. October 9, 2001, by deed recorded in book A-452 at page 144 (Exhibit D), MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern truck wash. The deed does not contain any restrictive covenants, nor does it incorporate by reference the DCCR. The deed contains covenants of general warranty. It states that the Moore mortgage, which was assigned to Land, and the Gibbons Mortgage are assumed by the grantee.
5. February 8, 2002. By mortgage recorded, in Book 465 at Page 134 (Exhibit D-1) Palmetto Air Plantation, LLC, mortgaged to Edward G. Gibbons the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern Truckwash. The mortgage contains no restrictive covenants, nor does it reference the DCCR. Palmetto Air Plantation, LLC, the mortgagor warrants (page three paragraph one) "Mortgagor is lawfully seized of said property in fee simple and has a perfect right to convey the same; there are no encumbrances or liens whatsoever on said property except this mortgage unless otherwise stated on the face hereof." No encumbrances are listed.
6. September 19, 2003, The Subdivision Plat of Palmetto Air Plantation Subdivision (Exhibit E) was recorded in Book E1008 Page 6 on. This Plat references Clarendon County Tax Parcel 140-00-05-063. It does not mention any restrictive covenants.
7. September 26, 2003, Lots 33 and 34 were conveyed to Defendant and his then wife by general warranty deed recorded, in Deed Book 509 at page 264 (Exhibit F). The deed does not mention restrictive covenants nor incorporate by reference the DDRC.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. To withstand a motion for summary judgment "in cases applying the preponderance of the evidence burden of proof, the non-moving

party is only required to submit a mere scintilla of evidence.” *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 163, (2012)

LEGAL DISCUSSION

1. DOCTRINES OF MERGER AND UNITY OF TITLE RENDER THE RECORDATION OF THE DECLARATION OF COVENANTS MEANINGLESS

- a. Restrictive covenants upon real estate are contractual in nature and, like any other contract, binds the parties thereto. (emphasis added) *Hynes Family Tr. v. Spitz*, 384 S.C. 625, 629, 682 S.E.2d 831, 833, (Ct. App. 2009) (Exhibit G). One cannot contract with himself. Recording of a Declaration of Covenants, without more, creates nothing. “It takes two to tango.” (in reference to creation of easement) *Davidson v. Robertson*, No. 2:13-CV-1972-DCN, 2015 WL 1056975, (D.S.C. Mar. 10, 2015) (Exhibit H)
- b. Like easements, restrictive covenants which run with the land, are servitudes of the property encumbered (the servient tenement) in favor of the property benefited thereby (the dominant tenement). There can be no doubt that, if the owner of the servient estate over which a right of way exists, acquires the fee-simple title to the dominant estate, the right of way is extinguished, because “The essential ingredient of a right of way would be wanting; it would not be a right of way over another’s land, but over his own land.” *Haselden v. Schein*, 167 S.C. 534, 166 S.E. 634, 635 (1932) (Exhibit I)
- c. The recording of the DCCR is the equivalent to the recordation of an easement from a grantor to himself. Recordation of an instrument serves no purpose other than providing constructive notice. They remained ineffective absent a conveyance subjecting the severed property to the covenants. Recordation does not elevate the covenants to any status beyond that absent the recording. MidEastern, at the time of recording owned all the property referenced in the declaration. Clearly, reserved unto MidEastern was the right to abandon the covenants, and ignore them completely and convey the property unencumbered by them.

- d. By general warranty deed dated October 9, 2001, recorded in book A-452 at page 144, (Exhibit D) MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern. Clearly, immediately prior to the conveyance, MidEastern owned fee simple title to the property and the ability to convey it unburdened by the DCCR. The deed does not mention restrictive covenants, nor does it incorporate by reference the DCCR. The deed contains covenants of general warranty though it states that the Moore mortgage which was assigned to Land and the Gibbons mortgage are assumed by the grantee. Following the conveyance it was owned in fee simple by Palmetto Air Plantation, LLC and not subject to the DCCR. Following the conveyance, Palmetto Air Plantation, LLC, mortgaged the property to Edward Gibbons. The mortgage contains a general warranty and specifically provides that the property is free of encumbrances. (Exhibit D-1 page 3, paragraph1) A general warranty in a deed of conveyance embraces the covenant that it is free from all encumbrances not excepted from its provisions. Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 210 (1965) (Exhibit J). A restrictive covenant running with the land is an encumbrance that violates a covenant against encumbrances 20 Am. Jur. 2d Covenants, Etc. § 95
- e. The deed to the Defendant (Exhibit F) contains covenants of general warranty with no exceptions. It does not mention restrictive covenants nor incorporate by reference the DCCR.

2. MERGER OF CONTRACT INTO DEED

- a. Defendant does not, by addressing this issue, concede that the contract or any other document related thereto or the closing of the purchase, other than the conveyance deed is admissible evidence and reserves, with the exception as to authenticity, all objections thereto.
- b. An agreement to convey real estate is merged into in the deed and the deed alone (emphasis added) regulates the rights and liabilities of the parties. Shoney's, Inc.

v. Cooke, 291 S.C. 307, 310, 353 S.E.2d 300, 302 (Ct. App. 1987) (Exhibit K)
Windham v. Riddle, 381 S.C. 192, 202, 672 S.E.2d 578, 583, (2009) (Exhibit L)

- c. In Windham, the property owner, Covington, by survey divided his property into two large tracts. Though shown as separate the on the survey, they shared a common irrigation pond and the equipment. He sold the first tract to Windham under an installment sale contract payable over a ten-year period. The contract allowed the purchaser immediate possession but provided for the retention of an easement by the seller for use of the irrigation equipment, pond and access thereto in connection with the operation of a farm on the tract retained. Before the payout of the installment sale contract, the other tract was sold to Riddle. Thereafter, upon payment of the installment sale contract, the property was deeded Windham. In the Windham deed, the same language as contained in the contract of sale was used, thereby reserving to the seller, Covington, the easements mentioned in the contract of sale though Covington no longer owned the adjoining property the easements were intended to benefit. Though Windham and Riddle used the irrigation system jointly for a considerable period of time before and after the deed to Windham, a dispute arose and Windham commenced a declaratory judgment action to have the court determine whether Riddle had an easement. The court ruled that because the wording of the Wyndham deed reserved the easement to the seller, Covington, who no longer owned the adjoining property, the easement, if any, was one in gross, rather than one appurtenant and, consequently, did not benefit Riddle. Though evident that the easements were intended to benefit both properties, Chief Justice Beatty, acknowledging that the decision may seem inequitable, recognized the importance of adherence to "current property jurisprudence." The jurisprudence adhered to and thereby dictating the outcome was three-fold. One, the terms of the contract of sale, merged into the deed and the deed controlled regardless of the intent evident from the terms of the contract; two, that, though all parties had knowledge of the contract and its terms, the easement was created, not by the contract, but by the deed; and, third, the easement reserved to the "seller" in the deed did not run with the land because it did not have a terminus on property of the seller, Covington, (a

requirement for an easement running with the land) at the time of the deed, the time of the easement's creation.

- d. If the contract were relevant, it would not be helpful to the Plaintiffs position. Paragraph four thereof states that the conveyance is subject to the DCCR. The following paragraph states "the Seller shall furnish to the Purchaser a general warranty deed to lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances." This is obviously inconsistent and renders the contract ambiguous, requiring an interpretation which least restricts the property. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980). Windham v. Riddle, 381 S.C. 192, 202, 672 S.E.2d 578, 583, (2009) (Exhibit L)

3. ESTOPPEL BY NOTICE

- a. In his memorandum counsel cites the case of Carolina Land Co. v. Bland, 265 S.C. 98, 105-06, 217 S.E.2d 16, 19-20 (1975) (Exhibit M) in support of his Summary Judgment position that "knowledge of the existence of the DCCR" equates to "bound by the covenants." The information imparted to the Defendant by Mr. Coffee was that the property, prior to the conveyance to the Defendant, was subject to the restrictive covenants. For the reasons detailed above, the property was not so encumbered, though, no doubt Mr. Coffee, believed them to be, and in turn, so informed the Defendant, but that erroneous belief is not a substitute for referencing them in the Deed to the Defendant. With due respect to counsel's able argument, the decision Carolina Land does not turn on the notice aspect but the fact that the recorded document, the survey which included the easement in question, was referred to, incorporated into, and the basis for the legal description in the deed from a predecessor in title. Notably, it was the deed referencing the survey plat not the recording of the plat which created the easement.

"We have held that where a deed describes land as is shown as a certain plat, such becomes a part of the deed. It is generally held that when the owner of land has it subdivided and platted into lots and

streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922. We also held in the cited case that the purchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots were purchased. We also held as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities. Carolina Land Co. v. Bland, 265 S.C. 98, 105-06, 217 S.E.2d 16, 19-20 (1975)" (Emphasis Added) (Exhibit M)

It is obvious that the outcome of Carolina Land would have been different had the survey plat been simply recorded but never referenced in a conveyance as is the case with the DCCR in question.

- b. Estoppel does not aid the Plaintiff but supports the Defendant's position.
"Estoppel by deed is a bar which precludes a party to a deed and his privies from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it" Hipps v. Hipps, 288 S.C. 564, 568, 343 S.E.2d 669, 672 (Ct. App. 1986) (Exhibit N)

CONCLUSION

The defendant submits that for the reasons stated herein, the Defendant's property was not encumbered by the DCCR and, therefore, the Motion for Partial Summary Judgment should be denied. Alternatively, the defendant submits that the motion should be denied because the case warrants further factual development.

s/Thomas E. Player, Jr.
Attorney for the Defendant
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 (*office*)
803-436-5960 (*fax*)
tommyplayer@playermcmillan.com

EXHIBIT A

State of South Carolina

County of Clarendon

DEED



KNOW ALL MEN BY THESE PRESENTS, THAT Edward G. Gibbons (hereinafter called "Grantor"), for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other consideration to the Grantor in hand paid at and before the sealing of these presents, by MidEastern Truck Wash, Inc. of Post Office Box 777, Manning, South Carolina 29102 (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. and by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 10.

Said lot being a portion of the lands conveyed to Edward G. Gibbons by deed of M. L. Eadon, Jr., dated 17 April 1984, recorded 31 January 1986 in the Office of the Clerk of Court for Clarendon County in Deed Book A-134 at Page 630.

Said lot being a portion of Tax Map Parcel Numbers 167-00-05-063-00 and 167-00-05-064-00.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

00053962 11/19/1996 B:A0305 P:28

Any reference in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: November 18, 1996

Signed, Sealed and Delivered
in Presence of:

Ricci Land
Janna L. Pless

Edward G. Gibbons (Seal)
EDWARD G. GIBBONS
(Seal)

State of South Carolina

County of Clarendon

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me November 18, 1996

Janna L. Pless (Seal)
Notary Public for South Carolina
My Commission expires: 4/6/2003

Ricci Land
Witness

00053962 W LPP
FILED, RECORDED, INDEXED
11/19/1996 11:36A
BK: A0305 Pg: 28
RecFeg: 10.00 DocSt: 291.20
CoRevSt: 123.20 Pages: 2
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

00053962 11/19/1996 B: A0305 P: 29

EXHIBIT B

State of South Carolina

County of Clarendon

DEED

KNOW ALL MEN BY THESE PRESENTS, THAT Marion Moore, Joe P. Moore, Marie M. Land and Virginia Sauls Threatt (hereinafter called "Grantor"), for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other consideration to the Grantor in hand paid at and before the sealing of these presents, by Mid-Eastern Truck Wash, Inc. of Post Office Box 777, Manning, South Carolina 29102 (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

All that piece, parcel or tract of land containing 22.22 acres, more or less, which is the remainder of a 53 acre tract of land described as follows:

All that piece, parcel or tract of land, with buildings and improvements thereon, lying, being and situate in the County of Clarendon, State of South Carolina, containing 53 acre, more or less, as per plat of G. T. Floyd, Surveyor, dated 14 December 1918, of what is known as the "Arnold, McLeod and King Tracts" bounded as follows: On the Northeast by Lot Numbers 3 and 10 on the aforesaid plat; on the Southeast by lands of W. M. Lewis; on the Southwest by lands of A. Weinberg and Lot Number 5 on the aforesaid plat; on the Northwest by lands of Richbough, from which it is separated by the Manning to Summerton Public Road.

Said premises having been conveyed to Marion Moore, Joe P. Moore, Marie M. Land and M. L. Sauls by deed of Marion Moore, Joe P. Moore and Marie M. Land, dated 6 March 1972, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-48 at Page 493. The said M. L. Sauls having conveyed his interest in the above described property to M. L. Sauls, III and Virginia Sauls Threatt by deed dated 25 September 1975, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-70 at Page 258.

Said premises being designated as Clarendon County Tax Map Parcel Number 140-00-05-044-00.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

00057225 06/13/1997 B:A0319 P:82

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any reference in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: May 9, 1997

Signed, Sealed and Delivered
in Presence of:

Debbie C. Leann
Sharon R. Ridgeway

Marion Moore (Seal)

Marion Moore

Joe P. Moore (Seal)

Joe P. Moore

Marie M. Land (Seal)

Marie M. Land

M. L. Sauls, III (Seal)

M. L. Sauls, III

Virginia Sauls Threatt (Seal)

Virginia Sauls Threatt

00057225 06/13/1997 B:A0319 P:83

State of South Carolina

County of Clarendon

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me May 9, 1997

Sharon Ridge
Witness

Duffie C. Ream (SEAL)

Notary Public for South Carolina

My Commission expires: *2-8-2000*

00057225 *JPR*
FILED, RECORDED, INDEXED
06/13/1997 04:49P
Bk: A0319 Pg: 82
Rec Fee: 10.00 St Fee: 156.00
Co. Conv. Fee: 66.00 Pages: 14
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

LOCATION
Map # Sub Map Plot # 1001 Sub Parcel
140 20 05 044 00
TE BY ASSESSOR

Norma A. Andrews

00057225 06/13/1997 B: A0319 P: 84

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME the undersigned, who being duly sworn, deposes and says:

Property located at _____, bearing Clarendon County Tax Map Parcel Number 140-00-05-044-00 was transferred by Marion Moore, Joe P. Moore, Marie M. Land and Virginia Sauls Threatt to Mid-Eastern Truck Wash, Inc. on May 9 1997.

The transaction was (check one):

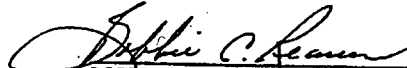
XX An arm's length real property transaction and the sales price paid or, to be paid in money or money's worth was \$ 60,000.00.

_____ NOT an arm's length real property transaction and the fair market value of the property is \$ _____.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. §12-24-10 et. seq. because the Deed is: _____.

As required by Code §12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One thousand and no/100 (\$1,000.00) Dollars or imprisoned not more than one (1) year, or both.


BOBBIE C. REAVES

SWORN to before me this _____ day of _____, 19 _____

_____(Seal)
Notary Public for South Carolina
My Commission Expires: _____

The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

00037225 06/13/1997 D:A0319 P:85

EXHIBIT C

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA**

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately 150 feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

W:\PPFILES\CORP\PALMETTOAIR\COVENANT.DOC

ARTICLE I
Definitions

Section 1.1 Adjoining Land shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 Annexation shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 Architectural Control Committee (ACC) shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 Architectural Guidelines shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 Assessments shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 Association shall mean the Palmetto Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 By-Laws shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 Palmetto Air Plantation shall mean and refer to the planned community created by this Declaration.

Section 1.11 Common Areas shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 Declarant shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

Section 1.13 Improvements shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 Licensor shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 Lot shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 Maintenance Fund shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 Members shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 Mortgage shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 Owner shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 Plat shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 Property shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II

The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

Section 2.5 Rules and Regulations. The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

- a. The Use of Open Space.
- b. The Use of Private Roads,
- c. Collection and Disposal of Garbage and Trash,
- d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
- e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
- f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 Ownership of Personal and Real Property for Common Use. The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 Implied Rights and Obligations. The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III

Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

The Architectural Control Committee shall

- 3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof
- 3.2. adopt architectural guidelines and programs consistent with covenants and restrictions.
- 3.3. inspect for compliance with these guidelines.
- 3.4. adopt procedures for the exercise of its duties.
- 3.5. maintain complete and accurate records of all actions taken.

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV

Architectural Guidelines and Rules

Section 4.1 Land Use. All Lots shall be used for residential purposes only and common recreational purposes ancillary thereto and for no other purpose. No Lot shall be used as a right-of-way, meet or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure except as herein provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hanger may not be constructed prior to the completion of the dwelling unless waived by the A/C and then limited to a one year completion deadline. Furthermore the accessory building or hanger shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore no airplane hanger shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association.

Section 4.2 Partition or Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replot any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 Commercial Businesses Prohibited. No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 Common Area. The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 Architectural Control. No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 Dwelling Size. Each single story dwelling on a Lot shall have a heated square foot area of 2,000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,500 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,500 square feet. All house/hangar combinations shall include a minimum of 1,500 square feet of heated living area, excluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family, one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

Section 4.7 Location. In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself the sole, sole and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including porches, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 Structure Material. Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 Kind of Home. No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 Driveways. Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 Drainage. No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 Continuity of Construction. All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred (\$100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; **PROVIDED HOWEVER**, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 Construction Traffic. Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 Hangar Specifications. Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V **Restrictions and Covenants**

Section 5.1 Failing to Comply. In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; **PROVIDED HOWEVER**, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 Maintenance. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 Toxic Disposal Prohibited. Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 Unsightly Materials Prohibited. No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 Outside Toilets. Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 Wall Hangings. An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

Section 5.9 Children. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 Pets. Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 Noise. No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 Electronic Equipment. No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 Satellite Dish. No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 Vehicles and Parking. No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

Section 5.15 Fuel Storage. It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 Fences and Hedges. The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 Signs. No signs of any character shall be erected, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 Clothes Lines. No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 Flag Poles. Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 Antennas. No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennas or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 Outdoor Lighting. One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

Section 5.22 Mail Boxes. Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 Swimming Pools. No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 Wells and Water Removal. No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 Access. There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 Amendments to Regulations. Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 Ponds and Waterways. Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI

Aircraft and Hangar Restrictions, and Parking

Section 6.1 Type of Aircraft. Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

Section 6.2 Airport Hangars. All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 Two or More Aircraft. If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 Unattended Aircraft. No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 Run-ups. "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 Stunt Flying. No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statutes, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 Speed Limits. Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 Taxi-Way Courtesy. Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 Commercial Business. No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

Section 6.10 Storing Parts. There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII

Runway Assurances and Operations

Section 7.1 Operation. Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 Complaints. As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 Control of Runway. The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair

Section 7.4 Withholding of Use. The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

- a) Who is in default in the payment of any assessment fee; or
- b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or
- c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII

Easements and Setbacks

Section 8.1 Setback Requirements. No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Claiborne County Planning Commission and Architectural Control Committee.

Section 8.2 During Construction. During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 Maintenance. In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX Insurance

Section 9.1 By the Declarant or Association. The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

Section 9.2 Liability Insurance by Declarant or Association. The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 By the Owner. It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 Aircraft Liability Insurance. Every Owner or user of an aircraft which is based on the Property shall provide the Licenser or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X

Maintenance Assessments

Section 10.1 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

- (a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.
- (b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.
- (c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.
- (d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.
- (e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.
- (f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.
- (g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 Effect of Non-payment of Assessment; Lien; Remedies of Association. Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

- (a) Assess a late charge of at least fifteen percent (15%) per delinquency.
- (b) Suspend the voting rights of the Owner during any period of delinquency.

(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:

The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 Subordination of the Lien. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI

Duration and Amendments

Section 11.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

Section 11.2 Amendments. So long as the Declarant owns twenty-five (25%) per cent of the un-sold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 Effective on Recording Any Modification or Amendment. Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII

Enforcement of Covenants

Section 12.1 Violations Deemed a Nuisance. Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available.

Section 12.2 Who May Enforce. Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 No Liability. No member of the Board or Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII

Expansion

Section 13.1 Reservation of Right to Expand. Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

Mary Ann Mann
George Chuck Brown

MIDEASTERN TRUCKWASH, INC.

Joe Witt
BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that she saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that she with the other witness above witnessed the execution thereof.

Mary Ann Mann
Witness

SWORN to before me this 11th
day of July, 2001

Brian A. Young
Notary Public for South Carolina
My Commission Expires: 4/4/11

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07/11/2001 03:40:50PM
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Rec Fee: 27.00 St Fee: 0.00
Co Conv Fee: 0.00 Pages: 21
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Reulah G. Roberts, Clerk of Court

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EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That, MidEastern Truckwash, Inc. the "Grantor" in the State aforesaid, for and in consideration of the sum of Five (\$5.00) Dollars, and the Assumption of a Mortgage to Edward G. Gibbons, dated 18 November 1996, recorded in Mortgage Book 287 at Page 208, having a balance of Ninety One Thousand Two Hundred Eighty One and 00/100ths (\$91,281.00) Dollars and the Assumption of a Mortgage, dated 9 May 1997, to Joe P. Moore, et al. recorded in Mortgage Book 301 at Page 234, assigned to John C. Land, III in Mortgage Book 301 at Page 297, having a balance of Thirty Seven Thousand One Hundred Eighty Six and 00/100th (\$37,186.00) Dollars, consideration paid to the Grantor by Palmetto Air Plantation, L.L.C., P. O. Box 777, Manning, South Carolina 29102 the "Grantee" has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee the following described property:

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.

Said premises having been conveyed to MidEastern Truckwash, Inc. by Deed of Edward G. Gibbons, dated 18 November 1996, recorded in the Office of the RMC for Clarendon County in Deed Book A-305 at Page 28. For Tax Map Parcel Number, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by

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lands of Alfred Blanding Estate; on the Northwest by lands of Ernest L. Rauber,
and lands of Ray and Rita Lamothe.

Said tract having been conveyed to MidEastern Truckwash, Inc. by Deed of
Marion Moore, et al. dated 9 May 1997, recorded in the Office of the Clerk of
Court for Clarendon County in Deed Book A-319 at Page 82.

The above tracts being designated as Clarendon County Tax Map Parcel No.
140-00-05-063.

Together with all and singular, the rights, members, hereditaments and appurtenances to the
said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said
Grantee, Palmetto Air Plantation, L.L.C., its Heirs and Assigns forever.

And the Grantor does hereby bind itself and its Heirs, Personal Representatives and Assigns,
to warrant and forever defend all and singular the said premises unto the said Grantee and the
Grantee's Heirs and Assigns, against the Grantor and the Grantor's Heirs and against every person
whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 9th day of October, 2001.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF

Carol P. Boelter
1st Witness
Marion Moore
2nd Witness

MIDEASTERN TRUCKWASH, INC.

BY: Joseph M. Witt
Joseph M. Witt, President

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named Grantor's sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME this
9th day of October, 2001.

Ray A. Hays (L.S.)
Notary Public for South Carolina

Caryl P. Buckles
1st Witness Sign Again

My Commission Expires: 4/4/02

W:\FILES\CORP\ALMETTO\DEED.DED

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Co Conv Fee: 141.35 Pages: 4
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

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EXHIBIT

D-1

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
26-2003 SEE MTGE BOOK 552, PAGE 42.

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
unc 204 SEE MTGE BOOK 586, PAGE 225

Lot #39
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
122-04 SEE MTGE BOOK 591, PAGE 23

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
22 Feb 2005 SEC MTGE BOOK 615, PAGE 95

Lot 36
FOR PARTIAL RELEASE OF MORTGAGE, RECORD
5/6/2005 SEE MTGE BOOK 628, PAGE 41

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
71-05 SEE MTGE BOOK 636, PAGE 19

100-465 P
104-103 (1-76 Acres)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
OUR RECORD
2-20-05 SEE MILE BOOK 664, PAGE 112

Lot #29
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11-4-2003 SEE MTGE BOOK 659, PAGE 83

Lot # 37 & 38
FOR PARTIAL RELEASE OF MORTGAGE RECORDED
11-12-05 SEE PAGE 17D

207-7-33)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
4-25-66 SEE MTGE BOOK 683 PAGE 79

SEE EXHIBIT 'A' - LEGAL DESCRIPTION ATTACHED HERETO AND MAKE A PLYT BELOW

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11/20/41 SEE MTGE BOOK 512 PAGE 72

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
3-7-06 SEE ANTGE BOOK 675, PAGE 38

STATE OF SOUTH CAROLINA }
County of CLARENDON }
MORTGAGE OF REAL ESTATE
TO ALL WHOM THESE PRESENTS MAY CONCERN: FALGUTIO AIR PLAYATION, 1775

Specialties referred to as Montague SENDS) GREETING:
Address: P.O. Box 111, KANAWHA, SC 29102

WHEREAS, the Mortgage is well and truly indented unto EDWARD C. CLARK, 511 S. MILLS STREET, MARION, SC 29102 (hereinafter referred to as Mortgagee), to be taken by the Mortgagee's preliminary note dated JANUARY 8, 2002 _____

is the sum of ONE HUNDRED THOUSAND FOUR HUNDRED TWENTY AND NO/100 DOLLARS

of principal and interest shall be due on SEPTEMBER 1, 2017

[illegible]

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
7/11/8

EXHIBIT 'A' - LEGAL DESCRIPTION

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 81.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.

For Tax Map Parcel Number and Derivation, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by lands of Alfred Blanding Estate; on the Northwest by lands of Ernest L. Rauber, and lands of Ray and Rita Lamothe.

Said tracts having been conveyed to PALMETTO AIR PLANTATION, INC., by deed of MidEastern Truckwash, Inc., October 9, 2001, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

The above tracts being designated as Clarendon County Tax Map Parcel No. 140-00-05-063.

LESS, AND EXCEPTING, HOWEVER, Lot 19, as shown on a plat prepared by DuValle W. Elliott, RPLS, drawn July 30, 2001, as recorded in the Office of said Clerk in Plat Book S-50 at page 599. Said lot 19 having previously been conveyed to Michael K. Huizenga and Judy Y. Huizenga by deed from MidEastern Truck Wash, Inc., and Joseph M. Witt, dated August 1, 2001, as recorded in the Office of said Clerk in Deed Book A-446 at Page 008.

det #45 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
12/21/6 SEE MTGE BOOK 465, PAGE 134

det #19 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
4/1/07 SEE MTGE BOOK 784, PAGE 834

000087274 B100465 P100135

FAWFFiles2002020095BRNLLC

det #16 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
7/16/07 SEE MTGE BOOK 1581, PAGE 2007

det #16 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11/14/7 SEE MTGE BOOK 123, PAGE 123

det #16 (1581 acres)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
5/16/07 SEE MTGE BOOK 1581, PAGE 2007

18. A default under this instrument or under any other instrument hereafter or hereinafter executed by mortgagee or mortgage shall in the opinion of mortgage constitute a default under any one or more of all instruments executed by mortgagee or mortgage.

IN WITNESS WHEREOF, mortgagee has hereunto set his Hand and Seal (and if mortgagee is or includes a corporation, it has caused this instrument to be executed, sealed by its corporate seal and delivered by its duly authorized officer.)
this 8TH day of FEBRUARY, 2002.

Signed, Sealed and Delivered
In the Presence of:
Hay P. Boyd, Jr.
April J. Gentry

PALMETTO AIR PLANTATION, LLC
BY: Joseph M. Witt (Seal)
JOSEPH M. WITT, MANAGING MEMBER (Seal)

(Seal)

STATE OF SOUTH CAROLINA, }
County of _____

Personally appeared before me
the within named

and made oath that he saw

sign, seal and as

set and deed deliver the within mortgage; and that he, with
witnessed the execution thereof.

SWORN to and subscribed before me

this

day of

. 20

(L. S.)

Notary Public for South Carolina
My Commission Expires _____

Hay P. Boyd, Jr.

STATE OF SOUTH CAROLINA, }
County of CLARENDON

Personally appeared before me THE UNDERSIGNED

and made oath that

s/he saw the within named PALMETTO AIR PLANTATION, LLC., A LIMITED LIABILITY COMPANY

~~MANAGING MEMBER~~ by JOSEPH M. WITT

as its MANAGING MEMBER and

~~MANAGING MEMBER~~ for and as the act and deed of the said

LIMITED LIABILITY COMPANY

~~MANAGING MEMBER~~ sign, seal and deliver the within mortgage, and that

S/HE

with THE SECOND WITNESS SUBSCRIBED TO ABOVE

witnessed the execution thereof.

SWORN to and subscribed before

me this

8TH

day of

FEBRUARY

. 2002

(L. S.)

Notary Public for South Carolina

My Commission Expires 8/14/07

Hay P. Boyd, Jr.

000037274
FILED, RECORDED, INDEXED
02/11/2002 03:16:28PM
Kkt00465 Pg100134
RecFee:10.00 St Fee:0.00
Co Conv Fee:0.00 Page:14
K M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

000067274 B:00465 P:00137

EXHIBIT E

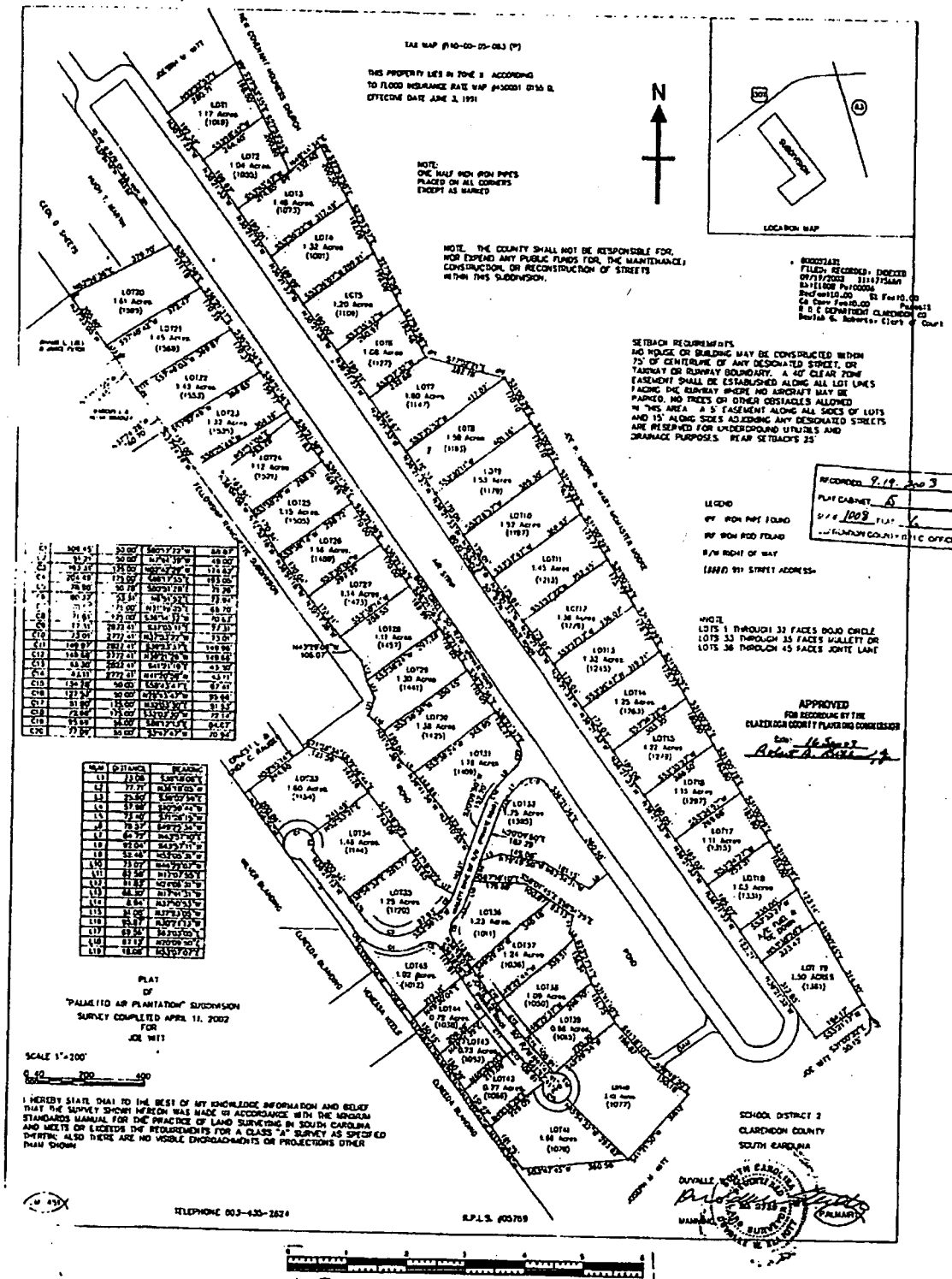


EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Palmetto Air Plantation, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Five and No/100ths (\$5.00) Dollars and other consideration to the Grantor paid by Kim E. Bevier and Susan S. Bevier, 706 Greene Street, Camden, South Carolina 29020, (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Kim E. Bevier and Susan S. Bevier, as joint tenants, with the right of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property to wit:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

F:\WPFILES\2003\40031902

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Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Kim E. Bevier and Susan S. Bevier as joint tenants, with the right of survivorship, and not as tenants in common, their heirs and assigns forever.

And the Grantor does hereby bind itself and its Heirs, Personal Representatives and Assigns, to warrant and forever defend all and singular the said premises unto the said Kim E. Bevier and Susan S. Bevier, their Successors and Assigns, against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 26 day of September, 2003.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Betty A. Clary
H. P. Buzell

PALMETTO AIR PLANTATION

By: [Signature] (Seal)
Its: [Signature]

000097869 B:A0509 F:00265

F:\WP7\FILES\2003\909030900r

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named Grantor sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

Sworn to before me this
26 day of Sept., 2003.

He P. Bond
Notary Public for South Carolina
My Commission Expires: 10-21-2007

Betty A. Thry

000097869 ✓
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09/26/2003 11:15:46AM
Bk:A0509 Pg:00264
RecFee:10.00 St Fee:226.20
Co. Conv Fee:95.70 Pages:4
R H C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is Lot 33 and 34, Palmetto Air Plantation, bearing a portion of Clarendon County Tax Map Number 140-00-05-063-00, was transferred by Palmetto Air Plantation to Kim E. Bevier and Susan S. Bevier on September 26, 2003.
3. Check one of the following. The deed is:
 - a. \$87,000.00 subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - c. _____ exempt from the deed recording fee because (See Information section of affidavit): _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$87,000.00.
 - b. _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - c. _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - a. Place the amount listed in item 4 above here: \$87,000.00
 - b. Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - c. Subtract Line 6(b) from Line 6(a) and place result here: \$87,000.00
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$321.90
8. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____
attorney

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 26
day of Sept., 2003.

H. P. Boyd
Notary Public for S.C.
My Commission Expires: 10-21-2007

W.C. Coffey, Jr.
Responsible Person Connected with the Transaction

W.C. Coffey, Jr.
Print or Type Name Here

000097869 B:A0509 P:00267

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
Palmetto Air Plantation)
Homeowners Association, Inc.,)
Plaintiff,)
v)
Kim E. Bevier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-14-00127

STIPULATION OF FACTS

The parties, by the signature of the attorneys below, submit to the Court this Stipulation of Facts for its assistance in consideration of the Plaintiff's Motion for Partial Summary Judgment. The stipulation is limited in the sense that the parties, by stipulating the accuracy of the statements and the authenticity of the documents mentioned herein do not concede their relevancy as to any particular issue.

1. The property in question is a portion of an 82.91 acre tract of land shown on a plat recorded in plat book A17 at page 6, conveyed to MidEastern Truck Wash, Inc. By Edward G. Gibbons on November 18, 1996, by deed recorded in the office of the Register of Deeds for Clarendon County (ROD) in Deed Book A-305 at Page 28 and a 22.22 acre tract conveyed to MidEastern Truckwash Inc by Marion Moore, et al, on May 9, 1997, by deed recorded in the office of the register of deeds for Clarendon County in Deed Book A319 at page 82.
2. In the connection with the purchase from Gibbons, a mortgage, recorded in Book 287, Page 208 was given to him.
3. In connection with the purchase from Moore, a mortgage recorded in Book 301 at Page 297 was given to Joe P Moore, et al. The mortgage has the same legal description (22.22 acres). This mortgage was subsequently assigned to John C. Land, III, by assignment recorded in book 301, at page 297.
4. On July 11, 2001, the restrictive covenants referred to in the complaint titled "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (DCCR) were filed in the office of the ROD in Deed Book A435 at Page 223. It references Tax Map Parcel 223-00-02-005.

5. By deed dated October 9, 2001, recorded in Book A-452 at Page 144, MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern Truckwash. The deed does not mention any restrictive covenants, nor does it incorporate by reference the Declaration of Covenants. The deed contains covenants of general warranty. It states that the Moore mortgage which was assigned to Land and the Gibbons Mortgage are assumed by the grantee.
6. By mortgage recorded February 8, 2002, in Book 465 at Page 134 Palmetto Air Plantation, LLC, granted to Edward G. Gibbons a mortgage using the acreage descriptions from the Gibbons and Moore deeds. The mortgage has covenants of general warranty and no reference to the DCCR or other restrictions.
7. Prior to and shortly before signing a contract to purchase the property, the Defendant met with Attorney W. C. Coffee Jr. During that meeting, the restrictive covenants were discussed.
8. On May 21, 2003, prior to signing the contract of sale W. C. Coffee, Jr., Esquire, wrote a letter to the Defendant and his now deceased wife enclosing a copy of the proposed contract of sale. In that letter, Mr. Coffee references the meeting and the Defendant's questions during the meeting regarding restrictive covenants.
9. On May 23, 2003, the Plaintiff and his then wife entered into a written contract for the purchase of lots 33 and 34. Paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, rights-of-way, and covenants, including those restrictive covenants dated 11 July, 2001, recorded in the office of the RMC for Clarendon County in that Deed Book A-444 at page 26" Paragraph 5, in part reads: "the Seller shall furnish to the Purchaser a general warranty deed to lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances."
10. At closing, a preliminary attorney's title certificate of Mr. Coffee was provided to Mr. Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 20 of the exceptions the following: "restrictive covenants recorded in the office of the clerk of court for Clarendon county in deed book A-444 at page 26 and deed book A-435 at page

223" (the A-435 Page 223 pertains to wetlands and an agreement with the Army Corp of Engineers)

11. The Subdivision Plat of Palmetto Plantation Subdivision was recorded on September 19, 2003, in Book E1008 Page 6
12. Lots 33 and 34 were conveyed to Plaintiff and his then wife by general warranty deed recorded on September 26, 2003, in Deed Book 509 at Page 264. The deed does not mention restrictive covenants nor incorporate any by reference.
13. On October 24, 2003, the attorney's Final Title Certificate of Mr. Coffee was mailed to the Defendant. It states that the property is subject to the restrictive covenants recorded in the office of the clerk of court for Clarendon County in Deed Book A-444 at Page 26.

/ Steven S. McKenzie

STEVEN S. MCKENZIE
ATTORNEY FOR THE PLAINTIFF
2 North Brooks Street
Po Box 1292
Manning South Carolina 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)
smckenzie@ccmlawsc.com

s/Thomas E. Player, Jr.
Attorney for the Defendant
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 (office)
803-436-5960 (fax)
tommyplayer@playermcmillan.com

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* * * * *

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Affidavit of Kim E. Bevier	Pl. Ex. 3
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Letter dated October 24, 2003 to Mr. and Mrs. Kim Bevier from Jaimee L. Garrett	Pl. Ex. 7
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Clarendon County Building Permit Application	Pl. Ex. 10
Letter dated March 21, 2017 to Mr. Kim E. Bevier from Steven S. McKenzie	Pl. Ex. 11

* * * * *

(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

1 The deposition of Kim E. Bevier is being taken
2 pursuant to agreement and in accordance with the South
3 Carolina Rules of Civil Procedure and Amendments as adopted
4 by the Supreme Court which shall control the taking of said
5 deposition and its use thereof.

6 Counsel, with the specific consent of the witness,
7 waives the reading and signing of the deposition prior to
8 the time it is filed with the Court.

9 (Kim E. Bevier, having been duly sworn, testifies as
10 follows:)

11 EXAMINATION BY MR. MCKENZIE:

12 Q. Mr. Bevier, again, I hope I don't butcher your name a
13 whole lot during this thing, but as you know, I'm
14 Steve McKenzie. I represent Palmetto Air Plantation
15 in a lawsuit that has been brought against you in the
16 Clarendon County Court of Common Pleas. Have you
17 ever had your deposition taken before?

18 A. I have.

19 Q. Okay. So, you understand that this lady, Ms. Brown,
20 beside me is taking down everything that we say
21 verbatim?

22 A. Yes.

23 Q. And she needs to get a clean record; so, it's -- if
24 you could give us a affirmative response as opposed to
25 a some type of gesture of the body, a headshake or a

PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC. VS.
KIM E. BEVIER

1 wave or whatever, we need some type of affirmative
2 response. Sometimes yeses or nos are a good answer.
3 Okay. But she needs to be able to take down -- it's
4 very difficult for her take down responses that are
5 not verbal. Do you understand that?

6 A. Sure.

7 Q. Okay. All right. You are Mr. Bevier. Am I
8 pronouncing that ---

9 A. I'm one of them, yes.

10 Q. Okay. Okay. And you are the Defendant in this
11 action?

12 A. Yes.

13 Q. Okay. And what is your current residence?

14 A. 1144 Mullett Drive, Manning.

15 Q. Okay. How long have you lived there?

16 A. It's about two and a half years now I moved down.

17 Q. Okay. Who do you live there with?

18 A. My wife.

19 Q. What is her name?

20 A. Ann Teresa Gaynor Bevier.

21 Q. Bevier?

22 A. That's how she pronounces it.

23 Q. Okay. All right. And that's how I pronounced it
24 before this, too, but -- all right. So, is she a
25 titled owner on the property?

1 A. No.

2 Q. Okay. You are the only titled owner?

3 A. That's correct.

4 Q. And I think that you had a late wife who passed ---

5 A. She did. She died in 2013.

6 Q. 2013. Okay. And she was currently on the Deed also;
7 is that correct?

8 A. Yes. Uh-huh (affirmative response).

9 Q. Okay. And I think you guys were joint tenants with
10 right of survivorship?

11 A. Uh-huh (affirmative response).

12 Q. Is that a yes?

13 A. I filed her Death Certificate at the courthouse. I
14 gave them notice and all of that.

15 Q. Okay.

16 MR. PLAYER: Kim, if you would say yes
17 or no rather than uh-huh. It's hard for
18 her to distinguish ---

19 MR. MCKENZIE: Yeah.

20 MR. BEVIER: I'm sorry.

21 MR. PLAYER: -- between the two. Okay?

22 MR. BEVIER: Okay.

23 Q. Yeah.

24 MR. BEVIER: Just stop and hit me or
25 something.

1 Q. And we will -- and if I do that during the course of
2 this, if you say uh-huh, I'll -- I may ask you for a
3 response. I'm not being rude.

4 A. I understand.

5 Q. I'm just trying ---

6 A. Not a problem.

7 Q. -- to get the record clear. Okay?

8 A. Not a problem.

9 Q. So, you and -- and she were -- bought the property --
10 when did you buy the property?

11 A. 2003, as I recall.

12 Q. Okay. And who did you buy the property from?

13 A. Palmetto Air Plantation, LLC.

14 Q. And do you know who handled the closing for you and
15 Palmetto Air Plantation?

16 A. I think it was your former partner.

17 Q. Okay.

18 A. Coffey.

19 Q. I hand you a letter dated May 21st, 2003. Do you
20 recognize that letter?

21 A. Yeah. I mean, I don't -- I think it's a valid letter
22 if that's what you're asking me.

23 Q. Do you recall receiving that letter?

24 A. No, not especially.

25 Q. Okay.

1 A. I mean, it's been, what, fifteen (15) years now.

2 Q. Okay. Do you have any reason to doubt that you did
3 not receive that letter?

4 A. No, I do not.

5 MR. PLAYER: We'll stipulate it.

6 MR. MCKENZIE: Okay. We'll move this
7 in as Plaintiff's Defendant -- Plaintiff's
8 Exhibit Number One.

9 COPY OF LETTER DATED 5/21/03 MARKED
10 PLAINTIFF'S EXHIBIT NUMBER ONE.

11 Q. Can you -- have you read the letter?

12 A. Yes.

13 Q. Okay. Paragraph One of the letter talks about
14 Restrictive Covenants?

15 A. Uh-huh (affirmative response).

16 Q. Do you see that?

17 A. Yes, I do.

18 Q. And it says apparently you -- you and your wife, Kim,

19 ---

20 A. No.

21 Q. I'm sorry.

22 A. Here's where you need to do your homework a little
23 bit. My wife's name was Sue. My name is Kim.

24 Q. Okay. Sorry. All right. So, "To meet Kim on
25 Tuesday." Okay. Apparently, Mr. Coffey may have had

1 that wrong. He meant -- meet you and Kim or you --
2 Kim and you, I guess?

3 A. I don't know.

4 Q. You don't know. Okay. It's -- the letter speaks for
5 itself. Mr. Coffey talks about the fact that he met
6 you on Tuesday ---

7 A. Uh-huh (affirmative response).

8 Q. -- concerning your purchase of lots at Palmetto Air
9 Plantation?

10 A. Uh-huh (affirmative response).

11 Q. Is that yes?

12 A. Yes, it is. I'm sorry.

13 Q. Okay. Apparently, you and your wife had questions
14 about the Restrictive Covenants?

15 A. I don't really remember if Susan did or not, and I --
16 I don't remember if I did what they were.

17 Q. Okay.

18 A. It's just too long ago.

19 Q. Okay. But were you aware of Restrictive Covenants
20 when you bought the lot?

21 A. I was aware. I was advised that there were
22 Restrictive Covenants, yes.

23 Q. Were you provided Restrictive Covenants or a copy of
24 the Restrictive Covenants?

25 A. I think I was told I could get them On-line.

1 Q. Okay. Did you go On-line and look for them?

2 A. Yes.

3 Q. Okay. And did you print those off or did you have
4 them in your possession?

5 A. I don't think I had ever printed them off until just
6 this past year.

7 Q. Okay. All right. I hand you a copy of the
8 Restrictive Covenants.

9 COPY OF RESTRICTIVE COVENANTS

10 MARKED PLAINTIFF'S EXHIBIT NUMBER TWO.

11 Q. And I've handed you a copy of the Restrictive
12 Covenants and I've marked them Plaintiff's Exhibit
13 Number Two for identification purposes right now, but
14 is this a copy of the Restrictive Covenants that you
15 would have printed off-line?

16 A. No.

17 Q. It's not?

18 A. It is not.

19 Q. Okay. I'll refer you down to the bottom of the page.

20 A. Yeah.

21 Q. It is the book and page where they are recorded in the
22 Clarendon County RMC Office. Do you see that at the
23 bottom of the page?

24 A. Do you have a memo on the front of this or something?

25 Q. It's like ---

1 A. Let me get past that and past your plat which didn't
2 exist at the time the Covenants were filed.

3 MR. PLAYER: Steve, I think you have
4 attached to this just for the record the 2009
5 Amendments ---

6 MR. MCKENZIE: Yeah, there's a -- there's
7 a First Amendment, too. You all can go
8 through that, too, but it's -- they're all
9 encompassing. They amended -- they amended
10 these Covenants.

11 MR. PLAYER: Right.

12 MR. MCKENZIE: And I will ask him about
13 that, too.

14 MR. PLAYER: Okay.

15 A. Okay. After that, beginning on about the one, two,
16 three, four, fifth page of what you handed me, I
17 recognize what was On-line.

18 Q. The fifth page?

19 A. Yeah, I think it's the fifth page out of what you
20 handed me.

21 Q. Okay. And the fifth page, it starts -- the first page
22 is the Declaration and the -- and the fifth page
23 actually starts the Covenants and the -- and the
24 Restrictions. Do you see that? And that is probably
25 what you're talking about.

1 A. Well, ---

2 Q. And it's in -- it's in D Book ---

3 A. I'm talking about this page right here is what I
4 recognize ---

5 Q. Okay.

6 A. -- as the first page of the Covenants that I saw On-
7 line.

8 Q. Okay.

9 A. And it says that MidEastern Truck Wash is the
10 Declarant.

11 Q. Well, let's do this so you'll be more familiar with
12 it. I will take this off and we'll re-mark this and
13 we'll just take the -- anything off that you don't
14 recognize. I'll also take the -- the Amendment to it
15 back. I don't think that really is any pertinent part
16 of this anyway.

17 MR. PLAYER: Steve, we can stipulate that
18 that's what's recorded as ---

19 MR. McKENZIE: Okay.

20 MR. PLAYER: -- as indicated on this ---

21 MR. McKENZIE: Okay.

22 MR. PLAYER: -- and the notation of where
23 it's recorded in Clarendon County.

24 MR. McKENZIE: I'm going to mark -- I'm just
25 going to mark the part of that's the Declaration

1 of Covenants, Conditions and the Restrictions
2 that -- it's at D Book 444, Page 26 at the RMC
3 Office marked at the bottom. You'll see about
4 the fifth page in, Tommy. I can correct that for
5 you.

6 MR. PLAYER: 226?

7 MR. MCKENZIE: Yeah. You'll see ---

8 MR. PLAYER: 226 is ---

9 MR. MCKENZIE: Let me correct yours. I'll
10 pull out -- that's the part that Mr. ---

11 MR. PLAYER: I'm fine with that, Steve.

12 MR. MCKENZIE: Okay.

13 MR. PLAYER: I'm not going to ---

14 MR. MCKENZIE: The part that he had
15 heartburn with ---

16 MR. PLAYER: No ---

17 MR. MCKENZIE: -- I'll take that out.

18 There you go.

19 Q. All right. We -- what we have done, Mr. Bevier, is,
20 we have marked on the Restrictive Covenants or we've
21 taken out the first three pages which started -- which
22 was the Declaration of Restrictive Covenants which
23 started at -- at or is filed at D Book 435, starting
24 at Page 223 and then the Declarations themselves and
25 Covenants are in D Book 444, Page 26, which is where

1 you -- what you are familiar with and what you
2 recognize; is that correct?

3 A. This is what I -- what I have here in my hand marked
4 Exhibit Two is what I have seen On-line. That's my
5 only -- I think I pulled up a copy of these with the
6 County's On-line system, but I've never seen this
7 other -- other pages that you had at the beginning of
8 it.

9 Q. Okay. And I want you to be -- what you're familiar
10 with, and so, ---

11 A. Uh-huh (affirmative response).

12 Q. -- and you will see that on the first page; it
13 actually is dated the 11th of July 2001?

14 A. Yes, I see that.

15 Q. And I think you purchased this property on May 21st,
16 2003 or around the time frame?

17 A. Pretty close.

18 Q. Okay. Why did you purchase this property?

19 A. Because I wanted to live on an airport.

20 Q. Okay. And did you -- you wanted to live on an
21 airport; you wanted to live in a restricted community?

22 A. No, that was not my objective to live in a restricted
23 community. It was my objective to live on a -- in a
24 nice place on an airport and build a retirement home

25 ---

1 Q. Okay.

2 A. -- for my wife and I at the time.

3 Q. All right. So, you -- when you -- as we've discussed
4 in Exhibit One, you had apparently met with Mr.
5 Coffey, and -- and the letter speaks for itself and
6 you discussed Restrictive Covenants with him?

7 A. I don't remember what was discussed ---

8 Q. Okay.

9 A. -- or if it was discussed.

10 Q. Okay.

11 A. To be honest.

12 Q. Okay.

13 A. I may have said something to him about the Covenants;
14 I don't know. And unless -- unless he's got some
15 notes somewhere he left for you after he retired, I
16 don't know what was discussed.

17 Q. Okay. Can you read the second paragraph into the
18 record for me of the Restrictive Covenants? Starting
19 with "Whereas".

20 A. "Whereas the Declarant is the owner of a tract of land
21 located south of the right of way of US Highway 301
22 between the city of Manning and Interstate Highway 95.
23 The property contains approximately forty-five (45)
24 lots, private access roads. FFA approve runway
25 measuring approximately a hundred and fifty (150) feet

1 by Thirty-seven twenty (3,720) feet and forty-five
2 (45) residential lots being a portion of Clarendon
3 County Tax Map Parcel Number 223-00-02-005, all of
4 which shall be reflected on a plat of the subdivision
5 prepared by DuValle W. Elliott, which shall be
6 reflected on a plat of the subdivision prepared by
7 DuValle W. Elliott. The Declarant's purpose is to
8 develop a community for aviation enthusiasts that
9 promotes peaceful living, protects investments and
10 provides the use of a private one-way gated entrance
11 and common areas for the benefit -- for the benefit
12 all owners." There's some ---

13 Q. It should have been "Of all owners".

14 A. There's some misspellings and some incorrect syntax in
15 there.

16 Q. Right. But so, your understanding of that paragraph
17 is that this is a gated -- it's a gated community for
18 aircraft enthusiasts?

19 A. Yes.

20 Q. Okay. And that is what you were looking for?

21 A. Yes.

22 Q. Okay. Now, at some point in time I think you built a
23 hangar for an airplane; is that correct?

24 A. Well, I built a hangar and a workshop, but that was
25 after I built the house.

1 Q. Right. But did you -- did you have to get that hangar
2 approved by the Clarendon County Planning Commission?

3 A. My understanding -- no. My understanding at the time
4 was that all I needed approval on was Joe signing off
5 as Architectural Control Committee.

6 Q. Right.

7 A. Okay?

8 Q. And did he do that?

9 A. Sure.

10 Q. Okay. And were you aware of the Agricultural Control
11 or Architectural Control Committee ---

12 A. I had read that in the Covenants.

13 Q. Okay. So, that is established pursuant to the
14 Covenants?

15 A. It's in the Covenants.

16 Q. Okay.

17 A. Uh-huh (affirmative response).

18 Q. Is it any -- is it anywhere else?

19 A. About the Architectural Control Committee?

20 Q. Right. Right.

21 A. As far as I know, no; I haven't read anything else
22 about that.

23 Q. Okay. I mean, is it a requirement from the County
24 that you had to get a ---

25 A. I have no idea.

1 Q. Okay. But you did get a Building Permit for the
2 hangar?

3 A. Of course. Uh-huh (affirmative response).

4 Q. Okay. And I think you got an original Building Permit
5 for your lot; is that correct?

6 A. For the house, yeah.

7 Q. Yeah. And a Certificate of Occupancy for the house?

8 A. Yes, I did.

9 Q. Okay. When we went to our first Hearing, you filed an
10 Affidavit with the Court; do you remember that? The
11 first Hearing in this case.

12 A. What did I say in the Affidavit?

13 Q. I'm going to hand it to you.

14 A. Okay.

15 Q. Okay. Just look at that Affidavit and see if that is
16 what you recall.

17 A. Yeah.

18 Q. Okay. Is that your Affidavit?

19 A. Absolutely it is.

20 Q. Okay. In the first paragraph, ---

21 A. Yes.

22 Q. -- you state your name?

23 A. Yes.

24 Q. And you say where you live, 1144 Mullett Drive?

25 A. Yes.

1 Q. And in Palmetto Air Plantation subdivision?

2 A. That's correct.

3 Q. Okay. It says also that you purchased Lots 33 and 34?

4 A. Yes.

5 Q. Okay. In September -- on September 26, 2003. And if
6 the date is wrong, I'm not holding you to the date,
7 I'm simply -- somewhere around that time frame?

8 A. Yes.

9 Q. Okay.

10 A. Of course.

11 Q. Some time in -- some time in 2003?

12 A. Whatever it was.

13 Q. Okay. Says you are a commercial aircraft pilot?

14 A. I am.

15 Q. And then it goes on to say why you were attracted to
16 this subdivision?

17 A. Yes.

18 Q. Okay. And what were the reasons for being attracted
19 to it?

20 A. The land. The land and the pond. And the private
21 access.

22 Q. Okay.

23 A. Uh-huh (affirmative response).

24 Q. You actually stated why you were -- can you read that
25 into the record? "I was attracted to the subdivision"

1 -- do you see that?

2 A. "I was attracted to this subdivision because it
3 includes as one of its amenities an airstrip and
4 accommodates the construction of hangars on individual
5 lots for the housing of aircraft".

6 Q. Okay. All right. So, and then it goes on to say you
7 built you home in 2010?

8 A. Yes.

9 Q. Okay. Where do you find the authority for the
10 building of the airstrip on the ---

11 A. Building of the airstrip?

12 Q. Yeah, I mean, where -- where -- why did you -- why
13 could Joe do or Palmetto Air Plantation do an
14 airstrip?

15 A. He's entitled to peaceful use and enjoyment of his
16 land that he owns and he built the airstrip and sold
17 it as one of the amenities when I bought my lots.
18 Otherwise, I sure would not guarantee you I would have
19 paid Ninety Thousand Dollars (\$90,000.00) or Eighty
20 Thousand Dollars (\$80,000.00) for three acres of land
21 down here.

22 Q. Right. And part of the reason you paid Eighty
23 Thousand Dollars (\$80,000.00) for the three acres of
24 land was because it had Restrictive Covenants?

25 A. No. It was because of the airstrip, the pond, and I

1 could get three acres of land on the side of the pond
2 and it was a gated community. That's why I bought the
3 land down there.

4 Q. Okay. Well, the authority for building the airstrip
5 and the amenities that you talked about, the gated
6 community and all of that come from the Restrictive
7 Covenants?

8 A. No, the authority to do what you want with your land
9 comes from common law in the state of South Carolina;
10 it's property law.

11 Q. Okay.

12 MR. MCKENZIE: We'll mark this as
13 Number Three. This is two pages.

14 COPY OF AFFIDAVIT MARKED PLAINTIFF'S
15 EXHIBIT NUMBER THREE.

16 Q. You can keep those in front of you. All right. So,
17 Mr. Bevier, your understanding is, is that it's -- you
18 can build an airstrip, put up a gated community and
19 ---

20 A. If I own a piece of -- if I own a piece of land ---

21 Q. Uh-huh (affirmative response).

22 A. -- and I'm otherwise not prohibited by Federal or
23 State law, I can build whatever I want to on my
24 property.

25 Q. You understand South -- that Clarendon County has

1 Building Codes?

2 A. Sure.

3 Q. Okay. It also has -- you have to get approval for --
4 to develop subdivisions, County approval?

5 A. I wasn't aware of that, but I assume so, yes.

6 Q. Okay. And a plan has to be submitted before you can
7 develop a subdivision?

8 A. I don't know that for a fact. I'll take your word for
9 it.

10 Q. Okay. All right. So, you are saying that common law
11 is modified by State or Federal law?

12 A. Sure.

13 Q. Okay. Well, ---

14 A. In Federal, State, local order, ---

15 Q. Okay.

16 A. -- I would assume.

17 Q. Okay.

18 A. Yeah.

19 Q. And so, you don't -- you're not aware of a local
20 Ordinance or you haven't looked that up and researched
21 it, but ---

22 A. About subdivisions?

23 Q. Sure.

24 A. No, I have not.

25 Q. Okay. So, if you wanted to develop your own lot, your

1 own division, what would you have to do, have you
2 researched that issue?

3 A. My own subdivision?

4 Q. Yeah, if you wanted to go ---

5 A. I have not researched that issue.

6 Q. All right. Do you recall entering into a Contract of
7 Sale with Palmetto Air Plantation?

8 A. Yes.

9 Q. Okay. I hand you a copy of it. Is that your -- can
10 you turn to the last page? Sorry. Yes, it's the last
11 -- well, it would be the fourth page.

12 MR. BEVIER: (To Mr. Player)

13 Have you got a copy of this, Tommy?

14 Q. I'll give him a copy of it.

15 A. Yeah, it's me. Okay.

16 MR. PLAYER: We'll stipulate to that.

17 MR. MCKENZIE: Okay. All right.

18 A. What was your question again?

19 Q. All right. This -- do you -- do you recall entering
20 into a Contract of Sale?

21 A. Sure.

22 Q. And that is your signature on Page Four?

23 A. Yes, it is.

24 Q. And you understand what a Contract is, I'm assuming?

25 A. I do.

1 Q. Okay. Paragraph One, can you read that into the
2 record?

3 A. "Purchasers agree to buy and Seller agrees to sell
4 Lots 33 and 34, Palmetto Air Plantation, situate in
5 Clarendon County, South Carolina, subject to all the
6 Covenants of record and all Governmental Statutes,
7 Ordinances, Rules and Regulations applicable to said
8 lots".

9 Q. Okay. So, you understand that, when you purchased
10 this property, it was subject to Restrictions and
11 Covenants?

12 A. At the time, it looked to me like it was subject to
13 those Covenants, yes.

14 Q. Okay. And I'll turn you to -- if you'll turn to Page
15 Two.

16 A. Uh-huh (affirmative response).

17 Q. At the top of that, ---

18 A. Where it says Restrictive Covenants?

19 Q. Yes.

20 A. Okay.

21 Q. All right. You agree it says, "Other buildings on the
22 premises as permitted by the Restrictive Covenants;"
23 is that correct?

24 A. That's what it says, yes.

25 Q. And one of the things that's permitted on the -- on

1 the premises is hangars; is that correct?

2 A. I would assume so.

3 Q. Well, I mean, we don't -- I don't have a hangar in my
4 subdivision.

5 A. What it says here is to construct a residence and
6 other buildings.

7 Q. Right. But part of -- where you get permission to
8 build a hangar in the subdivision is from the
9 Restrictive Covenants?

10 A. I -- I don't know. I'm not a lawyer.

11 Q. Okay. Well, ---

12 A. I mean, is it a matter of law?

13 Q. No, what I'm -- the question I'm asking you is, you
14 understand that -- that this is an air plantation
15 subdivision for ---

16 A. Okay.

17 Q. -- aircraft enthusiasts?

18 A. Let ---

19 Q. And you and I talked about that?

20 A. Let me tell you this.

21 Q. Okay.

22 A. And -- and it may help resolve some of the questions
23 you want to ask me here in the future. At the time,
24 I believe those Covenants were enforced. It's after
25 further investigation that my contention is they are

1 not.

2 Q. Okay. But we're going to go through them.

3 A. Okay.

4 Q. Okay?

5 A. All right.

6 Q. Because in 2000 -- 2001, -- I'm sorry -- 2003 when you
7 signed this Agreement, ---

8 A. Uh-huh (affirmative response).

9 Q. -- you -- you agreed to be held bound by the
10 Restrictive Covenants?

11 A. If there were any in existence, and it's my contention
12 there weren't.

13 MR. PLAYER: Let me put an objection
14 to the form of the question.

15 MR. MCKENZIE: Okay.

16 MR. PLAYER: But you have to answer it
17 notwithstanding my objection.

18 Q. Okay. Paragraph Four ---

19 A. Yeah.

20 Q. -- on Page Two.

21 A. All right.

22 Q. Restrictive Covenants. The conveyance is subject to
23 all visible and recorded easements, right of ways, and
24 Covenants including those Restrictive Covenants dated
25 11 July, which are in front of you ---

1 A. Yes.

2 Q. -- 2001, recorded in the Office of RMC Clarendon
3 County Deed Book A-444, Page 26. Right there.

4 A. Yeah. Uh-huh (affirmative response).

5 Q. That's Exhibit Number Two.

6 A. Okay.

7 Q. So, is your contention now that you are in violation
8 of your Contract?

9 MR. PLAYER: Object to the form.

10 Q. Is that your contention?

11 A. That is not my contention.

12 Q. Okay. So, ---

13 A. My contention is that there were never any Covenants
14 bound to my property.

15 Q. Okay. But you agree ---

16 A. That's what I'm trying to tell you.

17 Q. But my under -- but I want you to follow my question
18 here. Do you agree that you agreed to be bound by
19 them in a Contract of Sale?

20 A. At the time when I signed this, I believed the
21 Covenants were enforced and at that time that would
22 have been my belief, yes.

23 Q. All right.

24 A. Does that answer your question?

25 Q. Well, what has changed your belief?

1 A. Research.

2 Q. Okay.

3 A. And the law.

4 Q. Okay.

5 A. My reading of the law; okay?

6 Q. So, are you in violation of your Contract of Sale now?

7 A. No.

8 MR. PLAYER: Object to the form.

9 MR. BEVIER: (To Mr. Player) What

10 do I do here?

11 MR. PLAYER: You have to answer.

12 MR. BEVIER: Oh, okay.

13 A. What's the question again?

14 Q. Are you in violation of this Contract?

15 A. I don't think the Contract is valid.

16 Q. Okay.

17 A. Because there were no Covenants enforced at the time
18 I signed this even though it's stated that there were.

19 Q. Why were there not Covenants enforced?

20 A. They weren't bound to the land when it was transferred
21 from the Declarant to the Developer.

22 Q. I'm not asking about the Deed. I'm asking about this
23 Contract. You signed a Contract, ---

24 A. Uh-huh (affirmative response).

25 Q. -- and in that Contract, you agreed that the -- you

1 agreed that the -- the Covenants went with this piece
2 of land that you agreed to buy?

3 A. At -- at the time, that was my understanding.

4 MR. PLAYER: Object to the form. The
5 Contract speaks for itself.

6 Q. The Contract does speak for itself, Mr. Bevier, but
7 you -- it's your contention now that this Contract was
8 not valid?

9 A. My contention now is that this Contract is suffering
10 from a misstatement of fact if not an outright lie
11 that the Covenants were bound to my property. That's
12 my position at this point.

13 Q. All right. Let's go on further down. Paragraph
14 Seven: "Possession and Improvements;" do you see that?

15 A. I do.

16 Q. Provided, however, -- do you see that paragraph, that
17 part of the paragraph? Now, go about halfway where it
18 starts with "'Performance of this Contract shall
19 become part" -- do you see that?

20 A. Yeah, it's saying that if something's built, should
21 default occur on the part of the Purchasers which this
22 is a Sales Contract, right, which means that if you
23 don't get paid, that it's in default. Anything that
24 I built already gets to be taken by the seller.

25 Q. Okay.

1 A. I understand that.

2 Q. I know, but -- but my question -- my question to you
3 is this is an Agreement that you entered into with
4 Palmetto Air Plantation?

5 A. It's a Sales Agreement, yeah.

6 Q. Okay. So, if you're -- and your contention now is
7 Restrictive Covenants don't apply; is that correct?

8 A. Yes.

9 Q. Paragraph Four says that the conveyance is subject to
10 the Restrictive Covenants?

11 A. Well, the Restrictive Covenants were not bound to the
12 land at that time. When MidEastern Truck Wash sold
13 all the land ---

14 Q. Uh-huh (affirmative response).

15 A. -- to Palmetto Air Plantation, the Covenants were not
16 bound to all those lots.

17 Q. Were they -- were they -- were they filed in the
18 courthouse and the RMC Office?

19 A. A year and a half before that or two years before
20 that, yes, they were filed.

21 Q. Okay. So, when -- but your contention is and tell me
22 -- tell me about that contention. How do you get to
23 that?

24 A. The Covenants need to be bound to the property with
25 Deed of Conveyance.

1 Q. Okay.

2 A. They are not.

3 Q. Okay. So, that's -- that is your contention?

4 A. Yes, it is my contention.

5 Q. Okay. That the ---

6 A. And it never bound all of the lots; okay?

7 Q. Well, ---

8 A. Your -- your contention would be that it bound all of
9 the lots. But when Joe formed this Homeowners
10 Association, he made sure that Palmetto Air Plantation
11 in the forty-four (44) lots they owned at the time
12 would never be forced to pay lot fees by anybody else
13 because there were no Covenants bound to any of the
14 lots when MidEastern transferred the Deed of all those
15 lots to Palmetto Air Plantation. They didn't want
16 anybody to come back on them, any of the people that
17 had already bought lots, anything else. He didn't
18 want to pay for the common area. He wanted to be able
19 to get us to pay for the common area. That's my
20 answer to your question.

21 Q. Okay. So, your contention throughout this entire
22 lawsuit has been -- or now is that the Restrictive
23 Covenants don't apply to you?

24 A. That's correct.

25 Q. Okay.

1 A. And we said so in the -- you know, that was one of our
2 defenses that we went to the Hearing for just
3 recently.

4 Q. Oh, I understand that.

5 A. Covenants don't apply.

6 Q. And -- and that is your third Answer to this
7 Complaint?

8 A. Excuse me?

9 Q. Your third answer to this Complaint.

10 A. I don't know. Is it?

11 Q. Yes.

12 MR. PLAYER: You have to answer that.

13 I just ---

14 Q. Okay.

15 MR. PLAYER: Let me -- Steve, if I could
16 interrupt just a minute.

17 MR. MCKENZIE: Sure.

18 MR. PLAYER: We -- we should have told
19 you, Kim, to start with that you and I can't
20 communicate during the course of this deposition.

21 MR. BEVIER: No problem.

22 MR. PLAYER: You and I can't communicate.

23 MR. BEVIER: Okay.

24 MR. PLAYER: You just have to answer the
25 questions.

1 MR. BEVIER: All right. Good enough.

2 MR. MCKENZIE: Let's mark the Contract of
3 Sale as Number Four.

4 MR. PLAYER: No objection.

5 COPY OF CONTRACT OF SALE MARKED PLAINTIFF'S
6 EXHIBIT NUMBER FOUR.

7 Q. All right. Mr. Bevier, so, it is your contention that
8 the -- even though you signed the Contract of Sale
9 that said you would -- your lot would be subject to
10 the Restrictive Covenants, you're not bound by that
11 Contract?

12 A. That is my contention, yes.

13 MR. PLAYER: Again, let me -- let me
14 object to the form.

15 Q. That's your contention?

16 A. Listen, ---

17 Q. All right.

18 A. -- we entered into a Contract of Sale and there was --
19 in my opinion now after I've done the research, there
20 was a misstatement on the Contract of Sale.

21 Q. Okay. What was the misstatement?

22 A. That the Covenants were appropriately -- that the
23 Covenants had been filed on my property.

24 Q. All right. Then did you file any action to not ---

25 A. No, because ---

1 Q. -- to invalidate the Contract?

2 A. No, because I believed the whole story that Joe had
3 created at that point in time that the Covenants were
4 applicable.

5 Q. Okay.

6 A. Okay. It was only after he filed this lawsuit against
7 me that I did -- went into the courthouse, had the
8 availability to do On-line research of Deeds and
9 everything that I came to this conclusion, that I
10 realized what was going on here. Joe got in trouble
11 with that original development, needed money; the only
12 way he could bring in his partners was to give them
13 all the land and make sure they wouldn't have to put
14 up any more money. That's why he did all of this.

15 Q. Okay. Do you recall receiving a letter from I think
16 it's Billy Coffey's secretary, Betty Usry, at the
17 time, with the ---

18 A. What time would that have been?

19 Q. This would be -- I'll show you the letter. June 5th,
20 ---

21 A. Okay.

22 Q. -- 2003. And that letter states that you had actually
23 have a copy of the recorded Contract of Sale?

24 A. I -- I don't recall the letter to answer your
25 question.

1 Q. Okay.

2 MR. PLAYER: We're stipulating he received
3 the letter.

4 MR. MCKENZIE: Okay. We'll mark this as
5 Number Five.

6 COPY OF LETTER DATED 6/5/03 MARKED
7 PLAINTIFF'S EXHIBIT NUMBER FIVE.

8 Q. Do you remember receiving at closing a Preliminary
9 Attorney's Title Certificate?

10 A. I didn't remember that until I read -- I finally found
11 a cache of documents my late wife had filed which
12 included a copy of the Homeowner's Association By-
13 Laws.

14 Q. Okay. I hand you a copy of the Restrictive Covenants
15 -- I'm sorry, Preliminary Attorney's Title
16 Certificate.

17 MR. MCKENZIE: Tommy, do you have one?

18 A. Am I not answering a question that you made right now
19 or you haven't made one yet?

20 Q. No, I haven't asked you one. I'm just handing ---

21 MR. PLAYER: We -- we're stipulating he
22 received this.

23 MR. MCKENZIE: All right. Number Five or
24 Number Six.

25 COPY OF PRELIMINARY ATTORNEY'S TITLE

1 CERTIFICATE MARKED PLAINTIFF'S EXHIBIT NUMBER
2 SIX.

3 Q. Paragraph Three at the bottom of that page.

4 A. Uh-huh (affirmative response).

5 Q. It references the Restrictive Covenants recorded in
6 the Clarendon County Clerk of Court, and if you turn
7 to the second page, it gives you the Deed Book, ---

8 A. Yeah.

9 Q. -- page and all that.

10 A. Yeah. I -- I probably didn't even see this at the
11 time it came though. My wife put it in the folder.
12 But I see that -- that sentence if that's your
13 question.

14 Q. Okay. All right. At some point in time, you received
15 a letter on October 24th; do you recall receiving that
16 letter?

17 A. No, I don't recall receiving it.

18 Q. Okay.

19 A. I think I have a copy of this, the letter I found in
20 the file.

21 Q. Okay. And then that letter purports to send you a
22 copy of the Final -- the Recorded Deed and Attorney's
23 Title Certificate for the property you recently
24 purchased; do you see that?

25 A. Uh-huh (affirmative response).

1 Q. That is the Attorney's Title Certificate. Can you
2 read into the record Paragraph Three?

3 A. Can I do what now?

4 Q. Read into the record Paragraph Three at the bottom of
5 the page.

6 A. It says "Restrictive Covenants recorded in the Office
7 of the Clerk of Court for Clarendon County, Deed Book
8 A-444 at Page 26 and Deed Book A-435 at Page 223."

9 MR. MCKENZIE: We'll mark this as Number
10 Seven. This is the October 24th letter along
11 with the Final Attorney -- Attorney's Title of
12 Certificate.

13 COPY OF LETTER DATED 10/24/03 AND THE FINAL
14 ATTORNEY'S TITLE CERTIFICATE MARKED PLAINTIFF'S
15 EXHIBIT NUMBER SEVEN.

16 A. Do you need this back?

17 Q. Thank you. I'm going to ask you if you can identify
18 this document.

19 A. Yes.

20 Q. Tell me what that is.

21 A. It's a Plat of the subdivision.

22 Q. Okay.

23 A. It was done when -- 16 September of '03. When it was
24 approved by the Clarendon County Planning Commission.

25 Q. Okay.

1 A. What -- I'm just curious. What date was it that I
2 bought land down here?

3 Q. September of 2003.

4 A. Okay. So, it was just after this was ---

5 Q. Right.

6 A. Okay.

7 Q. I'll hand you another one.

8 A. Yeah, this is the one I saw On-line.

9 Q. That's the one you saw?

10 A. Right.

11 MR. MCKENZIE: We'll mark that as Number
12 Eight.

13 COPY OF PLAT OF PALMETTO AIR PLANTATION
14 MARKED PLAINTIFF'S EXHIBIT NUMBER EIGHT.

15 A. Yeah, the one that -- this shows that Joe's land's not
16 part of the subdivision.

17 Q. Okay.

18 A. Okay.

19 Q. I hand you a copy of this document. Do you recognize
20 that?

21 A. Yeah, I think this is what's outlined on my property
22 again.

23 Q. Okay.

24 MR. MCKENZIE: And we'll mark that as
25 Number Nine.

1 COPY OF CLARENDON COUNTY ASSESSOR'S OFFICE
2 SUMMARY OF MR. BEVIER'S PROPERTY MARKED
3 PLAINTIFF'S EXHIBIT NUMBER NINE.

4 Q. And that would be a -- the Clarendon County Assessor's
5 Office showing Mr. Bevier's property along with the
6 improvements and a -- I guess a scale drawing showing
7 the square footage of the house and the hangar; is
8 that correct? On the second page, showing the square
9 footage?

10 MR. PLAYER: Do you have an extra copy
11 of that?

12 MR. MCKENZIE: Yeah.

13 MR. PLAYER: Thanks.

14 A. I don't -- I don't believe it does show the square
15 footage of the house and the hangar.

16 Q. Okay.

17 A. There is no notation there for PEM or PBM, whatever it
18 is, which is the square footage -- would be the square
19 footage in the hangar and the workshop attached. It
20 does show it looks like for the house.

21 Q. Okay.

22 A. But it doesn't show the square footage for the house
23 -- for the hangar and workshop.

24 Q. Okay. It has the dimensions, it looks like 60 by ---

25 A. Yeah. The hangar is 60 by 60. And the workshop I

1 think is 30 by 42.

2 Q. Okay. 30 by 42?

3 A. Yeah.

4 Q. It shows those dimensions?

5 A. Right.

6 Q. It's just a -- it's just a copy that the Assessor's
7 Office does I guess for the purposes of taxation?

8 A. Uh-huh (affirmative response).

9 Q. Is that correct?

10 A. It appears to be so, yes.

11 Q. I hand you a copy of -- I believe this is the Building
12 Permit for the hangar. Do you see that?

13 A. Yes.

14 Q. Okay.

15 MR. MCKENZIE: We can mark that Number
16 Ten, I believe.

17 COPY OF THE BUILDING PERMIT FOR THE
18 HANGAR AND WORKSHOP MARKED PLAINTIFF'S
19 EXHIBIT NUMBER TEN.

20 Q. That is the Building Permit for the hangar and
21 workshop; would that be correct?

22 A. Yes.

23 Q. And I believe that that is dated sometime in 2010?

24 A. No, 9/8/14.

25 Q. Oh, I'm sorry. April of 2013. Is that correct?

1 A. No. This is for the hangar and workshop which was --
2 wasn't built until a year after Susan died. This was
3 built in -- this was issued in September 8th, 2014.

4 Q. Okay. The front of this says, "Clarendon County
5 Building Permit. Date, April 5, 2013." And this was
6 received -- I don't know why the difference in the
7 dates, but ---

8 MR. PLAYER: Have you got an extra copy?

9 MR. MCKENZIE: Yeah.

10 A. Well, I don't know why they put that up there.
11 Probably because the Tax Map Reference Number, but it
12 was not built until that latter date there.

13 Q. In 2014?

14 A. In 2014. The original Building Permit was done in
15 2010 when the home was built.

16 Q. Why did you have to go back and get a subsequent
17 Building Permit?

18 A. Because of the difference of four years between
19 building the home and building the hangar.

20 Q. Okay. Well, I note on here that -- that -- the --
21 maybe the application was submitted on that date; it
22 wasn't approved until it looks like on 9/8/14, which
23 is the second page?

24 A. The hangar was not built until 2014.

25 Q. All right. Again, the documents I guess speak for

1 themselves?

2 A. Well, it says -- it's got date issued 9/8/14 right
3 down at the bottom of the second page.

4 Q. That's the question I just asked you.

5 A. I'm sorry.

6 Q. I said, the application must have been submitted in
7 April of 2013?

8 A. It was not. It was not. I hadn't -- I had no idea of
9 building the hangar at that point in time. It was
10 four years later after my wife had died that I decided
11 to build that hangar and workshop. And the Building
12 Permit Morton went and got, I believe, and I don't
13 know why it's dated -- it says -- I don't know why
14 it's dated -- well, it's dated 5 April '13 up top, not
15 '10.

16 Q. That's what I stated on the record a second ago. It's
17 dated in April -- April 5th, 2013?

18 A. Uh-huh (affirmative response).

19 Q. And whatever reason, it was issued on 9/8/14, which is
20 the second page?

21 A. I have no idea.

22 Q. Okay.

23 A. I have -- I have no clue to that.

24 Q. And actually, the last page, Certificate of Occupancy,
25 I guess this was for your home?

1 A. That was for the house, the building inspection. Bart
2 Taylor did that on October 21st, '10.

3 Q. Okay.

4 A. Do you want this back?

5 Q. No, I made a copy. You can have that. Put it your
6 records right there is fine.

7 A. Do you want to put a sticker on this one?

8 Q. I put it right here on this one that we have. This
9 stack is going into evidence. Let me just get that
10 Number Nine out of there.

11 A. Here's another one with a yellow tag on it.

12 Q. Okay. You need to keep those. We might have to talk
13 about those later on.

14 A. All right.

15 Q. Okay Okay. Do you recall receiving a letter from
16 myself on March 21st, 2017? I'll hand you a copy of
17 it.

18 A. I don't recall the date, no. Yes, I recall this.

19 Q. Okay.

20 MR. MCKENZIE: We'll mark that Number
21 ELEVEN.

22 COPY OF LETTER DATED 3/21/17 MARKED
23 PLAINTIFF'S EXHIBIT NUMBER 11.

24 Q. It's a letter dated March 21st, 2017.

25 A. May I comment on this letter?

1 Q. We'll -- we'll talk about it in just a second. Let me
2 mark it first, and then you can tell me all you want
3 to.

4 A. All right.

5 Q. Here you go.

6 A. All right.

7 Q. Do you recall the letter, though?

8 A. Sure.

9 Q. Okay. Tell me what you want to comment about it.

10 A. Well, there's a couple of factual issues in here.
11 First of all, the dog is an English Mastiff and not a
12 Bull Mastiff.

13 Q. Okay.

14 A. Secondly, I responded to you. I sent you a couple e-
15 mails and I wanted a copy of the Homeowner's
16 Association By-Laws which you never responded to me.
17 As a matter of fact, you've never responded to any of
18 my e-mails to you. There was no due process at all
19 involved in this. I get this letter, and the next
20 thing I know I get sued. You know, I sent -- I think
21 I sent you back a letter saying I disagree with your
22 process on all of these. And it appears that somebody
23 decided that I was guilty of violating these
24 Restrictions and you were going to sue me about it.

25 There was no process involved at all, no conversation,

1 no nothing.

2 Q. Did you ever have any conversations with Joe Witt
3 about you not being in compliance with the Restrictive
4 Covenants?

5 A. Joe harangued me about the dog.

6 Q. Uh-huh (affirmative response).

7 A. Okay. And that was it. Everything was about the dog.

8 Q. Uh-huh (affirmative response). All right. Nothing
9 about Airbnb?

10 A. That was not a meeting with the Board of Directors to
11 discuss the issues they supposedly had problems with
12 per your letter on March 21st.

13 Q. Okay. You don't recall having any meetings with Joe
14 about anything other than the dog?

15 A. After this letter?

16 Q. No, before that letter.

17 A. There were no meetings.

18 Q. Before the letter?

19 A. Joe complained about the dog, and that was it. And
20 then at this letter brings up a couple other issues,
21 something about landscaping, and I think even you
22 amended that later on to include something about a --
23 a swimming pool I had inside my hangar out of sight.

24 Q. And we'll talk about that.

25 A. All right. Good.

1 Q. Okay. First -- the first paragraph of the letter
2 dated March 21st, 2017 talks about Airbnb. When did
3 you start Airbnb ---

4 A. I didn't start Airbnb.

5 Q. When did you start utilizing the Airbnb service?

6 A. I never have. But in order to avoid being deceptive
7 here, my wife enrolled that apartment in Airbnb so she
8 could earn a little extra money to help pay her
9 daughter's college costs.

10 Q. Okay. And -- but your wife passed in what year?

11 A.) That's not my wife that ---

12 Q. That is your current wife?

13 A. -- started the Airbnb. My wife died -- Susan died in
14 2013.

15 Q. Okay.

16 A. March 3rd of 2013. I married Annie in May of 2015.

17 Q. Okay.

18 A. All right.

19 Q. All right. So, when did Annie start Airbnb?

20 A. I'm not sure of the exact date.

21 Q. Okay. How long -- how many guests did you have in
22 Airbnb?

23 A. Probably a dozen.

24 Q. Okay. And what was the -- how did you get paid by
25 Airbnb for allowing guests to stay there?

1 A. I don't know for sure. I think the guests put credit
2 card information to Airbnb, and Airbnb takes that and
3 disburses it to the owners of the property.

4 Q. Okay. If you will turn -- have you got the
5 Restrictive Covenants still in front of you?

6 A. Yeah, go ahead.

7 Q. What do -- what does Article Four, Sections 4.1 and
8 4.3 say about commercial ---

9 A. What page?

10 Q. I'm sorry?

11 A. What page, please?

12 Q. Let's go to -- I'll tell you -- it's Page Seven.

13 A. Page Seven.

14 Q. Page Six and Seven.

15 A. Six and Seven. Now, where should I start reading?
16 This ---

17 Q. Well, don't start reading, but, you know, it -- it
18 tells you on Page Seven, Paragraph 4.3, how about read
19 that one.

20 A. Four Point Three.

21 Q. Can you read that into the record for us?

22 A. Section 4.3. "Commercial Businesses Prohibited."

23 Q. Okay.

24 A. "No commercial business of any type shall be
25 permitted."

1 Q. And ---

2 A. "However, nothing herein contained shall be construed
3 as preventing the Declarant from erecting and
4 maintaining facilities of a commercial recreational
5 community nature or facilities incident to the use of
6 the runway, taxi way and elements. This should not
7 exclude any home office -- should not exclude any home
8 office, but no customers, clients or patients can be
9 seen on residential premises. Although this should
10 not exclude work done on non-owned aircraft as long as
11 such work is done inside a hangar and the completed
12 aircraft conforms with all -- conforms it should be --
13 with all requirements as set forth in these Covenants.
14 No one other than the Declarant can allow the use of
15 the airport or runway for commercial activity or for
16 self-enterprise.

17 Q. Now, if these Declarations and Covenants apply to your
18 property, are you in violation of it pursuant ---

19 A. I disagree that doing Airbnb in an empty apartment is
20 a commercial enterprise. I'm not Hotel 6 set up along
21 the road with advertising and everything else.

22 Q. Okay.

23 A. That's my answer.

24 Q. So, let me ask you this question about Airbnb. You
25 are renting a room for profit?

1 A. More -- way more than one room, yes. Sure.

2 Q. But I mean, you were renting a room for profit?

3 A. That's what we were doing.

4 Q. Okay. All right. So, you disagree that that's a
5 commercial activity?

6 A. I do.

7 Q. Okay. All right. Now, let's go to the second
8 paragraph in the letter that I wrote to you on March
9 21st, 2017.

10 A. Okay.

11 Q. You own a large breed dog and you said it's an English
12 Mastiff?

13 A. It is an English Mastiff.

14 Q. Okay.

15 A. May I comment on that paragraph?

16 Q. Sure.

17 A. All right. I asked you I think in an e-mail that I
18 sent you who has complained about my dog, and you
19 never responded. You -- you state here that it has
20 received complaints that the dog has been seen off
21 your property unrestrained, and my contention is that
22 is an outright lie.

23 Q. Uh-huh (affirmative response).

24 A. Because I have not let my dog off my property off a
25 leash since February or March of Twenty Thousand or

1 2016.

2 Q. Well, let me ask you this. You say you -- you
3 restrain the dog with an underground fence?

4 A. On my property, he is restrained to a small area with
5 an underground electric fence, yes.

6 Q. And ---

7 A. But that's -- you're not answering -- you're not
8 responding to my point that -- who had complained
9 because it is a lie. It is a false statement.

10 Q. Did you go to the Architectural Control Committee to
11 ask about the fencing?

12 A. I didn't need to.

13 Q. Why?

14 A. There is no visible manifestation of that fence.

15 Q. But you understand that the -- the Covenants at
16 require any fence ---

17 A. I understand that the Cov -- any fence?

18 Q. Right.

19 A. That's not -- that doesn't even meet the definition of
20 a fence. It's an underground control system or
21 something. It's not a fence. You ask somebody what
22 a fence is, and they're going to tell you it has a
23 physical manifestation above ground that restricts
24 passage.

25 Q. Okay. So, on Page 12 -- Page 12 ---

1 A. And you still haven't answered my question about who
2 complained that the dog was seen off my property.

3 Q. Mr. Bevier, I am asking the questions. This is a
4 deposition. You're not asking questions. Okay. If
5 you want to ask those questions, you're going to ask
6 through your lawyer and we'll respond to that.

7 A. Okay.

8 Q. But ---

9 A. All right.

10 Q. -- this is your deposition; I'm taking your
11 deposition. I ask the questions.

12 A. Okay.

13 Q. Okay?

14 A. Cool.

15 Q. Page Twelve in regards to fence.

16 A. Of the Covenants?

17 Q. Of the Covenants. Paragraph 5.16.

18 A. "The erection or installation of fences and hedges may
19 be permitted with the consent of the Architectural
20 Control Committee which shall directly control the
21 location and type of said facility. No barbed wire
22 fencing will be permitted at any time."

23 Q. Okay. So, was the electric fence installed?

24 A. It was put in the ground, yes.

25 Q. Okay. All right. So, it is your contention that the

1 electric fence is not a fence?

2 A. It is not a fence in common usage, no.

3 Q. All right. Let's go on to the next paragraph which
4 would be Number Three.

5 A. Of ---

6 Q. Of the 2017, March 21st, 2017 letter.

7 A. Okay. Paragraph Three. Paragraph Three is about the
8 dog.

9 Q. I'm sorry. No, it's -- it's my third point I guess.

10 A. Third. Okay.

11 Q. Second page, third.

12 A. Okay. I got you. I got you.

13 Q. Starts of with -- with third. Article IV, Section 4.1
14 states in the pertinent part ---

15 A. Uh-huh (affirmative response).

16 Q. Do you see that?

17 A. Uh-huh (affirmative response).

18 Q. "Within one year after the issuance of the Building
19 Permit," ---

20 A. I see what you're saying, yeah.

21 Q. Okay.

22 A. Uh-huh (affirmative response).

23 Q. And you submitted -- do you recall submitting a Paula
24 Bishop plan to the Architectural or I guess the
25 Architectural Control Committee?

1 A. Yeah, but that -- that was well more than one year
2 after the issuance of the Building Permit. I asked
3 Joe about this, and he told me at the time, "Don't
4 worry about it."

5 Q. All right. I'm going to refer you back to Plaintiff's
6 Number Ten, the issuance of the Building Permit was
7 dated October 3rd -- on the last page -- I'm reading
8 upside down. October 21st, 2010, that's the
9 Certificate of Occupancy?

10 A. Uh-huh (affirmative response).

11 Q. Okay. So, within one year of you building your home,
12 you were required by the By-Laws ---

13 A. Joe told me not to worry about it. He wanted me to
14 build the house.

15 Q. Okay. Well, the house would have been built?

16 A. When I asked him about that in the Covenants, he said,
17 "Don't worry about it; go ahead and build your house."

18 Q. Okay.

19 A. Because he wanted another house put up out there to
20 help him sell his lots.

21 Q. Okay. All right. So, it is your contention that you
22 -- you were exempted from the -- having to put --
23 implement the Paula Bishop plan?

24 A. When was the Paula Bishop plan even undertaken? I
25 think I paid her to do that in 2014, which was already

1 four years after the house was constructed.

2 Q. So, my question to you is, have you implemented the
3 Paula Bishop plan that was submitted to you ---

4 A. I have not.

5 Q. Okay. All right. So, let's go back to your
6 contention that the Covenants -- I want to get a clear
7 understanding from you why the Covenants don't --
8 aren't applicable to you.

9 A. Because they've never been bound to the property that
10 I purchased.

11 Q. All right. Explain that to me because I'm having a
12 hard time with your understanding of the law.

13 A. Okay. My lay understanding of this is that any
14 Restrictive Covenants needs to be either stipulated in
15 a conveyance or referenced in a conveyance if recorded
16 elsewhere. None of those things happened when Joe
17 sold all the land as MidEastern Truck Wash sold all
18 the land to Palmetto Air Plantation, LLC. Okay?

19 Q. Okay.

20 A. All right. Joe, at that point in time, lost his
21 rights as Declarant because more than twenty-five (25)
22 -- he retained zero percent of the lots at that time.
23 He can't act as Declarant after he's sold all of the
24 property.

25 Q. And where is that located in the law?

1 A. I'd have to look. I've read it somewhere. I can't
2 cite that. I'm not -- I'm not a lawyer and this is
3 not my court presentation. You asked me why I believe
4 what I believe and I'm trying to explain that to you.
5 Okay? He didn't record the Covenants when he deeded
6 all of that land, all forty-four (44) or forty-five
7 (45) lots to Palmetto Air Plantation, LLC. Okay.
8 Palmetto Air Plantation, LLC has not recorded those
9 Covenants by reference in any of the lots, any of the
10 Deeds for the twenty (20) some lots that has sold
11 since that date including mine. And as a matter of
12 fact, the -- as I recall, if my memory is right, the
13 only lot that Joe sold from MidEastern Truck Wash to
14 a guy down in Summerton I think it was did not contain
15 that verbiage either. So, you ask -- why I don't
16 believe the Covenants apply to my land -- that's the
17 first reason is that he lost all right to be Declarant
18 and God on that property after he sold it to Palmetto
19 Air Plantation, LLC. Palmetto Air Plantation, LLC
20 gave me a general Warranty Deed; okay? Not subject --
21 I guess it's subject to restrictions, zoning,
22 easements and all that jazz that apply, but it did --
23 again, it did not bind the Covenants to my property
24 and, indeed, I don't think they could unless they re-
25 filed themselves. That's my answer.

1 Q. Okay. And again, it is your contention that the
2 Contract of Sale is what, null and void?

3 A. The Covenant -- I don't know. A Judge would have to
4 say that, I guess, but my contention is that there is
5 an error in there that those Covenants were applicable
6 to my property at the time I entered into that
7 Contract for Sale. Although, at the point in time if
8 you want -- this is probably what you want to hear --
9 I believed that the Covenants did apply.

10 Q. Okay. So, regardless of whether they do or not, you
11 agreed to be bound by them?

12 A. At that point in time, I thought everything was on the
13 up and up. It was only after I got to digging into
14 all of this stuff that I realized what a huge morass
15 Joe had created here.

16 Q. Okay. But -- but I guess -- I guess my question is,
17 is that you entered into a Contract and whether there
18 was a mistake made at some point in the way these lots
19 were deeded, you -- you agreed to be bound by these
20 Covenants whenever you entered into the Contract?

21 MR. PLAYER: Object to the form.

22 A. My belief at the time is that all of that was legal
23 and on the up and up. I no longer believe that. That
24 answers your question. At the time, I believed that
25 it was in force and that it was valid. It was only

1 later I discovered it was a bunch of horse hockey.

2 Q. Okay. All right. So, let me ask a good question.

3 So, you -- my -- my question to you is, is that it
4 says that there are Restrictive Covenants on Paragraph
5 Four, and if you want to pull this back in front of
6 you, that will be fine; I'll get it for you.

7 A. This is the Contract of Sale?

8 Q. Contract of Sale.

9 A. Okay. I don't have that, but yeah, I know it's in the
10 Contract of Sale.

11 Q. Okay.

12 A. Yeah, I know it's in there.

13 Q. Paragraph Four.

14 A. Yeah.

15 Q. I mean, do you disagree or agree that the -- that at
16 the time of your purchase, that these Restrictive
17 Covenants were on file at the RMC Office in Clarendon
18 County?

19 A. I don't disagree with that. I disagree that they were
20 effective.

21 Q. Okay. But you -- I mean, do you agree or not agree
22 that you have signed this Contract?

23 A. Yes, of course, I signed the Contract, Steve, I mean,
24 come on.

25 Q. Okay. And so, the question -- my question to you is

1 then you signed a Contract agreeing to be bound by
2 them?

3 A. At the time, I believed it was legal and truthful and
4 it -- it's turned out that it's not. Okay? All
5 right? If you're getting me to say -- if you want me
6 to say that I agreed to that and I agreed to continue
7 to be bound by that, I don't because it wasn't right
8 at the time that Contract for Sale was signed. That
9 was an untrue statement that the property was bound by
10 those Covenants. I don't know how else to answer this
11 question.

12 Q. Well, Mr. Bevier, I -- my -- I guess my response to
13 that would be that you entered into a Contract and the
14 Contract asked if you wanted -- you didn't have to be
15 bound by these, you could have gone anywhere else and
16 built anywhere else you wanted to build; right? You
17 could have built anywhere you wanted to build in the
18 world?

19 A. What has that got to do with your question?

20 Q. Because you entered into a Contract.

21 A. Yes, I did, and some of the information that was
22 presented to me as being factual turns out not to be
23 so.

24 Q. Okay. So, what is the remedy, Mr. Bevier?

25 A. Well, if Joe wants to buy all of my property back from

1 me, that would be a good remedy.

2 Q. Okay.

3 MR. PLAYER: Object to form.

4 Q. So, the -- the remedy would be he buys your property?

5 A. He buys everything ---

6 MR. PLAYER: Object to the question.

7 A. Uh-huh (affirmative response).

8 MR. PLAYER: As to form. You can answer.

9 Object to the question.

10 Q. You may answer. He can buy your property?

11 A. If he wants me out of there, let him buy me out at
12 some sum that I agree is appropriate. All right? If
13 he doesn't want me in there, he can -- he can claim
14 he's Genghis Khan, he can claim he's emperor of the
15 world. I don't care as long as -- if he buys me out
16 and I move out of there, I don't give a damn what he
17 does to that land. Okay. But as long as I own it and
18 I'm trying to sell it. I'm trying to get out of there
19 now. I care a lot. Steve, would you mind if I took
20 another bathroom break?

21 Q. Yeah.

22 A. Would that be all right?

23 Q. I'm looking over my notes anyway.

24 (OFF THE RECORD).

25 MR. MCKENZIE: I don't have any other

1 questions. I think I know your position now
2 and I just had to get my head around it, and
3 I -- I appreciate you answering my questions.

4 MR. BEVIER: Surely.

5 MR. MCKENZIE: Mr. Player may have some
6 questions for you.

7 MR. PLAYER: No, I don't -- I don't have
8 any questions.

9 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
10 CONCLUDED AT 11:20 A.M.).

11

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) CERTIFICATE

I, Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I did have Kim E. Bevier appear before me commencing at 10:17 A.M. on April 4, 2018, at the offices of the Coffey and McKenzie, 2 North Brooks Street, Manning, South Carolina; that the witness was duly sworn and cautioned to tell the truth; that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place.

I hereby certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 21st day of May, 2018.

Doris Tompkins Brown, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4-02-2025

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA**

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately 150 feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

Section 1.13 Improvements shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 Licensor shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 Lot shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 Maintenance Fund shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 Members shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 Mortgage shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 Owner shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 Plat shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 Property shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II

The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenant's failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

Section 2.5 Rules and Regulations. The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

- a. The Use of Open Space,
- b. The Use of Private Roads,
- c. Collection and Disposal of Garbage and Trash,
- d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
- e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
- f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 Ownership of Personal and Real Property for Common Use. The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 Implied Rights and Obligations. The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III

Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

The Architectural Control Committee shall

- 3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof
- 3.2. adopt architectural guidelines and programs consistent with covenants and restrictions.
- 3.3. inspect for compliance with these guidelines.
- 3.4. adopt procedures for the exercise of its duties.
- 3.5. maintain complete and accurate records of all actions taken

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV

Architectural Guidelines and Rules

Section 4.1 **Land Use.** All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure, except as herein provided shall be erected, placed, or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling, unless waived by the A.C.C. and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite, or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association.

Section 4.2 **Partition or Combination of Lots.** No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 Commercial Businesses Prohibited. No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 Common Area. The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 Architectural Control. No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 Dwelling Size. Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area, excluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

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Section 4.7 Location. In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 Structure Material. Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 Kind of Home. No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 Driveways. Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 Drainage. No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 Continuity of Construction. All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred (\$100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; PROVIDED HOWEVER, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 Construction Traffic. Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 Hangar Specifications. Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V

Restrictions and Covenants

Section 5.1 Failing to Comply. In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 Maintenance. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 Toxic Disposal Prohibited. Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 Unsightly Materials Prohibited. No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 Outside Toilets. Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 Wall Hangings. An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

Section 5.9 Children. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 Pets. Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 Noise. No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 Electronic Equipment. No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 Satellite Dish. No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 Vehicles and Parking. No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

Section 5.15 Fuel Storage. It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 Fences and Hedges. The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 Signs. No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 Clothes Lines. No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 Flag Poles. Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 Antennas. No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 Outdoor Lighting. One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

Section 5.22 Mail Boxes. Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 Swimming Pools. No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 Wells and Water Removal. No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 Access. There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 Amendments to Regulations: Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 Ponds and Waterways. Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI

Aircraft and Hangar Restrictions, and Parking

Section 6.1 Type of Aircraft. Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

Section 6.2 Airport Hangars. All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 Two or More Aircraft. If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied-out aircraft must be in a good state of repair and appearance.

Section 6.4 Unattended Aircraft. No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down, and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 Run-ups. "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 Stunt Flying. No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statutes, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 Speed Limits. Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 Taxi-Way Courtesy. Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 Commercial Business. No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

Section 6.10 Storing Parts. There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII

Runway Assurances and Operations

Section 7.1 Operation. Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 Complaints. As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 Control of Runway. The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4 Withholding of Use. The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

- a) Who is in default in the payment of any assessment fee; or
- b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or
- c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII

Easements and Setbacks

Section 8.1 Setback Requirements. No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 During Construction. During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 Maintenance. In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX Insurance

Section 9.1 By the Declarant or Association. The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

Section 9.2 Liability Insurance by Declarant or Association. The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 By the Owner. It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 Aircraft Liability Insurance. Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X

Maintenance Assessments

Section 10.1 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

- (a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.
- (b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.
- (c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.
- (d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.
- (e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.
- (f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.
- (g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 Effect of Non-payment of Assessment; Lien; Remedies of Association. Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

- (a) Assess a late charge of at least fifteen percent (15%) per delinquency.
- (b) Suspend the voting rights of the Owner during any period of delinquency.

(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:

The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 Subordination of the Lien. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI

Duration and Amendments

Section 11.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

Section 11.2 Amendments. So long as the Declarant owns twenty-five (25%) per cent of the un-sold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 Effective on Recording Any Modification or Amendment. Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII

Enforcement of Covenants

Section 12.1 Violations Deemed a Nuisance. Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available.

Section 12.2 Who May Enforce. Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 No Liability. No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII

Expansion

Section 13.1 Reservation of Right to Expand. Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

Mary Ann Moore
Allyce Chuck Brown

MIDEASTERN TRUCKWASH, INC.

Joseph M. Witt
BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

Mary Ann Moore
Witness

SWORN to before me this 11th
day of July, 2001

Bette A. Ward
Notary Public for South Carolina
My Commission Expires: 4/4/11

✓
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Beulah G. Roberts, Clerk of Court

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COFFEY, CHANDLER & YOUNTS, P.A.

Attorneys At Law
8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292
(803) 435-8847

WILLIAM C. COFFEY, JR.
RAY E. CHANDLER
LENA T. YOUNTS
JOSEPH K. COFFEY



FACSIMILE
(803) 435-8915
E-MAIL
coffeylaw@ftc-i.net

May 21, 2003

Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden, SC 29020

RE: Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier:

It was a sincere pleasure for me to meet Kim on Tuesday concerning your purchase of lots at Palmetto Air Plantation. It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants. I feel that you will be a valued addition to our community and look forward to having you move here.

In accordance with our conversation, I have prepared and enclose herein for your consideration and execution a Contract of Sale on the lots. Hopefully, I have incorporated those provisions that you requested and if you have any questions concerning it please do not hesitate to contact me. Otherwise, if you will be so kind as to execute it and return a signed copy to me I will be glad to record it in the Office of the Clerk of Court of Clarendon County for you and return the recorded copy.

With sincere regards,

W. C. Coffey, Jr.

WCCJr/bau

Enclosure: As Stated

*Sale contract 5-21-03
Closed on sale 9-24-03*

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

CONTRACT OF SALE



This Contract made and entered into this 21st day of May, 2003, by and between Palmetto Air Plantation, P. O. Box 777, Manning, SC 29102, hereinafter referred to as the "Seller", and Kim E. Bevier and Susan S. Bevier, 706 Greene Street, Camden, SC 29020, hereinafter referred to as the "Purchasers".

1. Description of Premises - Purchasers agree to buy and Seller agrees to sell Lots 33 and 34, Palmetto Air Plantation, situate in Clarendon County, South Carolina, subject to all of the covenants of record and all governmental statutes, ordinances, rules and regulations applicable to said lots.

2. Purchase Price - The purchase price is Eighty Seven Thousand Dollars (\$87,000.00) to be paid as follows:

A. An earnest money deposit of Four Thousand Dollars (\$4,000.00) has been paid prior hereto as consideration for this Contract, which sum shall be applied to and deducted from the purchase price at closing and shall be held in the escrow account of Coffey, Chandler & Younts, P.A., closing attorneys;

B. The balance of Eighty Three Thousand Dollars (\$83,000.00) shall be payable by the issuance at closing of a Purchase Money Note, secured by a Mortgage of Real Estate on the lots herein referred to, which Note shall bear interest at the rate of six percent (6%) per annum and shall be payable on a ten (10) year amortization schedule with a balloon installment at the 60th month of the outstanding balance thereon. The first payment shall be due and payable one (1) month from the closing date anticipated by this transaction.

3. Closing - The Seller shall notify the Purchasers within one (1) year of the date of this Contract that the Seller is prepared to close this transaction and the Purchasers shall have a period of ninety (90) days from the date of notification to complete the closing. PROVIDED HOWEVER, in any event, the closing of this transaction shall occur on or before the 1st day of June, 2004. PROVIDED FURTHER, that the closing of this transaction on behalf of the Purchasers is contingent upon approval of the appropriate authority of Clarendon County for the issuance of a building permit

CERTIFIED TRUE COPY
Of Original Filed
In This Office
05/30/2003 09:04:35AM
Beulah G. Roberts
Clerk of Court
CLARENCE COUNTY SC

to construct a residence and other buildings on the premises as permitted by the Restrictive Covenants and upon its failure to do so, the Purchasers shall have the right to terminate this Contract and the earnest money deposited as herein provided shall be refunded to them.

4. Restrictive Covenants - This conveyance is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July, 2001, recorded in the Office of the RMC for Clarendon County in Deed Book A-444 at Page 26.

5. Deed and Costs - Upon payment by the Purchasers to the Seller of the outstanding balance due under this Contract, the Seller shall furnish to the Purchaser a general warranty deed to Lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances. The Buyer agrees to pay for the preparation of the deed, deed stamps, any loan fees, title fees and all other closing costs incurred by them in completing the purchase including the preparation of this Contract.

6. Taxes - Ad valorem taxes shall be prorated between the Seller and Purchaser as of the closing date. The Seller shall pay all roll-back taxes applicable to the property.

7. Possession and Improvements - During the term of this Contract the Purchasers shall have possessory rights of the above described lots which shall include the rights to clear said lot of undergrowth and to conduct tests thereon in accordance with the Restrictive Covenants. PROVIDED HOWEVER, that any well, septic tank, or other permanent improvement erected by the Purchasers during the performance of this Contract shall become a part of the real estate herein described and should default occur on the part of the Purchasers, then and in that event, the said structure and appurtenances shall be retained by the Seller as part of the property without any compensation.

8. Default - In the event of default in the payment of the sums recited herein, the Seller may, by endorsement across the face of the original of this Contract and/or endorsement across any recorded copy of the same, cancel and terminate this Contract and said endorsement shall be sufficient evidence of the cancellation of this Contract. Upon said cancellation this Contract shall be declared null and void and all payments made by the Purchasers to the Seller shall be retained in

the hands of the Seller and considered as liquidated damages. PROVIDED FURTHER, that prior to the cancellation of this Contract due to nonpayment, the Seller shall give to the Purchasers ten (10) days written notice by registered or certified mail of said default. Should the Purchasers fail to correct said delinquency and to complete the purchase and pay the balance of the purchase price within said ten (10) day period, the Seller may terminate this Contract as hereinabove provided.

This Contract shall be binding upon the parties hereto, their heirs, successors and assigns.

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above written.

Witnesses:
Carol P. Barlett
Mary Ann Morris

Palmetto Air Plantation, Inc.

BY [Signature]
ITS President, Seller

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Joseph M. Witt, sign, seal and as his act and deed, deliver the within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the other witness subscribed above witnessed the execution thereof.

Carol P. Barlett
1st Witness Sign Again

SWORN to before me this 21st
day of May, 2002.

Mary Ann Morris
Notary Public for South Carolina
My Commission Expires: 03/19/06

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above
written.

WITNESSES

Kathy B. West
1st Witness
Putnam V. Love
2nd Witness

Kim E. Bevier
Kim E. Bevier, Purchaser
Susan Bevier
Susan Bevier, Purchaser

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he
saw the within named Kim E. Bevier and Susan Bevier sign, seal and as his act and deed, deliver the
within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the
other witness subscribed above witnessed the execution thereof.

Kathy B. West
1st Witness Sign Again

SWORN to before me this 23
day of May, 2003.

Putnam V. Love
Notary Public for South Carolina
My Commission Expires: 10/1/2013
(Notary may be 2nd Witness)

My Commission Expires
October 1, 2012

W:\FPFILES\CORPORATE\PALMETTO\BEVIERK-COS
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DESCRIPTION OF LOTS

All those pieces, parcels or lots of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33, containing 1.6 acres and Lot No. 34 containing 1.46 acres and bounding now or formerly as follows: On the Northwest by lands of Ernest and Linda C. Rauber; on the Northeast by a pond; on the Southeast by Lot No. 35; on the Southwest by Mullet Drive and lands of Wilver Blanding.

For a more particular description of said Lots reference may be had to a plat of Palmetto Air Plantation Subdivision, dated 11 April, 2002, made by DuValle W. Elliott, RLS.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation, LLC by Deed of Mideastern Truckwash, Inc., dated 9 October, 2001, recorded October 22, 2001 in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map Parcel No. 140-00-05-063.

COFFEY, CHANDLER & YOUNTS, P.A.

Attorneys At Law
8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292
(803) 435-8847

WILLIAM C. COFFEY, JR.
RAY E. CHANDLER
LENA T. YOUNTS
JOSEPH K. COFFEY

FACSIMILE
(803) 435-8915
E-MAIL
coffeylaw@ftc-i.net

June 5, 2003



Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden, SC 29020

Mr. Joe Witt
Palmetto Air Plantation, LLC
P. O. Box 777
Manning, SC 29102

RE: Contract of Sale - Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier & Joe:

We are pleased to enclosed copies of the executed and recorded Contract of Sale between Mr. & Mrs. Bevier and Palmetto Air Plantation.

It has been our sincere pleasure to assist you with this transaction and if we can be of further assistance please do not hesitate to give us a call.

Sincerely,

Betty A. Usry, Secretary to
W. C. Coffey, Jr.

bau/

Enclosure: As Stated.



STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

PRELIMINARY
ATTORNEY'S TITLE CERTIFICATE

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Palmetto Air Plantation to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

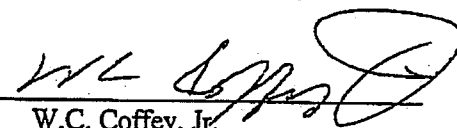
1. Mortgage from Palmetto Air Plantation, Inc. to Edward G. Gibbons dated February 8, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 465 at Page 134.
2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.
3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County

in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.
5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.
6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.
7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.
8. Any law, ordinance or governmental regulation relating to environmental protection.
9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.
10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.
11. This certificate is limited in the amount of \$87,000.00.

Respectfully submitted,

COFFEY, CHANDLER & MEREDITH PA

BY: 

W.C. Coffey, Jr.

September 25, 2003
Manning, South Carolina

COFFEY, CHANDLER & MEREDITH, P.A.
Attorneys At Law

8 South Brooks Street - Post Office Box 1292
Manning, South Carolina 29102-1292

Telephone (803) 435-8847
Facsimile (803) 435-8915
E-mail coffeylaw@ftc-i.net



William C. Coffey, Jr.
Ray E. Chandler
Lena Younts Meredith
Joseph K. Coffey

October 24, 2003

Reply to:
Manning

Mr. and Mrs. Kim Bevier
706 Greene Street
Camden, SC 29020

RE: Purchase of Property from Palmetto Air Plantation
Our File No. 030390BR

Dear Mr. and Mrs. Bevier:

Enclosed please find the original, recorded deed and Attorney's Title Certificate for the property you recently purchased. You will want to store the enclosed documentation in your property portfolio.

Please do not hesitate to call our office should you have any questions or if we may be of service to you with future legal needs.

Sincerely,

Jaimee L. Garrett
Real Estate Department

Enclosure(s): As stated

Greenwood Office: 214 Waller Street, Greenwood, South Carolina 29646
Telephone (864) 943-1002 • Facsimile (864) 943-1004 • E-mail lenameredith@earthlink.net

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

FINAL
ATTORNEY'S TITLE CERTIFICATE

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Kim E. Bevier and Susan S. Bevier to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lot being conveyed to Kim E. Bevier and Susan S. Bevier by deed of Palmetto Air Plantation dated September 26, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-509 at Page 265.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

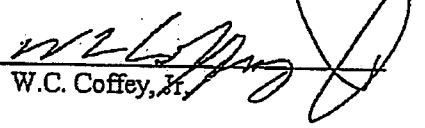
Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

1. Mortgage from Kim E. Bevier and Susan S. Bevier to Palmetto Air Plantation, Inc. dated September 28, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 551 at Page 307.
2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.
3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.
5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.
6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.
7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.
8. Any law, ordinance or governmental regulation relating to environmental protection.
9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.
10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.
11. This certificate is limited in the amount of \$87,000.00.

Respectfully submitted,

COFFEY, CHANDLER & MEREDITH PA

BY: 
W.C. Coffey, Jr.

September 26, 2003
Manning, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2017-CP-14-00127

Palmetto Air Plantation Homeowners Association, Inc.,.....Respondent.

vs.

Kim E. Bevier,.....Appellant,

NOTICE OF APPEAL

Kim E. Bevier appeals the Orders of the Honorable R. Ferrell Cothran, Jr., granting Partial Summary Judgment, electronically signed on December 14, 2018, and E-filed on December 17, 2018, and denying the Rule 59(e) SCRPC Motion to Alter or Amend the Judgment, dated and E-filed February 28, 2019. Appellant received notice of the E-filing of the February 28, 2019 Order on February 28, 2019.

March 26, 2019

Other Counsel of Record:
Steven S. McKenzie, Esquire
2 North Brooks Street
Manning, South Carolina 29102
Telephone: (803) 435-8847
Facsimile: (803) 435-8915
Email: smckenzie@ccmlawsc.com
Attorney for the Respondent

s/ Thomas E. Player, Jr.
Thomas E. Player, Jr.
Player & McMillan, LLC
305 North Main Street
Post Office Box 3690
Sumter, South Carolina 29151-3690
Telephone: (803) 775-2306
Facsimile: (803) 436-5960
Email: tommyplayer@playermcmillan.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

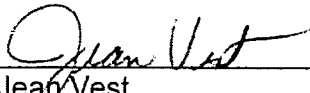
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2017-CP-14-00127

Palmetto Air Plantation Homeowners Association, Inc.,.....Respondent,
vs.
Kim E. Bevier,.....Appellant

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 21st day of March, 2019, served the **Notice of Appeal** in the above captioned matter, on the Respondent by E-Filing the same and causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to it's attorney of record, Mr. Steven S. McKenzie, Esquire, 2 North Brooks Street, Manning, South Carolina 29102.



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

The Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Case No. 2019-000516

CERTIFICATE OF COUNSEL

RECEIVED

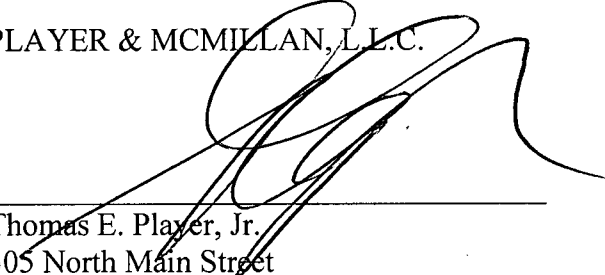
AUG 14 2019

SC Court of Appeals

I hereby certify, pursuant to SCACR 210(g), that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RESPECTFULLY SUBMITTED.

PLAYER & MCMILLAN, L.L.C.



Thomas E. Player, Jr.
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151
(803) 775-2306
ATTORNEY FOR THE APPELLANT

Sumter, South Carolina
July 24, 2019