

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

Case No. 12-ALJ-17-0542-CC

Dorchester County Assessor Appellant,

v.

Middleton Place Equestrian Center, LLC Respondent.

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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ISSUE

What is the appropriate tax classification for the tax year 2012 for the subject parcels of real property located in Dorchester County, South Carolina?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. Notice of the time, date, place, and nature of the hearing was timely given to all parties.
2. The Respondent is the owner of certain parcels of real property located in Dorchester County, South Carolina, which parcels constitute a small portion of an overall tract of several hundred acres owned by Middleton Place Equestrian Center, LLC. These parcels are designated TMS#s 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005 & 189-00-00-009.
3. In 1970, Charles H.P. Duell ("Mr. Duell"), the principal and sole member of the Respondent LLC, inherited all of the real property that is currently part of the Respondent LLC, together with significant additional property, including the historic manor remains and gardens of what is commonly referred to as Middleton Place (the portion of the property containing the remaining portion of the manor and the gardens is actually designated as the Middleton Place National Historic Landmark, while the property which includes the subject parcels is on the National Register of Historic Places).
4. In the mid-1970s, Mr. Duell developed a master plan for the set-aside of a portion

of Middleton Place to provide sufficient capital to aid in the restoration of the Middleton Place National Historic Landmark. The plan was developed with the aid of Robert Marvin and was laid out with conservation and historic preservation in mind. The initial plan called for the creation of approximately twenty-five home sites which might be sold to raise capital for restoration and improvements to the Middleton Place National Historic Landmark.

5. After the creation of the master plan, Mr. Duell established the Middleton Oaks Property Owners Association, Inc., now known as the Middleton Place Property Owners Association, Inc. and created a "Declaration of Covenants and Restrictions of Charles H.P. Duell as Pertain to Middleton Oaks." The purpose of the Covenants and Restrictions is to govern the use and restriction of the house sites once they are sold to individual owners. The Covenants and Restrictions reserve to Mr. Duell the sole and exclusive final authority as to all determinations related to said use and restriction, though he may appoint an Architectural Review Board to advise him in the process.

6. The entire tract within the master plan continued to receive the agricultural use designation and, each time a house site was sold, the site was individually platted and a plat was recorded with the Dorchester County RMC office. The subject house site was then removed from the agricultural use designation and taxed at the appropriate market rate.

7. In 1990, Mr. Duell was contacted by the Dorchester County Planning Board; it requested that he obtain and record a plat reflecting each of the individual house sites to aid in the recording of each when a house site was sold. Mr. Duell was concerned that recording a plat might require standard curb and gutter, sidewalk and roadway requirements common to traditional "subdivision" type developments and might, even more significantly, impact the agricultural use designation of the remaining portion of the property. He brought his concerns to

the attention of Dorchester County officials and sought assurance from Joe Murray, the assessor for Dorchester County at the time, that the designation would not change. He confirmed this understanding in writing to Mr. Murray by letter dated August 11, 1993. From the time of the recording of the plat until 2012, the subject property continued to receive the Agricultural Use designation for all unsold parcels.

8. Both prior to and after the change requested by Dorchester County in 1990, the house sites were sold at a rate of less than one every two years on average and the last transaction involving the sale of a house site took place in 2007; none have occurred since. Since the creation of the master plan less than twenty house sites have been sold and fewer than a dozen homes constructed.

9. The remaining portion of the master plan property, including the eleven parcels now sought to be taxed at the market value rate, have remained a part of the woodlands property. During this time period, dating back to when the plat was required to be recorded in 1990, the eleven parcels have been part of the timberland management plan that Mr. Duell follows throughout the National Register property as a whole, which calls for selective "improvement cutting" to harvest pines, allowing for the removal of mature pines and the improved viability of remaining hardwoods. In 2012, approximately \$40,000.00 worth of timber was cut on Mr. Duell's property within the Respondent LLC and listed on the National Register of Historic Places. Current plans have been approved by the Architectural Review Board for Middleton Oaks Property Owners Association, Inc., in its advisory capacity to Mr. Duell as owner, for such improvement cutting to take place within the footprint of the remaining, unsold, house sites and common area, as is done periodically. Since 1993, when the agricultural use designation was reaffirmed, Mr. Duell has cut timber from the eleven parcels in question.

10. Mr. Duell has been the sole owner of the subject parcels since he inherited them in 1970. The parcels in aggregate far exceed the minimum of five acres required by §12-43-232(1)(a) of the South Carolina Code of Laws, and, despite the requirement from Dorchester County in 1990 that each be separately platted, he has continued to treat each as part of the greater whole, which acreage vastly exceeds the requirement, and has continued to manage them as he has all of the other property owned by him at Middleton Place.

11. The vast majority of the real property (significantly more than fifty percent) owned by the Respondent LLC continues to qualify as agricultural real property and no other business for profit is being operated on that property.

12. The Petitioner relied on language in the Declaration of Covenants and Restrictions as his basis for determining that the Agricultural Use classification is not appropriate for the subject parcels. Petitioner focused on language in the Declaration of Covenants and Restrictions, which he believes prevents Respondent from cutting trees on the subject parcels: "No trees, bushes, or underbrush of any kind may be removed without the written approval of the Architectural Review Board." Petitioner failed to give credence to the clear language in the Declaration of Covenants and Restrictions which grants to the owner (Mr. Duell) the sole and exclusive power to "appoint an Architectural Review Board to counsel him; but ultimate authority for the decisions of the Architectural Review Board shall in all cases rest with the Owner, his heirs and assigns."

13. Petitioner made further assumptions about the rationale for the provisions in the Declaration of Covenants and Restrictions, but failed to apprehend and appreciate the unique nature and character of this property. Petitioner has read and seeks to

interpret the Declaration of Covenants and Restrictions in the context of a traditional subdivision, which is not the case.

14. The Declaration of Covenants and Restrictions, authored by Mr. Duell, was placed on the property to protect the sensitive and historic nature of the property and the surrounding environs; to restrict homeowners from unnecessary or excessive removal of trees or other alterations to the property that would impact the other property owners, Mr. Duell, guests at the Inn, users of the Equestrian Center, and the aesthetics of that portion of the National Register property; and, to prevent any non-residential use of any parcel by an owner. However, there is no indication that it was intended to restrict in any way selective cutting and appropriate management of the land, and the language therein vests final authority for every decision with Mr. Duell as owner.

CONCLUSIONS OF LAW

Based upon the findings of fact, I conclude the following as a matter of law:

1. S.C. Code Ann. §12-60-2540 authorizes the ALC to hear this contested case pursuant to Chapter 23 of Title 1 of the 1976 Code of Laws, as amended.
2. The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. *Anonymous v. State Board of Medical Examiners*, 329 S.C. 371, 796 S.E.2d 17 (1998).
3. An Agency decision must be reached utilizing reasoned judgment and must be based upon adequate determining principles and a rational basis. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987).
4. The trier of fact must weigh and pass upon the credibility of the evidence presented.

S.C. Cable Television Association v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992).

5. A court construing a statute must first seek to ascertain and effectuate legislative intent. *Koenig v. South Carolina Dep't of Public Safety*, 325 S.C. 400, 480 S.E.2d 98, 99 (Ct. App. 1996). The cardinal rule of statutory construction is to give words used in the statute their plain and ordinary meaning without resort to subtle or forced construction. *Id.* The language must be read to harmonize its subject matter with its general purpose. *Id.* "In construing statutory language, the statute must read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). However, our courts have held that statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design and policy of lawmakers. *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). *Gilstrap v. South Carolina Budget and Control Board*, 310 S.C. 210, 423 S.E.2d 101 (1992).

6. S.C. Code Ann. §12-43-230(a) provides in pertinent part: "For the purposes of this article, unless otherwise required by the context, the words 'agricultural real property' shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. **In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so**

classified, provided no other business for profit is being operated thereon.” (Emphasis added).

7. S.C. Code Ann. §12-43-230(a) requires the South Carolina Department of Revenue to promulgate a regulation designed to provide a more detailed definition of “agricultural real property” and to exclude from the use assessment any real property not used for a bona fide agricultural purpose.

8. In accordance with the referenced requirement, Regulation 117-1780.1 was promulgated. The Regulation provides that “Agricultural Real Property, as that term is used in 12-43-220(d), 12-43-230, and 12-43-232 of the South Carolina Code of Laws means a tract of real property which is used for agricultural purposes. Real property must meet the requirements for agricultural real property of Code Sections 12-43-220(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property.

Additionally, the term Agricultural Real Property shall not include any property used as the residence of the owner or others. In no event shall real property be classified as agricultural real property when such property is not used for bona fide agricultural purposes. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use. Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception.

The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (These factors are not, however, meant to be exclusive and all relevant facts must be considered.) 1. The nature of the terrain; 2. The density of the marketable product (timber, etc.) on the land; 3. The past usage of the land; 4.

The economic merchantability of the agricultural product; 5. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; 6. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes. **In cases in which the real property is committed to more than one use, one use being agricultural use and the other use or uses being unrelated to agriculture the agricultural activity use must comprise the most significant use of the property in order for it to be classified as agricultural real property.**" (Emphasis added).

9. In weighing the factors that **"shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property"** (Emphasis added), the Petitioner placed great weight and emphasis on the Declaration of Covenants and Restrictions. Specifically, Petitioner focused on language which he believed to proscribe the removal of timber from the subject Parcels owned by Respondent. In construing restrictive covenants, our courts have held that "[w]ords of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 3, 498 S.E.2d 862, 863 (1998). "'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.*, 332 S.C. at 3, 498 S.E.2d at 863-864 (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (1985)). "The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Id.*, 332 S.C. at 4, 498 S.E.2d at

864 (quoting *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420, 424 (1950)). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of the free use of the property, subject, however, to the provision that this rule of strict construction should be applied so as not to defeat the plain and obvious purpose of the instrument.

It follows, of course, that where the language and all restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” *Id.*, 332 S.C. at 4, 498 S.E.2d at 864 (citing *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951)). The Declaration of Covenants and Restrictions in the instant case clearly reserves to the Respondent the ultimate authority for decisions relating to the removal of trees and cutting of timber. This reservation is contained in the language pertaining to the appointment and authority of Architectural Review Board as set forth in the findings of fact above.

10. Because the Petitioner seeks to treat the subject parcels each separately, resulting in each being less than five acres, reference must be made to S.C. Code Ann. §12-43-232(1)(a): “If the tract is used to grow timber, the tract must be five acres or more. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For the purposes of this item, tracts of timberland must be devoted actively to growing trees for commercial use.” In the instant matter, Respondent owns contiguous tracts of timberland which greatly exceed the minimum requirements set forth in the statute and are managed in the same manner as the subject parcels. Respondent also owns

contiguous tracts of nontimberland real property whereupon the equestrian center and other agricultural operations are situated.

11. Though each proves only to further bolster the Court's determination that the Respondent's subject parcels shall continue to qualify as agricultural real property for the tax year 2012, even if full deference were to be given to Petitioner's interpretation of the Declaration of Covenants and Restrictions as well as his assumptions as to the use of the subject parcels, reference is made to S.C. Code Ann. §12-43-232(2) and S.C. Code Ann. §12-43-232(3)(e) for support for the contention that the designation would still apply to these parcels even if they were determined to be nontimberland. S.C. Code Ann. §12-43-232(2) states: "For tracts not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way." S.C. Code Ann. §12-43-232(3)(e) states: "A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994. The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever occurs first. For purposes of this subitem, "immediate family" is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of

whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity." Each exception would apply to Respondent's parcels were they not timberland tracts.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Assessor's decision to remove the agricultural use classification for the subject parcels for tax year 2012 is reversed and the agricultural use classification reinstated.

IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

Columbia, South Carolina
September 30 2013

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 30th day of September 2013
By: May Beth Capelle
Judicial Law Clerk

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This matter is before the Administrative Law Court (“ALC”) upon a request by Petitioner for a contested case hearing, filed on December 7, 2012. After considering the filings and arguments, the Court issued a final order in the matter on August 20, 2013. On September 3, 2013, Petitioner moved this Court to alter or amend that order. In that motion the Petitioner argues that the Court made errors of fact and the decision of the ALC was inconsistent with applicable statutes, which requires the judgment be amended. The Court denies this motion.

However, the Court has issued an Amended Final Order and Decision to correct a scrivener's error. The Court did not intend to award attorney's fees and does not find an award of attorney's fees appropriate in this case. The second to last line stating "that Respondent be awarded attorney's fees in accordance with attached Affidavit of Attorney's Fees", has been removed from the Amended Final Order and decision.

AND IT IS SO ORDERED.

Carolyn A. Matthews

CAROLYN C. MATTHEWS
SC Administrative Law Judge
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

September 30, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 30th day of September 2018

By: Maya Rose Campbell
Judicial Law Clerk

Judicial Law Clerk

FILED

SEP 30 2013

SC ADMIN. LAW COURT

Dorchester County Assessor,	)	Docket No. 12-ALJ-17-0542-CC
	)	
Petitioner,	)	
	)	
vs.	)	FINAL ORDER AND DECISION
	)	
Middleton Place Equestrian Center, LLC,	)	
	)	
Respondent,	)	
	)	

SC ADMIN. LAW COURT¹⁴

ISSUE

What is the appropriate tax classification for the tax year 2012 for the subject parcels of real property located in Dorchester County, South Carolina?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. Notice of the time, date, place, and nature of the hearing was timely given to all parties.
2. The Respondent is the owner of certain parcels of real property located in Dorchester County, South Carolina, which parcels constitute a small portion of an overall tract of several hundred acres owned by Middleton Place Equestrian Center, LLC. These parcels are designated TMS#s 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005 & 189-00-00-009.
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of Middleton Place to provide sufficient capital to aid in the restoration of the Middleton Place National Historic Landmark. The plan was developed with the aid of Robert Marvin and was laid out with conservation and historic preservation in mind. The initial plan called for the creation of approximately twenty-five home sites which might be sold to raise capital for restoration and improvements to the Middleton Place National Historic Landmark.

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6. The entire tract within the master plan continued to receive the agricultural use designation and, each time a house site was sold, the site was individually platted and a plat was recorded with the Dorchester County RMC office. The subject house site was then removed from the agricultural use designation and taxed at the appropriate market rate.

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the attention of Dorchester County officials and sought assurance from Joe Murray, the assessor for Dorchester County at the time, that the designation would not change. He confirmed this understanding in writing to Mr. Murray by letter dated August 11, 1993. From the time of the recording of the plat until 2012, the subject property continued to receive the Agricultural Use designation for all unsold parcels.

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9. The remaining portion of the master plan property, including the eleven parcels now sought to be taxed at the market value rate, have remained a part of the woodlands property. During this time period, dating back to when the plat was required to be recorded in 1990, the eleven parcels have been part of the timberland management plan that Mr. Duell follows throughout the National Register property as a whole, which calls for selective "improvement cutting" to harvest pines, allowing for the removal of mature pines and the improved viability of remaining hardwoods. In 2012, approximately \$40,000.00 worth of timber was cut on Mr. Duell's property within the Respondent LLC and listed on the National Register of Historic Places. Current plans have been approved by the Architectural Review Board for Middleton Oaks Property Owners Association, Inc., in its advisory capacity to Mr. Duell as owner, for such improvement cutting to take place within the footprint of the remaining, unsold, house sites and common area, as is done periodically. Since 1993, when the agricultural use designation was reaffirmed, Mr. Duell has cut timber from the eleven parcels in question.

10. Mr. Duell has been the sole owner of the subject parcels since he inherited them in 1970. The parcels in aggregate far exceed the minimum of five acres required by §12-43-232(1)(a) of the South Carolina Code of Laws, and, despite the requirement from Dorchester County in 1990 that each be separately platted, he has continued to treat each as part of the greater whole, which acreage vastly exceeds the requirement, and has continued to manage them as he has all of the other property owned by him at Middleton Place.

11. The vast majority of the real property (significantly more than fifty percent) owned by the Respondent LLC continues to qualify as agricultural real property and no other business for profit is being operated on that property.

12. The Petitioner relied on language in the Declaration of Covenants and Restrictions as his basis for determining that the Agricultural Use classification is not appropriate for the subject parcels. Petitioner focused on language in the Declaration of Covenants and Restrictions, which he believes prevents Respondent from cutting trees on the subject parcels: "No trees, bushes, or underbrush of any kind may be removed without the written approval of the Architectural Review Board." Petitioner failed to give credence to the clear language in the Declaration of Covenants and Restrictions which grants to the owner (Mr. Duell) the sole and exclusive power to "appoint an Architectural Review Board to counsel him; but ultimate authority for the decisions of the Architectural Review Board shall in all cases rest with the Owner, his heirs and assigns."

13. Petitioner made further assumptions about the rationale for the provisions in the Declaration of Covenants and Restrictions, but failed to apprehend and appreciate the unique nature and character of this property. Petitioner has read and seeks to

interpret the Declaration of Covenants and Restrictions in the context of a traditional subdivision, which is not the case.

14. The Declaration of Covenants and Restrictions, authored by Mr. Duell, was placed on the property to protect the sensitive and historic nature of the property and the surrounding environs; to restrict homeowners from unnecessary or excessive removal of trees or other alterations to the property that would impact the other property owners, Mr. Duell, guests at the Inn, users of the Equestrian Center, and the aesthetics of that portion of the National Register property; and, to prevent any non-residential use of any parcel by an owner. However, there is no indication that it was intended to restrict in any way selective cutting and appropriate management of the land, and the language therein vests final authority for every decision with Mr. Duell as owner.

CONCLUSIONS OF LAW

Based upon the findings of fact, I conclude the following as a matter of law:

1. S.C. Code Ann. §12-60-2540 authorizes the ALC to hear this contested case pursuant to Chapter 23 of Title 1 of the 1976 Code of Laws, as amended.
2. The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. *Anonymous v. State Board of Medical Examiners*, 329 S.C. 371, 796 S.E.2d 17 (1998).
3. An Agency decision must be reached utilizing reasoned judgment and must be based upon adequate determining principles and a rational basis. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987).
4. The trier of fact must weigh and pass upon the credibility of the evidence presented.

S.C. Cable Television Association v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992).

5. A court construing a statute must first seek to ascertain and effectuate legislative intent. *Koenig v. South Carolina Dep't of Public Safety*, 325 S.C. 400, 480 S.E.2d 98, 99 (Ct. App. 1996). The cardinal rule of statutory construction is to give words used in the statute their plain and ordinary meaning without resort to subtle or forced construction. *Id.* The language must be read to harmonize its subject matter with its general purpose. *Id.* "In construing statutory language, the statute must read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). However, our courts have held that statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design and policy of lawmakers. *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). *Gilstrap v. South Carolina Budget and Control Board*, 310 S.C. 210, 423 S.E.2d 101 (1992).

6. S.C. Code Ann. §12-43-230(a) provides in pertinent part: "For the purposes of this article, unless otherwise required by the context, the words 'agricultural real property' shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. **In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so**

classified, provided no other business for profit is being operated thereon.” (Emphasis added).

7. S.C. Code Ann. §12-43-230(a) requires the South Carolina Department of Revenue to promulgate a regulation designed to provide a more detailed definition of “agricultural real property” and to exclude from the use assessment any real property not used for a bona fide agricultural purpose.

8. In accordance with the referenced requirement, Regulation 117-1780.1 was promulgated. The Regulation provides that “Agricultural Real Property, as that term is used in 12-43-220(d), 12-43-230, and 12-43-232 of the South Carolina Code of Laws means a tract of real property which is used for agricultural purposes. Real property must meet the requirements for agricultural real property of Code Sections 12-43-220(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property.

Additionally, the term Agricultural Real Property shall not include any property used as the residence of the owner or others. In no event shall real property be classified as agricultural real property when such property is not used for bona fide agricultural purposes. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use. Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception.

The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (These factors are not, however, meant to be exclusive and all relevant facts must be considered.) 1. The nature of the terrain; 2. The density of the marketable product (timber, etc.) on the land; 3. The past usage of the land; 4.

The economic merchantability of the agricultural product; 5. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; 6. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes. **In cases in which the real property is committed to more than one use, one use being agricultural use and the other use or uses being unrelated to agriculture the agricultural activity use must comprise the most significant use of the property in order for it to be classified as agricultural real property.**" (Emphasis added).

9. In weighing the factors that **"shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property"** (Emphasis added), the Petitioner placed great weight and emphasis on the Declaration of Covenants and Restrictions. Specifically, Petitioner focused on language which he believed to proscribe the removal of timber from the subject Parcels owned by Respondent. In construing restrictive covenants, our courts have held that "[w]ords of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 3, 498 S.E.2d 862, 863 (1998). "Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.*, 332 S.C. at 3, 498 S.E.2d at 863-864 (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (1985)). "The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Id.*, 332 S.C. at 4, 498 S.E.2d at

864 (*quoting Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420, 424 (1950)). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of the free use of the property, subject, however, to the provision that this rule of strict construction should be applied so as not to defeat the plain and obvious purpose of the instrument.

It follows, of course, that where the language and all restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” *Id.*, 332 S.C. at 4, 498 S.E.2d at 864 (*citing McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951)). The Declaration of Covenants and Restrictions in the instant case clearly reserves to the Respondent the ultimate authority for decisions relating to the removal of trees and cutting of timber. This reservation is contained in the language pertaining to the appointment and authority of Architectural Review Board as set forth in the findings of fact above.

10. Because the Petitioner seeks to treat the subject parcels each separately, resulting in each being less than five acres, reference must be made to S.C. Code Ann. §12-43-232(1)(a): “If the tract is used to grow timber, the tract must be five acres or more. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For the purposes of this item, tracts of timberland must be devoted actively to growing trees for commercial use.” In the instant matter, Respondent owns contiguous tracts of timberland which greatly exceed the minimum requirements set forth in the statute and are managed in the same manner as the subject parcels. Respondent also owns

contiguous tracts of nontimberland real property whereupon the equestrian center and other agricultural operations are situated.

11. Though each proves only to further bolster the Court's determination that the Respondent's subject parcels shall continue to qualify as agricultural real property for the tax year 2012, even if full deference were to be given to Petitioner's interpretation of the Declaration of Covenants and Restrictions as well as his assumptions as to the use of the subject parcels, reference is made to S.C. Code Ann. §12-43-232(2) and S.C. Code Ann. §12-43-232(3)(e) for support for the contention that the designation would still apply to these parcels even if they were determined to be nontimberland. S.C. Code Ann. §12-43-232(2) states: "For tracts not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way." S.C. Code Ann. §12-43-232(3)(e) states: "A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994. The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever occurs first. For purposes of this subitem, "immediate family" is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of

whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity." Each exception would apply to Respondent's parcels were they not timberland tracts.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Assessor's decision to remove the agricultural use classification for the subject parcels for tax year 2012 is reversed and the agricultural use classification reinstated.

IT IS FURTHER ORDERED that the Respondent be awarded attorney's fees in accordance with the attached Affidavit of Attorney's Fees.

IT IS SO ORDERED.


Carolyn C. Matthews,
Administrative Law Judge

Columbia, South Carolina
August 20, 2013

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 20th day of August 2013
By: Mary Beth Campbell
Judicial Law Clerk

**DORCHESTER COUNTY
BOARD OF ASSESSMENT APPEALS
201 Johnston Street
St. George, SC 29477**

Appeal by Charles Duell for Middleton Place Foundation regarding agricultural use tax rate on the properties listed below:

- 1) TMS#s 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 180-00-00-001, 189-00-00-004, 189-00-00-005 & 189-00-00-009

FINDINGS OF FACTS

An appeal hearing was conducted at 8:30 a.m. on Monday, October 15, 2012. The Board Members present were Ben Cheatham (Chairman), Jeff Bowers (Vice-Chairman), Mr. Walter Limehouse, Mr. Ted French, Mr. Ed Causey & Mrs. Betty Harrison. Wayne Welch, Dorchester County Assessor represented the Assessor's position in this matter. The Board's findings are as follows:

The appellant, Mr. Charles Duell of Middleton Place Foundation, is appealing that the subject properties above are being taxed at market value. He feels that the properties should be taxed at the agricultural use value. Mr. Duell presented a letter he had addressed from 1993 to former Assessor Joe Murray requesting that the subject properties be taxed at the agricultural use. It was then accepted and approved at that time and has been since. He feels that this letter memorializes facts of the event and now the county is re-niggling on their part. He feels this is a devastating hit that Middleton Place Foundation cannot afford. Mr. Duell feels that Middle Place Foundation does a lot for Dorchester County and asks that the Board grant agricultural use for the subject properties above.

On April 30, 2012, the Assessor's Office received appeal forms from Mr. Charles Duell requesting a review of the agricultural use value on the subject properties listed above owned by Middleton Place Foundation. These lots are located in the Middleton Place Subdivision. They range in size from 0.29 acres to 3.08 acres.

Dorchester County Assessor's Office has been auditing all properties less than 5 acres that are receiving agricultural use value. If it is found that a property does not qualify for the agricultural use value, then it is taken off of the use value and put on for the market value of the property or the capped value, whichever applies.

The subject lots had been taxed at the agricultural use value in previous tax years, but were taken off of agricultural use value and put on for market value based on the properties not meeting the criteria for agricultural use value for the 2012 tax year. The restrictive covenants for Middleton Place Subdivision state that no trees may be removed

without the written approval of the Architectural Review Board. A copy of the restrictive covenants for Middleton Place was provided with the appeal packet.

Dorchester County Assessor Wayne Welch met with Mr. Charles Duell concerning the properties being taken off of agricultural use. The Assessor explained to Mr. Duell that he could apply for multiple lot discounts on the properties since Mr. Duell owned 10 or more lots in the same subdivision. Mr. Duell applied for and was granted the multiple lot discounts on all eleven lots for the 2012 tax year. Mr. Duell stated that even though he was given this discount, it was not attractive because he was still at the 6% rate.

In the Assessor's Office opinion, following the South Carolina State Law, the subject properties do not qualify for the agricultural use value. Therefore the Assessor's Office requests that the Board uphold the decision of the Assessor's Office to remove the subject property from agricultural use.

DECISION

After review of the evidence of record by the Assessor's Office and the information submitted by the appellant, it is the decision of the Board of Assessment Appeals that the subject properties of Middle Place continue to receive the agricultural use value. If the decision is not appealed it must be certified by the Dorchester County Auditor for entry upon the property tax assessment rolls.

RIGHT OF APPEAL

Within 30 days after the date of this decision, the property tax payer or the County Assessor may appeal a property tax assessment by the Board by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division, as provided in the SC Code of Laws, Section 12-60-2540. Appeals should be sent to:

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

*Ben Cheatham / Lt
Chairman*

Dorchester County Assessor,

VS.

Respondent.

**MOTION TO ALTER OR AMEND
(RULE 59(e) SCRCP, RULE 29(D)
SCRALC)**

1

Place Equestrian Center, LLC ("Middleton"). The Assessor denied the classification following an audit of all properties in the County that consisted of less than five (5) acres and were then receiving the agricultural land use classification for a reduced property tax rate. The Assessor found that Middleton's home sites did not meet the statutory requirements for an agricultural classification. Middleton appealed the classification denial to the Dorchester County Board of Assessment Appeals who reversed the Assessor without setting forth a legal basis in its decision. The Assessor appealed to the South Carolina Administrative Law Court on the basis the properties do not meet the requirements for agricultural land use classification. At the conclusion of the Respondent's case in chief, the ALC declined closing arguments and asked the parties to submit proposed orders based on transcripts of the hearing, adopting Middleton's proposed Order verbatim. The Assessor's proposed Order is attached hereto as Exhibit 2.

ARGUMENT

The Assessor respectfully asserts that the Final Order and Decision sets forth an incorrect and incomplete summary of the facts as they appear on the record and is inconsistent with applicable statutes, as well as prior rulings of this very Court under identical facts. The Final Order omits key pieces of evidence necessary to reach certain conclusions and incorrectly includes facts that were not submitted to the Court, both of which materially affect the conclusions of law. Further, an order of Attorney's Fees is inappropriate under S.C. Code Ann. § 12-60-2545.

1. Pursuant to Rules 52 and 59, SCRPC, the Court should withdraw, reconsider, and/or alter or amend its findings of fact and conclusions of law that the Assessor made assumptions about the properties' Restrictive Covenants based on a single

provision prohibiting the cutting of trees, and should otherwise amend the Order so as to evaluate the full body of evidence regarding the applicability of the Covenants to the property and the uses to which it is committed. See Final Order, pp. 5-6. The Final Order specifically states that the Covenants must be read as a whole—as is required by applicable law—yet such a reading is not possible when numerous key sections of the Covenants (which have been in place on the subject properties since 1993) are absent in the Court's analysis.

The Final Order and Decision fails to consider all aspects of the Covenants in evidence, particularly those additional provisions entered into evidence and relied upon by the Assessor that specifically identify the properties at issue as Residential Lots **committed to residential purposes only**. The Covenants define residential lots as “any unimproved parcel of land located within the property which is intended for use as a site for a single-family detached dwelling, townhouse, or cottage, or dwelling as shown upon any recorded final subdivision plat or plat of the property.” (Covenants, Part One, Art. I, Sec. G). The lots in question are set forth on a plat entitled “Plat Showing the **Housesites** at Middleton Place,” which clearly shows their intended use under the Covenants to which they are bound. (Emphasis added). Middleton testified that no other plat has been recorded for these platted housesites.

The findings of the Court are incorrect and incomplete as the evidence clearly supports a finding that the Assessor based its denial of agricultural land use classification on a clear reading of the entire Covenants, which includes the provision that “**All Residential Lots in the Middleton Oaks shall be used for residential purposes exclusively.**” (Covenants, Part Two, Art. 1, Sec. 1). If the Covenants are given a full and

correct reading, and if the entire body of evidence before the Court is considered, the decision in this case does not simply rest upon a single provision in the Covenants limiting removal of vegetation from the properties and the interpretation of who may conduct such removal. Rather, the decision hinges on the properties' dedicated **use** as set forth by the controlling plat and the ensuing restrictions under the clear language of the Covenants. Because S.C. Code Ann. § 12-43-232(1)(a) mandates that tracts of timberland **must be devoted actively to growing trees for commercial use**, the properties' **use** as defined by the Covenants is the key component in the Assessor's analysis, and must be made a part of the Court's Order.

The Covenant limiting the removal of vegetation must be read in the greater context of the properties' permissible use under the Covenants, because it is the dedicated use of the property that controls the application of the law—not the identity of who has permission to cut vegetation. Even assuming arguendo that Middleton can unilaterally remove vegetation from the properties without regard to the limitations in the Covenant, that fact alone does not mean the parcels should qualify for agricultural use classification. The fact remains that the properties are solely devoted to residential use and therefore cannot qualify as timberland due to the explicit statutory mandate that property must be dedicated to actively growing trees for **commercial use** in order to qualify.

An agricultural use classification is granted to agricultural real property "actually used for agricultural purposes." S.C. Code Ann. § 12-43-220(d) (2005). The subject property must be used for **bona fide agricultural purposes**, and the owner must have committed the property to such use in good faith S.C. Code Ann. Regs. 117-1780.1 (2004). To determine if the properties had a bona fide agricultural use, the Assessor gave

consideration to the factors set forth in the Regulations: "(1) The nature of the terrain; (2) The density of the marketable product (timber, etc.); (3) The past usage of the land; (4) The economic merchantability of the agricultural product; (5) The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; (6) The business or occupation of the landowner or lessee." *Id.* No evidence was set forth on the record regarding a form agricultural land use of the residential properties that would be allowed under the use restrictions of the Covenants.

The Covenants specifically exclude the home sites from bona fide agricultural land use because the properties appear on a final subdivision plat designating them as home sites that are committed solely to residential purposes and restricted from commercial use by the plain language of the Covenants. Because the supposed agricultural land use at issue is with regard to timberland, and the very parcels in question are explicitly committed solely to residential purposes, then the property cannot qualify as agricultural real property pursuant to S.C. Code Ann. § 12-43-232(1)(a) which mandates that tracts of timberland **must be devoted actively to growing trees for commercial use**. The Court should alter, amend or withdraw its Order.

2. Pursuant to Rules 52 and 59, SCRCPP, the Court should withdraw, reconsider, and/or alter or amend its findings of fact and conclusions of law with regard to the existence and applicability of Middleton's supposed timberland management plan. Your Honor bases her decision on a timberland management plan which allegedly applies to the subject properties, but without analysis as to how such a plan applies to the **housesites** as they are defined by the Covenants and restricted by use. See Final Order, p.

9. At no point did Middleton submit a timberland management plan as evidence that the specific properties in question were devoted to actively growing trees for commercial purposes. In fact, the Assessor testified that he specifically requested evidence of such a plan from Middleton, but no such plan was ever provided. See Transcript 48:7-18 (attached hereto as Exhibit 3).

The Final Order provides specifics about a timber management plan applicable to the subject properties, which is perplexing to the Assessor, as there is no record of such a plan submitted into evidence aside from Middleton's sweeping generalizations as to unspecified parcels of land. While Middleton testified that it employs a forester and may have harvested trees on other properties it owns *after* the applicable tax date of December 31, 2011, the record contains no evidence that the parcels in question are or were devoted to actively growing trees for commercial use under some greater management plan. While Middleton attempts to classify the lots as part of a supposed greater management plan for commercial harvesting, it ignores the plain and unmistakable fact that the parcels in question are bound by their committed status as residential lots. The properties are plainly defined as housesites by their applicable plat, and cannot be devoted to actively growing trees for commercial use due to the clear restrictions of the Covenants. The Assessor agrees that an active Timber Management Plan would be crucial to the final decision, but the Court is not able to consider facts not in evidence. The evidence before the Court is that the parcels are currently platted and restricted in such a manner as to preclude the application of a commercial timber management plan or devotion of the parcels to actively growing timber for commercial use. A finding or conclusion to the

contrary is a crucial error impacting the final decision, and calls for a reconsideration of the ruling.

Further, the Order states that \$40,000 of timber was cut on the property, which implies that the subject home sites appearing on the final subdivision plat are actively being timbered. See Final Order, p. 4. In fact, during the hearing, Middleton specifically stated that \$40,000 worth of timber was cut on land other than the subject home sites. See Transcript 108:23-109:1. The only trees on the subject properties that Middleton testified to cutting were trees affected by rot or at risk for lightening strikes. See Transcript 107:4-10. This does not entail active timbering of the properties for commercial purposes. Without an active timberland management plan applicable to the subject properties, or even proof that there are bona fide or permissible agricultural purposes for the housesites under the applicable Covenants, the law does not allow the property to receive agricultural use classification.

3. Pursuant to Rules 52 and 59, SCRCF, the Court should withdraw, reconsider, and/or alter or amend its findings of fact and conclusions of law because the South Carolina Constitution specifically prohibits the Court from making an exception for Middleton's property outside of the law, and precedent mandates that a Court may not expand or limit a restrictive covenant beyond the clear meaning of its terms as has occurred in the instant case. Article X, Section 6 of the South Carolina Constitution requires that "property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes." Judicial exceptions cannot be made for Middleton's property simply because of its "unique nature and character," as

the Order so describes it; and to do so is contrary to the clear restrictive covenants governing the use of the parcels at issue.

Your Honor has ruled on an almost identical set of facts as those currently in evidence, yet reached the opposite conclusion than in the instant case. In *Albert C. and Ellen R. Straub vs. Charleston County Assessor*, Docket No. 04-ALJ-17-0218-CC (S.C. A.L.J.D. 2005) (attached as Exhibit 4), Your Honor found that the South Carolina Administrative Law Court is “bound by the language in the recorded covenants.” The Straubs owned property, which were subject to covenants prohibiting the cutting of trees over six inches in diameter, without prior approval from an Architectural Control Committee. *Id.* The Straubs argued that the restrictive covenant was not as restrictive as it appeared, much like Middleton has done in the present case by arguing that despite the clear Covenant, it does not necessarily work the way it appears. *Id.* Further, the Straubs failed to submit a timber management plan or proof that timber was cut from the land aside from self-serving testimony. *Id.* Your Honor found that the Court was bound by the language of the Covenants prohibiting commercial activity—just like the Middleton Covenants—and because of the lack of evidence regarding a bona fide commercial timber management plan submitted by the Straubs, the property failed to meet the classification for agricultural land use. *Id.* If anything, the evidence before the Court supports a finding that Middleton’s timber management plan is one of preservation as opposed to active growing and cultivation for commercial use.

The facts of *Straub* are nearly identical to those in the instant case. Based on the clear and reasonable conclusion reached in the *Straub* ruling, the Court should not now reinterpret the clear language of recorded Covenants in the instant case to allow for a

different meaning and application for Middleton. "The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1994). (citations and quotations omitted). By finding and concluding the Middleton properties qualified for agricultural use classification without addressing the properties' clearly covenanted residential "use" and the clear restrictions imposed thereby, the Court impermissibly limits a restriction on commercial activity on the subject property.

The Covenants and restrictions in the case before Your Honor are clear on their face that Middleton's housesites are dedicated solely for residential use and are plainly prohibited from the commercial dedication necessary to qualify the parcels for the bona fide agricultural use contemplated by the language of the controlling statute. Regardless of whether Middleton has authority to remove vegetation without approval of an architectural board or otherwise intended a different application when the properties were platted and subjected to the restrictive Covenants, the Covenants simply do not allow the properties to qualify as agricultural real property.

It is improper to classify the home sites as agricultural land use because such a classification results—by the very nature of the controlling statute—in an impermissible limitation upon the clear use restrictions set forth in the Covenants. It is unconstitutional to make an exception for the taxation of Middleton's housesites contrary to that allowed for other properties under the same facts and circumstances like those in *Straub*. Based on the Constitution, statutory and case law, and viewed in light of the full and correct

facts in evidence, the Court should reconsider the Final Order classifying the subject home sites as agricultural land use.

4. Pursuant to Rules 52 and 59, SCRCP, the Court should withdraw, reconsider, and/or alter or amend its findings of fact and conclusions of law awarding attorney's fees. An award of attorney's fees is not appropriate under S.C. Code Ann. § 12-60-2545. The Final Order and Decision inappropriately awards attorney's fees to Middleton. S.C. Code Ann. § 12-60-2545 states, "if a taxpayer appeals a county assessor's decision to remove the agricultural use classification from a property, the county shall pay reasonable attorney's fees if the taxpayer prevails in the contested case hearing and the administrative law judge makes a finding that the county assessor's decision was not reasonable." Although the Order contains a matter-of-course finding that the Assessor's action was unreasonable, such a finding is unsupported in light of the facts, evidence, and complexity of the legal questions before the Court.

A finding of unreasonableness should not simply be implied from the final outcome of the ruling. Given Your Honor's prior conclusions which arose from a nearly identical set of facts in the *Straub* case, Middleton's failure to provide the Assessor with evidence of the alleged Timberland Management Plan as Middleton later generalized to the Court, and a full reading of the Covenants and restrictions imposing a strictly residential use upon the parcels in question, it was entirely reasonable for the Assessor to conclude Middleton's agricultural land use classification should be denied. Precedent, statutory law, and the clear language of the Covenants supported the Assessor's decision to deny the agricultural use classification on the facts available to him.

The County Assessor's Office is charged with ensuring properties are correctly and uniformly taxed according to South Carolina law, and the Assessor's application of the law with regard to Middleton's housesites was reasonable. In determining whether property qualifies for agricultural use classification, there are three statutory and regulatory issues an Assessor must to consider: (1) Is the property greater than five acres or meet an exception to the acreage requirement; (2) Is the most significant use of the property for agricultural purposes; and (3) Is the agricultural most significant portion of the property actually used for bona fide agricultural purposes? S.C. Code Ann. §§ 12-43-220(d), -43-230 and -43-232; S.C. Code Ann. Regs. 117-1780.1. The evidence before the Court supports a finding that the Assessor was reasonable in concluding that: (1) None of the parcels in question contain more than the five acre minimum or meet an exception to the acreage requirement; (2) The Covenants dedicate the platted **housesites** to residential purposes and explicitly restrict the very commercial activity required to satisfy the statutory mandate of growing trees for commercial use; and (3) despite inquiry, the Assessor received no evidence that the parcels in question were committed to actively growing timber for commercial use under a timberland management plan, much less that such activity was permissible upon the lots as platted.

The Assessor's initial denial of agricultural use classification, which is the decision at issue, was wholly reasonable based upon all the evidence before the Court, including consideration of the factors from Reg. 117-1780.1, as set forth above. Furthermore, in light of the absence of a legal basis in the Dorchester County Board of Assessment Appeals written decision reversing the Assessor's initial denial, the Assessor

was within reason to seek adjudication of the issues at hand. Accordingly, attorney's fees should not have been awarded and the Assessor seeks withdrawal of such a ruling.

5. Pursuant to Rules 52 and/or 59, SCRCP, the Court should withdraw, reconsider, and/or alter or amend its findings of fact and conclusions of law that pursuant to S.C. Code Ann. §12-43-232(2) and S.C. Code Ann. §12-43-232(3)(e) an agricultural use classification would still apply to the parcels even if they were determined to be nontimberland.

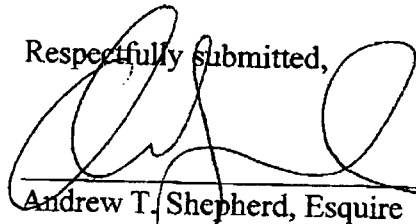
S.C. Code Ann. §12-43-232(2) states: "For tracts not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way." There is no evidence before the Court that Middleton has utilized or attempted to treat the properties at issue as anything other than timberland. There is no evidence that the tracts, whether contiguous or not, have any bona fide agricultural use as contemplated by applicable law. Even if the instant statutory exception were applicable, there is insufficient evidence to warrant a finding that all of the platted properties would meet the contiguity requirements of the statute. Furthermore, the finding and conclusion is unsupported by an analysis of the effect of the Covenants upon the requisite bona fide commitment to agricultural uses. The Court should withdraw its findings and conclusion with regard to the applicability of §12-43-232(2).

Furthermore, S.C. Code Ann. §12-43-232(3)(e) states: "A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994. The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever occurs first. For purposes of this subitem, "immediate family" is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity." The Court should withdraw its finding and conclusion with regard to the applicability of §12-43-232(3)(e) as this exemption is only applicable until "the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever applies first." As the properties have been subdivided and platted for strictly residential use and are no longer individually owned by Charles Duell, but by an LLC, this exemption does not apply.

CONCLUSION

Based upon the facts actually in evidence, the applicable case law and statutes, and the grounds set forth above, the Court erred in denying Assessor's appeal and reclassifying the subject home sites as agricultural land use. The Court's Final Order and Decision should be reconsidered.

Respectfully submitted,



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Summerville, SC 29484

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andrew@hartfirm.com

S.C. Bar No. 76859

John G. Frampton, Esquire
Dorchester County Attorney
201 Ridge Street
St. George, SC 29477

Summerville, South Carolina
September 3, 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dorchester County Assessor,	)	
	)	
Petitioner,	)	
	)	REQUEST FOR CONTESTED CASE
vs.	)	HEARING
	)	
Middleton Place Equestrian Center, LLC,	)	
	)	
Respondent.	)	

The Office of the Dorchester County Assessor, by and through its undersigned attorney, files the within Request for Contested Case Hearing. The nature and origin of the case, identities of the parties, and counsel of record are as follows:

- 1) **Agency Issuing Decision:** Dorchester County Board of Assessment Appeals.
- 2) **Date of Decision Issued:** November 20, 2012. Decision Attached.
- 3) **Date Decision Received:** November 20, 2012. Decision Attached.
- 4) **Basis of Request & Relief Sought:** This matter arises from the Dorchester County Assessor's denial of the Agricultural Use Discount on Respondent's properties for ad valorem property tax purposes, which denial was overturned by the Dorchester County Board of Assessment Appeals. Petitioner asserts that the Agricultural Use Discount is not available to the properties in question and that the decision of the Dorchester County Board of Assessment Appeals reaches a conclusion contrary to applicable law.

5) **Petitioner:** R. Wayne Welch
Dorchester County Assessor
200 Johnston Street
St. George, SC 29477

6) **Respondent:** Middleton Place Equestrian Center, LLC
c/o Charles Duell
21 E. Battery Street
Charleston, SC 29401

- 7) **Subject Properties:** Dorchester County TMS Nos.: 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005, 189-00-00-009.

FILED

DEC 07 2012

SC ADMIN. LAW COURT

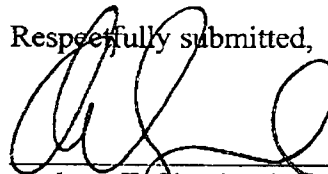
8) **Petitioner's Attorney:** Andrew T. Shepherd, Esquire
Hart Hyland Shepherd, LLC
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(843) 871-6657 *fax*
jgf@chellisandframpton.com

9) **Respondent's Attorney:** None known at this time.

10) **Filing Fee:** Exempt pursuant to Rule 71, SCALC.

Respectfully submitted,



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jgf@chellisandframpton.com

Summerville, South Carolina
December 6, 2012.

FILED

FEB 06 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Dorchester County Assessor,

Petitioner,

vs.

Middleton Place Equestrian Center, LLC,

Respondent.

**PRELIMINARY TAX APPEAL
STATEMENT**

12-ALJ-17-0542-CC

1. Statement of Issues for the Judge to Decide:

- (a) Petitioner requests the Court determine whether the Properties (as described below) should be taxed at market value or at the agricultural use value.

2. Statement of Facts:

- (a) The properties at issue are eleven (11) residential home sites within the Middleton Place Subdivision, and identified as Dorchester County Tax Map Numbers 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005, 189-00-00-009 (the "**Properties**").
- (b) The tax year in dispute is 2012.
- (c) There are restrictive covenants on the Properties which state that, "[n]o trees, bushes, or underbrush of any kind may be removed without the written approval of the Architectural Review Board." The covenants further limit vegetative destruction or alteration to the Properties and apply to the Properties as a residential subdivision.
- (d) There is no evidence Respondent has cultivated or managed the Properties for timber production.
- (e) The subject Properties are all less than five (5) acres, as shown in the chart below:

TMS #	Acreage
180-00-00-003	1.30
180-00-00-005	2.20
180-00-00-024	3.08
180-00-00-026	1.98
180-00-00-027	1.92

180-00-00-028	1.90
180-00-00-033	1.60
189-00-00-001	0.29
189-00-00-004	1.34
189-00-00-005	1.25
189-00-00-009	1.63

- (f) For tax year 2012, Dorchester County Assessor's Office ("**DCA**") audited all properties less than five (5) acres that were receiving agricultural use value. If it was found that a property does not qualify for the agricultural use value, it is reassessed at the market value of the property or the capped value, whichever applies.
- (g) Prior to the tax year 2012 the subject Properties were taxed at the agricultural use value. Due to the restrictive covenants in place on the subject properties, the DCA began taxing them at the market value.
- (h) The Dorchester County Board of Assessment Appeals ("**DCBAA**") overturned the opinion of the DCA, and found that the Properties should be taxed at the agricultural use value.
- (i) Petitioner presented persuasive oral and documentary evidence to support its valuation of the Properties.
- (j) The decision of the DCBAA fails to consider the requirements for classification of agricultural use as set forth by South Carolina law and applicable regulations.

3. **Statement of Legal Authority:**

- (a) S.C. Code Ann. § 12-60-2540 (2005) authorizes the Administrative Law Court to hear this contested case pursuant to Chapter 23 of Title 1 of the 1976 Code of Laws, as amended.
- (b) The standard of proof in proceedings before the Administrative Law Court is a preponderance of the evidence. *Anonymous v. State Bd of Medical Examiners*, 329 S.C. 371, 496 S.E.2d 17 (1998).
- (c) The proceeding before the Administrative Law Judge on a contested case matter is in the nature of a *de novo* hearing. *See Blizzard v. Miller*, 306 S.C. 373, 412 S.E.2d 406 (1991).
- (d) S.C. Code Ann. § 12-43-230(a) (2005) defines agricultural real property as "any tract of real property which is used . . . to produce plants, trees, fowl or animals useful to man." This definition, "includes but is not limited to

such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture.” *Id.*

- (e) S.C. Code Ann. § 12-43-230(a) requires the South Carolina Department of Revenue to promulgate a regulation designed to provide a more detailed definition of “agricultural real property” and to exclude from the use assessment any real property not used for a bona fide agricultural purpose.
- (f) Accordingly, S.C. Code Ann. Regs. 117-1780.1 (2004) was promulgated, which states, “[r]eal property must meet the requirements of 12-43-220(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property.” In addition, “[i]n no event shall real property be classified as agricultural real property when such property is not used for **bona fide agricultural purposes**. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use.” *Id.* (emphasis added). The regulation specifically excludes vacant land, which is lying dormant, from the definition. *Id.*
- (g) S.C. Code Ann. Regs. 117.1780.1 (2004) provides factors to determine if the land is bona fide agricultural real property:
 - (1) The nature of the terrain,
 - (2) The density of the marketable product (timber, etc.) on the land,
 - (3) The past usage of the land,
 - (4) The economic merchantability of the agricultural product,
 - (5) The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof,
 - (6) The business or occupation of the landowner or lessee.
- (h) S.C. Code Ann. § 12-43-232(a) (2005) states, “[i]f a tract is used to grow timber, the tract must be five acres or more. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For the purposes of this item, **tracts of timberland must be devoted actively to growing trees for commercial use.**” (emphasis added).
- (i) S.C. Code Ann § 12-43-232(3) provides a number of exemptions when the property does not meet the acreage requirements, none of which apply to

the subject Properties. 12-43-232(3)(e) states an otherwise unqualified nontimberland tract can be classified as agricultural use when "the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994." This exemption applies until "the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever applies first." As the Properties have been subdivided for residential subdivision use and are no longer individually owned by Charles Duell, but by an LLC, this exemption does not apply.

- (j) "In evaluating whether the Respondent's property should receive the agriculture use classification, there are three issues to consider. First, is the property greater than five (5) acres. Second, is the most significant use of the property for agricultural purposes. Third, is the agricultural most significant portion of the property actually used for bona fide agricultural purposes." *Charleston County Assessor v. Mr. and Mrs. C. Keith Finley*, 96-ALJ-17-0215-CC (S.C. A.L.J.D. 1996). Based on South Carolina code and regulations, the subject Properties fail to qualify as agricultural use value.
- (k) The restrictive covenants governing the subject Properties within the Middleton Place Subdivision are conclusive proof that the Properties are not used for bona fide agricultural purposes. The South Carolina Administrative Law Court is "bound by the language in the recorded covenants." *Albert C. and Ellen R. Straub vs. Charleston County Assessor*, Docket No. 04-ALJ-17-0218-CC (S.C. A.L.J.D. 2005). "Restrictive covenants are contractual in nature." *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). The language in a restrictive covenant shall be construed according to the plain and ordinary meaning attributed to it at the time of execution. *Seabrook Is. Prop. Owners Ass'n v. Marshland Trust, Inc.*, 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of the property." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citation omitted). The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written. *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998). (citations and quotations omitted).
- (l) Further, the subject Properties do not qualify as agricultural use value under the contiguous exemption. Contiguous is defined by *Black's Law*

Dictionary 338 (8th ed. 2004) as “[t]ouching at a point or along a boundary.” In addition to using dictionaries, our courts must review other state statutes, as well as state appellate decisions, to ascertain the meaning of an undefined statutory term. *Sunoco Products Co. v. Carolina Dept. of Rev.*, 378 S.C. 385, 662 S.E.2d 599 (2008) Considering all relevant sources, in order for land to be contiguous, the plots should touch in some manner, and have the same owner, with no intervening landowners between. *See Id.* Property will still be considered contiguous if the plots are separated by a road, railway, or waterway. *Id.*

(m) The classification of the subject Properties as agricultural use in the past is irrelevant. “The mere fact that Respondent’s property was granted the agricultural use classification in past years does not entitle it to such classification at the present time.” *Charleston County Assessor v. Mr. and Mrs. C. Keith Finley*, 96-ALJ-17-0215-CC (S.C. A.L.J.D. 1996).

4. Conclusion Judge Should Reach:

(a) The DCBAA did not correctly consider the facts supporting the Dorchester County Assessor’s Office’s decision that the Properties did not qualify for the agricultural use value, and further erred in allowing the subject Properties to receive the agricultural use value for 2012 which is contrary to applicable law.

5. Property Owner:

Middleton Place Equestrian Center, LLC
c/o Charles Duell
21 E. Battery Street
Charleston, SC 29401

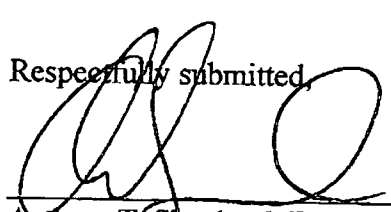
6. Property Owner’s Attorney:

Thomas B. Pritchard
Pritchard Law Group, LLC
P.O. Box 630
Charleston, SC 29402

7. Estimated Time of Hearing: Half day hearing.

[Acknowledgement of Counsel on Following Page]

Respectfully submitted,



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Summerville, South Carolina
February 6, 2013.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dorchester County Assessor,

Petitioner,

vs.

Middleton Place Equestrian Center, LLC,

Respondent.

CERTIFICATE OF SERVICE

12-ALJ-17-0542-CC

I, Morgan Hart, an employee of Hart Hyland Shepherd, LLC, Attorneys for the Petitioner, Dorchester County Assessor, do hereby certify that I served a copy of the **Preliminary Tax Appeal Statement** in the above-captioned matter on all parties and counsel of record by depositing the same in the United States Post Office, first-class postage prepaid, addressed as follows:

Thomas B. Pritchard
Pritchard Law Group, LLC
P.O. Box 630
Charleston, SC 29402


Morgan Hart
Hart Hyland/Shepherd, LLC

Summerville, South Carolina
February 6, 2013.

FEB 01 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Dorchester County Assessor,	)	Docket No. 12-ALJ-17-0542-CC
	)	
Petitioner,	)	
	)	PRELIMINARY TAX
vs.	)	APPEAL STATEMENT
	)	OF RESPONDENT
Middleton Place Equestrian Center, LLC,	)	
	)	
Respondent,	)	
_____	)	

1. Statement of issues for the Judge to decide:

The Dorchester County Tax Assessor sought to change the tax basis on a number of parcels owned by Middleton Place Equestrian Center, LLC from the existing Agricultural Use Value to the higher Market Use Value for the tax year 2012, despite the fact that there had been no change in use or purpose from any prior year. Respondent sought relief from the Dorchester County Board of Assessment Appeals and a hearing was held on October 15, 2012. Subsequent to the hearing, the Board issued an Order finding that the subject properties would continue to receive the Agricultural Use Value and be taxed accordingly.

The two issues presented to the Board by the Respondent, and similarly advanced for this Court's consideration are whether or not the Agricultural Use designation should continue to apply to these parcels under the current state of the law and whether or not the Dorchester County Assessor should be estopped, in any event, from asserting its right to change the designation due to a prior written understanding between the Respondent and the Office of the Dorchester County Assessor.

Finally, while the finding of facts and basis for decision contained in the Order are somewhat incomplete and factually inaccurate in certain places, the outcome is correct under both the current law and the unique facts related to these parcels. It is the desire of the Respondent that the Order requiring that the parcels continue to be taxed at the Agricultural Use Value be affirmed.

2. The tax year(s) in dispute: 2012.

3. Statement of the facts I believe the evidence will show:

It is the position of the Respondent that the current law, given its plain and ordinary meaning, would continue to permit the agricultural use designation for these parcels. It is

also the position of Respondent that these parcels have been taxed on the Agricultural Use basis for more than thirty-five years and a clear agreement was reached with the Office of the Dorchester County Assessor in 1993, reaffirming the taxing of these parcels on the same basis. Respondent and Petitioner have continued to operate under this agreement since that time.

The Respondent is a South Carolina Limited Liability Corporation. Its purpose and origins date back to the late 1970s when its principal, Charles H.P. Duell, first sought to develop a master plan for the subdivision of a portion of Middleton Place, to provide sufficient capital to help restore, preserve and protect the Middleton Place National Historic Landmark. Working with Robert Marvin, a preeminent landscape architect, whose goals and visions were consistent with the importance and historically sensitive nature of the Landmark, Mr. Duell created a plan for the possible limited sale of a number of house sites to individual owners. In 1980, the Middleton Oaks Property Owners Association, Inc. (now known as the Middleton Place Property Owners Association, Inc.) was created for the purpose of governing the house sites once they were sold to individual owners. The remaining, unsold, house sites continued to be owned by the predecessor entity to the Respondent. During the 1980s each time a house site was sold it was removed from the Agricultural Use Value designation and taxed at its appropriate use rate. The remaining portion of the tract maintained the Agricultural Use Value designation. It should be noted that over the entire history of this tract, sales of house sites have occurred at the average rate of one sale every two or three years, with Respondent not ever certain whether or not another house site would sell (in fact, no house sites have been sold since 2007).

In the early 1990s the Dorchester County Zoning Board requested that a full plat of all of the house sites in the Middleton Oaks tract be created and recorded. Mr. Duell expressed concern that the recording of such plat might impact the Agricultural Use Value designation of each of the unsold house sites. After conversations between Mr. Duell and the Dorchester County Planning Board and then assessor, Joe Murray, Mr. Duell was assured that this, in fact, would not happen, and the house sites continued to receive the same Agricultural Use designation. In 1993, the house sites were reclassified in error and Mr. Duell sent a letter, dated August 11, 1993, to Mr. Murray, the assessor, reminding him of the prior agreement and requesting that house sites be properly classified consistent with their use. Mr. Murray changed the classification back to the Agricultural Use Value and it remained that way until 2012, when Petitioner sought to change the classification again, though absolutely nothing had changed in the use of these parcels since the original inception of the plan.

In addition to the facts as set forth above, Respondent believes that the facts will quite clearly demonstrate that the applicable statutes continue to justify the designation of the parcels as agricultural real property. The parcels are part of an active timber management plan (a portion of the property owned by Mr. Duell, through Respondent, personally, and through other entities, is actively being timbered as of this writing). Additionally, though separately platted, as expressly required by Dorchester County, the parcels, in aggregate, which are all owned by the same entity, far exceed the minimum requirement of five

acres specified in §12-43-232(1)(a) of the South Carolina Code of Laws. The referenced code section further permits the Agricultural Use designation when the properties are "owned in combination with other tracts of nontimberable agricultural real property that qualify as agricultural real property." Mr. Duell, as sole member of the Respondent LLC, is the sole owner of these parcels. Mr. Duell, individually, and also as a member of one or more additional LLCs, is the owner of other parcels within Middleton Place that maintain this same designation and clearly fall under the provisions of this section. In fact, these parcels, in combination, vastly exceed the acreage requirement of the statute. With respect to the question of whether or not Respondent and/or Mr. Duell have an active timber management plan governing these parcels as well as other parcels owned by Mr. Duell, Respondent would call the Court's attention to the Opinion of the South Carolina Attorney General, November 8, 2006, which defines the legislative intent of the term "timber management plan." This opinion relies in significant measure upon past decisions of this Court. It is clear from the language of the Opinion that Respondent meets the intent of the statute.

Notwithstanding the above, §12-43-232(3)(e) provides a further exemption to the Respondent, should the Court be so inclined as to determine that the parcels are not part of a defined timber management plan. Specifically, this provision, which pertains to nontimberland tracts, states that if the property "does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property tax year 1994." Mr. Duell, individually, and as sole member of the LLC, has owned this property since he inherited it in 1970.

Finally, the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), provides strong guidance to state and local governments to assist in making the maintenance of National Historic Landmarks financially viable for private owners, when, as in this instance, such means of ownership is the case. It can be argued that property taxation at the lowest allowable rate is certainly governed by the spirit, if not the express letter, of this law. Since the Middleton Oaks tract, which Petitioner seeks to tax at the higher rate is in fact on the National Register of Historic Places, it would be consistent with the Act that they be taxed at the lowest rate unless and until sold to other individuals for their own use, at which time they may be removed to the appropriate tax rate.

4. A statement of the legal authority (case law, statutes, regulations, etc.) that I think apply to the facts:

South Carolina Code Ann. §12-43-232, including subparts (1)(a) and (3)(e).
South Carolina Attorney General's Opinion, November 8, 2006
National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*)
The equitable doctrines of waiver and/or estoppel

5. Statement of the conclusion I believe the Judge should reach on each issue I want decided:

Respondent respectfully believes that the Court should reach the only legally appropriate determination that it is entitled to continue to have the subject parcels taxed at the Agricultural Use Value, as previously determined by the Dorchester County Board of Assessment Appeals. This determination is consistent with the binding statutory authority, the course of conduct between the parties for more than thirty years, and the historic character and use of the property.

6. The name and address of the taxpayer/owner of the property is:

Middleton Place Equestrian Center, LLC
c/o Charles H.P. Duell
21 East Battery
Charleston, SC 29401

7. Pursuant to ALC Rule 8 you may be represented by any one of the following:

 X (a) Attorney;
 (b) Certified Public Accountant (CPA); or
 (c) Yourself.

8. If you are not representing yourself and are being represented by an attorney or CPA, please indicate the name and address of that person:

Thomas B. Pritchard
Pritchard Law Group, LLC
129 Broad Street (29401)
P.O. Box 630
Charleston, SC 29402
(843) 722-3300
(843) 722-3379 – Fax
tpritchard@pritchard-elliott.com

9. I estimate that the hearing will take two to three hours.

Respectfully submitted,



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(843) 722-3379 – Fax
tpritchard@pritchard-elliott.com

Date: February 1, 2013.

Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dorchester County Assessor,

Petitioner,

vs.

Middleton Place Equestrian Center, LLC,

Respondent,

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Respondent in the above-captioned matter and that on the 1st day of February, 2013, in Charleston, South Carolina, I served a copy of the foregoing Preliminary Tax Appeal statement on all parties to this matter by depositing the same in the United States Mail, postage paid and addressed as follows:

Wayne Welch
Dorchester County Tax Assessor
201 Johnston Street
St. George, SC 29477


Thomas B. Pritchard
Pritchard Law Group, LLC
129 Broad Street (29401)
P.O. Box 630
Charleston, SC 29402

Transcript of the Testimony of
**DORCHESTER COUNTY ASSESSOR V.
MIDDLETON PLACE**

Date: May 15, 2013



CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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Email: contact@creelreporting.com
Internet: www.creelreporting.com



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 12-ALJ-17-0542-CC

Dorchester County Assessor,)

Petitioner,)

v.)

Middleton Place Equestrian Center,)
LLC,)

Respondent.)

ADMINISTRATIVE HEARING

Wednesday, May 15, 2013
10:10 a.m. - 1:03 p.m.

The hearing before the Honorable Carolyn C. Matthews was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 15th day of May, 2013 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

EXHIBITS

- 1 Petitioner's Exhibit Number One 6
2 (Notices of classification)
3 Petitioner's Exhibit Number Two 6
4 (Plat of house sites at Middleton)
5 Petitioner's Exhibit Number Three 6
6 (Assessment notices 7/27/12)
7 Petitioner's Exhibit Number Four 6
8 (Declaration of covenants and restrictions)
9 Petitioner's Exhibit Number Five 6
10 (Aerial photos of lots)
11 Respondent's Exhibit Number One 6
12 (Plat lot 28 typical)
13 Respondent's Exhibit Number Two 6
14 (Ltr dtd 8/11/93 to Assessor Joe Murray)
15 Respondent's Exhibit Number Three 6
16 (Ltr dtd 1/24/12 from Dorchester to
17 Middleton)
18 Respondent's Exhibit Number Four 6
19 (Photos)
20 Respondent's Exhibit Number Five 6
21 (Large plat)
22 Respondent's Exhibit Number Six 6
23 (Glossy architectural photo)
24
25 (The original exhibits were retained by Judge Matthews.)

STIPULATIONS

- 1 It is stipulated and agreed that this hearing
2 is being taken pursuant to the rules of the
3 Administrative Law Judge Division and the South
4 Carolina Rules of Civil Procedure.

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APPEARANCES:

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- 1 THE COURT: Good morning. I'm Judge Carolyn
2 Matthews. I'm the Administrative Law Judge
3 assigned to hear the case before me this
4 morning. And with me is my law clerk, Mary
5 Beth Campbell.
6 And this case is entitled Dorchester County
7 Assessor, Petitioner, versus Middleton Place
8 Equestrian Center, LLC, Respondent. Our Docket
9 Number is 12-ALJ-17-0542-CC.
10 Representing the Petitioner, we have Mr. Andrew
11 Shepherd, Esquire. Good morning, Mr. Shepherd.
12 MR. SHEPHERD: Thank you, Your Honor.
13 THE COURT: And representing -- and Mr. John G.
14 Frampton, Esquire, is with him.
15 Then representing -- I assume you're
16 representing the Respondent?
17 MR. PRITCHARD: Yes, ma'am. Thomas Pritchard here,
18 Your Honor, this morning.
19 THE COURT: All right. Thank you, sir.
20 MR. PRITCHARD: Thank you, Judge.
21 THE COURT: The case involves the Dorchester
22 County's denial for the 2012 tax year of an
23 agricultural use timber exemption for 11
24 residential lots in Middleton Place
25 subdivision.

1 (Pages 1 to 4)

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1 And, essentially, they contend that there
 2 are -- that because there are restrictive
 3 covenants which require consent of the
 4 homeowner's association before any trees can be
 5 removed, that that voids any possibility of
 6 their getting the agricultural use exemption.
 7 And the way we will proceed today is to first
 8 have opening statements on behalf of each party
 9 and then the Petitioner, the Dorchester County
 10 Assessor, goes first, of course bearing the
 11 burden of proof in this case. And then the
 12 Respondent will do the same, Middleton Place
 13 Equestrian Center, and then we will have brief
 14 closing statements on behalf of each party.
 15 Before we get started, are there any
 16 stipulations with respect to admissibility of
 17 evidence or exhibits or anything else that we
 18 should take care of?
 19 MR. PRITCHARD: Your Honor, on behalf of the
 20 Respondent, we have no objection to any of the
 21 exhibits that the Petitioner seeks to submit to
 22 the Court and we would waive any arguments and
 23 move that they be admitted.
 24 MR. SHEPHERD: And, Your Honor, we also have no
 25 objection to the exhibits the Respondent wishes

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1 to introduce.
 2 THE COURT: All right. Thank you, gentlemen.
 3 MR. PRITCHARD: Thank you.
 4 THE COURT: So how many exhibits are we talking
 5 about for each side?
 6 MR. SHEPHERD: Your Honor, Petitioner will have five
 7 at this time.
 8 THE COURT: Okay.
 9 MR. PRITCHARD: And, yes, ma'am, we submitted six
 10 both to Your Honor and to be marked as
 11 exhibits.
 12 THE COURT: All right, then. Without objection,
 13 then, Petitioner's five exhibits are admitted
 14 into evidence and Respondent's six exhibits are
 15 admitted into evidence and the parties may
 16 refer to them as you need to during your
 17 presentation.
 18 (Petitioner's Exhibit Numbers One through Five and
 19 Respondent's Exhibit Numbers One through Six were
 20 admitted into evidence.)
 21 THE COURT: All right, then. If there's nothing
 22 else, then we'll be glad to hear from you in
 23 opening.
 24 MR. PRITCHARD: Yes, ma'am, one additional procedural
 25 manner and I've spoken with Mr. Shepherd and I

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1 understand he has no objection.
 2 Your Honor, we had listed as another witness
 3 Larry Hargett; he's a member of Dorchester
 4 County Council. Mr. Hargett has to preside
 5 over another meeting here in Columbia, so he
 6 needs to leave here at 11:00. And I understand
 7 that Mr. Shepherd would not object to us
 8 calling him out of order. I think his
 9 testimony would be less than ten minutes in
 10 duration, anyway.
 11 THE COURT: That would be fine.
 12 MR. PRITCHARD: Thank you.
 13 THE COURT: That works for both of you?
 14 MR. SHEPHERD: That's correct, Your Honor.
 15 THE COURT: Thank you very much, gentlemen, for
 16 agreeing to that. So we'll be glad to hear
 17 from you in opening, then.
 18 OPENING ARGUMENT BY MR. SHEPHERD:
 19 MR. SHEPHERD: Your Honor, as you pointed out, this
 20 case involves 11 residential lots in the
 21 Middleton Oaks subdivision. It is owned by
 22 Middleton Equestrian Center, LLC.
 23 These lots range in size from 0.29 acres to
 24 3.08 acres. They represent -- and I will list
 25 out the Dorchester County tax map numbers for

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1 the record: 180-00-00-003, 180-00-00-005,
 2 180-00-00-024, 180-00-00-026, 180-00-00-027,
 3 180-00-00-028, 180-00-00-033, 189-00-00-001,
 4 189-00-00-004, 189-00-00-005, and
 5 189-00-00-009.
 6 These lots are relatively adjacent -- to give
 7 the Court an idea of where we're at to the
 8 Middleton Place Plantation, I'm sure the Court
 9 is probably familiar with the location of that
 10 off of Highway 61. It's a historic plantation.
 11 THE COURT: Uh-huh (affirmatively responds). Right.
 12 MR. SHEPHERD: And these lots were platted by our
 13 Respondent here today for purposes of
 14 residential development.
 15 For the past 20 or so years, the properties
 16 have qualified or been allowed to receive the
 17 agricultural use discount on the basis that
 18 they were timberland.
 19 Recently, the Dorchester County Assessor's
 20 Office audited all agricultural use property
 21 under five acres to determine whether or not it
 22 is actually a qualifying tract.
 23 With regards to these 11 parcels, it was the
 24 decision of the Assessor's Office, based upon
 25 restrictive covenants associated with these

2 (Pages 5 to 8)

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1 particular parcels, together with state law,
2 that these parcels do not qualify for the
3 agricultural use discount.
4 The Respondent appealed that decision to the
5 Dorchester County Board of Assessment Appeals
6 and at that hearing, the evidence was presented
7 by the Respondent and the Appellant with
8 regards to the various positions. The
9 Dorchester County Board of Assessment Appeals
10 overturned the decision of the Assessor without
11 stating a basis in its order.
12 The law with regards to this particular case
13 will revolve around Section 12-43-230 of the
14 South Carolina Code of Laws, Section 12-43-232
15 of the South Carolina Code of Laws, the
16 regulations -- the South Carolina Code of
17 Regulations, 117-1780.1, defining "agricultural
18 real property," together with Regulation 17 --
19 117-1780.2 with regard to "special assessment
20 applications."
21 Your Honor, it is the position of the
22 Dorchester County Assessor that based upon the
23 restrictive covenants, the requisite law
24 regarding this particular subject matter, and
25 the facts of this case that these do not --

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1 these lots do not qualify for the agricultural
2 use discount and that they should be assessed
3 at fair market value and we would respectfully
4 request that the decision of the Dorchester
5 County Board be overturned.
6 And since we are calling witnesses out of
7 order, I will, of course, let Mr. Pritchard go
8 ahead and do what he needs to do.
9 MR. PRITCHARD: Okay. Thank you.
10 THE COURT: Mr. Pritchard, be glad to hear from you
11 in opening.
12 MR. PRITCHARD: Yes, ma'am.
13 OPENING ARGUMENT OF MR. PRITCHARD:
14 MR. PRITCHARD: Thank you for having us here this
15 morning, Your Honor, and also thank you for
16 accommodating my earlier request to take my
17 children out of town during spring break;
18 although, it would cost me more money than I
19 needed to --
20 THE COURT: Where did you go, Mr. Pritchard?
21 MR. PRITCHARD: Oh, my boy -- my daughter was in the
22 Bahamas with a friend and my boys and I went to
23 Atlanta for a few days and then to Chapel Hill
24 to -- my boys really love lacrosse and so I
25 spent a lot of money in lacrosse stores and a

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1 lot of time watching lacrosse.
2 THE COURT: Wonderful. I'm glad you got to do that.
3 MR. PRITCHARD: Well, thank you.
4 Your Honor, it's my pleasure to be here this
5 morning with Mr. Duell, who not only happens to
6 be my friend, he also happens to be my
7 stepfather and so I'm here on his behalf this
8 morning.
9 And I've actually had the pleasure of knowing
10 him most of my life and have grown up with an
11 opportunity to see the incredible stewardship
12 he's had over Middleton since he was fortunate
13 enough to inherit it in 1970.
14 Your Honor, obviously, as you know, this is an
15 exceedingly unique situation. As a matter of
16 fact, so unique that this is the only National
17 Landmark --
18 MR. DUELL: National Historic Landmark.
19 MR. PRITCHARD: -- National Historic Landmark
20 property in Dorchester County. And as Your
21 Honor will hear, when Mr. Duell inherited the
22 property and needed to provide the necessary
23 funds to rehabilitate Middleton and to restore
24 it to the glory that we all enjoy now today and
25 that many from around the country and the world

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1 enjoy today, he was looking for a way to
2 generate some revenue towards that end.
3 And at the time, he had opted to come up with
4 the opportunity to sell some lots on sort of
5 the far end of the property from the actual
6 home site of Middleton and the -- what we all
7 know as the stable yards and the gardens and
8 whatnot.
9 And so he came up with this plan in conjunction
10 with Robert Marvin, who Your Honor may be
11 familiar with, is responsible for how our State
12 House grounds look today, and some other folks
13 who were involved in the process and came up
14 with a plan.
15 And Mr. Duell never wanted to plat these lots
16 individually. It was Dorchester County who
17 required him to and when they did, of course
18 there was much discussion at the time about any
19 taxable implications to doing so.
20 But, Your Honor, that's all really sort of
21 window dressing to this. If Your Honor -- Your
22 Honor, if we're only here today to discuss the
23 fact that restrictive covenants would prevent
24 Mr. Duell from having this property as
25 timberable land, then -- and the Petitioner has

3 (Pages 9 to 12)

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1 cited, Your Honor, several cases for authority
 2 in their filing to the Court being: Hamilton
 3 versus CCM, Inc., which is found at
 4 263 S.E. 2d 378; 498 S.E. I'm sorry, Taylor
 5 versus Lindsey, which is found at
 6 498 S.E. 2d 862; Seabrook Island Property Owner
 7 Association versus Marshland Trust, Inc., which
 8 is found at 596 S.E. 2d 380; and Hardy versus
 9 Aiken, which is found at 631 S.E. 2d 539.
 10 Your Honor, each of these cases is cited for
 11 some proposition as to the literal construction
 12 of "restrictive covenants."
 13 And, Your Honor, I will submit that it is the
 14 position of the Respondent that we
 15 wholeheartedly agree. We think these cases are
 16 good law. We couldn't agree more.
 17 And I think if Your Honor will hear testimony
 18 and see throughout the presentation that their
 19 basis relates to the fact that the ARB has to
 20 decide that whether or not trees can be cut on
 21 the property.
 22 THE COURT: Pardon me, ARB?
 23 MR. PRITCHARD: The architectural review board, I'm
 24 sorry.
 25 THE COURT: Okay.

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1 MR. PRITCHARD: The ARB has to be the determinative
 2 group of whether or not any trees can be
 3 removed from the property, Your Honor, and they
 4 cite specifically the environmental section of
 5 the -- of the restrictive covenants, Your
 6 Honor, which is found at -- I'm sorry, I had it
 7 right here and then I turned it away -- which
 8 is found in article two, section two, which is
 9 on page 15 relating to tree removal: "No
 10 trees, bushes, underbrush of any kind may be
 11 removed without the written approval of the
 12 architectural review board. Approval for the
 13 removal of trees located within ten feet of the
 14 main dwelling or accessory building or within
 15 ten feet of the approved site for such building
 16 will be granted unless such removal will
 17 substantially decrease the beauty of the
 18 property."
 19 Your Honor, again, we don't disagree that
 20 that's what it says, but however, Your Honor,
 21 you have to read the covenants and restrictions
 22 in their entirety for context.
 23 And if Your Honor goes to page eight, part two,
 24 entitled "Covenants and Restrictions Applicable
 25 to Community Development of Middleton Oaks,"

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1 and that's in article one, section two, the
 2 architectural review board states: "Owner in
 3 his exercise of the authority and obligations
 4 reserved by and conferred upon him by this
 5 declaration may appoint an architectural review
 6 board to counsel him. But ultimate authority
 7 for decisions of the architectural review board
 8 shall in all cases rest with the owner, his
 9 heirs and assigns."
 10 So, in other words, Your Honor -- and I can
 11 read on. There's more of it. I'm not
 12 intentionally omitting it, but --
 13 THE COURT: No, I'm looking at it.
 14 MR. PRITCHARD: But, in other words, Your Honor, I
 15 jokingly said to Mr. Duell that this is
 16 equivalent to the old elections we saw in the
 17 Soviet Union.
 18 There was an election, but at the end of the
 19 day, the same guy was still going to be in
 20 charge. And that's exactly what we have here.
 21 It doesn't say "may." It doesn't say "could."
 22 It doesn't say "can." It says "shall." The
 23 owner "shall" and Mr. Duell's the owner.
 24 So, at the end of the day, he makes the
 25 decision. The architectural review board,

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1 which he is sensitive to and tries -- he
 2 actually appoints whenever there is an issue.
 3 He works with them, but if they say, "All
 4 right, you can't take trees off of these
 5 properties that hadn't been sold," he can say,
 6 "That's all well and good, but the owner makes
 7 the decision and my decision is to timber this
 8 property. It's my property. It's part of my
 9 overall property."
 10 The other aspect of it, Your Honor, without
 11 getting on to the law for a moment -- just so
 12 Your Honor can be clear, obviously this
 13 property goes back hundreds of years in the
 14 family and Mr. Duell inherited all of the
 15 property in its entirety in 1970. And
 16 when -- and when I say Mr. Duell, I mean
 17 Mr. Duell. He was the only one. Okay?
 18 Now, what we refer to now as "road to river" is
 19 all still property that Mr. Duell is involved
 20 in, except for the portion that he has put into
 21 the foundation ownership.
 22 Everything else outside of the foundation
 23 ownership is still owned either solely and
 24 exclusively by Mr. Duell, either through an LLC
 25 that he's established over time, or in

4 (Pages 13 to 16)

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1 conjunction with the only other direct
2 beneficiaries, which happen to be his four
3 children.
4 So everything they own, they've owned
5 continuously. They've had ongoing timber
6 management. They've had ongoing farming
7 operations. They've had ongoing other
8 operations out there that would qualify all of
9 these parcels for the agricultural use
10 designation.
11 And so we believe that if you read, Your Honor,
12 Section 12-43-232(3), that Mr. Duell also comes
13 in under that provision in that he has owned
14 this property continuously for the ten years
15 prior to 1994. In fact, Your Honor, for the 24
16 years prior to 1994 and continuing to today.
17 I think you may hear some testimony that they
18 take the position that it hasn't been
19 continuous ownership because it was held in the
20 name of Mr. Duell before but then it was placed
21 into an LLC.
22 But the LLC has one member and I'm sure Your
23 Honor can figure out who that one member is:
24 Mr. Duell. So it's been the same person from
25 start to finish right up until this moment.

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1 And, Your Honor, we are very sensitive to
2 what -- you know, to Dorchester County's and
3 Mr. Welsh's obvious need to act in the best
4 interest of his taxpayers. And to the extent
5 Mr. Duell sells one of these properties in the
6 future, although one hasn't been sold in the
7 past six years, it would immediately go into
8 the tax rolls of Dorchester County and, as a
9 matter of fact, it would be beneficial to the
10 citizens because it would either have the
11 six percent or somebody might build a house and
12 move there and have the four percent, but the
13 value goes up and somebody -- and then it's
14 taxed at the appropriate rate.
15 But for right now, Mr. Duell controls it.
16 Mr. Duell has the right to timber it.
17 Mr. Duell has specific plans to timber areas
18 right there, including portions of this area
19 (indicating), as you'll hear testimony, too.
20 So we just feel like we're not even really sure
21 why we're here. We understand the restrictive
22 covenants argument, but we -- but we think that
23 the Petitioner has failed to apprehend (sic)
24 and appreciate the portion of the restrictive
25 covenants that essentially says Mr. Duell -- in

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1 the famous words of George W. Bush, Mr. Duell's
2 the decider. He ultimately makes the decision.
3 Thank you.
4 THE COURT: Thank you very much, Mr. Pritchard.
5 Well, then, so you would like to take your
6 witness first, then?
7 MR. PRITCHARD: I would just like to take
8 Mr. Hargett briefly, because --
9 THE COURT: All right.
10 MR. PRITCHARD: -- of his schedule.
11 THE COURT: Certainly.
12 MR. PRITCHARD: Thank you.
13 THE COURT: We'll be glad to accommodate you,
14 Mr. Hargett. If you'll please come around here
15 to our witness chair, raise your right hand and
16 I'll ask our court reporter to administer the
17 oath or affirmation.
18 LARRY HARGETT, having been duly sworn, testifies and
19 examines as follows:
20 MR. PRITCHARD: Your Honor, do --
21 THE COURT: Please have a seat and answer questions
22 Mr. Pritchard has for you.
23 MR. PRITCHARD: -- you prefer that I stand to
24 address him or seated?
25 THE COURT: Do whatever works for you.

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1 MR. PRITCHARD: Okay. I didn't know what the
2 Court's pleasure was, so I'll sit down --
3 THE COURT: Whatever works.
4 MR. PRITCHARD: -- so it won't be confusing.
5 MR. HARGETT - DIRECT EXAMINATION BY MR. PRITCHARD:
6 Q: Mr. Hargett, would you state your full name for
7 the record, please, sir?
8 A: Larry Hargett.
9 Q: Okay. And, Mr. Hargett, where do you live,
10 sir?
11 A: I live at 615 Fairington, Summerville, South
12 Carolina.
13 Q: Okay. And as I understand it, you're a member
14 of Dorchester County Council?
15 A: That's correct.
16 Q: Okay. And how long have you been on the
17 council, sir?
18 A: Ten years.
19 Q: Okay. Have you had involvement with Middleton
20 Place and with issues related to Middleton
21 Place in your time as council?
22 A: Yes. Specifically this issue for at least six
23 years, yes.
24 Q: Okay. And what do you mean specifically "this
25 issue"?

5 (Pages 17 to 20)

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1 A: Well, I've been -- I've enjoyed Middleton Place
2 for the last 30 years because I've lived there
3 30 years, but as far as County Council work,
4 about five or six years regarding this issue of
5 taxation.
6 Q: Yes, sir. And so you've had other issues that
7 have arisen with Middleton and taxation in the
8 past five or six years on council?
9 A: No, only this issue.
10 Q: Okay. Just this issue --
11 A: Just this issue, I'm sorry.
12 Q: -- related to these plats --
13 A: Yes --
14 Q: -- these platted lots.
15 A: -- related to these lots.
16 Q: Okay. And so it's come up in the past prior to
17 why we're here today as to how to address these
18 lots from a tax assessment standpoint.
19 A: Well, specifically, ten years ago, one of our
20 councilmen who had served for 32 years got me
21 off to the side as new freshman councilman and
22 said to me, "Mr. Hargett"
23 MR. SHEPHERD: Objection, Your Honor. This is
24 calling for hearsay.
25 THE COURT: Sustained.

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1 MR. PRITCHARD: Okay.
2 THE WITNESS: Okay.
3 Q: Let's ask the question a different way.
4 A: Okay.
5 Q: In fair terms over the years --
6 A: Uh-huh (affirmatively responds).
7 Q: -- based on your wisdom and understanding of
8 Middleton, you've come to learn the value of --
9 and importance of Middleton to Dorchester
10 County.
11 A: It is a jewel, a 300-year-old jewel that is an
12 economic factor in our county. And, yes, I
13 recognize that very much and so does our
14 council.
15 Q: Okay. And you started to talk about the
16 ten-year reassessment issue.
17 A: Yes.
18 Q: Okay. Tell me what you were going to say about
19 that without getting into what others have told
20 you.
21 A: Well, it's my view that, first of all,
22 Mr. Duell did not ask for these lots to be
23 platted and we knew that in the County and,
24 secondly, I view it as a near takings by the
25 County to ask for something that, you know,

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1 we're not entitled to.
2 Q: Okay.
3 A: It is not a -- you know, the only thing I can
4 liken it to is if we have -- when we have a
5 company that comes to our area, we give them a
6 tax break, pretty significant tax break. And,
7 in essence, that's what Mr. Duell is doing
8 here. He's applying the proceeds of these lots
9 back into Middleton Place, which I think is
10 excellent.
11 MR. PRITCHARD: Okay. Mr. Hargett, I really
12 appreciate your time and I know you did this as
13 a special accommodation to us, but I don't have
14 anything further for you; if Mr. Shepherd has
15 anything he'd like to ask you.
16 THE COURT: Mr. Shepherd, your witness for
17 cross-examination. Would you please answer any
18 questions Mr. Shepherd may have?
19 THE WITNESS: Uh-huh (affirmatively responds).
20 MR. SHEPHERD: Chairman Hargett, I don't believe I
21 have any questions for you.
22 THE WITNESS: All right.
23 MR. SHEPHERD: All right. Thank you.
24 THE WITNESS: Thank you.
25 MR. PRITCHARD: Thank you, sir.

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1 THE WITNESS: Thank you.
2 THE COURT: Thank you, sir, and good luck with your
3 next meeting.
4 MR. PRITCHARD: Appreciate everybody taking him out
5 of place.
6 THE COURT: Sure.
7 MR. PRITCHARD: Thank you.
8 (Witness excused.)
9 THE COURT: All right, then. Mr. Shepherd, whenever
10 you're ready, you may call your first witness.
11 MR. SHEPHERD: All right. Thank you, Your Honor. I
12 would like to call Mr. Wayne Welch to the
13 stand, please.
14 THE COURT: Mr. Welch, please come forward to our
15 witness chair, raise your right hand and I'll
16 ask our court reporter to administer the oath
17 or affirmation to you.
18 THE WITNESS: Yes, ma'am.
19 WAYNE WELCH, having been duly sworn, testifies and
20 examines as follows:
21 THE COURT: Please have a seat and answer questions
22 Mr. Shepherd has for you.
23 MR. WELCH - DIRECT EXAMINATION BY MR. SHEPHERD:
24 Q: Mr. Welch, if you could identify yourself for
25 the Court.

6 (Pages 21 to 24)

Page 25

1 A: I'm Wayne Welch, the Dorchester County tax
 2 assessor.
 3 Q: Okay. How long have you been the tax assessor
 4 for Dorchester County?
 5 A: Five and a half years.
 6 Q: And how long have you been dealing with taxes?
 7 A: Since 1969.
 8 Q: What were you doing in 1969?
 9 A: I was an appraiser for the -- for the South
 10 Carolina Department of Revenue appraising
 11 industrial properties. We also trained at that
 12 time -- when the Assessor's Office was being
 13 set up, we trained the Assessor, the field
 14 people, in regards to mainly set up the offices
 15 when the original Equalization Act was passed
 16 in the early seventies.
 17 Q: Okay.
 18 A: So I've been in since 1969.
 19 Q: All right. And are you familiar with the laws
 20 regarding taxation of real property?
 21 A: Yes.
 22 Q: Okay. And what are the duties of your office?
 23 A: To uphold the laws of South -- the property tax
 24 laws of South Carolina. Our office is
 25 responsible for the appraisal and assessment of

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1 all properties under our jurisdiction. We're
 2 also responsible for taking applications for
 3 special amendments such as ag use, legal
 4 residence, mobile home moving permits, all
 5 sorts of things. But the main purpose in our
 6 office -- and it's set up in, I think 12-37 --
 7 to appraise and assess all properties under our
 8 jurisdiction in the County.
 9 Q: Okay. And you said "ag use." For clarity of
 10 the record, that refers to agricultural --
 11 A: Agricultural use value, yes.
 12 Q: Okay. Thank you. Are you familiar with the
 13 properties in question today?
 14 A: Yes, I am.
 15 Q: Okay. Have you personally observed these
 16 properties?
 17 A: Yes, I have.
 18 Q: Okay. How would you describe these properties?
 19 A: They're left in their natural state, which I
 20 assume was done by Robert Marvin, who was
 21 mentioned before, he was the architect who
 22 designed it; that was one of his trademarks.
 23 I think the -- being in a natural state was
 24 what -- is a drawing card for potential buyers
 25 for those lots because the houses that are

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1 built there, the trees kind of envelop the
 2 houses. There's not a whole lot of disturbance
 3 done to the natural beauty of the lots.
 4 Q: Okay. And, Mr. Welch, I'm going to hand you a
 5 document --
 6 MR. PRITCHARD: That's fine.
 7 Q: -- as you to identify it.
 8 MR. PRITCHARD: Without objection.
 9 Q: And this has been admitted as Dorchester County
 10 Petitioner's Exhibit One. Can you identify
 11 those for us, please?
 12 A: Yeah, these are the assessment notices that
 13 were sent out to Middleton Place Equestrian
 14 Center, LLC, when the agricultural use --
 15 agricultural use was denied and we sent --
 16 we're required by law to send out assessment
 17 notices notifying the property owner of the new
 18 assessed value.
 19 Q: Okay. So you sent out the notices and notified
 20 Mr. Duell's company that the agricultural use
 21 discount was no longer going to apply.
 22 A: Yes, we did.
 23 Q: Okay. Did he appeal those timely?
 24 A: Yes.
 25 Q: Okay. And --

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1 A: We had several meetings with him, but he
 2 appealed timely and we went forward from there.
 3 Q: Okay. What was the reason for sending these
 4 notices of classification and denial?
 5 A: Well, when I -- as I say, I've been the
 6 Assessor there for about five and a half years
 7 now. When I first came onboard, I noticed
 8 periodically would run into properties that
 9 were under five acres that we had previously --
 10 the previous Assessors had qualified as ag use,
 11 which really didn't -- shouldn't have qualified
 12 according to 12-37-2 whatever -- 12 -- no, I'm
 13 sorry, 12-43.
 14 But I noticed that several of those
 15 lots/parcels less than five acres, they were
 16 just lots, people living on them, vacant lots,
 17 vacant parcels. They didn't qualify. They
 18 weren't growing trees. They weren't doing
 19 anything. The main thing, they didn't meet the
 20 acreage requirements.
 21 So I -- I took it upon myself to go through --
 22 we had a -- we ran a query to come up with all
 23 the parcels that were getting agricultural use
 24 value under five acres and I individually went
 25 through each parcel and determined whether I

7 (Pages 25 to 28)

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1 thought they qualified or not.
 2 And a vast majority of those parcels did not
 3 qualify, because -- mainly because of the
 4 acreage, but other things were deeming -- you
 5 know, if it was a part -- if it was growing
 6 timber in a part of a timber management plan,
 7 which the law allowed, I allowed it. If it was
 8 under five acres and John Doe was farming it --
 9 if he had a thousand acres adjacent to my five
 10 acres and I -- or four acres and a half and I
 11 leased it to him and he's got corn planted here
 12 and he's got corn planted there, that's part of
 13 his farm management plan; we allowed that.
 14 So it was circumstances under which we allowed
 15 acreages under five to qualify. But the law
 16 says in order to qualify for ag -- for the
 17 timberland portion of the -- timberland
 18 portion, it has to be five acres. But there
 19 are circumstances which will allow you to
 20 qualify.

21 Q: Is one of those circumstances if it's less than
 22 five acres, as long as it's contiguous or a
 23 part of the --

24 A: Yeah, if it's contiguous to a larger tract it
 25 qualifies -- yes, it would be -- or if I had

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1 two parcels of -- three acres on one parcel,
 2 five acres on another parcel, both of them
 3 owned by the same owner and growing trees, then
 4 they would -- the total of the two -- two
 5 tracts would equal over five acres, that
 6 would -- as far as we're concerned would
 7 qualify.

8 Q: Okay. And for the Court, let's try and
 9 identify which of these parcels we're talking
 10 about with regards to this.

11 All right. Mr. Welch -- and I see our easels
 12 over here. If you need to, Mr. Welch, I'd ask
 13 you to come over here and point them out to us.

14 MR. SHEPHERD: Can you see okay, Thomas?

15 MR. PRITCHARD: Yeah, I'll stand up. You go ahead
 16 and refer to it so the Judge can see and
 17 I'll --

18 MR. SHEPHERD: All right. Now --

19 MR. PRITCHARD: If she doesn't mind, I'll stand
 20 right here so I can look.

21 THE COURT: Everybody move wherever you have to.
 22 (Off the Record)

23 Q: All right. Mr. Welch, we have 11 parcels. The
 24 first one we read off was TMS number 180003,
 25 last three digits.

1 A: That's this parcel here (indicating).

2 Q: Okay. And I'm going to write for the record
 3 the last three digits of the TMS numbers on the
 4 these parcels.

5 Okay. And what about 003 would make it not
 6 qualify for the agricultural use discount?

7 A: Doesn't meet the acreage requirements.

8 Q: And how many acres is 003?

9 A: 003 is 2.3 -- I'm sorry, I'm looking at the
 10 wrong -- 1.4 acres.

11 Q: Okay. I notice you're referring to something
 12 in your hand. Is that your records?

13 A: Yes, this is the GIS printout, the printout of
 14 our office records shows that shows the
 15 acreage, ownership, things like that.

16 Q: Do those GIS printouts, are those from plats
 17 that have been recorded?

18 A: Yes. This is -- well, it's a copy of our
 19 aerial photography from our GIS and the basis
 20 for these lines on here are our recorded plats.

21 Q: Okay. So that one's under five acres.

22 A: Yes.

23 Q: Okay. The second parcel that was appealed was
 24 180, the last three digits 005. Can you
 25 identify that on this particular map?

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1 A: Yes. This parcel right here (indicating); it's
 2 2.32 acres.

3 Q: And it's your position it did not qualify
 4 because it was under the five acres?

5 A: That's correct.

6 Q: The last three digits of the next one are 024,
 7 first three digits 180. Can you identify that
 8 on this map?

9 A: 024 would be right here (indicating).

10 Q: And how many acres is that?

11 A: 3.08.

12 Q: And that was under the five; is that correct?

13 A: That's correct.

14 Q: Okay. The next was 180, the last three digits
 15 026. Can you identify which tract that is?

16 A: It's this parcel right here (indicating) and it
 17 is 1.98 acres.

18 Q: Mr. Duell also appealed the denial of 180, last
 19 three digits 027. Can you identify that one?

20 A: That's this parcel right here (indicating) and
 21 it's 1.92 acres.

22 Q: He also identified 180-028. Can you point that
 23 out for the Court?

24 A: 028 is here (indicating); 1.9 acres.

25 Q: And for the transcript, when you are saying

8 (Pages 29 to 32)

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1 "here," you are pointing to this aerial
2 photo --
3 A: Yes.
4 Q: -- identified as Exhibit Five.
5 A: Yes.
6 Q: The other parcel is 180, last three digits 033.
7 Can you point that out for the Court on this
8 map?
9 A: Yes, right here (indicating) and it's 1.6
10 acres.
11 Q: And you denied that because it was under five
12 acres?
13 A: Under five acres and the restrictions, as all
14 of them.
15 Q: Okay. The other parcel, first three digits
16 189, last three digits 001, can you identify
17 that on this picture?
18 A: This parcel right here (indicating) and it's
19 .29 acres.
20 Q: The other parcel is 189, last three digits 004.
21 Can you identify that on this picture?
22 A: This parcel here (indicating) and it's 1.34
23 acres.
24 Q: Okay. 189-005, can you identify that parcel?
25 A: 005, this parcel here (indicating) and it's

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1 1.25 acres.
2 Q: And the final and 11th one identified is 189,
3 last three digits 009, can you point that out
4 for us?
5 A: Parcel here (indicating) and it's 1.64 acres.
6 Q: Thank you, Mr. Welch.
7 MR. SHEPHERD: Court's indulgence --
8 THE COURT: Certainly.
9 MR. SHEPHERD: -- while I write the numbers on this
10 exhibit.
11 THE COURT: Certainly.
12 Q: Mr. Welch, this is a smaller version of what we
13 were just pointing out to the Court. Is that
14 as a fair and accurate representation of the
15 same picture?
16 A: Yes, it is.
17 Q: Okay. And that is Plaintiff's Exhibit Five.
18 Now, Mr. Welch, we've identified these lots.
19 In particular, you pointed out that the reason
20 for denial was they were less than five acres.
21 A: That, along with the restrictive covenants.
22 Q: Okay. And with regards to the restrictive
23 covenants, was there a particular portion of
24 the restrictive covenants that you focused upon
25 with regards to denial?

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1 A: Yeah, article two, section one, I think it's
2 "topography and vegetation."
3 Q: Is that the only section of the covenants that
4 you --
5 A: I read all of them, but that was -- in part,
6 section one and section two and it says section
7 two about tree removal.
8 Q: Okay. I'm going to hand you -- this is
9 Plaintiff's Exhibit Four. Are those the
10 restrictive covenants that you looked at?
11 A: Yes, these are the ones, yes.
12 Q: Okay. Mr. Welch, I'm going to ask you about
13 these restrictive covenants. When you read a
14 restrictive covenant with regards to real
15 property, what are you looking for in order to
16 determine whether or not the property is
17 agricultural use?
18 A: Well, in this case -- and I've had it -- I had
19 one other subdivision similar to this -- I read
20 the covenants to determine what they allow.
21 In this case, I did not think that these
22 restrictions would allow timber management and
23 wholesale harvesting of timber from these lots,
24 because it would destroy the reason for buying
25 these lots. And I assumed that when people

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1 buy -- and I'm making assumptions here, but
2 when people buy those lots, they buy it for
3 their natural beauty.
4 Q: Uh-huh (affirmative response).
5 A: And if you go in these lots and manage timber
6 and harvest timber, then you've destroyed the
7 drawing -- one of the main drawing cards for
8 these -- these lots, because they are
9 beautiful.
10 It's nothing like the old oak hills and ridges
11 in the lower part of the state, the live oaks
12 grow. If you go and start cutting trees off
13 them, you destroy, in my opinion, the value of
14 the lots to start with. I mean, you destroy
15 why anybody would want to buy one there.
16 Because that is, to me -- and I live out in the
17 country, too. I live on a farm and it's
18 nothing like being in the woods.
19 I hate to see people cut a lot of trees down
20 and clear cut. But when you go in and harvest
21 timber like they do today, that would destroy
22 the whole area and that's a -- and I agree with
23 them; that's a pristine area. You don't need
24 to do stuff, especially on that side of the
25 highway on the left-hand side between Highway

9 (Pages 33 to 36)

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1 61 and the Ashley River.
 2 Q: Now, Mr. Welch, did you read anything in the
 3 covenants that spoke to the purpose of these
 4 particular lots?
 5 A: Purpose of the lots?
 6 Q: Let me rephrase. Did you read anything that
 7 said that the purpose of these lots would be
 8 for commercial --
 9 A: No.
 10 Q: -- timberland?
 11 A: No, no.
 12 Q: Okay.
 13 A: The purpose of these covenants -- the purpose
 14 is that to protect those lots from being
 15 destroyed, the value of those lots, the beauty
 16 of those lots -- not value, but the beauty of
 17 those lots from being destroyed.
 18 Q: When you look to see if there's an active
 19 timber management plan and you're looking at
 20 covenants and restrictions such as these, are
 21 you looking for anything that allows for them
 22 to be cut?
 23 A: Yes.
 24 Q: Okay.
 25 A: Something that tells you what you can and

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1 cannot do with those lots.
 2 Q: And I'm going to ask you to turn to recorded
 3 page Book 398, Page 265 of the covenants and
 4 restrictions and that is Exhibit Four.
 5 A: (Witness complies.) I'll get there in a
 6 minute. Okay.
 7 Q: Okay. Now, I have a blown-up picture of that
 8 page here. Is that the page that appears in
 9 the exhibit that you're holding?
 10 A: Yes, it is.
 11 Q: Okay. And there's some highlighting on the
 12 blown-up page. Can you read that for the
 13 Court?
 14 A: Yes, I can. It says, "All residential lots in
 15 the Middleton Oaks shall be used for
 16 residential purposes exclusively."
 17 Q: Did you read anything in that that allows for
 18 commercial timbering?
 19 A: No.
 20 Q: When you look at covenants and restrictions,
 21 are you looking at the overall document?
 22 A: Yes.
 23 Q: Are you looking at the intent behind the
 24 development?
 25 A: Yes.

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1 Q: And when you read these, what was the intent
 2 that you derived?
 3 A: That all residential lots shall be used for
 4 residential purposes exclusively; that's what
 5 it said. And I don't think there's any doubt
 6 that that's what it -- in my mind that that's
 7 what it's used for and it shall be used for.
 8 Q: And did you see limitations as for the removal
 9 of trees?
 10 A: I don't see where any trees could be removed.
 11 Of course, you would remove trees if you bought
 12 a lot and had to build a house in it -- on the
 13 lot. You'd have to remove certain trees in
 14 order for the house to fit.
 15 Q: And earlier you referenced that you read
 16 something that said trees could not be removed.
 17 A: Yes, I did.
 18 Q: And is that the page that you looked at on --
 19 A: 398, page 272.
 20 Q: Article two --
 21 A: Yes.
 22 Q: -- referenced in Respondent's opening
 23 statements.
 24 A: Yes.
 25 Q: Okay. Is there anything in there that stuck

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1 out to you and was the driving factor in your
 2 decision?
 3 A: Yeah, it said no trees, bushes or underbrush of
 4 any kind may be removed without the written
 5 approval of the architectural review board.
 6 And I assume that was put in there to protect
 7 the -- not just the person that buys a lot out
 8 there, but to protect the whole -- the
 9 subdivision as a whole.
 10 Q: Okay. And, Mr. Welch, I'm going to hand you
 11 Exhibit Number Two and ask you to tell me what
 12 that is and tell the Court.
 13 A: This is the recorded subdivision plat of
 14 Middleton Oaks Plantation.
 15 Q: Okay. Is this the plat --
 16 A: Subdivision.
 17 Q: I'm sorry, I interrupted you.
 18 A: Uh-huh (affirmatively responds).
 19 Q: Say that last part again?
 20 A: It's Middleton -- I think it's Middleton Oaks
 21 Subdivision, is the name of it.
 22 Q: Okay. And, Mr. Welch, we looked at an aerial
 23 photo earlier. Does this plat show all of the
 24 lots in question?
 25 A: Yes, it does.

10 (Pages 37 to 40)

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1 Q: I'd ask you to look back at Number Five and
2 let's just make sure so the record is clear.
3 Number Five refers to Exhibit Five, for the
4 record.
5 A: Uh-huh (affirmative response). Yes.
6 Q: To make sure that we're clear, and I'm going to
7 point out for you, 005 and 003, do they -- they
8 do not appear on that plat.
9 A: I'm sorry, no, they -- they don't. They were
10 re-platted later. They were platted later as
11 individual plats of those lots. And I have
12 told Mr. Duell that since they were not part of
13 that subdivision, that if he chose to do so, he
14 could ask us to do away with those lines. But
15 those aren't -- those parcels were sold anyway.
16 No, they're not. They're not sold. He could
17 do away with those property -- abandon those
18 property lines and they would be included in
19 the larger tract.
20 Q: And if they were included in the larger tract,
21 would they qualify for the agricultural use?
22 A: Yes, they would, because the restrictive
23 covenants do not cover those two lots.
24 Q: Okay.
25 MR. PRITCHARD: That's -- I'm sorry, just for the

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1 record, you're referring to 005 and 003?
2 THE WITNESS: Yes.
3 MR. SHEPHERD: Yes, sir.
4 MR. PRITCHARD: Okay.
5 THE WITNESS: Yes, they were not part of that
6 subdivision plat.
7 MR. PRITCHARD: Yes, sir, that's correct. I just
8 want to make sure we were talking about the
9 same thing.
10 THE WITNESS: Yes.
11 Q: And, Mr. Welch, this blown-up version, this
12 is -- is this the only plat regarding the
13 subdivision that you are -- that you have found
14 in the records of the County?
15 A: Yes.
16 Q: Okay. And when you are looking to determine
17 boundaries and lot size, are you looking only
18 at what's recorded?
19 A: That's correct.
20 Q: Okay.
21 THE COURT: Can you tell me the date of that plat?
22 MR. SHEPHERD: The date of this plat, Your Honor --
23 I can't read the small one. It was dated
24 November 20th, 1990.
25 THE COURT: Thanks.

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1 MR. SHEPHERD: And recorded January, I want to
2 say -- it looks like 3rd, 1991, perhaps.
3 THE COURT: Thank you very much.
4 MR. SHEPHERD: Yes, Your Honor.
5 Q: Mr. Welch, I'm going to hand you what is marked
6 as Plaintiff's Three and if you can tell the
7 Court what these documents are.
8 A: The value of these lots were appealed, along
9 with the fact that they should not be
10 classified -- that they should retain the
11 agricultural use classification. And when
12 we -- this is a notice to the taxpayer stating
13 the market value of the lots, of all these lots
14 that we found after the review was made and we
15 notified him of our findings.
16 Q: Okay. There's a notation at the bottom of
17 those letters from your office. What do those
18 refer to?
19 A: That the taxes would be based on a much lower
20 amount than the market value because of the
21 multiple lot discount that they would receive;
22 which means that the taxes would be based on
23 probably 25 percent of the market value,
24 because he would -- they would qualify for the
25 multi-lot discount, which is in the law. And

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1 all he had to do was to file for that. And it
2 would not -- certainly not bring the value down
3 to what the ag use value, but it would reduce
4 it by a large amount.
5 Q: And has the multi-lot discount been around for
6 a long time?
7 A: Yes, it has.
8 Q: Okay. And when is it typically applied?
9 A: When developers have lots that have not sold,
10 they have a lot of -- several lots in the area
11 and they can apply for this for a period up to
12 five years and as the lots sell and comes off.
13 After the period is over, you -- the lots won't
14 qualify. But it's to help developers --
15 Q: Okay. And --
16 A: -- to tease the influence of taxes on the
17 development.
18 Q: And is that -- in your experience, has that
19 been the result of subdivisions not qualifying
20 for agricultural use?
21 A: No, not really, because some subdivisions don't
22 have agriculture use. Since the fact that they
23 got several lots -- unsold lots and this is a
24 way that the Legislature found it would help
25 those alleviate some of the pressures of

11 (Pages 41 to 44)

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1 property taxes of areas of unsold lots.
 2 Q: Okay. Mr. Welch, are you aware of any
 3 agreements between the County and Middleton
 4 Place Equestrian Center, LLC, or Mr. Duell
 5 regarding agreements to tax these properties at
 6 a lower -- at the agricultural use rate?
 7 A: Not -- just based on what Mr. Duell said --
 8 told me, he said that he had -- that there was
 9 an agreement with the planning commission. The
 10 planning commission is not a Dorchester
 11 County -- they're not hired employees; they're
 12 appointed -- that said if you record the plat,
 13 it will not affect -- adversely affect the
 14 property taxes.
 15 I -- I looked for that in the minutes, but it
 16 was back in the nineties and we could not find
 17 that.
 18 Q: So you -- have you found any record in your
 19 office or in the County records regarding an
 20 agreement?
 21 A: No, but there was a letter from Mr. Duell to
 22 former assessor Joe Murray requesting that this
 23 ag use apply to those lots. I -- there was
 24 no -- I did not find a response from Mr. Murray
 25 to Mr. Duell.

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1 Q: Was he receiving the ag use?
 2 A: Yes --
 3 Q: Okay.
 4 A: -- he was receiving the ag use.
 5 Q: Does the law, to your knowledge, allow you to
 6 make an exception for tracts that may not
 7 qualify?
 8 A: No, the law is specific. If you don't meet the
 9 requirements, as far as I'm concerned, the law
 10 is concerned, you don't receive the exemption.
 11 As I say, it's -- the fact is, the law is what
 12 governs my office and it's not always pleasant
 13 to uphold the law, but that's what my job is.
 14 Q: Okay. And, Mr. Welch, have you -- strike that.
 15 This property, to your knowledge, is not a part
 16 of a special tax district that you're aware of?
 17 A: No, not that I'm aware of. Now -- I don't
 18 think so, no.
 19 Q: Okay.
 20 A: I know the main -- the main tract where the
 21 gardens and restaurant, where the public
 22 generally goes, that's part -- and Mr. Duell
 23 can correct me if I'm wrong -- that's exempt
 24 because it's in the National Historic Register
 25 or for some reason it's exempt from property

1 taxes, which is a portion of the property. But
 2 as far as any special district, I don't
 3 think -- no, I know not; it's not.
 4 Q: Okay. And is there any provision of the law
 5 that allows you to tax property that does not
 6 qualify if it is outside of a special tax
 7 district?
 8 A: No, it -- 12-30 -- 12-43-232(E) says that a
 9 nonqualifying tract of nontimberland, if
 10 it's -- it can be grandfathered in because of
 11 the ownership. But it says it's a
 12 nontimberland tract and that means it's a row
 13 crop. It grows corn, soybeans, and wheat or
 14 whatever, cows, whatever you want to put on it.
 15 But it's specific. The law does, allow in that
 16 case -- if my great great grandfather owned a
 17 hundred acres of farmland and he -- it's now --
 18 it belongs to 20 heirs and divided -- 30 heirs
 19 and it's cut up into two- or three-acre tracts.
 20 If it's still used as farmland and if those
 21 family members still own it, it's grandfathered
 22 in because -- but that's speaks only of
 23 non -- the statute's fairly specific. It says
 24 nontimberland tracts and in that case, it does
 25 allow it.

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1 Q: Okay. And you personally observed this
 2 property you said earlier, correct?
 3 A: Yes.
 4 Q: Okay. Did you observe any nontimberland?
 5 A: No, it's all -- it's all timberland, yeah.
 6 Q: Okay.
 7 A: And it's not part of any -- I don't think -- I
 8 have not seen that it was part of a larger
 9 timber management plan.
 10 Q: Okay. So you haven't received any
 11 documentation --
 12 A: No, I haven't.
 13 Q: -- or any proof of a --
 14 A: No, I haven't.
 15 Q: -- timber management plan --
 16 A: No.
 17 Q: -- for these tracts?
 18 A: No, I haven't.
 19 Q: Okay. And, to your knowledge, you may not
 20 know, but before these properties were
 21 subdivided and platted out in the manner they
 22 are now, was the larger tract, the parent
 23 tract, subject to the covenants and
 24 restrictions?
 25 A: To the best of my knowledge it was, yes.

12 (Pages 45 to 48)

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1 MR. SHEPHERD: Okay. All right. Thank you,
 2 Mr. Welch. If you'd please answer any
 3 questions of the Court or Mr. Pritchard may
 4 have for you.
 5 THE COURT: All right. Yes, sir, Mr. Pritchard,
 6 your witness for cross-examination.
 7 MR. PRITCHARD: Yes, ma'am.
 8 MR. WELCH - CROSS-EXAMINATION BY MR. PRITCHARD:
 9 Q: All right. Mr. Welch, I got a few things I
 10 need to clarify with you, if you don't mind.
 11 One of the things you said in testimony to
 12 Mr. Shepherd was that you had another similar
 13 subdivision.
 14 A: Uh-huh (affirmatively responds).
 15 Q: What subdivision was that?
 16 A: I can't think of the name of it. It's the one
 17 on Highway 165.
 18 THE COURT REPORTER: I'm sorry, I can't hear you. I
 19 was --
 20 THE WITNESS: It's on Highway -- Boyle Plantation.
 21 (Off the Record)
 22 THE COURT: Let's take a ten-minute break.
 23 (Off the Record)
 24 THE COURT: Whenever you're ready, Mr. Pritchard,
 25 you may cross-examine Mr. Welch.

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1 MR. PRITCHARD: Thank you.
 2 Q: All right. Mr. Welch, I believe when we had to
 3 take a brief break there, we were discussing
 4 the other subdivision you referred to as Boyle
 5 Plantation?
 6 A: Boyle Plantation on 165 ...
 7 Q: Is the characteristic of Boyle Plantation
 8 similar to what we're dealing with here at
 9 Middleton in terms of the location in a
 10 National Landmark area with -- with these other
 11 operations that go on like they do at
 12 Middleton?
 13 A: No, but that don't have -- no, but that has
 14 nothing to do with me making my decision. The
 15 covenants and restrictions said basically the
 16 same thing that Middleton said: You cannot
 17 harvest trees or sell products for commercial
 18 purposes.
 19 I don't look at the -- what goes on at
 20 Middleton to determine whether those lots in
 21 this subdivision should receive agricultural
 22 use value or not. The surroundings mean
 23 nothing to me. The fact that Middleton Gardens
 24 is next door and this is all historic property,
 25 all I look at is -- are the facts. This

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1 subdivision, the restrictions says you can't do
 2 certain things with it; therefore, it does not
 3 qualify for agricultural use value. The
 4 surroundings mean -- I don't think they have
 5 any -- any meaning at all in this.
 6 Q: Okay. Mr. Welch, you said about six different
 7 things there that I think we need to parse out.
 8 The first thing you said was that you cannot --
 9 that the restrictive covenants say you cannot
 10 sell things for commercial purposes. And I
 11 presume that maybe what you're referring to is
 12 what Mr. Shepherd showed you earlier on this
 13 article one, general covenants, which refers in
 14 relevant part that you read to all residential
 15 lots in Middleton Oaks shall be used for
 16 residential purposes exclusively; is that
 17 correct, sir?
 18 A: Would you ask the question again?
 19 Q: Yes, sir. You said that the restrictive
 20 covenants that you relied on had somewhere in
 21 them an indication that you could not sell
 22 things for commercial purposes. And I'm asking
 23 you where in the restrictive covenants you're
 24 referencing. Is it this that you're
 25 referencing?

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1 A: I didn't say that about Middleton. I basically
 2 made a statement that it prohibited you from
 3 doing that in the Boyle Plantation. I can't
 4 tell you exactly what it said.
 5 Q: Okay.
 6 A: But it basically said the same thing as
 7 Middleton that -- it's -- the basis for it is,
 8 it's there to protect the subdivision itself
 9 from other influences, such as cutting timber,
 10 growing this, doing that, whatever. It's there
 11 to protect the buyers of the subdivision.
 12 If you go to buy -- if you pay a huge amount of
 13 money for a lot in a subdivision, I don't think
 14 you want to wake up the next -- one morning and
 15 there's a logging crew next door to you cutting
 16 all the trees off the adjacent lot. And so
 17 that's where I think any -- the restrictions --
 18 the restrictive covenants prohibit you from
 19 doing that. They may say it in different ways.
 20 It all boils down, they're there to protect the
 21 homeowner. It's there to protect that
 22 subdivision as a whole from -- from other
 23 influences, commercial influences.
 24 Q: But, Mr. Welch, you'll agree by your own
 25 admission, both on direct examination, just now

13 (Pages 49 to 52)

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1 on restatement, that your interpretation of the
 2 covenants and restrictions takes into account a
 3 whole lot of assumptions on your part.
 4 A: Yes, but I -- I read the -- the assumption I
 5 make is what I read is correct; that that's
 6 what it says.
 7 Q: Yes, sir, but you said that your assumption is
 8 that somebody buying a piece of property and
 9 paying several hundred thousand dollars and
 10 building a house and all would be that they
 11 wouldn't want somebody coming in and clear
 12 cutting the lot next door. But, again, that --
 13 A: That's an assumption.
 14 Q: You agree, that's an assumption, right?
 15 A: Sure, it's an assumption.
 16 Q: You didn't see that anywhere in here as a basis
 17 for why they put what they put in the covenants
 18 and restrictions.
 19 A: But that is why they -- I said, "I assume." I
 20 use that word quite freely sometimes, but that
 21 is why --
 22 Q: Okay.
 23 A: -- you have covenants and restrictions.
 24 Q: Okay.
 25 A: I don't assume that. I know that the reason

1 property in this entire area, as the Assessor
 2 for Dorchester County, Mr. Duell either solely
 3 and exclusively as Charles H.P. Duell --
 4 Mr. Duell either as the sole member of
 5 Middleton Equestrian Center, LLC, or Mr. Duell
 6 and his four children own together? Are you
 7 familiar with how much of that property they
 8 own together?
 9 A: All of it.
 10 Q: Well, actually, I'll submit that this
 11 particular portion, which is the historic
 12 portion is owned by the foundation. But
 13 otherwise --
 14 A: Yeah, I think he receives proceeds from it,
 15 doesn't he? Or somebody does.
 16 Q: No, sir, it's a 501(C)(3) --
 17 A: Okay.
 18 Q: -- nonprofit foundation.
 19 A: But basically he owns it all.
 20 Q: But anything from there, basically, and there,
 21 basically is either Mr. Duell solely and
 22 exclusively, Mr. Duell as Middleton Equestrian
 23 Center, LLC, or Mr. Duell and his four
 24 children. Will you agree with me on that?
 25 A: Sure.

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1 you have covenants and restrictions are to
 2 protect the owners of the subdivision, as well
 3 as the subdivision as a whole. And I don't --
 4 I don't know why I say I assume that. I say
 5 "assume" sometimes when I shouldn't, but I
 6 don't assume that. I know that. That's a
 7 fact. And that's why they're there.
 8 Q: I think that we've got a lot of different
 9 ground to cover here. What I'm going to try to
 10 do -- I'm not even sure ...
 11 (Off the Record)
 12 Q: All right. Now, Mr. Welch, you're familiar
 13 with -- have you -- have you ever seen this --
 14 we've marked this as Exhibit Six. This is just
 15 what we call a "bird's eye" or aerial view of
 16 the entire Middleton property as it was
 17 inherited by Mr. Duell in 1970.
 18 MR. DUELL: Plus the land across the road.
 19 MR. PRITCHARD: I know. Well, I'm not -- I'm sorry,
 20 let me clarify that.
 21 Q: Road to river portion of the property.
 22 A: Okay. I haven't seen that, but I've seen --
 23 Q: Okay.
 24 A: I've seen -- I've seen pictures of it, yes.
 25 Q: Okay. And are you familiar with just what

1 Q: Okay.
 2 A: And 6,000 acres or so more across the road.
 3 Q: Yes, sir. Well, I believe the 6,000 acres is
 4 now owned by his children, but I understand
 5 what you're saying.
 6 Now, are you familiar with any timbering that
 7 Mr. Duell has conducted on any of these
 8 properties in the last -- in the calendar year
 9 2012?
 10 A: No, I'm not.
 11 Q: Okay. Would it surprise you to learn that what
 12 we refer to as in the north part, Mr. Duell did
 13 some timbering in the calendar year 2012?
 14 A: Was there any timbering done on these lots?
 15 Q: That's not the question I asked. Would it
 16 surprise you to learn that Mr. Duell did some
 17 timbering in the north part tract in 2012?
 18 A: No.
 19 Q: Okay. But you're not familiar with them, so
 20 you don't know whether or not Mr. Duell in his
 21 practice of land management and stewardship of
 22 this property goes in and what you refer to as
 23 wholesale cutting or clear cutting of property.
 24 A: This decision was made as of December 31st,
 25 2011. What transpired after that means nothing

14 (Pages 53 to 56)

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1 for the 2012 tax year.
 2 Q: Okay. Are you familiar with any timbering
 3 Mr. Duell did in and around 2011, 2010, 2009;
 4 any of those years?
 5 A: I was not made aware of it.
 6 Q: Okay. I'm going to ask the question again and
 7 assume for the sake of my question that we
 8 cover any of those years, okay? Any timbering
 9 that Mr. Duell did on any property that he
 10 owned on this side of the road, what we refer
 11 to as the rive side of the road, you don't have
 12 any knowledge as to how that timbering was
 13 conducted, do you?
 14 A: No, but it wouldn't matter.
 15 Q: Okay. Well, it does matter to me and I'll tell
 16 you why, Mr. Welch. Because part of your
 17 assumption, in your own words, was based on the
 18 fact that people don't want to buy several
 19 hundred thousand dollar property and build
 20 houses on them and then have somebody come in
 21 and wholesale cut on the lot next to them.
 22 And so my question to you is, is do you know
 23 how Mr. Duell in his stewardship of this land
 24 conducts his practice of timbering?
 25 A: I have never been made -- no timber management

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1 plan has ever been made available to me and the
 2 only thing -- only properties that I would
 3 consider if they were timbered would be these,
 4 the lots in that subdivision. And that's
 5 all -- this subdivision is all I work -- I'm
 6 dealing with; just the subdivision itself. And
 7 I don't -- and last I was down there, no
 8 timbering has occurred in that subdivision.
 9 Now, I haven't been down there in several
 10 months, but I was down there in 2012 a couple
 11 times and I didn't see any timbering then. And
 12 as far as I'm concerned, that's all that
 13 matters. What transpires outside of the
 14 boundaries of this plat for the subdivision
 15 does not influence what I do at all. It's what
 16 happens to these lots.
 17 Q: Okay. And so, just so we're clear, if
 18 timbering were taking place down there or were
 19 scheduled to take place down there, that might
 20 matter to your assessment of the situation?
 21 A: Timbering where?
 22 Q: Within this platted area that we're referring
 23 to now.
 24 A: What area are you referring to?
 25 Q: Sir, within the platted area that we're

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1 referring -- that we're here about.
 2 A: If you were -- if you go in and start cutting
 3 timber, then I guess I would have to. But
 4 that's not going to affect anything that --
 5 we're here for 2012 tax year and as of December
 6 31st, 2011 --
 7 Q: Okay. And I understand --
 8 A: -- none of that has occurred.
 9 Q: And I understand that. Let me -- let me ask
 10 you this. Now, you went with Mr. Duell to look
 11 at this property together, did you not?
 12 A: That's correct.
 13 Q: Okay.
 14 A: And I've ridden through there myself --
 15 Q: And there was some -- either -- I'm not sure
 16 whether Mr. Duell or whether you took
 17 photographs the day y'all were out there
 18 together, but somebody took photographs of
 19 the --
 20 A: Yeah.
 21 Q: -- of the area.
 22 A: Uh-huh (affirmatively responds).
 23 Q: Is that correct?
 24 A: That's correct.
 25 Q: And do these two, which we've marked as Four,

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1 look like representative samples of the area
 2 you saw?
 3 A: Yes, they could be.
 4 Q: Okay. And will you agree with me that within
 5 those photographs, you can see depicted both
 6 pine trees and hardwood trees?
 7 A: Uh-huh (affirmative response).
 8 Q: Okay. And you would agree that pine wood or
 9 pine tree timbering is, perhaps, a more
 10 prevalent type of tree cutting that takes place
 11 in the Low County of South Carolina?
 12 A: No.
 13 Q: You don't? You think we take more hardwood
 14 than we take pines?
 15 A: No, not more, but that's not --
 16 Q: Okay. When I say "prevalent" --
 17 A: I own a farm.
 18 Q: Yes, sir.
 19 A: We recently cut the timber on it; it was all
 20 hardwood.
 21 Q: Okay.
 22 A: Mostly hardwood.
 23 Q: When I say "prevalent," I mean more than.
 24 A: Oh, yes. Yeah.
 25 Q: Okay. MeadWestvaco isn't out there planting

15 (Pages 57 to 60)

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1 oaks and cutting them, are they?
 2 A: Oh, yeah, they are.
 3 Q: They're Planting -- they have a selective
 4 planting process now of oaks which they're
 5 going to --
 6 A: Hardwood -- other than pines, yes.
 7 Q: Okay.
 8 A: It's not -- it's a -- it's a --
 9 Q: Small minority.
 10 A: -- percentage, right.
 11 Q: Okay. All right. And the reason I was asking
 12 you about other areas that Mr. Duell owns, you
 13 had given us the number of acreage of each of
 14 these lots that you're seeking to remove the
 15 agricultural use from. And -- and I'll agree
 16 with you that none of them -- in no case did
 17 you state more than five acres on any lot; is
 18 that correct, sir?
 19 A: That's correct.
 20 Q: But in toto, those lots together exceed five
 21 acres, correct?
 22 A: Yeah.
 23 Q: And in toto, those lots together with
 24 everything else Mr. Duell owns, either
 25 exclusively, in a single member LLC or with his

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1 children, far exceed five acres; is that
 2 correct, sir?
 3 A: Sure.
 4 Q: And as I've represented to you, in some areas
 5 of that vast acreage above five acres,
 6 selective timbering takes place on a semi
 7 regular basis. And does that not come into
 8 play in your assessment at all?
 9 A: No.
 10 Q: Okay. So it doesn't come into play. All
 11 right.
 12 So what you've got -- what we're left to to
 13 come into play for you is, just so we're
 14 clear --
 15 MR. DUELL: Can you leave that up so I can use it?
 16 MR. PRITCHARD: Yeah, I'll come back to it. I need
 17 him to see -- I'm sorry. I apologize,
 18 Mr. Shepherd.
 19 Q: Just so we'll be clear, you've looked at the
 20 restrictive covenants, right?
 21 A: Yes, sir.
 22 Q: And you've interpreted the restrictive
 23 covenants. And let's go back to this for just
 24 a second because Mr. Shepherd asked you to read
 25 that first sentence which says, "All

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1 residential lots in Middleton Oaks shall be
 2 used for residential purposes exclusively."
 3 But wouldn't you agree that in the next portion
 4 it starts talking about the fact that no
 5 businesses are to be constructed on these lots
 6 and to be operated on these lots and that, in
 7 fact, if you read this entire paragraph in
 8 totality, all that's referring to is they don't
 9 want somebody building a business out there.
 10 A: Timbering is a business.
 11 Q: So you read that to mean that because it says
 12 that, Mr. Duell, who owns the remainder of the
 13 lots and owns all of this other property up
 14 there, can't timber.
 15 A: That's what I assume to mean. I did not -- I
 16 asked for advice from other places, from our
 17 county attorney and some other places, but I --
 18 Q: And you -- I'm sorry.
 19 A: And I assume that that -- that's what it meant,
 20 that you can't go in there and just harvest the
 21 timber off those lots because --
 22 Q: Okay.
 23 A: -- of the restrictions.
 24 Q: And then you also read both the topography and
 25 vegetation and tree removal portions of the

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1 restrictive covenants.
 2 A: That's correct.
 3 Q: Is that correct, sir?
 4 A: Uh-huh (affirmative response).
 5 Q: And because both of those specifically say,
 6 "Without the prior written approval of the
 7 architectural review board and without the
 8 written approval of the architectural review
 9 board," you interpreted that to mean that
 10 Mr. Duell was not free to do what he wanted
 11 with those properties.
 12 A: Yeah, I -- this subdivision plat was recorded
 13 I think you said in nineteen -- early -- around
 14 1990.
 15 Q: Okay.
 16 A: I don't think there's any timbering been done
 17 in that subdivision to those lots in that
 18 period of time. Now, it could have been, but
 19 evidence I didn't see, nor did Mr. Duell make
 20 me aware of that.
 21 Q: Okay. But --
 22 A: So over that period of time, nothing's been
 23 done. It's not part of the timber management
 24 plan. It's not actively being harvested for
 25 trees. It's a subdivision plat. It's a

16 (Pages 61 to 64)

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1 subdivision and the restrictions pretty well
 2 tell me that you can't go in there and cut
 3 trees. I made the decision that ag use should
 4 not apply in this case.
 5 Q: Okay. Did you give any -- well, let me just
 6 ask you. So, basically, what you're saying is
 7 "yes," you took these two provisions -- I know
 8 you gave me a long answer, but the answer is
 9 "yes," right? You interpreted these two
 10 provisions --
 11 A: I read the whole -- I read all the
 12 restrictions, but yes.
 13 Q: Okay. Did you give any credence at all to
 14 article one, general covenants, section two,
 15 about the architectural review board, which is
 16 actually right here at the bottom of this page?
 17 A: Yes, sir, Mr. Duell made me aware of that.
 18 Q: Okay. What does that mean to you?
 19 A: I still felt that you could not come in and
 20 harvest trees on this subdivision lot. I
 21 took -- the other ones, where it says you can't
 22 harvest trees or cut trees, I took that to
 23 override that.
 24 Q: You took it to override another portion of the
 25 covenants and restrictions?

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1 A: It plainly says about the tree removal. Based
 2 on the advice of our attorney and my feeling
 3 and some other assessors that had similar
 4 situations, decided that this property did not
 5 qualify for the -- these properties do not --
 6 these lots do not qualify for the agricultural
 7 use exemption.
 8 All the rest of the property, the stables, all
 9 the timberland across the road, the remainder
 10 of this tract down to the marsh, the rice
 11 fields, all those qualify. But these lots, in
 12 my opinion, do not qualify. And it's not only
 13 my opinion, but this is -- that's the only
 14 opinion right now that counts in here, as far
 15 as what we're doing.
 16 Q: And you know that the stables and the horse
 17 pastures and the riding trails and the woods
 18 through which the riding trails lead and all of
 19 that other area does qualify for ag use because
 20 you got an Attorney General's opinion on it,
 21 didn't you?
 22 A: Uh-huh (affirmatively responds).
 23 Q: Which was dated July 2nd, 2012, right?
 24 A: Correct.
 25 Q: Did you ask the Attorney General for an opinion

1 on this? Was it close -- was it enough of a
 2 question in your mind?
 3 A: I had case law. I had some case law on it.
 4 Q: Okay. You had some case law on this --
 5 A: Uh-huh (affirmatively responds).
 6 Q: -- but you didn't have -- so you didn't think
 7 it was enough of a question to while you were
 8 at it and you were already over there and
 9 you're talking about Middleton and you're
 10 actually talking not only about Middleton, but
 11 you're actually talking about a portion of
 12 Middleton that is actually owned by the same
 13 entity, right?
 14 A: That opinion from the Attorney General was not
 15 asked for for Middleton's sake. It was asked
 16 for for another -- stables down on County Line
 17 Road.
 18 Q: On County Line Road?
 19 A: I think so.
 20 Q: Okay.
 21 A: Maybe I'm wrong.
 22 Q: Is there a portion of --
 23 A: I was dealing with both of them at the same
 24 time.
 25 Q: Okay. I'll be honest with you, Mr. Welch. I

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1 lived in Charleston my entire life.
 2 A: Uh-huh (affirmatively responds).
 3 Q: Does County Line Road have a stable set up that
 4 would meet the description that is so clearly
 5 intended to describe Middleton Plantation with
 6 a 55-acre lake, with adjoining marsh, with 71
 7 acres of wooded riding trails, with 65 acres of
 8 open pasture and stables?
 9 A: Yes.
 10 Q: It does, okay.
 11 A: Yes, it does.
 12 Q: And do you remember what that property is?
 13 A: Poplar Grove.
 14 Q: All right. So Poplar Grove has this --
 15 A: I think the -- it may even back up -- the
 16 woodlands may even back up to Middleton.
 17 Mr. Duell can tell me that. They're close.
 18 Q: Okay. So Poplar Grove has a remarkably
 19 identical description --
 20 A: No, I did not say -- I said they have a really
 21 nice riding stables. They teach -- it's the
 22 same type use. They board horses. They teach
 23 riding lessons. They have riding trails. Same
 24 thing as this one. We're not talking about
 25 that because they -- I got the opinion from the

17 (Pages 65 to 68)

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1 Attorney General and so I acted on it.
 2 Q: Okay.
 3 A: We're talking about these lots (indicating).
 4 Q: I understand. But my question to you is, is it
 5 appears -- I obviously don't know what you sent
 6 to the Attorney General. But it appears from
 7 the description of the Attorney General's
 8 opinion that was authored to you that we're
 9 referring to Middleton Equestrian Center.
 10 A: What does that have to do with these?
 11 Q: Well, it has to do with my question to you and
 12 that is, did it -- did you consider seeking the
 13 Attorney General's assessment of whether or not
 14 these lots should be removed from the
 15 agricultural use?
 16 A: I didn't -- no, I didn't because I felt like I
 17 had the answer.
 18 Q: Okay.
 19 A: Case -- I had case law and I had my attorney's
 20 opinion, as well as some opinions from some
 21 other assessors that had the same situation.
 22 Q: Have you ever -- in your interpretation of
 23 restrictive covenants, have you ever seen a
 24 restrictive covenant that essentially says,
 25 "You know what? Here's an ARB, an

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1 architectural review board, but in reality, I'm
 2 a dictator, however benevolent I choose to be"?
 3 A: (No response.)
 4 Q: Have you something like that before?
 5 A: No.
 6 Q: Do you think that's what that says?
 7 A: I don't know what it says.
 8 Q: So you -- but if you don't know what this
 9 section says, but yet you're relying on the
 10 fact that an architectural review board has to
 11 approve the cutting, wouldn't it seem logical
 12 that you would have to know what that section
 13 means?
 14 A: I -- I sought guidance from my county attorney
 15 and that's what he recommended I do. As I say,
 16 based on that -- those restrictions and case
 17 law, we decided that these lots did not qualify
 18 for the ag use exemption.
 19 Q: But, Mr. Welch, your county attorney is not on
 20 the witness stand; you are and you're the
 21 assessor and you made the determination. So,
 22 again, just a simple "yes" or "no," did you
 23 think this provision was relevant to your
 24 consideration of the other provisions upon
 25 which you relied that said that if the

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1 architectural review board had to make that
 2 decision?
 3 A: I did not come to an answer on my own. I hope
 4 you understand that.
 5 Q: Yes, sir.
 6 A: I sought advice from the county attorney, as
 7 well as other people, and based on the case law
 8 and the advice of my county attorney, this is
 9 what I did.
 10 I relied on what -- what the covenants and
 11 restrictions, the part referring to -- and the
 12 restriction as the cutting of trees, how
 13 vegetation was to be handled. Based on that,
 14 I made my decision with assistance from, I say,
 15 our county attorney and some other things.
 16 Q: Okay. And Mr. Shepherd asked you if you had
 17 done any type of research to determine whether
 18 or not there had been an agreement in place
 19 between the County and Mr. Duell about how
 20 to -- how these properties were to be treated.
 21 And I think you referenced the fact that you
 22 saw a letter from Mr. Duell, but you never saw
 23 anything from the County --
 24 A: Nothing else could be found and, believe me, I
 25 looked.

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1 Q: And this is Respondent's Two that we've marked.
 2 And is that the letter you're referring to from
 3 Mr. Duell to Joe Murray, the then assessor?
 4 A: Yes.
 5 Q: Okay. And in that letter, does Mr. Duell voice
 6 these very --
 7 THE COURT: May I see that letter?
 8 MR. PRITCHARD: Yes, ma'am, I'm sorry.
 9 THE COURT: Okay. I'd note for the record that the
 10 date of that letter is August 11, 1993, from
 11 Mr. Duell to Mr. Joe Murray, the assessor.
 12 Q: And would you agree that Mr. Duell was raising
 13 the very concerns that we're here about today
 14 at that time, about how these properties were
 15 going to be treated going forward?
 16 A: Yes, he raised that question.
 17 Q: Okay.
 18 A: Certainly.
 19 Q: And he sent that letter. And I know that you
 20 have not located anything in return from
 21 Dorchester County and I will represent to you
 22 that I have never seen anything in return from
 23 Dorchester County.
 24 All I can represent to you is that it's my
 25 understanding that from 1993 -- and actually

18 (Pages 69 to 72)

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1 even before 1993, but from 1993 until the time
2 that you evaluated and reassessed him, that's
3 the way it was done, right?

4 A: Yes.

5 Q: So is it fair to -- I hate to use the word
6 "assume," but since you brought it out here --

7 A: Right.

8 Q: -- is it fair to assume that Dorchester County
9 at least by acquiescence accepted what
10 Mr. Duell was requesting in that letter?

11 A: The Dorchester County Planning Commission, nor
12 Joe Murray as assessor had the right not to
13 follow state law.

14 Q: Okay.

15 A: They're required by law to follow state law and
16 they did not. Dorchester County -- the
17 Planning Commission has no authority to say
18 that these lots will not -- will qualify for
19 agricultural use value, nor does the assessor
20 have the authority to say something that's
21 illegal can be done.

22 Q: It is possible that maybe they just looked at
23 this provision and realized what it actually
24 said?

25 A: I doubt that.

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1 Q: Okay. But you --

2 A: I don't know that.

3 Q: You don't know it, okay.

4 A: Neither do you.

5 Q: I sure don't. That's why I asked if it was
6 possible.

7 And, again, I think you said that your
8 interpretation of 12-43-232(3)(E), where it
9 said "nontimberable tracts," that to you -- or
10 "nontimberland" -- I apologize. I didn't mean
11 to say "nontimberable -- "nontimberland tract,"
12 that that, to you, is fallow fields or open
13 fields or pastures or stables or whatever.

14 A: Uh-huh (affirmatively responds). That's what
15 it says and you're familiar enough about the
16 Legislature to know that if somebody had a
17 friend who had a farm of open land, farmland,
18 row crop and they wanted to help them and
19 that's what was done. But they specifically
20 said a "nontimberland tract," which means if
21 it's growing timber, this grandfather clause
22 does not apply.

23 Q: Okay. And you also know that 12-43-232(1)(A)
24 refers to the fact that if the tract is used to
25 grow timber, the tract must be five acres or

1 more. Tracts of timberland of less than five
2 acres, which are contiguous to or under the
3 same management system as tracts of timberland
4 which meet the minimum acreage requirement are
5 treated as part of qualifying tracts. Again,
6 it's your position, though, that these aren't
7 managed in any way for timber, so he's not able
8 to avail himself of (1)(A); is that correct,
9 sir?

10 A: If he comes in and has a forester, the state --
11 that meets a part of this timber management
12 plan, if a forester is wishing -- wishes to do
13 that -- and he's been told that. I told
14 Mr. Duell that on occasions. If that's part of
15 his timber management plan, I don't have any
16 option. I follow the law.

17 Q: Okay. And let me ask you this, just because we
18 raised it in our -- in our original filing with
19 the Court and I think it is relevant here. Do
20 you ever have occasion to reference the
21 National Historic Preservation Act and what
22 impact it may have on properties that fall
23 within your jurisdiction?

24 A: No.

25 Q: Okay. And whether or not it provides guidance

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1 and -- I won't -- I'm not going to say
2 "requirement" because it isn't a requirement --
3 but strong, persuasive suggestion to taxing
4 authorities that there be particular
5 sensitivities given to areas within that
6 designation?

7 A: Well, I assume since the -- there I go, I use
8 that term and I apologize. Since -- not
9 assume, but since the gardens themselves are
10 totally exempt, I thought that that provision
11 had been taken care of.

12 Q: Okay. But you understand that the gardens
13 themselves are totally exempt by something
14 completely unrelated, which is the Internal
15 Revenue Service Code 501(C)(3).

16 A: Yeah.

17 Q: Okay.

18 A: The law requires that I appraise property at
19 current market value.

20 Q: Okay.

21 A: And, also, it -- for these -- for more than ten
22 lots, it allows for the multiple-lot discount.
23 But the market value of these lots are in
24 excess -- I can't tell you how much per acre,
25 but they're in the eighties and \$90,000 per

19 (Pages 73 to 76)

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1 acre; that's what they were selling for. I
2 can't ignore what -- the law does not allow me
3 to ignore what properties are selling for when
4 we do our market value appraisals, which are
5 required by law.

6 Q: Okay.

7 A: So these -- it's not these lots are not selling
8 for a lot of money. They're selling for
9 \$90,000 more or less per acre.

10 Q: And, in fact, if Mr. Duell took them all out
11 of -- if he abandoned them all and put them all
12 back into his common property, the citizens of
13 Dorchester County would never realize the
14 value -- full value of them if they sold; isn't
15 that correct?

16 A: Yes.

17 Q: Okay.

18 A: No, that's not correct.

19 Q: It's not?

20 A: No.

21 Q: Why not?

22 A: Well, you just said if he put those lots back
23 into the --

24 Q: Into his bigger tract of land.

25 A: Yeah, but you said if they sold, Dorchester

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1 County would never get the true value.

2 Q: No, sir.

3 A: If they sold, they wouldn't.

4 Q: No, sir, that's exactly the opposite of what I
5 said. I said --

6 A: I apologize.

7 Q: -- if, in fact, Mr. Duell took all of the --

8 A: Uh-huh (affirmatively responds).

9 Q: -- remaining parcels out of this and put them
10 back into his greater tract of the land,
11 Dorchester County would never realize the value
12 of any of them, because they'd all be in
13 agricultural use value for as long as he or his
14 direct descendants keep going down determine to
15 keep them there.

16 A: Well, that's what you're here to determine --
17 to try to get us -- the Judge to do now is put
18 them in ag use, which is the same thing that
19 you just said.

20 Q: I agree. I agree, but --

21 A: So what you just said was, if we put them back
22 in -- if we had them back into his -- the total
23 large acreage, Dorchester County would never be
24 able to reap the benefits of it. Well, if
25 we -- they haven't reaped the benefits since

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1 1990 something since these lots have been
2 platted.

3 Q: Wait a minute. Wait a minute. Wait a minute.
4 They haven't reaped the benefits since 1990?
5 Haven't a number of lots sold?

6 A: Yes, but it --

7 Q: Then they have reaped the benefits of each
8 sale.

9 A: But if you -- if you go out and you -- if you
10 add these -- put these lots back into the large
11 tract and you come back a week later or a month
12 later or a year later and sell one of them, we
13 have the same thing as we have right now -- or
14 before -- as we had it before I put these on at
15 market. They're going to go back -- once they
16 sell, they're not going to go on as ag use.
17 They're going to go on at current market value.
18 And they're going to be cut out of the larger
19 tract.

20 Q: And I think you and I totally agree; that's
21 exactly what I was asking you. But if, in the
22 alternative, Mr. Duell just said, "You know
23 what? This is more trouble than it's worth.
24 I'll take them all out of there. We'll never
25 sell them. We'll put them back into the

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1 greater good for the family and they'll just
2 have the ag use."

3 So don't -- I guess what I'm trying to get at
4 is, don't you think, perhaps, the folks in
5 Dorchester County long before you got here
6 recognized that there was some benefit to both
7 sides of this relationship?

8 A: I don't know what they thought, what they
9 thought by what they did. They did what they
10 did was contrary to state law.
11 I can't help what Mr. Duell would do with these
12 lots. As I told him, he could have a surveyor
13 come out, resurvey the lots, cut those lots out
14 and only survey those that had been sold and
15 they would become part of the larger tract
16 again.

17 But I -- I can't sit back in my office and
18 worry about what is going to happen in the
19 future. I'm required by law to appraise
20 property as it is as of the taxing date, which
21 is December 31st of each year.

22 Q: Which you have done here precisely based on
23 your interpretation of the covenants and
24 restrictions.

25 A: Not just mine.

20 (Pages 77 to 80)

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1 Q: But you're the authority. You're the guy that
 2 makes the decision, right?
 3 A: (No response.)
 4 Q: I mean, you're the assessor.
 5 A: I'm the assessor.
 6 Q: The assessor made the --
 7 A: I made the final decision but I didn't make
 8 it -- I didn't make it without guidance.
 9 Q: Okay. But you're the ultimate authority.
 10 A: Oh, yeah.
 11 Q: Okay.
 12 A: That's why I'm right here.
 13 Q: And your ultimate authority was based on
 14 covenants and restrictions.
 15 A: That's correct.
 16 Q: Okay. Let me ask you one more question, then
 17 I'll leave you alone.
 18 A: Okay.
 19 Q: On what y'all have labeled "B," "A," and "G" on
 20 this plat that y'all marked -- and here it is
 21 right here (indicating). Well, on the one
 22 you've got there it's not "B," "A," "G," I
 23 apologize. But let's just say --
 24 A: Show it to me.
 25 Q: -- 005, 003 and 033.

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1 A: Okay.
 2 Q: Has there been any discussion with Mr. Duell
 3 about the fact that those parcels had actually
 4 already been abandoned and put in, you know --
 5 A: Yeah, I told -- I told Mr. Duell all he had to
 6 do was fill out a form -- excuse me -- that
 7 would ask us to combine this with the larger
 8 parcel and it would be done.
 9 Q: Okay. All right.
 10 A: We have not received that request.
 11 MR. PRITCHARD: Okay. I'm going to let you be for
 12 right now. I need a sip of water, anyway.
 13 THE COURT: All right. Thank you.
 14 MR. PRITCHARD: Thank you.
 15 THE COURT: Anything on redirect, Mr. Shepherd?
 16 MR. SHEPHERD: Just a couple things, Mr. Welch.
 17 MR. WELCH - REDIRECT EXAMINATION BY MR. SHEPHERD:
 18 Q: Questions asked to you were with regards to
 19 this environmental restrictions. I believe
 20 that is "general covenants" here (indicating).
 21 The question specifically was with regards to
 22 section two, architectural review, and the
 23 power of the owner.
 24 Reading that first sentence, "Owner in his
 25 exercise of the authority and obligations

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1 reserved by and conferred upon him by this
 2 declaration may appoint an architectural review
 3 board to counsel him. The ultimate authority
 4 for decisions of the architectural review board
 5 shall in all cases rest with the owner, his
 6 heirs and assigns."
 7 Do you take that -- do you see an
 8 interpretation there that means that the owner
 9 can without restriction commercially harvest
 10 trees?
 11 A: No.
 12 Q: In reading the architectural review board
 13 provision, in conjunction with section one
 14 above, does it appear the purpose of those two
 15 is to control the type of development for
 16 residential purposes?
 17 A: Yes. I feel like those restrictions were put
 18 there to protect the owners; if not -- if not,
 19 why have restrictions and covenants if you're
 20 not -- if it's not going to protect the
 21 purchasers of the property?
 22 I assume -- I'll quit using that word, I'm
 23 sorry. The restrictions are there to protect
 24 the buyers, not necessarily to protect the
 25 owner, the current owner, the seller, but to

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1 protect the future buyer of this property.
 2 Q: Okay.
 3 A: That's my opinion.
 4 Q: Okay. Is that your interpretation of --
 5 A: Yes, that's my interpretation of this.
 6 Q: You stated that you did not feel that Mr. Duell
 7 or Middleton Place, LLC -- Equestrian Center,
 8 LLC, is free to do as they please. Did you
 9 read the section of the covenants and
 10 restrictions that stated that these covenants
 11 and restrictions run with the land?
 12 A: Yeah, I read the -- I read all -- the whole
 13 thing. I don't recall everything I read --
 14 verbatim what I've read, but I read the whole
 15 thing -- the whole document.
 16 Q: Okay. I'm going to point out, this is page 296
 17 of the recording stamp.
 18 A: Okay.
 19 Q: Can you read that first sentence to us, please?
 20 A: "The covenants and restrictions of this
 21 declaration shall run with and bind the land
 22 and shall enure to benefit -- to the benefit of
 23 the -- and be enforceable by the association,
 24 the company, the owner, or any property owner,
 25 their respective legal representatives, heirs,

21 (Pages 81 to 84)

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1 successors and assigns for a period of 25 years
 2 from the date of this declaration, which is
 3 recorded."
 4 Q: So it enures to the benefit of all those
 5 people, including the owner.
 6 A: Yes.
 7 Q: And enforceable by all of those people.
 8 A: That's right.
 9 Q: Assumably -- the word that you used --
 10 A: You can use that word.
 11 Q: -- the folks who build a house subject to -- or
 12 buy lots subject to these covenants and
 13 restrictions?
 14 A: There has -- this is put here -- these
 15 covenants and restrictions are put here to
 16 protect the buyers of that property.
 17 Q: And did you --
 18 A: If you purchase one of these lots and the next
 19 morning, next day somebody was -- next door was
 20 setting up a logging crew cutting every tree or
 21 clean cutting the trees off the adjacent lot
 22 and you bought these lots -- bought this lot
 23 based on the fact that Robert Marvin -- Robert
 24 Marvin had developed -- had drawn the plat, had
 25 designed it with keeping this thing in

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1 historic -- in its pristine state, all the
 2 trees left on it or as many as possible and you
 3 woke up the next morning, one morning, and the
 4 logging crew next door with skidders running
 5 and chainsaws running cutting those beautiful
 6 trees? What would you think?
 7 Q: And --
 8 A: That's why I made my decision.
 9 Q: And so the questions asked to you on
 10 cross-examination were with regards to your
 11 interpretation of these covenants and
 12 restrictions.
 13 A: That's right.
 14 Q: I'm going to hand you what would be marked as
 15 page 299 of the recording stamp. Can you read
 16 section three for the Court?
 17 A: Yes. "In all cases, the provisions of this
 18 declaration shall be given that interpretation
 19 of construction that will best intend toward
 20 the consummation of the general plan of the
 21 development of this property."
 22 Q: Is that "consummation" of the general plan?
 23 A: (No response.)
 24 Q: Well, you said "consumption."
 25 A: I'm sorry, consummation. I apologize.

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1 Q: And the general plan of development, you were
 2 shown the bigger picture --
 3 A: Yes.
 4 Q: -- the color picture. I don't remember the
 5 exhibit number, but it shows the entire
 6 Middleton area. You were asked specifically if
 7 you were aware of timbering on other portions
 8 of that general plan.
 9 A: That's correct.
 10 Q: As part of that general plan, are the
 11 subdivided lots for development, residential
 12 development, set forth?
 13 A: Yeah.
 14 Q: And as part of that general plan, is
 15 conservation a part of that general plan?
 16 A: Yes.
 17 Q: And based upon the restrictive covenants, the
 18 restrictions against cutting timber, does it
 19 appear to you that the general plan binding all
 20 of the parties, including the owner, would be
 21 towards residential development only and not
 22 commercial timbering of these residential lots?
 23 A: That's correct. That's the decision I made.
 24 Q: And that was for the platted --
 25 A: Platted area.

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1 Q: -- area as it existed at the time that you did
 2 the audit.
 3 A: And as I -- as I mentioned before, he had
 4 that -- he had the option of asking that those
 5 three lots be abandoned -- property lines be
 6 abandoned on those three lots since they were
 7 not a part of the subdivision plat and they
 8 would be included in the total acreage and
 9 receive agricultural use value.
 10 Q: And, Mr. Welch, whether or not the County may
 11 have acquiesced in the past, are you aware in
 12 your review of Title 12 or any other provision
 13 of law, the State of South Carolina of any
 14 provision that allows you to ignore what the
 15 State law says with regards to how these
 16 properties should be taxed as opposed to how
 17 they may have been taxed by the County?
 18 A: How they may have been -- how they were taxed
 19 in the past has no bearing on what I should do.
 20 If I just -- if I just go in error, I can --
 21 it's my job as the assessor to correct it.
 22 MR. SHEPHERD: Thank you, sir. No further
 23 questions.
 24 THE COURT: Thank you, sir. Did you have another
 25 question --

22 (Pages 85 to 88)

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1 MR. PRITCHARD: One. Literally one additional
 2 follow-up.
 3 THE COURT: Certainly.
 4 MR. WELCH - RECROSS-EXAMINATION BY MR. PRITCHARD:
 5 Q: Now, Mr. Welch, if Mr. Duell were currently to
 6 abandon the property lines on those three lots,
 7 he would fall below the ten required to have
 8 multi-use discount, right?
 9 A: Yes.
 10 Q: So right now he's in a Catch 22, isn't he?
 11 A: He certainly is.
 12 Q: You're trying to tax these at a higher rate.
 13 So if he takes those three out, then he not
 14 only loses what protection -- what protection
 15 he has of the ag use, but what protection
 16 you're offering him at the multi-lot discount,
 17 as well. Okay.
 18 A: I think 11 lots, he probably could drop one
 19 off, drop the most valuable one off --
 20 Q: All right.
 21 A: -- and that would work.
 22 MR. PRITCHARD: Thank you.
 23 THE COURT: All right. Thank you very much,
 24 Mr. Welch. You may be excused.
 25 Any further witnesses on behalf of the County?

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1 MR. SHEPHERD: Your Honor, Mr. Welch is my only
 2 witness today. Thank you.
 3 THE COURT: Thank you very much.
 4 Okay. Then we'll be glad to hear from your
 5 witness.
 6 MR. PRITCHARD: Yes, ma'am, I call Mr. Duell.
 7 THE COURT: Mr. Duell, if you'll please come around
 8 here to our witness chair, raise your right
 9 hand and I'll our court reporter to administer
 10 the oath or affirmation to you.
 11 (Off the Record)
 12 THE COURT: We'll take a break, then.
 13 (Off the Record)
 14 THE COURT: All right. You may proceed,
 15 Mr. Pritchard.
 16 MR. PRITCHARD: I don't know if you finished
 17 swearing him.
 18 CHARLES DUELL, having been duly sworn, testifies and
 19 examines as follows:
 20 THE COURT: Please have a seat and answer questions
 21 Mr. Pritchard --
 22 THE WITNESS: Your Honor, if I stand up, is that all
 23 right?
 24 THE COURT: If it works for the court reporter,
 25 whatever works for you.

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1 THE WITNESS: If I -- if you can hear me clearly
 2 enough. Thank you.
 3 THE COURT: Certainly.
 4 MR. DUELL - DIRECT EXAMINATION BY MR. PRITCHARD:
 5 Q: All right. Mr. Duell, I don't think we need to
 6 go into a lengthy background introduction. I
 7 think the Judge has a pretty good flavor of who
 8 you are by now. But just tell me very briefly
 9 about your involvement with Middleton.
 10 A: Early on or ...
 11 Q: Well, yes, sir, how you came into being a part
 12 of Middleton.
 13 A: Well --
 14 Q: You don't have to go back to birth, though.
 15 THE WITNESS: Your Honor, unfortunately, a Gemini,
 16 so I can handle the schizophrenia of my father
 17 being a New Yorker and my mother being a South
 18 Carolinian.
 19 THE COURT: That's quite all right. I'm sure it was
 20 a great relationship.
 21 THE WITNESS: I frequently as a child came down to
 22 Charleston and Middleton Place, so I was living
 23 in New York. I went to school in Charleston
 24 for one year, basically went away, had other
 25 plans.

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1 I was going into the American Foreign Service,
 2 worked on Wall Street for a few years and then
 3 came back to Charleston as my grandfather, who
 4 owned Middleton Place, was aging and nearing
 5 his demise.
 6 I did not think I would inherit the property,
 7 because the real estate -- I mean the estate
 8 tax burdens. So I was working for the South
 9 Carolina National Bank for those years.
 10 And do you want me to go ahead with my
 11 involvement --
 12 MR. PRITCHARD: Yeah, just take us into --
 13 THE WITNESS: -- early on?
 14 MR. PRITCHARD: Yeah, go ahead and take us ...
 15 THE WITNESS: So -- so I was actually very surprised
 16 when in 1970 at age 32 I inherited not just
 17 what you see on the board there, but north of
 18 that, above it, another 5800 acres. So the
 19 whole property is about sixty-five, 6600 acres
 20 of land.
 21 And, curiously, I inherited it with no
 22 securities, no cash. I had two sisters. And
 23 being kind of the typical Southern land poor
 24 situation, the land was huge, but, you know, in
 25 the 1920's when my grandfather inherited it, it

23 (Pages 89 to 92)

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1 wasn't worth anything. Literally three dollars
 2 an acre.
 3 And it had become valuable and I was sure that
 4 estate taxes would take it, but that's another
 5 story -- we had a life tenancy and we avoided
 6 that. So I actually inherited the entire
 7 property in 1970 with no liquidity virtually at
 8 all.
 9 It had been the gardens, which are here
 10 (indicating) in the middle. Can I walk over
 11 here?

12 THE COURT: Certainly.

13 THE WITNESS: Is that all right?

14 THE COURT: Certainly.

15 THE WITNESS: The garden area that Thomas --
 16 Mr. Pritchard referred to as the National
 17 Historic Landmark is this central area that is
 18 designated a National Historic Landmark.
 19 This whole area, by the way, between the road
 20 and the river is on the National Register of
 21 Historic Places, which is the next rung closest
 22 to National Historic Landmark.
 23 And since I inherited it with no -- no
 24 resources, no financial resources, I had to
 25 make something work to make it work. And just

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1 the gardens were open at that time to the
 2 public and we wanted to open it.
 3 You -- I'm not supposed to ask you questions,
 4 but are you familiar at all -- I don't want to
 5 repeat myself. Are you familiar with Middleton
 6 Place a little bit?

7 THE COURT: I am. I am.

8 THE WITNESS: So we determined that to open the
 9 plantation stables and show the
 10 behind-the-scenes aspect of Middleton Place
 11 would be valuable and then eventually to open
 12 the house and let everything come into play to
 13 make it survive.

14 And we did this -- I said I brought this -- I
 15 led the effort to make this happen, realizing
 16 that the family was just temporal during their
 17 lifetime and that the land -- and what's
 18 important about Middleton Place really belonged
 19 to the public and we wanted to turn it over to
 20 the public.

21 And, eventually, all of this land that you see
 22 up here (indicating) will belong to a 501(C)(3)
 23 that is the Middleton Place Foundation when I
 24 get hit by a truck.

25 But in the meantime, going back --

1 THE COURT: We'll hope that won't happen, Mr. Duell.

2 THE WITNESS: Or get hung or whatever happens.

3 But when I inherited it, to try and provide
 4 some liquidity in order to do the plantation
 5 stables, I raised money -- I borrowed some
 6 money from the bank, but there are limitations
 7 on that, and I looked around the property to
 8 see if there was someplace where we might be
 9 able to make some money, to liquidate some of
 10 the property.

11 So we chose this area down near Charleston that
 12 was in a wooded area, part of our woodlands
 13 that continues up here (indicating) and across
 14 the road, all part of the woodland management
 15 plan of Middleton Place.

16 And, by the way, we do have a forester full
 17 time on staff and we have a manager of the
 18 woodlands who the forester works for. And used
 19 to work for Bart Sibine (phonetic), you
 20 probably know, and a man name Josh Hair
 21 (phonetic).

22 And -- but back in 1974, we thought if we could
 23 design something that could work in the
 24 woodlands, that that would be a sensible
 25 approach. We did not know if anyone would want

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1 to live there.

2 Can you pour me a glass of water?

3 MR. PRITCHARD: I certainly will.

4 THE WITNESS: We did not know if anyone would want
 5 to live there. We didn't know, you know, if
 6 there would be woodlands -- someone might want
 7 to build a house. We kind of referred to
 8 people that took a house site -- got interested
 9 in a house site as a co-steward of Middleton
 10 Place; that would be the attitude about it.

11 So we hired Robert Marvin to come up with a
 12 plan to do that and we decided in 1970 to start
 13 raising money to help the effort of doing -- of
 14 taking care of Middleton Place.

15 And that was 1970. Over the next ten years, we
 16 sold a few house sites. I'm going to turn this
 17 around and simply use this on the other side.
 18 We sold -- this was -- the first house site we
 19 sold was right here (indicating). We sold, you
 20 know, two or three and I think the average --
 21 the maximum was -- we said we would not sell
 22 more than five a year. We, in fact, sold on an
 23 average one every two or one house site every
 24 two or three years.

25 We were not trying to get rich quick. We were

24 (Pages 93 to 96)

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1 just trying to liquidate. We were not
2 developers. And in those days, there was a
3 distinction between being a developer and just
4 being a private land owner. If you sold more
5 than two house sites a year, you were deemed
6 a developer and your income tax treatment was
7 different. So, specifically, we were not
8 developers.

9 And we sold a few. And all of these on here
10 that are marked red have now been sold. I
11 believe there are nine houses. These are
12 probably something like 13 house sites, 13 or
13 14, and there are nine houses on them.
14 When they -- this is all during the seventies
15 and the eighties. When they were sold, we came
16 up with a plan -- with system that if they were
17 sold, they would have their own plat. And so
18 every time we sold a house site, we had an
19 individual plat drawn.

20 MR. PRITCHARD: Your Honor, for the purposes of the
21 record, let me just give this to Mr. Duell only
22 because we've marked it as an actual exhibit,
23 which was Middleton One.

24 THE WITNESS: Do I hand that to you, Your Honor?

25 THE COURT: That'd be great. Thank you.

1 to -- these are all the ones that are yet
2 unsold.

3 And what we did is, we would -- we go through
4 and sell a house site, as I said very
5 occasionally, and come up with a plat and
6 register the plat and all of a sudden, this
7 would be taxable as a residential property.
8 Residentially intended without a house. And
9 then a residence when the house was built on
10 it. And so, obviously, that increased the
11 taxes up to thousands of dollars per house.
12 So I wanted to also point out that Robert
13 Marvin had nothing to do with writing the
14 covenants that have been much referred to
15 today. He was simply a land planner. And his
16 theory was to plan things so that they kind of
17 fitted into nature and, you know, didn't --
18 wasn't any kind of, you know, track housing by
19 a long shot, but it fitted into nature.

20 And it's worked very well over the years. The
21 first 20 years, so from 1970 to 1990, we were
22 doing a few sales. And I suppose by 1990,
23 maybe we had sold a half a dozen, six or eight.
24 And we went to Dorchester County Planning
25 Board -- well, the Dorchester Planning Board

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1 THE WITNESS: So these were individual plats. We
2 never drew -- we had a plan from Robert Marvin,
3 which was basically this plan (indicating).
4 And you might note that it's not cookie-cutter
5 plan. It's a plan that respects the topography
6 and the lot -- the lines between the house
7 sites are all gullies, you know, so that these
8 are like fingers of land and the houses would
9 go on there if they sold.

10 And that was the key. And we're talking about
11 43 years ago. And over 43 years, we've only
12 sold 13 house sites on which are built about
13 nine acres. We were not developers. We are
14 conservationists and historic preservationists.
15 It was all part of the effort to try and have
16 liquidity to build Middleton Place, to build
17 the stables, to advance Middleton Place so
18 that it could carry itself.

19 And since then, we have paid off all the debt
20 and we have been able to carry it and realizing
21 that I can't take it with me, I have given it
22 all, as I said, to this nonprofit; however, we
23 still own parts of it.

24 The parts that we own are shown on the County's
25 plat here as being gray in color, as opposed

1 came to us and said, "Hey, instead of just
2 recording these individual house sites, why
3 don't you come up with a survey that shows, you
4 know, where the houses of the future would go."
5 And I was concerned about that, because I knew
6 the difference between agricultural land use
7 tax and residential tax.

8 And, by the way, what's shown on here in gray
9 cannot be referred to or referred to in the
10 covenants as "residential house sites." They
11 are, in fact, part of the timberland until
12 they're sold and then they become residential
13 house sites.

14 So we did that up until 1990 and the then
15 assessor, Joe Murray, came to us and said that
16 he wanted -- that, you know, they wanted to see
17 a plan if we were going to sell any more.
18 And I'd like to read, if I may, from the letter
19 that I wrote to him, which is an exhibit and I
20 believe --

21 MR. PRITCHARD: It's got the --

22 THE WITNESS: -- it's been filed.

23 THE COURT: Yes, I believe it's Number Three. Do
24 you need that?

25 THE WITNESS: And I think there are -- are there

25 (Pages 97 to 100)

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1 some highlights on that?
 2 THE COURT: Yeah, it's Middleton Number Two.
 3 THE WITNESS: Yeah, I'd like to read into the record
 4 just the highlights in this letter of August
 5 11th, 1993, to Joe Murray, Assessor, Dorchester
 6 County.
 7 And one important point is, I say, "Please be
 8 advised that there has been no change in the
 9 ownership of land of the above-referenced
 10 property -- land use of the above-referenced
 11 property." In other words -- then I go on to
 12 explain what that is.
 13 The important part on the second page is that
 14 I write to Joe and we had had several telephone
 15 conversations and several visits and he asked
 16 me to memorialize this in a letter to him,
 17 which I did.
 18 And in the second paragraph, I say, "Three
 19 years ago, the Board" -- which is the
 20 Dorchester County Zoning Board -- "requested
 21 that we record a complete plat to facilitate
 22 future closings. At a meeting of the Board
 23 that I attended in the fall of 1990, the
 24 subject of taxation was specifically discussed
 25 and it was stated that Middleton Place could

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1 not record the mapping of the future house
 2 sites within its woodlands that some day might
 3 or might not be sold if it would jeopardize
 4 that recording, would jeopardize the
 5 agricultural land use status of that part of
 6 our woodlands."
 7 I was assured at that time that there would be
 8 no tax status change until these properties
 9 were sold or the land use changed.
 10 So that was 1993. What happened after 1993 is
 11 that we discussed it several times, in person
 12 and on the telephone, and everything was set
 13 straight that the agricultural land use --
 14 agricultural use tax was continued.
 15 Mr. Welch said that he did not have any record
 16 of it and then he said that the records were,
 17 I believe, all destroyed. They don't keep
 18 records after a certain time and they were all
 19 destroyed. So that's, perhaps, why he doesn't
 20 have a record of it.
 21 But for whatever reason, I think, Your Honor,
 22 that the proof is in the fact -- the proof of
 23 the acceptance of this principle and this
 24 agreement that was made with the County, proof
 25 of it is in the fact that for the next 22

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1 years, there's been no change in the
 2 agricultural land use tax, until Mr. Welch last
 3 year came along and said, "Hey, your taxes
 4 suddenly go up by, you know, tens of thousands
 5 of dollars."
 6 And we can't go afford that and we don't want
 7 that and we refer to this letter. And he wrote
 8 me back a letter that I think has also been
 9 introduced into evidence by him on January
 10 2012, a little over a year ago, saying that --
 11 that the -- checking records of five years --
 12 do you have that?
 13 MR. PRITCHARD: It has not -- I mean, it has been
 14 marked as an exhibit. I don't believe it's
 15 been entered into the record. Will you read
 16 the exhibit number off of the record?
 17 THE WITNESS: Exhibit Number Middleton Three.
 18 MR. PRITCHARD: Thank you.
 19 THE WITNESS: And, Your Honor, if you look at that
 20 letter, in the first paragraph he refers to
 21 parcels with less than five acres of land. And
 22 he said, "The above parcels" -- that he
 23 enumerates is 11 -- "do not qualify for
 24 agricultural use. They are part of Middleton
 25 Oaks subdivision."

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1 Well, it's not -- never was a subdivision in
 2 terms of development subdivision. It was
 3 division of land, yes, and it was a plan to
 4 sell house sites, if they sold, but it was
 5 hardly -- in the common use of the word
 6 "subdivision" never a subdivision. They've
 7 termed it that.
 8 And he said, "The subdivision restrictions
 9 prohibit the removal of any trees without the
 10 written approval of the board of architectural
 11 review." And, of course, we agree with that.
 12 And then he's -- we talked and had discussions
 13 and there were, in fact, several sites on here
 14 that had long been abandoned and this was
 15 because, again, of future land planning.
 16 Since 1970, in the eighties, Your Honor, the
 17 Middleton Inn was built up here (indicating).
 18 THE COURT: Uh-huh (affirmatively responds).
 19 THE WITNESS: And that's a separate tax entity. And
 20 these house sites were removed in our -- there
 21 was actually another one here and I don't know
 22 what happened to that in the County records.
 23 But we understood that all of these were
 24 removed because they were in -- the way the
 25 planners divided up the National Historic

26 (Pages 101 to 104)

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1 Landmark was public land; the Middleton Inn
2 sector was semi public, you know, available to
3 guests; and that from here over was strictly
4 private (indicating).
5 So we had already abandoned these and when
6 these came back, we were surprised. And then
7 the other here gray house sites, we simply
8 considered part of the woodlands and planned to
9 continue that. And then the discussion has
10 pursued since then where
11 Mr. Murray -- Mr. Welch has said no, that
12 they're part of the subdivision.
13 He came with his appraiser to visit me and we
14 went down on the site and we went to the house
15 site here.
16 I think both of these have been entered into
17 exhibits with -- this is our exhibit, but -- do
18 you have these pictures or do you want them,
19 Your Honor?
20 THE COURT: Certainly.
21 MR. PRITCHARD: They're in the record, yeah.
22 THE COURT: In the record. They're Middle Exhibit
23 Four, the photograph.
24 THE WITNESS: And there are two paragraphs.
25 THE COURT: Two photographs.

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1 THE WITNESS: And let me be very accurate about
2 them; so you'll understand that ...
3 This photograph here was the first stop that we
4 made that was -- excuse me -- down in this area
5 (indicating) with -- on these house sites.
6 That photograph shows the timber on that.
7 You'll see it's mostly pine trees.
8 And the second -- the second stop -- wait a
9 minute. The first -- anyway, the -- sorry, the
10 first stop was down in one of these house
11 sites, I believe. Let me get oriented. Yeah,
12 it was one of these that are still -- that are
13 not sold.
14 And the second one was right here (indicating).
15 That house site and that was this one
16 (indicating) and both these pictures, which
17 aren't great pictures, I took them precisely
18 where we walked in and looked at the sites and
19 talked with him about it and explained that
20 in -- in our -- as Mr. Pritchard referred to,
21 our timbering -- which is not unusual in this
22 part of the world -- we don't do clear cutting
23 with exceptions, special exception, but
24 basically we do what we call "improvement
25 cutting" and you have to harvest pine trees.

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1 Mr. Welch said that he had hardwoods; well,
2 that's fine. But the bulk of our timbering has
3 been pine trees.
4 Pine trees don't live, you know, more than 150
5 years. They start to rot. They're lightening
6 rods. And at a certain point, it's just they
7 stop growing. At a certain point, from a
8 timber management standpoint, it's
9 unquestionably wise to take them out.
10 And we do that on all the property. We respect
11 live oaks that can live to be hundreds of years
12 old and we respect a lot of hardwoods that make
13 up the conservation efforts that we do.
14 So I also would like to point out that when
15 Mr. Shepherd and Mr. Welch referred to the
16 covenants talking about commercial activities
17 on residential lots, the residential lots are
18 where people live. The word "residential"
19 means a residence.
20 And these are not residential lots. They're
21 timber -- they're part of the whole timberland
22 until, under our system, that we -- that I sell
23 them and they become residential lots.
24 And the commercial aspect of it had not to do
25 with the business of timbering, but it had to

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1 do with people having commercial establishments
2 in their houses. We didn't want someone to set
3 up a shop or manufacturing or anything else in
4 the residential lots.
5 The covenants, I would suggest, are not only
6 simply to protect the owner. Owners all have
7 different ideas of how they should be
8 protected. But to protect the whole property
9 in its -- in its effort to attract co-stewards
10 for Middleton Place and its effort to have
11 people living in natural surroundings.
12 So we -- I think Mr. Pritchard has addressed
13 the nonqualifying of five acres and the
14 possible -- the availability of grouping these
15 with other lands that we own.
16 By the way, the covenant that we have in
17 exhibit apply and have been expanded since to
18 this whole area, including the Equestrian
19 Center and the Middleton Inn. They've been
20 amended to include the Middleton Inn as part of
21 the homeowners' association. It's really for
22 the protection of the whole.
23 We're not doing any kind of clear cutting. We
24 have cut raised last year approximately \$40,000
25 in timbering on another part of the LLC

27 (Pages 105 to 108)

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1 property, but the same property.
 2 Now, we have plans this year to harvest timber
 3 on several sites here and the board of
 4 architectural review has already passed on that
 5 as an advisory board. As Mr. Pritchard said,
 6 I appoint when needed, ad hoc, and the advisory
 7 board already approved the timber sale for this
 8 year, which will take these mature pines and
 9 leave the land probably looking better with
 10 live oaks allowed to grow and naturalize and so
 11 on.

12 MR. PRITCHARD: You want me to ...

13 THE WITNESS: Yeah.

14 MR. PRITCHARD: Yeah.

15 THE WITNESS: So anyway, that's kind of just the
 16 background and -- and -- and the story of how
 17 we got to where we are.

18 And we talked with the -- the hearing of
 19 independent citizens in Summerville and they
 20 agreed that this clearly is part of timberlands
 21 and that these house sites should continue to
 22 enjoy agricultural use taxation.

23 If they are sold, they immediately become
 24 residential -- tax residentially and we applaud
 25 that. We don't have to pay the taxes; the

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1 homeowner does.
 2 So that's basically how we got to where we
 3 were. It was 20 years until the agreement in
 4 1990. It's been since 1993. It's been exactly
 5 20 more years. And we would hope that Your
 6 Honor would agree with us, that that treatment
 7 should not be changed for all of the reasons
 8 that we're presenting to you today.

9 THE COURT: Yes, I believe I understand your
 10 argument.

11 THE WITNESS: Thank you.

12 MR. PRITCHARD: Your Honor, Mr. Duell left off of
 13 his resume "frustrated lawyer." But you can
 14 see that he's got some ideas in him there.
 15 Your Honor, just a couple of follow-up
 16 questions that I think are illustrative and
 17 helpful to the record and Mr. Duell asked -- I
 18 mean, he made a statement in there that
 19 residential lots, as referred to in these
 20 covenants, is purely the lot once somebody has
 21 purchased them and all.

22 Q: So what I would like, Mr. Duell, just for the
 23 record to tell me -- and you're going to have
 24 to put your glasses on.

25 A: (Witness complies.)

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1 Q: When were these restrictive covenants recorded?

2 A: These were recorded on December 31st, 1979.

3 Q: Okay. And this plat that Dorchester County
 4 required you to enter into was created -- well,
 5 I'm not even sure this is the one. Is this the
 6 one? Is this the one they required you to
 7 enter into?

8 A: That's -- they're all similar.

9 Q: Okay.

10 A: This is similar and this shows in more detail.
 11 The H's in purple, if you can see the purple of
 12 where people have built houses. The S's are
 13 simply parcels of land that have been sold but
 14 have not been built on yet. And the yellow
 15 ones that you see here and here (indicating)
 16 are still part of the woodlands that we have
 17 not yet sold.

18 And I've been around the merry-go-round with
 19 Mr. Welch suggesting that -- that if you take
 20 the three lots here (indicating) and we simply
 21 make one lot out of it, that's over five acres
 22 for openers.

23 And this, just taking this line away,
 24 the -- you may have heard him say that -- that
 25 if we resurveyed all of the present house

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1 sites? Why would we have to resurvey them when
 2 they're already owned by somebody else?

3 But he says that if we resurvey the present
 4 sites, then these others could be combined into
 5 the land holding. That's going to be a multi
 6 20,000-dollar plus bill to resurvey them and
 7 we're not interested in doing that. We're just
 8 interested in continuing our conservation and
 9 preservation practices.

10 Q: Let me ask a question that I'm not sure you
 11 answered. These documents you said were
 12 recorded on December --

13 A: 29 -- '79.

14 Q: 1979.

15 A: And then they were amended when the Inn was --

16 THE WITNESS: The Middleton Inn was started in 1983,
 17 Your Honor --

18 Q: But the plat --

19 THE WITNESS: -- and I don't know if you know, it's
 20 a small country inn on the property.

21 THE COURT: It's marvelous, the reviews.

22 Q: But the plat, as I understand it, that
 23 Dorchester County required to be recorded was
 24 not until 1990 --

25 A: That's correct. We went for 20 years without

28 (Pages 109 to 112)

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1 any platting, except the individual plat every
 2 time a house site was sold.
 3 Q: Okay. So under the original contemplation of
 4 these covenants restrictions, residential site
 5 would -- I don't know the marked exhibit.
 6 THE WITNESS: She has the --
 7 MR. PRITCHARD: Okay. The one of the individual
 8 plat.
 9 THE COURT: Ah, here it is.
 10 MR. PRITCHARD: It's number --
 11 THE COURT: Middleton Number One.
 12 MR. PRITCHARD: Number One?
 13 THE COURT: Uh-huh (affirmatively responds).
 14 Q: Middleton Number One would have been -- would
 15 that have been the document referring to a
 16 residential lot each time it became a
 17 residential lot?
 18 A: That's correct. It's just a -- it's just an
 19 example of what we did multiply. I could bring
 20 you, you know, plats for each individual site
 21 that was sold.
 22 Q: Mr. Duell, I hate to ask you this question, but
 23 I'm going to ask you anyway and that is: In
 24 the covenants and restrictions, ultimately with
 25 respect to the architectural review board, does

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1 the architectural review board have any real
 2 authority?
 3 A: Not -- not really. I would look at it as an
 4 advisory board. We try to develop a community
 5 of happy campers, if you will, and, you know,
 6 when you get in a homeowners' association
 7 meeting, people complain and we try to make
 8 them happy.
 9 Some people want to pave roads. We don't -- as
 10 preservationists, we don't pave roads because
 11 the whole experience is preserving what was
 12 there in day's gone by. There are all kinds of
 13 issues that come up.
 14 But as far as the board of architectural
 15 review, as you read, the covenants say that I
 16 may appoint a board of architectural review and
 17 then it makes very clear that I have the
 18 authority, the final authority over what's
 19 decided.
 20 Now, obviously, if I want to cut timber as
 21 we're doing this year, as we did last year --
 22 although the last year's cutting isn't within
 23 the board of architectural review -- I mean,
 24 within the homeowners' association -- but any
 25 time we want to cut timber, it applies -- it

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1 does not -- I don't think those covenants --
 2 the tree removal section even applies to it,
 3 because it talks about in that tree removal
 4 section relationships to the building; it
 5 references the house.
 6 And these are not -- as I said, the yellow ones
 7 are not residential lots. They're part of the
 8 woodlands until they're sold and become
 9 residential. I'm repeating myself.
 10 Q: But the simple truth of the matter is, even
 11 though you don't necessarily believe they
 12 apply, you try to be sensitive to the
 13 homeowners anyway.
 14 A: Certainly. We want to keep everybody happy;
 15 that's the main idea. And most -- most -- most
 16 people agree.
 17 Q: But at the end of the day, you have to reserve
 18 to yourself as the owner of the land the
 19 ultimate responsibility for just the reasons
 20 you reiterated, like paving of roads and --
 21 A: Exactly.
 22 Q: -- things like that.
 23 A: We're trying to protect the Natural Historic
 24 Landmark, which is 110 acres of National
 25 Historic Landmark, and the entire 725 acres of

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1 National Registered property in which these
 2 house site opportunities exist. And we don't
 3 know if they're ever going to sell.
 4 THE WITNESS: We have not sold any, Your Honor, for
 5 the last six years. There's just not -- hasn't
 6 been a market for it, so you don't know. So
 7 they are timberland today. One of them may
 8 sell sometime and as soon as it does, your
 9 taxes, Wayne Welch, on that piece of property
 10 will skyrocket --
 11 MR. PRITCHARD: The --
 12 THE WITNESS: -- you'll enjoy as you having
 13 everything else.
 14 MR. PRITCHARD: Your Honor, I don't have anything
 15 further. You've been the easiest client I've
 16 had to ...
 17 THE COURT: Will you please answer any questions
 18 Mr. Shepherd then has for you, Mr. Duell.
 19 THE WITNESS: Beg your pardon?
 20 THE COURT: Please answer any questions on
 21 cross-examination --
 22 THE WITNESS: I'll be glad to.
 23 THE COURT: -- Mr. Shepherd may have for you.
 24 THE WITNESS: Mr. Shepherd?
 25 THE COURT: Mr. Shepherd, your witness.

29 (Pages 113 to 116)

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1 MR. SHEPHERD: Sir, thank you, Mr. Duell.
 2 MR. DUELL - CROSS-EXAMINATION BY MR. SHEPHERD:
 3 Q: First off, you have a beautiful property out
 4 there. I enjoy it and there are those cases
 5 where you don't necessarily enjoy what you have
 6 to do, but you have to do what you've got to
 7 do, so I'll be kind.
 8 A: I love my work. I hope you love yours.
 9 Q: I do. All right. Mr. Duell, you stated that
 10 these properties -- well, first off, let's
 11 address what's up here right now.
 12 This is marked as Defendant's Exhibit Number
 13 Five, I believe. And this is -- looks the plat
 14 that we submitted as a plaintiff's exhibit.
 15 But there are a few alterations here; namely,
 16 it looks like a couple of property lines
 17 abandoned. Is that correct?
 18 A: This was -- this was created, again, at our
 19 expense. Mr. Shepherd, for discussion with
 20 Wayne Welch to suggest, as I said before, that
 21 these three house -- you know, planned house
 22 sites that are not sold or built upon could
 23 easily be combined into one to satisfy him. So
 24 that's more than five acres and therefore
 25 exempt.

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1 THE WITNESS: This is -- this could just go right
 2 back into what we had originally had, which was
 3 timberland and agricultural use for the
 4 timberland and the residential -- and the
 5 Equestrian Center, Your Honor, the whole
 6 agricultural part of it, which is part of our
 7 conservation efforts, as was this one
 8 (indicating); not to mention the three that are
 9 in the Catch 22 problem of, you know, do you
 10 have more than ten or do you have less than
 11 ten?
 12 And this on the road (indicating), so all of
 13 the yellow ones are -- these are the ones that
 14 we've already abandoned up here in this
 15 section.
 16 So to talk about -- I think your -- I think
 17 it's this here. I think your plat is probably
 18 easier for the Court to see; although, your --
 19 and I think it's been introduced into evidence,
 20 too.
 21 So that's really the same layout. The only
 22 thing is the gray ones, if you will, are the
 23 yellows ones on here and this is -- these are
 24 the much better job in your demonstration.
 25 Q: So this plat that we're looking at is

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1 Defendant's Exhibit Five with these abandoned
 2 lines. This one has not yet been recorded; is
 3 that correct?
 4 A: I think it has.
 5 THE WITNESS: Hasn't it?
 6 MR. WELCH: No.
 7 MR. PRITCHARD: No. For the Court's record clarity,
 8 the plat itself is part of what is recorded.
 9 There are just some --
 10 MR. SHEPHERD: The alterations --
 11 MR. PRITCHARD: Yeah, alterations.
 12 MR. SHEPHERD: -- that have not been recorded.
 13 MR. PRITCHARD: No, the alterations have not been
 14 recorded; that is correct, yes.
 15 THE WITNESS: Your Honor, we used that at the
 16 hearing --
 17 MR. PRITCHARD: Yeah, that was this -- okay.
 18 THE WITNESS: -- (inaudible) where there were
 19 houses, where there were parcels that were sold
 20 and so on. So, essentially, Mr. Shepherd, all
 21 the gray areas are part of our woodland
 22 efforts. And the pictures, what I showed you,
 23 were taken on those sites that have not yet
 24 been sold.
 25 Q: Yes, sir. And the overall scheme of Middleton

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1 and the plan of development is preservation; is
 2 that correct?
 3 A: Preservation and conservation, yes, sir.
 4 Q: Okay. So is it a fair statement to say that
 5 you have not committed this property for
 6 commercial timber purposes?
 7 A: No, it's really not. It's a combination of
 8 efforts. Were we to sell a parcel of land, it
 9 would come under the covenants that would say
 10 when you build your house -- in the first
 11 place, the siting of the house has to be
 12 approved by the architectural review board and
 13 any timber that you take out, any trees you
 14 remove have to be approved by board of
 15 architecture.
 16 THE WITNESS: That -- the intent of that, Your
 17 Honor, is really more than anything to protect
 18 live oaks and magnolias and magnificent trees
 19 that are frequent in the land.
 20 It's not to protect pine trees, because pine
 21 trees become lightening rods. Most people
 22 don't like to build under a pine tree,
 23 notwithstanding Summerville being the City of
 24 the Pines.
 25 So they do need that so that they don't over --

30 (Pages 117 to 120)

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1 you know, some people, like John's Island
 2 (inaudible) is a good example where they like
 3 a lot of lawn and lot of open space.
 4 What we promote is living in nature. So we
 5 don't want people unnecessarily to just remove
 6 trees and the BAR has to approve that or,
 7 ultimately, I have to approve it.
 8 Q: And, Mr. Duell -- I'll let you walk back over
 9 here before I ask -- you stated that the --
 10 these are not necessarily residential lots
 11 until they are sold as such, correct?
 12 A: That's correct. Absolutely.
 13 Q: Okay. Mr. Duell, I'll ask you if you could
 14 look in the covenants at page -- and you can
 15 use my copy here -- page 258 and specifically
 16 under article one, subsection G, if you could
 17 read that out to --
 18 THE WITNESS: These, Your Honor -- if Your Honor,
 19 these are definitions under "general
 20 references."
 21 THE COURT: All right.
 22 THE WITNESS: It says, "Residential lots shall mean
 23 any unimproved parcel of land located within
 24 the property which is intended for use as a
 25 site for a single-family detached dwelling,

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1 townhouse, or cottage or dwelling as shown upon
 2 any recorded final subdivision plat or plat of
 3 the property."
 4 "A parcel of land shall be deemed to be
 5 unimproved until the improvements, being
 6 consisted -- being constructed thereon are
 7 sufficiently complete to be subject to
 8 assessment as improved property."
 9 So I agree with this entirely and "residential
 10 lot" it says refers to lands that are intended
 11 to be house sites.
 12 These unimproved lots, Mr. Shepherd, the gray
 13 ones, are not intended to be residential use
 14 until and unless they are sold.
 15 Very clearly in our letter to Assessor Joe
 16 Murray, we -- we have our articulated for the
 17 record that we may never sell any of them and
 18 until we sell them, they are part of the
 19 woodlands efforts of the larger Middleton
 20 Place.
 21 Q: And I understand that, Mr. Duell. And the
 22 question is, though: Your definition of
 23 "residential lot" borders on your intent, not
 24 necessarily what's reflected on that final
 25 subdivision plat. The final subdivision plat

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1 with regards to these lots is the plat that was
 2 recorded in 1991; is that correct?
 3 A: That's not correct. For 20 years, these
 4 covenants -- all during the seventies and the
 5 eighties, these covenants applied to the land.
 6 We were required or strongly requested by the
 7 assessor, who Mr. Welch says operates --
 8 operated illegally, but whatever -- he
 9 required/requested that we send a plan to show
 10 where in the future they might go to facilitate
 11 the recording it when we came up with the
 12 individual plat.
 13 In other words, if we sold this house site
 14 right here (indicating) and we just handed
 15 Wayne Welch a plat of the house site, he
 16 wouldn't know where it was. And this gives him
 17 a frame of reference in which to place the
 18 residential lot. But it is not --
 19 Q: I understand that, Mr. Duell.
 20 A: -- a residential lot until it is sold. And it
 21 does not get taxed as residential until it's
 22 sold out of the timberland agricultural use
 23 into residential.
 24 Q: Is it -- let's look at exhibit ...
 25 This would be Dorchester County Exhibit Two.

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1 And that is the big version. It's hard to read
 2 our smaller version of the plat, but I will
 3 grab this. And this is the same as the smaller
 4 version that we have marked as an exhibit.
 5 What is the title of this plat?
 6 A: It's the same as that, also.
 7 Q: Yes, sir.
 8 A: Yeah.
 9 Q: It's --
 10 A: A plat showing the house sites at Middleton
 11 Place, Dorchester County, November 20th, 1990.
 12 Q: Okay. And you said that these are not
 13 considered residential lots until they are
 14 sold. But what would we consider a "house
 15 site"? What's your definition of a "house
 16 site"?
 17 A: A "house site" is a place -- is a siting,
 18 really, still involving Robert Marvin as to
 19 where a house could best be sited. And that is
 20 within the -- the boundaries that you've marked
 21 out there. And it is, usually, as I explained
 22 earlier, topographically on -- it's kind of
 23 where a farmer would have put his -- his house,
 24 you know, years ago.
 25 It's on the crest of -- they're little waving

31 (Pages 121 to 124)

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1 pieces of land and down between them are
 2 gullies or natural divisions and that's where
 3 the property lines go.
 4 So this was precisely what the zoning board and
 5 Assessor Joe Murray requested that they give
 6 them as a plan; under the clear
 7 understanding -- it's proven by the fact that
 8 they accepted not to change ag use.
 9 Q: Yes, sir. Now --
 10 A: Now, how we can -- how we can do that 40 years
 11 later when we still got a few left, that does
 12 not seem reasonable.
 13 Q: All right. And I understand your point,
 14 Mr. Duell. But the fact of the matter is, the
 15 declarations drafted in 1979 defined a
 16 "residential lot" as the subdivided lots as
 17 shown on the final subdivision.
 18 A: That's not the final subdivision.
 19 Q: Has any other plat been recorded to negate this
 20 subdivision of these lots?
 21 A: It wasn't even -- in 1990, it wasn't
 22 referring -- any final subdivision would be
 23 subsequent to that. The final -- the final
 24 plats were the ones that were submitted on
 25 individual houses.

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1 Q: Okay. And, Mr. Duell, it's correct that you
 2 were requested, you were not required, to do
 3 this particular plat, correct?
 4 A: I would say that it was pretty strong arm. I
 5 mean, they said, "Look, if you want to continue
 6 in this -- in this effort" -- and they
 7 supported it.
 8 It was more than -- Mr. Shepherd, it was more
 9 than just planning the boundaries of house
 10 sites and potential house sites. It was -- it
 11 was also avoiding the rules of curbs and
 12 gutters, which are required by the County in a
 13 subdivision if this were a normal subdivision.
 14 You'd have all kind of things: Paved roads,
 15 curbs and gutters, stormwater drainage.
 16 None of that applied here because it's -- as I
 17 said, in the whole effort to conserve these
 18 woodlands. And if you -- if you really saw
 19 this aerial photograph without the hashmarks
 20 over it, these are all trees (indicating). It
 21 would look just like that (indicating). It's
 22 total woodlands. And one of the reasons we
 23 have houses sited away from open space is so
 24 they won't be seen. And --
 25 Q: So, Mr. Duell, is the answer to that question

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1 you were not required?
 2 A: I cannot say that we were required. I guess --
 3 Q: All right. Thank you.
 4 A: -- we could -- we could have said, but -- but
 5 I don't think they -- they would have welcomed
 6 our continuing -- it was just a friendly
 7 gentlemen's agreement. You know, yes, we'll --
 8 Robert Marvin's drawn it up. If you want us to
 9 send that to you. We did not record them.
 10 Q: Did you seek counsel with regards to the tax
 11 implications of the subdivision of these lots
 12 from the master plat?
 13 MR. PRITCHARD: I'm going to object, your Honor.
 14 Whether he sought counsel or not is a
 15 privileged matter.
 16 THE COURT: I don't think the fact that he sought is
 17 privileged. I think whatever counsel told him
 18 would be privileged.
 19 MR. SHEPHERD: Yes, Your Honor, I think that -- and
 20 I can -- I can go beyond this.
 21 Q: Did you inquire of anyone as to what could
 22 occur if you subdivided these plats or
 23 subdivided these properties?
 24 A: As Mr. Welch has said in his effort, that he
 25 consulted a lot of people. I consulted tons of

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1 people saying, you know, here -- and that's why
 2 that letter, Mr. Shepherd, very clearly states
 3 that we told at the meeting in 1990 -- excuse
 4 me. We told the zoning board that we could not
 5 enter into giving them a plan that could be
 6 considered a plat, unless we were assured that
 7 our agricultural land use tax would not be
 8 destroyed.
 9 I mean, that makes sense. You can understand
 10 that, if suddenly you were going to be taxed as
 11 a developer when you're not a developer.
 12 Q: And I guess the question then becomes,
 13 Mr. Duell, you have not been taxed beyond ag
 14 use since 991; is that correct?
 15 A: All of these house -- all of these gray areas
 16 (indicating) -- this is a wonderful exhibit you
 17 have here. All of these gray areas remain
 18 agricultural land use treatment, until Wayne
 19 Welch in 2012 said, "No, they've got to
 20 change." And I don't know why he picked on
 21 this quite unique situation, but he did.
 22 All of these have changed and the -- the taxes
 23 on these where there are houses built are a
 24 thousand, two thousand, three thousand dollars
 25 a year, depending on the value of the house.

32 (Pages 125 to 128)

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1 They're thousands of dollars, collectively. So
 2 does that answer your question? These have not
 3 been at all (indicating).
 4 Q: Correct.
 5 A: But the ones that have been -- because they're
 6 considered -- this is just a planning, if you
 7 will, a planning map.
 8 Robert Marvin was not a surveyor and he was not
 9 a tax person. He was just saying, "This is
 10 where you ought to put your house and you ought
 11 to, you know, not do it cookie cutter, but
 12 leave divisions going down into natural
 13 topographic areas that make sense."
 14 Q: So the --
 15 A: So all --
 16 Q: -- the answer to the question is, you -- you
 17 have not been taxed over and above the ag use
 18 for these lots since 1991, correct?
 19 A: What -- by "these lots," what are you --
 20 Q: The lots have not been sold.
 21 A: The gray --
 22 Q: You have not been taxed --
 23 A: The gray parcels --
 24 Q: The gray parcels on this exhibit, yes, sir.
 25 A: -- that have been part of our timberland

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1 management have been taxed for agricultural use
 2 and agricultural use only for the past 43
 3 years.
 4 Q: So the subdivided lots have received
 5 agricultural use.
 6 A: I'm not calling them subdivided lots.
 7 Q: Okay.
 8 A: You heard what my answer was. I'm not going to
 9 let you make the answer for me.
 10 MR. PRITCHARD: Shhhh.
 11 THE WITNESS: I'm sorry. Excuse me.
 12 Q: The County has not sought rollback taxes of any
 13 sort since notifying you that you would not be
 14 receiving the agricultural use discount; is
 15 that correct?
 16 A: Not that -- not to my knowledge.
 17 Q: Okay. The County has only notified you that
 18 they are denying agricultural use discount from
 19 December 31st of 2011 forward based on this
 20 recorded plat and the covenants and
 21 restrictions applicable to those lots; is that
 22 correct?
 23 A: That's correct.
 24 Q: Okay. And, Mr. Duell, you have presented a
 25 plat with certain boundaries have been

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1 abandoned. And we have discussed how
 2 abandoning those property lines may qualify
 3 some of these tracts or, if not, all of them in
 4 redoing the plat may qualify them for the
 5 agricultural use discount; is that correct?
 6 A: Uh-huh (affirmatively responds).
 7 Q: Okay. But as of December 31st, 2011, none of
 8 these boundary lines have been abandoned; is
 9 that correct?
 10 A: (No response.)
 11 Q: In a recorded document with the County.
 12 A: That's correct because --
 13 Q: Thank you, sir. That's all I need to hear,
 14 sir.
 15 A: But let me explain why.
 16 Q: No, sir, I --
 17 A: When I --
 18 MR. PRITCHARD: He can explain his answer.
 19 THE COURT: Yes, sir, please --
 20 THE WITNESS: May I explain my answer?
 21 THE COURT: Just a minute. Yes, please. The rules
 22 say he may explain his answer.
 23 THE WITNESS: Thank you, Your Honor.
 24 Now, when we got that letter, I talked with
 25 Wayne and I went to a surveyor and he said that

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1 this original plan was so old that it didn't
 2 use whatever fancy computer systems they use
 3 today, like CAD systems or whatnot. It was not
 4 an easy thing to do it.
 5 Mr. Welch told me, and he said that in his
 6 testimony this morning, that we had to survey
 7 all of the house sites that had been sold and
 8 were built on. And I had to explain to the
 9 Court that that would be a great economic
 10 hardship to come up with the money to do that
 11 because none of -- it would have to be done
 12 de novo, on the ground, surveying the whole
 13 thing.
 14 And so what we plead with the Court to consider
 15 is that the proper thing to do is simply leave
 16 these, as they have been for 43 years, as
 17 agricultural use. If they become residential,
 18 they will pay residential taxes. They may
 19 never become residential.
 20 MR. SHEPHERD: Okay. I understand. Thank you, sir.
 21 No further questions.
 22 THE COURT: Anything on redirect?
 23 MR. PRITCHARD: No, ma'am. I think we're good.
 24 THE COURT: May I ask one question.
 25 MR. PRITCHARD: You certainly may.

33 (Pages 129 to 132)

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1 THE COURT: In the past year since the agriculture
 2 use exemption was properly -- or put back on in
 3 1993, have you cut any trees on any of the 11
 4 lots that are --
 5 THE WITNESS: Absolutely.
 6 THE COURT: Okay.
 7 THE WITNESS: Absolutely.
 8 THE COURT: Anything else, Mr. Shepherd?
 9 MR. SHEPHERD: I have nothing further for him.
 10 THE COURT: Well, thank you, sir. You may be
 11 excused.
 12 (Witness excused.)
 13 THE COURT: Any further witnesses?
 14 MR. PRITCHARD: No, ma'am. We're finished with our
 15 case, as well, and I'm just going to approach
 16 to put these exhibits with the rest of them.
 17 THE COURT: Thank you.
 18 Any witnesses in reply?
 19 MR. SHEPHERD: No, Your Honor, I don't believe that
 20 I do.
 21 THE COURT: All right. Well, Counsel, it appears to
 22 me -- first of all, I would like to thank you
 23 both for doing a great job in vocally and
 24 vociferously defending your position and
 25 advocating your position.

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1 interfere with that, please let me know and
 2 we'll try to adapt.
 3 (The proceedings concluded at 1:03 p.m.)

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1 And I know how important this is both to you,
 2 Mr. Duell, and to the whole concept here at
 3 Middleton as a whole, and then with respect to
 4 these lots that are platted.
 5 And I know how important it is to Dorchester
 6 County Assessor and how you're charged with
 7 interpreting the law, Mr. Welch, and doing the
 8 best you can with that and everybody is.
 9 But I would suggests at that point, I think it
 10 would make more sense to get a transcript of
 11 this hearing and I would like to get proposed
 12 orders from you both.
 13 And I'll be glad to hear from you in closing
 14 argument, also, if you would like, but I
 15 thought that might be the best way to handle
 16 this at this point.
 17 Madam Court Reporter, how long are we looking
 18 for a transcript?
 19 THE COURT REPORTER: It would be three weeks.
 20 THE COURT: Around three weeks.
 21 Well, if you would notify Ms. Mary Beth
 22 Campbell and let us know when you get the
 23 transcript and then we would allow you 30 days
 24 after that. And if anybody has any particular
 25 things, like vacations or whatever that

34 (Pages 133 to 135)

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12-ALJ-17-0542-...	54:17 92:16 93:7	258 121:15	6600 92:19	
1:2 4:9	96:12,15 99:21	263 13:4	7	
12-30 47:8	104:16	265 38:3	7 2:12	
12-37 26:6	1974 95:22	272 39:19	7/27/12 3:5	
12-37-2 28:12	1979 111:2 112:14	28 3:8	71 68:6	
12-43 28:13	125:15	29 33:19 112:13	725 115:25	
12-43-230 9:13	1983 112:16	29402 2:8	79 112:13	
12-43-232 9:14	1990 42:24 64:14	29483 2:4	8	
12-43-232(E) 47:8	79:1,4 99:21,22	296 84:16	8/11/93 3:9	
12-43-232(1)(A)	100:14 101:23	299 86:15	82 2:16	
74:23	110:4 112:24	3		
12-43-232(3) 17:12	124:11 125:21	3rd 43:2		
12-43-232(3)(E)	128:3	3.08 7:24 32:11		
74:8	1991 43:2 123:2	30 21:2,3 47:18		
	129:18			

Talk with Wayne
Accept Appeal! per Wayne
No Signature
(4)

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 BATTERY STREET
CHARLESTON, SC 29401

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:

Mfg:
Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 180-00-00-003
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

RECEIVED
2012 APR 30 AM 7:50
DORCHESTER CO. ASSESSOR

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$.00 Capped Value
\$ 104,000 .00 Market Value
\$.00 Agricultural Use Value

Based on _____, your taxable value will be calculated on the lower value of the two figures at a _____% ratio. The Assessed Value of this property is 6240. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department
(> on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477
Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-003

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC
Ratio: 6%
Date: 01/30/12

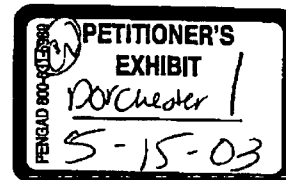
Tax Year: 2012
Appraiser: DONNA CAREY

Reason for Appeal:

Email Address: _____
Day Phone: (____) _____

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: _____ Date: _____



DORCHESTER COUNTY ASSESSOR'S OFFICE
201 Johnston Street
St. George, SC 29477
(843) 563-0162 or (843) 832-0162

Mr. Wayne
Accept Appeal for Wayne
Talk with Wayne
About This No Signature

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:50
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:

TMS#: 180-00-00-005
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 165,000 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 9900. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department
(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-005

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Tax Year: 2012

Ratio: 6%

Appraiser: DONNA CAREY

Date: 01/30/12

Reason for Appeal:

Email Address: _____

Day Phone: (____) _____

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: _____ Date: _____

DORCHESTER COUNTY ASSESSOR'S OFFICE
201 Johnston Street
St. George, SC 29477
(843) 563-0162 or (843) 832-0162

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:50
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12

Property Location:

Subdivision:

Serial#:

Mfg:

Phone: St. George (843) 563-0162

Summerville (843) 832-0162

TMS#: 180-00-00-024

Decal#:

Lot#:

MH Year Built:

Model:

District #: 202

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value

\$ 184,800 .00 Market Value

\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 11090. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,

Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-024

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Tax Year: 2012

Ratio: 6%

Appraiser: DONNA CAREY

Date: 01/30/12

Reason for Appeal:

Email Address: _____

Day Phone: (_____) _____

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: _____

Date: _____

13

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:

Subdivision:

Serial#:

Mfg:

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 180-00-00-026

Decal#:

Lot#:

MH Year Built:

Model:

District #: 202

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 133,700 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 8020. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,

Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-026

Tax Year: 2012

Appraiser: DONNA CAREY

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Ratio: 6%

Date: 01/30/12

Reason for Appeal:

180-00-00-026, 180-00-00-027 and 180-00-00-028 are contiguous house sites whose acreage totals 5.8 acres. I therefore request that these three parcels be appraised as an agricultural use timberland-producing parcel and assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org

Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: Charles Duell Date: 4/25/12

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:

TMS#: 180-00-00-027
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 129,600 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 7780. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477
Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-027

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC
Ratio: 6%
Date: 01/30/12

Tax Year: 2012
Appraiser: DONNA CAREY

Reason for Appeal:

180-00-00-026, 180-00-00-027 and 180-00-00-028 are contiguous house sites whose acreage totals 5.8 acres. I therefore request that these three parcels be appraised as an agricultural use timberland-producing parcel and assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org
Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: Charles Duell Date: 4/25/12

56

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:

Subdivision:

Serial#:

Mfg:

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 180-00-00-028

Decal#:

Lot#:

MH Year Built:

Model:

District #: 202

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 142,500 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 8550. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,

Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-028

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Tax Year: 2012

Ratio: 6%

Appraiser: DONNA CAREY

Date: 01/30/12

Reason for Appeal:

180-00-00-026, 180-00-00-027 and 180-00-00-028 are contiguous house sites whose acreage totals 5.8 acres. I therefore request that these three parcels be appraised as an agricultural use timberland-producing parcel and assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org

Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: [Signature] Date: 4/25/12

116

Not Sign I This
Talk With Wayne

DORCHESTER COUNTY ASSESSOR'S OFFICE
201 Johnston Street
St. George, SC 29477
(843) 563-0162 or (843) 832-0162

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:

Mfg:

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 180-00-00-033
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

RECEIVED
2012 APR 30 AM 7:50
DORCHESTER CO. ASSESSOR

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 120,000 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 7200. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,

Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 180-00-00-033

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Tax Year: 2012

Ratio: 6%

Appraiser: DONNA CAREY

Date: 01/30/12

Reason for Appeal:

Email Address: _____

Day Phone: (_____) _____

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: _____ Date: _____

Per Wayne
Not Signed
Accept Appeal

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:

TMS#: 189-00-00-001
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 23,500 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 1410. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477
Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 189-00-00-001

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Tax Year: 2012

Ratio: 6%

Appraiser: DONNA CAREY

Date: 01/30/12

Reason for Appeal:

Email Address: _____
Day Phone: (____) _____

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: _____ Date: _____

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:

TMS#: 189-00-00-004
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 96,500 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 5790. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 189-00-00-004

Tax Year: 2012
Appraiser: DONNA CAREY

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC
Ratio: 6%
Date: 01/30/12

Reason for Appeal:

189-00-00-009, 189-00-00-005 and 189-00-00-004, together with open space surrounding them, are contiguous house sites whose acreage totals more than 5 acres. I therefore request that these three parcels be appraised as an agricultural use timberland-producing parcel and assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org
Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: [Signature] Date: 4/25/12

MP

Notice of Classification, Appraisal & Assessment of Real Estate

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:
Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 189-00-00-005
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 100,000 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 6000. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,
Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 189-00-00-005

Tax Year: 2012
Appraiser: DONNA CAREY

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC
Ratio: 6%
Date: 01/30/12

Reason for Appeal:
189-00-00-009, 189-00-00-005 and 189-00-00-004, together with open space surrounding
them, are contiguous house sites whose acreage totals more than 5 acres. I therefore request
that these three parcels be appraised as an agricultural use timberland-producing parcel and
assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org
Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: [Signature] Date: 4/25/12

120

Notice of Classification, Appraisal & Assessment of Real Estate

DORCHESTER CO. ASSESSOR

MIDDLETON PLACE EQUESTRIAN CENTER LLC
21 E BATTERY STREET
CHARLESTON, SC 29401

Dear Property Owner

Date: 01/30/12
Property Location:
Subdivision:
Serial#:
Mfg:

Phone: St. George (843) 563-0162
Summerville (843) 832-0162

TMS#: 189-00-00-009
Decal#:
Lot#:
MH Year Built:
Model:
District #: 202

RECEIVED
2012 APR 30 AM 7:49
DORCHESTER CO. ASSESSOR

Dorchester County has completed a review of your property based on an Assessment Change for the 2012 tax year. It was determined that your property is appraised at:

\$ _____ .00 Capped Value
\$ 110,000 .00 Market Value
\$ _____ .00 Agricultural Use Value

Based on N/A, your taxable value will be calculated on the lower value of the two figures at a 6% ratio. The Assessed Value of this property is 6600. Please keep in mind that the Assessed Value is NOT the amount of taxes for this tax year, but simply a percentage of the lowest value above (Capped Value or Market Value) and is used to calculate your taxes for the current tax year. Tax estimates are only available online by using our "Tax Estimate" form at www.DorchesterCounty.net.

If you disagree with the above value (lowest of the Capped Value or Market Value) and wish to appeal the value of this property, you will need to complete the below Informal Appeal Form and mail it in within 90 days of the date of this notice. If the mailing address has changed from the address on this form, please submit the address change on a separate note in writing with the TMS# or Decal# to the address at the top of this letter. Please keep in mind that if you appeal the value for the current tax year, taxes must still be paid by January's due date of the following year to avoid penalties; otherwise penalties will be applied to the parcel. Please keep a copy of the detached form for your records.

Sincerely,

Dorchester County Assessor's Department

(X on dotted line - keep top portion for your records)

DORCHESTER COUNTY INFORMAL APPEAL FORM

201 Johnston Street, St. George, SC 29477

Please complete a form for each parcel you wish to appeal

TMS#/Decal#: 189-00-00-009

Tax Year: 2012

Appraiser: DONNA CAREY

Owner: MIDDLETON PLACE EQUESTRIAN
CENTER LLC

Ratio: 6%

Date: 01/30/12

Reason for Appeal:

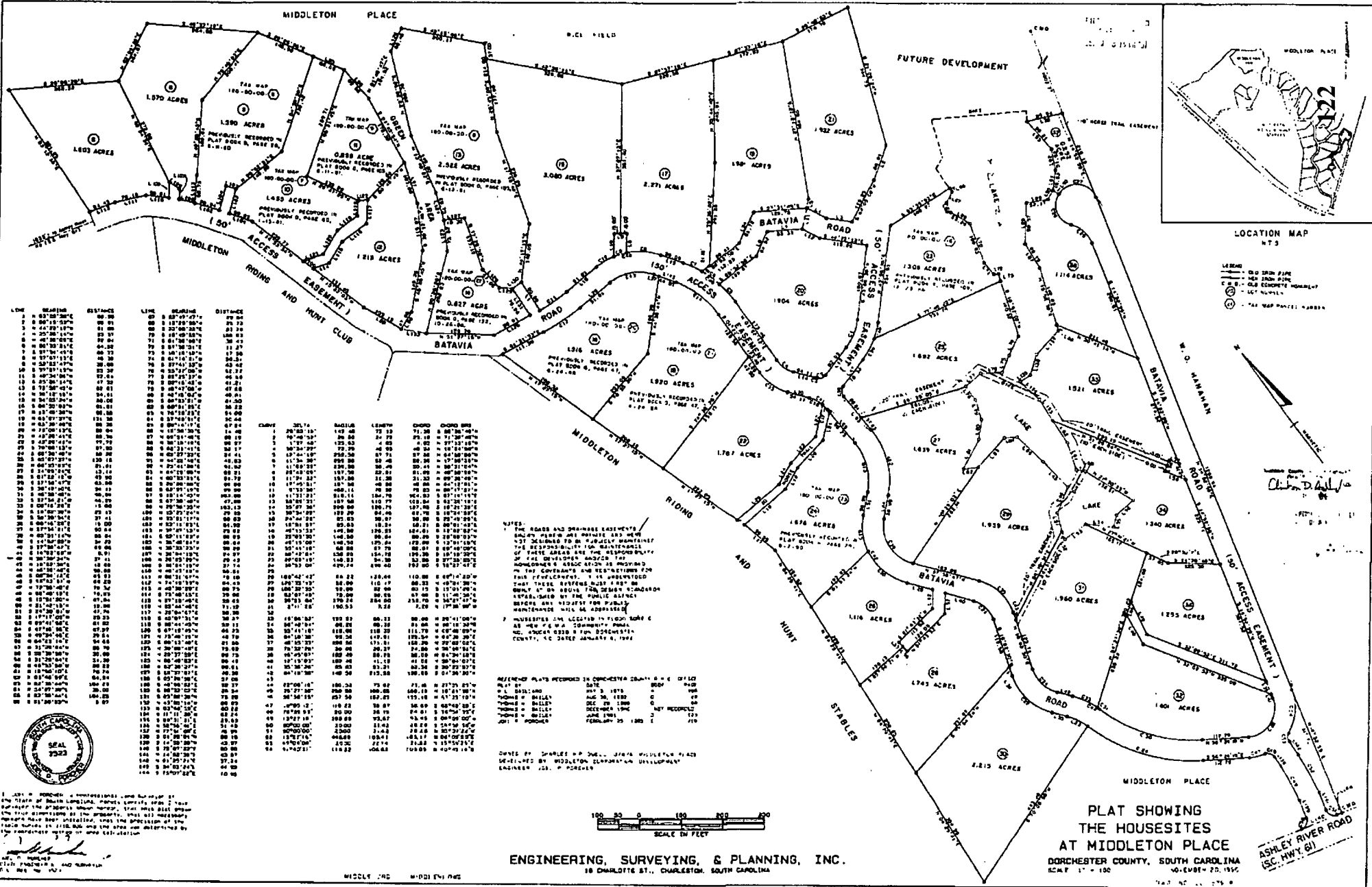
189-00-00-009, 189-00-00-005 and 189-00-00-004, together with open space surrounding them, are contiguous house sites whose acreage totals more than 5 acres. I therefore request that these three parcels be appraised as an agricultural use timberland-producing parcel and assessed at the 4% ratio.

Email Address: charlesduell@miltonplace.org

Day Phone: (843) 556-6020

I understand that I must provide the Assessor with documented information to support my estimate of market value. I also understand that although I am appealing the value, the taxes for the current tax year must be paid by January's due date of the following year to avoid penalties.

Signature: Charles Duell Date: 4/25/12



PETITIONER'S
EXHIBIT
Dorchester 2
5-15-03



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-003

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

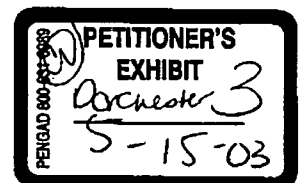
MARKET VALUE REMAINED THE SAME: **104,000**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".

Donna Carey



***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$29,800**

17
23



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-005

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **165,000**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".

Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$50,500**

148



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-024

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:

CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:

CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **184,800**

CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".
Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$70,700**



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-026

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

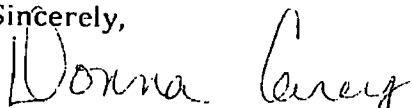
MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **133,700**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,


Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$45,500**

120



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-027

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **129,600**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".
Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$44,100**

1221



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-028

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **142,500**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,


Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$43,600**

22



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 180-00-00-033

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:

CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:

CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: 120,000

CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

Donna Carey

*2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$36,700

23



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 189-00-00-001

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **23,500**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".
Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$6,700**

24



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 189-00-00-004

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:

CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:

CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: 96,500

CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

Donna Carey
Donna Carey

*2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$30,800

25



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 189-00-00-005

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **100,000**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carey".

Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$28,700**

226



DORCHESTER COUNTY ASSESSOR'S OFFICE

500 N. Main Street, Summerville, S.C. 29483

Phone (843) 832-0007 or 563-0007

Fax (843) 563-0290 or 832-0290

dcarey@dorchestercounty.net

July 27, 2012

Middleton Place Equestrian Center LLC
C/O Charles Duell
21 E Battery Street
Charleston, SC 29401

Re: TMS# 189-00-00-009

Dear Mr. Duell,

The review of your appraisal/assessment has been completed for the tax year 2012.
The appraisal/assessment will be one of the following:

MARKET VALUE LOWERED TO:
CAPPED VALUE LOWERED TO:

MARKET VALUE RAISED TO:
CAPPED VALUE RAISED TO:

MARKET VALUE REMAINED THE SAME: **110,000**
CAPPED VALUE REMAINED THE SAME:

If you disagree with the Assessor's action, please contact our office **in writing** within thirty days so that we can schedule an appointment to discuss your appeal further.

Sincerely,

Donna Carey

***2012 TAXES WILL BE BASED ON THE MULTIPLE LOT DISCOUNT VALUE OF \$37,400**

237

149.00

VOL 398 PAGE 255

Dec 21 3 12 PM '79

FILED-RECORDED
MARGIE K. CARN
CLERK OF COURT
DORCHESTER COUNTY

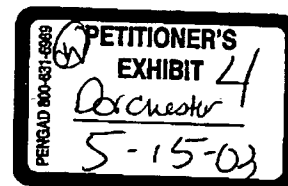
DECLARATION OF COVENANTS AND RESTRICTIONS

OF

CHARLES H.P. DUELL

AS PERTAIN TO

MIDDLETON OAKS



MIDDLETON OAKS
COVENANTS

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Dec 21 2 56 PM '79
FILED-RECORDED
MARJORIE K. CARP
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

VOL 398 PAGE 257

DECLARATION OF COVENANTS
AND RESTRICTIONS
running with Middleton Oaks
and Provisions for the
MIDDLETON OAKS PROPERTY OWNERS
ASSOCIATION

THIS DECLARATION, made this 14th day of December, 1979, by
Charles H.P. Duell, hereinafter referred to as "Owner."

WITNESSETH:

WHEREAS, Owner holds title in fee simple to the certain lands (hereinafter referred to as "the Property") described in Part One, Article II, Section I of this Declaration and in the Master Plan (which has been made available for inspection by prospective property owners) and has authorized First Southern Properties, Inc., dba Middleton Development Company, a South Carolina corporation (hereinafter referred to as "Middleton Development Company" or "the Company") to plan and develop a community comprised of the Property and known as Middleton Oaks with certain facilities, amenities and services for the use and benefit of all property owners within such community; and

WHEREAS, Owner and the Company desire to provide for the preservation of the values and amenities and for the maintenance of common facilities, services and properties; and to this end, Owner has consented to subject the Property together with such additions as may hereafter be made, as provided in Part One, Article II, to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth (hereinafter referred to as "the Covenants"), each and all of which is hereby declared to be for the benefit of the Property and every owner of any and all parts thereof; and

WHEREAS, Owner and the Company deem it desirable, for the efficient preservation of the values and amenities in the Community, for the Company to create an agency to which can be delegated and assigned by the Owner authority to maintain and administer the common properties and services and enforce the Covenants governing the same; and

WHEREAS, the Company has caused to be incorporated under the laws of the State of South Carolina, a non-profit corporation, Middleton Oaks Property Owners Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

WHEREAS, this Declaration will be referred to as the "Covenants of December, 1979," and will be recorded in the Office of the Clerk of Court for Dorchester County, South Carolina, and may be incorporated by reference in deeds to residential property issued by the Owner or the Company, as the case may be, by reference to the Book and Page of recording in the realty records in said Office; and

NOW THEREFORE, Owner hereby declares that the Property and such additions thereto as may hereafter be made pursuant to Part One, Article II hereof are and shall be held, transferred, sold, conveyed, given, purchased, leased, occupied, and used subject to the Covenants. These Covenants shall be covenants running with the land, and Owner reserves the right to add additional covenants in respect to the Property.

GENERAL REFERENCES

ARTICLE I

DEFINITIONS

Section 1. The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Owner" shall mean and refer to Charles H.P. Duell and his heirs and assigns as pertain to the Property.
- (b) "Company" shall mean and refer to First Southern Properties, Inc., a South Carolina corporation, its successors and assigns. In the event of the termination of such agreements by which the Owner provides for development of the Property, the Owner shall designate a successor (who may be the Owner) to First Southern Properties, Inc., and such designated successor, and any designated successor(s) thereto, shall become the "Company" under these Covenants.
- (c) "Property" and "Middleton Oaks" shall mean and refer to the lands described in Part One, Article II, Section 1 hereof and Exhibit A, attached hereto, and additions thereto as provided in Part One, Article II, Section 2 hereof, as are subjected to this Declaration or any supplemental declaration under the provisions of Part One, Article II hereof.
- (d) "Association" shall mean and refer to the Middleton Oaks Property Owners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
- (e) "County Clerk of Court" shall mean and refer to the Clerk of Court for Dorchester County, South Carolina, the successors and assigns of that office.
- (f) "Pertinent Laws" shall mean and refer to the statutes, ordinances, regulations, and other laws pertinent to the ownership, sale, use, and development of the Property, as are codified or promulgated by the State of South Carolina, the County of Dorchester, South Carolina, the Government of the United States of America, and other public authorities having jurisdiction over the Property.
- (g) "Residential Lot" shall mean any unimproved parcel of land located within the Property which is intended for use as a site for a single family detached dwelling, townhouse, or patio dwelling as shown upon any recorded final subdivision plat of any part of the Property. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.
- (h) "Multi-Family Tract" shall mean any unimproved parcel of land located within the Property, intended for use as a site for multi-family dwellings including, without limitation, condominium regimes, cooperative apartments, or apartments. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multi-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property for multi-family use is recorded with the County Clerk of Court and, further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.

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(i) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family detached dwelling, patio home, condominium unit, townhouse unit, cooperative apartment unit, or apartment unit located within the Property.

(j) "Public Open Space" shall mean and refer to the following lands within the Property as designated on the Master Plan:

(i) the Horse Pastures as bounded by S.C. Highway 61 and the portions of the perimeter road which provide access from S.C. Highway 61 to (A) the Middleton Oaks Riding and Hunt Club, (B) the boundary of the Pinewood Tract which lies closest to the Ashley River, and (C) the boundary of the perimeter road adjacent to the Pasture Tract and House Site D, as noted in the Master Plan, and

(ii) the Middleton Oaks Riding and Hunt Club, including the lands upon which are situated the Riding Ring, Pond, and Smoke House,

over which an easement is herein granted to all owners of property within Middleton Oaks, their tenants and guests (including but not limited to the Owner and owners of Family Dwelling Units, the proposed Middleton Inn site, and the Middleton Riding and Hunt Club) for their enjoyment thereof in accordance with rules and regulations established from time to time by the Owner. A ten-foot easement to walk, run, and ride horses, from the boundary of the Historic Landmark along the Ashley Riverfront through the Rice Fields Park and around the Flooded Rice Fields banks shall also constitute Public Open Space as herein defined. Land designated as "Public Open Space" may be employed in the construction, maintenance, operation, use, and engagement of the following facilities, subject to approval, if required by law, by the appropriate agencies of Dorchester County, and, in the case of any structure within 500 feet of any existing Family Dwelling Unit, so long as construction and operation thereof do not directly block the view of such existing Family Dwelling Unit and do not cause particular hazards to the owner of such Family Dwelling Unit:

(i) Social, recreational, storage, and community buildings;

(ii) Public and private profit-making clubs, horse farms and stables, golf courses, and other recreational facilities;

(iii) Unpaved automobile parking;

(iv) Emergency squad and fire stations; and

(v) Public service facilities (wells, pumping stations, etc.)

(k) "Private Open Space" shall mean and refer to the following lands, including any improvements thereon, within the Property as designated on the Master Plan:

VOL 398 PAGE 260

- (i) the Ravine, bounded by the Old Boat Landing Tract and Residential Lots A, B, C, D, E, 1, 2, 3, 4, and 5 from the Garden Pond, diverging at Residential Lot 2, to the perimeter road,
- (ii) the perimeter road, as bordered by the Middleton Oaks Riding and Hunt Club, and the Horse Pastures, on one side, and the Phosphate Road Tract, Pasture Tract, and Residential Lots D, C, 1, 2, 3, 4, E, 6, 8, 9, 10, 12, 14, and 17,
- (iii) the existing roads and paths, and such others as are necessary to provide access from the perimeter road and the Phosphate Road to all Residential Lots, being no less than ten (10) feet or greater than fifty (50) feet in width,
- (iv) the area bounded by the Garden Pond, the Historic Landmark, the Ashley River, and the Old Boat Landing Tract, the distance from the Old Boat Landing Tract to the Historic Landmark being no less than twenty (20) feet at its least distant point
- (v) the area along the Ashley Riverfront bounded by the Historic Landmark, the River, Rice Fields Park, and the Old Boat Landing Tract, the distance from the Old Boat Landing Tract to the River being no less than fifteen (15) feet at its least distant point, except as a Public Open Space easement is established in Paragraph (j) herein
- (vi) Rice Fields Park and the Flooded Rice Field banks, except as a Public Open Space easement as established in Paragraph (j) herein
- (vii) the Phosphate Road leading from the perimeter road to the River
- (viii) the Old Tram Way bounded by the perimeter road, Residential Lots 14, 12, 13, and 11, Rice Fields Park, and the Flooded Rice Field banks,

such lands being owned by the Owner subject to easements set forth herein or as may be actually deeded or leased to the Association and designated in such deed or lease as "Private Open Space." All Private Open Space is to be devoted to and intended for the common use and enjoyment of Property Owners, their immediate families, guests accompanying them, tenants of such Property Owners holding leases of nine (9) months duration or longer, the Owner and the Company, and to be closed to the use of (1) tenants of such Property Owners holding leases less than nine (9) months duration, (2) guests of the Middleton Inn, except as use of the perimeter and other roads is reasonably necessary to private access to the Inn and unless expressly otherwise provided for by the Association, (3) visitors to Middleton Place and the general public, except as use of the perimeter and other roads is reasonably necessary to private access to the facilities of the Middleton Inn. Any lands which are leased by the Association for use as Private Open Space shall lose their character as Private Open Space upon the expiration of such lease.

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- (l) "Proposed Middleton Inn Site" shall mean and refer to the Old Boat Landing Site so designated on the Master Plan, which may be used for construction, operation, use, and enjoyment of a public inn, including not more than 120 rooms, restaurant, lounge, tennis, and traditional recreation facilities, or for such other purposes as permitted in Subsection (b), Section 6, of Article II, Part Three hereof.
- (m) "Development Unit Parcels" shall mean and refer to those parcels or tracts of land conveyed by the Owner to third parties under these covenants and restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots or Multi-family Residential Tracts.
- (n) "Unsubdivided Land" shall mean and refer to all land in the Property described in Part One, Article II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Part One, Article II hereof which has not been subdivided through metes and bounds subdivision plats filed for record with the County Clerk of Court. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof:
 - (1) All lands designated on the Master Plan for intended use, or by actual use if applicable, for outdoor recreation facilities; operating farms and/or animal pastures; woodland, marsh and swamp conservancies; places of worship; community, civic, and cultural clubs; libraries; nursery and other schools and instructional centers, medical centers, hospitals, clinics, nursing care, rest and convalescent homes and charitable institutions.
 - (2) All submerged lands.
 - (3) All lands designated, in any way, as Public Open Space, Private Open Space, or Purchased Common Properties.
- (o) "Property Owner" shall mean and refer to the owner (but shall not include the "Owner" except with respect to properties re-acquired by the Owner after Owner's conveyance thereof) as shown by the real estate records of the County Clerk of Court, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multi-Family Tract, Development Unit Parcel, or Unsubdivided Land situated upon the Property but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Property Owner" mean or refer to any lessee or tenant of a Property Owner. In the event that there is recorded with the County Clerk of Court a long-term contract of sale covering any lot or parcel of land within the Property, the Property Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.

- (p) "Member" shall mean and refer to the Owner and all those Property Owners who are Members of the Association as provided in Article I, Part Three hereof.
- (q) "Intended for Use" shall mean the use intended for various parcels within the Property as shown on the Master Plan, as the same may be revised from time to time by the Owner and/or the Company, strictly in conformance with this Declaration, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Owner has conveyed such land.
- (r) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Middleton Oaks, held by the Company and made available for inspection by prospective land purchasers. Since the concept of the future development of Middleton Oaks is subject to continuing revision and change by the Company as provided in Section 1, Article II, Part One hereof, present and future references to the "Master Plan" shall be references to the latest revision thereof.
- (s) "Purchased Common Properties" shall mean and refer to the Rice Fields Park fronting on the Ashley River and being generally so designated on the Master Plan and other tracts of land with any existing improvements thereon which may be purchased, as set forth herein, from Owner by the Association for operation of clubhouse, pool, tennis, and other facilities as membership facilities with membership criteria, user costs and operating rules for such facilities, to be selected and determined by mutual agreement between the Association's Board of Directors and the Company.
- (t) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein including, without limitation, whether the Association shall accept any offer by the Owner to convey to the Association any "Purchased Common Properties;" whether the Association shall incur the obligation of developing, maintaining, and operating recreation facilities on land donated or sold to the Association by the Owner; the levy of any Special Assessment; and the addition or deletion of functions or services which the Association is authorized to perform. In the event fifty-one percent (51%) of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage required to "pass" shall be specifically expressed herein or be required for any particular issue by a fifty-one percent (51%) vote of the Association, as determined by the procedures set forth herein, that higher percentage shall control in that instance.

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ARTICLE II

PROPERTY DESCRIPTION

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Dorchester County, South Carolina, whose boundaries are the Ashley River, the Middleton Place Registered National Historic Landmark, Highway 61, and the tract presently owned by Ashby Farrow et al., and which is graphically and conceptually depicted on the Master Plan.

The Company, pursuant to an agreement with the Owner, intends to develop the Property in accordance with the Master Plan, but ownership of the Property shall remain with the Owner until conveyed by the Owner by lawful deed. The Company reserves the right to review and modify, subject to the Owner's consent in each instance, the Master Plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Company or the Owner, their heirs, successors and assigns, to adhere to the Master Plan in the development of the land shown thereon except as to the (1) general location and approximate acreage of the Public and Private Open Space, (2) a residential density of the Property, exclusive of the Middleton Inn site, of not more than 78 dwelling units, and (3) a restriction that no building will exceed five stories in height. Properties conveyed to the Association shall become Public or Private Open Space, or Purchased Common Properties, as the case may be. The Company shall not be required to follow any predetermined sequence or order of improvements and development; and it may bring within the plan of these covenants additional lands, and develop the same before completing the development of the Property. Other than as stated in this Section, the Company shall have full power, subject to the Owner's consent in each instance, to add to, subtract from, or make changes in the Master Plan, including the addition of other nearby lands owned by Owner, such actions potentially altering membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) The Owner and the Company, their heirs, successors and assigns, by mutual consent, shall have the right, without consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development. The additions authorized under this and the succeeding subsections, shall be made by filing a Supplementary Declaration of Covenants and Restrictions (hereinafter referred to as "The Supplementary Declaration") with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of these Covenants as may be necessary or convenient, in the judgment of the Owner and the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modifications shall have no effect on the Covenants as they apply to the Property.

(b) Upon approval in writing of the Association pursuant to three-fourths of the vote of those present at a duly called meeting, the owner of any property who desires to add it to the plan of these Covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modification of these Covenants as may be necessary or convenient, in the sole judgment of the Association, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modification shall have no effect on the Covenants as they apply to the Property.

(c) Upon merger or consolidation of the Association with another association, as provided for in the by-laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing Property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change or addition to these Covenants, including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

(d) For any property subjected to this Declaration pursuant to the provisions of this Section, there may be established by the Company an additional association limited to the owners and/or residents of such additional property in order to promote their social welfare, including their health, safety, education, culture, comfort, and convenience, to elect representatives on the Board of the Association, to receive from the Association a portion, as determined by the Board of Directors of the Association, of the annual assessments levied pursuant hereto and use such funds for its general purposes, and to make and enforce rules and regulations of supplementary covenants and restrictions, if any, applicable to such additional lands.

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PART TWO

COVENANTS AND RESTRICTIONS
APPLICABLE TO
COMMUNITY DEVELOPMENT
OF MIDDLETON OAKS

ARTICLE I

GENERAL COVENANTS

Section 1. Purposes. The primary purpose of these Covenants and the foremost consideration in the origin of same has been the creation of a residential community which is aesthetically pleasing and functionally convenient. The establishment of objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of property and of technological advances and environmental values. For this reason, such standards are not established hereby, but have been suggested by the Company in discussions with and materials submitted to Property Owners. These standards and this Declaration are consistent with and serve to complement the Subdivision Regulations of Dorchester County, South Carolina. To implement these Covenants, the Owner and/or the Company with the Owner's consent, shall establish and amend from time to time objective standards and guidelines which shall be in addition to and more restrictive than said governmental standards.

All Residential Lots in Middleton Oaks shall be used for residential purposes exclusively. The use of a portion of a dwelling on a Residential Lot as an office by the owner or tenant thereof shall be considered a residential use if such use does not create regular customer or client traffic to and from the lot. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling and one (1) small one-story accessory building which may include a detached private garage or carport, provided the use of such accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

A guest suite or like facility without a kitchen 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, and provided, however, that such suite would not result in over-crowding the site.

The provisions of this Section shall not prohibit the Owner or the Company from using a house or other dwelling units as models.

Section 2. Architectural Review. Owner, in his exercise of the authority and obligations reserved by and conferred upon him by this Declaration, may appoint an Architectural Review Board to counsel him; but ultimate authority for decisions of the Architectural Review Board shall in all cases rest with the Owner, his heirs and assigns. Neither the Owner nor the Company shall be liable to a Property Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against a Property Owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents or required approvals which must be obtained from the Architectural Review Board or public authorities whether given, granted or withheld.

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No building, fence, or other structure shall be erected, placed or altered nor shall a building permit for such improvement be applied for on any property in Middleton Oaks until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas), landscape plan, and construction schedule shall have been approved in writing by the Architectural Review Board. Refusal of approval of plans, location or specification may be based by the Architectural Review Board upon any ground, including purely aesthetic considerations, so long as they are not arbitrary and capricious. No alteration in the exterior appearance of any building or structure shall be made without like approval by the Architectural Review Board.

Two (2) copies of all plans and related data shall be furnished the Architectural Review Board, one copy to be delivered by the Architectural Review Board to the Company, and the original to be retained for the Architectural Review Board's records. The other copy shall be returned to the Property Owner or builder marked "approved" or "disapproved." Approvals shall be dated and shall not be effective for construction commenced more than six (6) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Owner of written request for approval, the provisions of this Section shall be thereby waived.

No approval of plans and specifications, and no publication or architectural standards bulletins shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good, workmanlike manner. The Owner may require payment of a cash fee, not to exceed \$100.00, to partially compensate for the expense of reviewing plans and related data, at the time they are submitted for review. This paragraph shall not apply to any property utilized by a governmental entity or institution.

Section 3. Siting. To assure that buildings and other structures will be located so that the maximum view, privacy and breeze will be available to each building or structure, and that structures will be located with regard to the topography of each property taking into consideration the location of large trees and other aesthetic and environmental considerations, the Owner reserves unto himself, his heirs and assigns, the right to control and to decide solely (so long as (a) his decisions are not arbitrary and capricious and (b) subject to the provisions of the pertinent land use regulations of public authorities having jurisdiction) the precise site and location of any building or structures on any property in Middleton Oaks.

The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. Provided, however, that in the event an agreed location is stipulated in writing in the contract of purchase and approved by the Owner, and such location complies with the Subdivision Regulations, the Owner shall approve automatically such location for a residence or group of residential units.

Section 4. Parking. Each Property Owner subject to these Covenants shall provide space for the parking of automobiles off public streets (e.g., S.C. Highway 61) and community roads prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Architectural Review Board.

Section 5. Completion of Construction. The exterior of all houses and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to

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the Property Owner or builder due to strikes, fires, national emergency or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuance of construction the Property Owner shall require the contractor to maintain the Residential Lot in a reasonably clean and uncluttered condition.

Section 6. Service Yards. Each Property Owner shall provide a screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, clotheslines, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties.

Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Architectural Review Board prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened areas only if located underground.

Section 7. Signs. No signs or ornaments shall be erected or maintained on the Property by anyone including, but not limited to, the Property Owner, a realtor, a contractor or subcontractor, except with the written permission of the Architectural Review Board or except as may be required by legal proceedings. If such permission is granted the Architectural Review Board reserves the right to restrict size, color and content of such signs.

Section 8. Other Buildings and Vehicles. No mobile home, trailer, tent, barn, or other similar out-building or structure shall be placed on any Residential Lot or Development Unit Parcel at any time, either temporarily or permanently without prior approval from the Architectural Review Board. Boats, boat trailers, campers, golf carts, recreation vehicles, trucks, or utility trailers may be maintained on the Property, but only with prior written approval of the Architectural Review Board and only within an enclosed or screened area approved by the Architectural Review Board such that they are not generally visible from adjacent properties. Construction and repairs to any vehicle or boat shall be confined to said enclosed or screened areas.

In the event that vehicles or boats are too large or too many to be stored adequately on-site and the Association so elects, the Owner shall select and convey, at a cost not to exceed its fair market value, to the Association, or the Association (if it has effective use of such lands) shall provide an area within the Public or Private Open Space (as then designated) for construction, if necessary, of storage facilities at the expense of the Association. Such sites shall be treated as Purchased Common Property.

Section 9. Unsightly Conditions. It shall be the responsibility of each Property Owner and tenants thereof to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on the Property which shall tend to substantially decrease the beauty of the community as a whole or the specific area.

Section 10. Lights. To enhance the beauty, function and security of the Middleton Oaks community, each residence shall have a gas or electric light fixture attached to or recessed within the front facade of the residence or as a post or pole in the vicinity of the main entrance to the residence. The design and location of these lighting fixtures shall be subject to the approval of the Architectural Review Board. Neither these nor any other illumination devices, including but not limited to Christmas ornaments, located anywhere on the structures or grounds of any Residential Lot shall be located, directed, or of such intensity to affect adversely the night-time environment of any adjacent property.

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Section 11. Repairs and Hazards. Any building or other improvement on the Property that is destroyed partially or totally by fire, storm or any other means shall be repaired or demolished within a reasonable period of time, and the land restored to an orderly and attractive condition.

No part or parts of any land within Middleton Oaks shall be used in such manner which would increase the hazard of fire on any other part or parts of Middleton Oaks or any adjoining property.

Section 12. Offensive Activity. No noxious or offensive activity shall be carried on upon any Residential Lot, Family Dwelling Unit, or Development Unit Parcel, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the community.

Section 13. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, kept, staked or pastured on any Residential Lot, Family Dwelling Unit, or Development Unit Parcel, except that not more than a total of three (3) dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose and provided that such household pets shall not be allowed to roam unattended over neighboring properties.

Section 14. Water and Sewage. Prior to the occupancy of a building or structure on the Property, suitable provisions shall be made for water and the disposal of sewage by each Property Owner, consistent with the recommendations of the Company and pertinent law. If no community water and/or sewer systems service Middleton Oaks at the time of construction of said building or structure, then such service and disposal shall be made by means of well(s) and septic tank(s) constructed, at the sole expense of the respective Property Owner, on such property. Approval of such systems shall be obtained by such Property Owner from the appropriate public health authorities of Dorchester County and the State of South Carolina.

No private water wells may be drilled or maintained on the Property so long as the Company, its successors or assigns, plans a water distribution line within one hundred (100) feet of such property with an average daily water pressure in such line adequate for normal household use in dwellings served by such distribution line; provided that such water distribution line must be completed within the time specified in the Contract of Sale on such property.

Section 15. Certain Easements. The Owner reserves unto himself, his heirs and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain, and use electric, cable television, and telephone poles, wires, cables, conduits, drainage ways, sewers, wells, pumping stations, tanks, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of such property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these Covenants by the Owner, or (b) such portion of the property as may be designated as the site for a building on a plot plan or for erection of a building which has been filed with the Architectural Review Board and which has been approved in writing by said Architectural Review Board.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Property Owner caused by such utility installation shall be repaired and said grounds returned to their prior condition by the Owner or the Company, as the case may be, or prompt

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and reasonable remuneration for such repair shall be made to such Property Owner by the Owner or the Company, as the case may be.

The Owner further reserves to himself, his heirs and assigns, the right to locate wells, pumping stations, siltation basins and tanks within Middleton Oaks in any Public or Private Open Space or on any property designated for such use on the applicable plat of the Property, or to locate same upon any property with the permission of the respective Property Owner. Such rights may be exercised by any licensee of the Owner, but this reservation shall not be considered an obligation of the Owner or the Company to provide or maintain any such utility or service.

Section 16. Antennas. No television antenna, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of property within Middleton Oaks, nor radio, television signals, nor any other form of electromagnetic radiation shall be permitted to originate from any Residential Lot, Multi-Family Tract, or Development Unit Parcel which may unreasonably interfere with the reception of television or radio signals upon any other of such properties, except as following:

- (a) The provisions of this Section shall not prohibit the Owner or the Company from installing equipment necessary for a master antenna system, cable television and mobile radio systems or other similar systems within Middleton Place; and
- (b) Should cable television services be unavailable and good television reception not be otherwise available, a Property Owner may make written application to the Architectural Review Board for permission to install a television antenna, and such permission shall not be unreasonably withheld.

Section 17. Sound Devices. No exterior speaker, horn, whistle, bell, or other sound device, except security devices used exclusively for security purposes, shall be located, used, or placed upon lands within Middleton Oaks.

Section 18. Trespass. Whenever the Association, the Owner, and/or the Company is permitted by these Covenants to correct, repair, clean, preserve, clear out or do any action on any property or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

Section 19. Parcels. No Residential Lot shall be subdivided, or its boundary lines changed, nor shall application for same be made to Dorchester County, except with the written consent of the Owner. However, the Owner and the Company hereby expressly reserve to themselves, their heirs, successors or assigns, the right by mutual consent to replat any such lot or lots owned by either of them and shown on the plat of any subdivision within Middleton Oaks; and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, bridges, parks, recreational facilities and other amenities to conform to the new boundaries of said replatted lots, provided that no Residential Lot originally shown on a recorded plat is reduced to a size more than ten percent (10%) smaller than the smallest lot shown on the first plat of the subdivision section recorded in the public records.

The provisions of this Section shall not prohibit the combining of two (2) or more contiguous lots into one (1) larger lot. Following the combining of two (2) or more lots into one (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered in the interpretation of these Covenants.

Section 20. Bridges. The Owner expressly reserves to himself, his heirs and assigns, any other provisions in this Declaration notwithstanding, the right to build bridges, walkways, or fixed spans across any or all natural or man-made canals, creeks, riding trails, paths, or lagoons in Middleton Oaks. Nothing in this Section shall be construed as placing an affirmative obligation on the Owner or Company to provide or construct any such improvement.

Section 21. Re-purchases. When any Residential Lot, Family Dwelling Unit, or Development Unit Parcel within Middleton Oaks is offered for sale by successors in title to the Owner, the Company shall have the option to purchase such property at the price and on the terms of any bona fide offer for such property made in writing to the Property Owner at such time and submitted to the Company for verification. The Company shall have forty-five (45) days after presentation of such offer to the Company to exercise this purchase option. If the Company has not executed a contract for purchase during this period, the record owner may freely convey the property to the subject offeror.

Should, however, such sale to a third party not be consummated within six (6) months of the date of the offer transmitted to the Company, the terms and limitations of this Section shall again be imposed upon any sale by the Property Owner.

If the Company shall elect to purchase such property, the transaction shall be consummated within sixty (60) days following delivery of notice by Company to the Property Owner of its decision to purchase.

The Company shall not be entitled to any mechanics lien to secure payments of any amounts due the Company under this Section, and the Company hereby waives the right to any such mechanics lien.

Section 22. Compliance. In the event of a violation or breach of any of the restrictions contained in this Declaration by any Property Owner, or agent of such Property Owner, other Property Owners, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Owner, the Company, and/or the Association severally shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

In addition to the foregoing the Owner, the Company, and/or the Association severally shall have the right, but shall not be obligated, whenever there shall have been built at any place on the Property any structure which is in violation of these restrictions, to enter upon such property where such violation exists and summarily abate or remove the same at the expense of the Property Owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the Property Owner. Any person entitled to file a legal action for the violation of these Covenants shall be entitled to recover reasonable attorneys' fees as a part of such action. Any such entry and abatement or removal shall not be deemed a trespass.

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The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

ARTICLE II

ENVIRONMENTAL CONTROLS

Section 1. Topography and Vegetation. Topographic and vegetation characteristics of the Property shall not be altered by removal, reduction, cutting, excavation or any other means without the prior written approval of the Architectural Review Board. Written approval may, but need not, be granted hereunder until a plan designed to protect the Ashley River from pollution resulting from erosion, pesticides or the seepage of fertilizer or other materials has been submitted to and accepted by the Architectural Review Board. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of this Declaration.

Section 2. Tree Removal. No trees, bushes, or underbrush of any kind may be removed without the written approval of the Architectural Review Board. Approval for the removal of trees located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property.

Section 3. Certain Controls. To implement effective and adequate erosion control and protect the beauty of the Ashley River, the Owner and/or the Company, severally, their heirs, successors, assigns (including but not limited to the Association), and agents shall have the right to enter upon any property before or after a building or structure has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the properties for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices, the Owner, Company, or Association, as the case may be, shall give the Property Owner the opportunity to take any corrective action required by giving the Property Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by such Property Owner. If the Property Owner fails to take the corrective action specified immediately the Owner, Company, or Association, as the case may be, may then exercise his right to enter upon the property in order to take the necessary corrective action. The cost of such erosion prevention measures when performed by the Owner, his successors or assigns, on an improved property, shall be paid by the Property Owner thereof.

To implement effective insect, reptile and woods fire control, the Owner and/or the Company and their heirs, successors, assigns, and agents have the right to enter upon any property on which a building or structure has not been constructed and upon which no landscaping plan has been implemented. In any case which in the opinion of the Owner detracts from the overall beauty, setting and safety of Middleton Oaks, the Owner and/or the Company, their heirs, successors, assigns, and agents shall have the aforementioned rights of entry for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, removing trash, or dispensing pesticides.

The cost of this vegetation and trash control shall be kept as low as reasonably possible and shall be paid by the respective Property Owner. Such entry shall not be made until thirty (30) days after such Property Owner has been notified in writing of the need of such work and unless such Property Owner fails to perform the work within said thirty (30) day period.

The provisions of this Section shall not be construed as an obligation on the part of the Owner or the Company to mow, clear, cut or prune any property, to provide garbage or trash removal services, to perform any grading or landscaping work, construct or

maintain erosion prevention devices, or to provide water pollution control on any privately owned property.

Entrance upon property pursuant to the provisions of this Section shall not be deemed a trespass.

The rights reserved unto the Owner and the Company in this Section shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of this Declaration.

Section 4. Environmental Hazards. To secure the natural beauty of Middleton Oaks, the Architectural Review Board may promulgate and amend from time to time rules and regulations which shall govern activities which may, in its judgment, be environmentally hazardous, such as the application of fertilizers and pesticides and other chemicals. Failure of any Property Owner or tenant of property in Middleton Oaks to comply with the requirements of such rules and regulations shall constitute a breach of these Covenants.

The Owner hereby reserves unto himself, his heirs, assigns, and agents a perpetual, alienable and releasable easement and right on, over and under all property in Middleton Oaks for the purpose of taking any action necessary to effect compliance with such environmental rules and regulations. The cost of such action by the Owner shall be paid by the respective Property Owner(s) of the property upon which the work is performed.

Section 5. Further Siting Authority. To prevent excessive "run-off" or drainage from any projects the Owner hereby reserves to himself, his heirs and assigns the right to establish a maximum percentage of property which may be covered by a building, patio, driveway or other structures. In the establishment of such maximum percentage the Owner shall consider topography, percolation rate of the soil, soil types and conditions, vegetation cover and other relevant environmental factors. Neither this nor any other right reserved herein by the Owner shall be construed, however, to be an obligation of either the Owner or the Company to take any action.

ARTICLE III

OPEN SPACE AREAS

Section 1. Intent. It is the intent of the Owner that the natural, scenic, historic and recreation resources, soils, wetlands, wildlife, game and migratory birds currently in evidence at Middleton Place be maintained and enhanced by designation of certain areas of Middleton Oaks herein as "Public Open Space" or "Private Open Space" and on plats filed by the Company on behalf of the Owner for record with the County Clerk of Court.

It is with the aforementioned objectives that Public Open Space, Private Open Space, and Purchased Common Properties are further defined, and policies relating thereto elaborated, in this Article and elsewhere throughout this Declaration.

Section 2. Wildlife. Pursuant to his overall objectives of wildlife conservation, the Owner expressly reserves to himself, his heirs and assigns, the right to erect wildlife feeding stations, to plant small patches of cover and food crops for wildlife, to make access trails or paths or boardwalks through Public Open Space, Private Open Space, and Purchased Common Properties for the purpose of permitting observation and study of wildlife, hiking, and riding, to erect small signs throughout the Public Open Space and Private Open Space designating points of particular interest and attraction, and to take such other steps as are reasonable, necessary and proper to further the community use and enjoyment of the open spaces.

The Owner and the Company severally, their heirs, successors, and assigns, shall have the right, but shall not be obligated, to protect from erosion all Public Open Space, Private Open Space, and Purchased Common Properties, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Owner or the Company, respectively. The right is likewise reserved to the Owner and the Company to take steps necessary to provide and insure adequate drainage ways in open space, to cut fire breaks, remove diseased, dead or dangerous trees and carry out other similar activities, the costs of which services to be paid by assessment of the Association in accordance with the provisions of Part Three of this Declaration.

Section 3. Easements. The Owner reserves unto himself, his heirs, assigns, and agents, a perpetual, alienable and releasable easement of right to go on, over and under the ground to erect, maintain and use electric, cable television, telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage or other public conveniences or utilities in said open space areas and common properties. These reservations and rights expressly include the right to cut any trees, bushes, or shrubbery, rights to make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

The Owner further reserves to himself, his heirs and assigns the right to locate wells, pumping stations and tanks within such open space areas and common properties. The Owner reserves to himself, his heirs and assigns, the right to all subsurface minerals, elements, and objects found under Public Open Space, Private Open Space, or Purchased Common Properties and the right to remove minerals and fill from all Public Open Space and Private Open Space.

The Owner and the Company similarly reserve unto themselves, severally, their heirs, successors, and assigns all the rights, as pertain to Public Open Space, Private Open Space, and Purchased Common Properties, that are reserved to themselves in this Declaration as pertain to Residential Lots, Family Dwelling Units, Multi-Family Tracts, and Development Unit Parcels.

Section 4. Offensive Material. No trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon Public Open Space, Private Open Space, or Purchased Common Properties, except as is temporary and incidental to the bona fide improvement and/or normal operation of the area in a manner consistent with its classification as open space or common property and present uses or those approved by the Association.

Section 5. Owner's Use. The Owner expressly reserves to himself, his heirs and assigns, every reasonable use and enjoyment of said Public and Private Open Space and Purchased Common Properties, in a manner not inconsistent with the provisions of this Declaration.

Section 6. Affirmative Obligations. It is expressly understood and agreed that the granting herein of easements pertaining to Public Open Space, Private Open Space, and Purchased Common Properties and the reservation by the Owner and the Company of rights pertinent thereto in no way places a burden of affirmative action on the Owner or the Company, that neither the Owner nor the Company is bound to make any of the improvements noted herein, or extend to any Property Owner any service of any kind, except as such may be consented to by the Owner or the Company on its own behalf and be undertaken at the expense of the Association or the Property Owner, as the case may be.

ARTICLE IV

WATERFRONT AREAS

Section 1. Conservation Zone. To preserve historic and natural character of the Ashley River, there is hereby established a construction and clearing restricted zone within Middleton Oaks on all properties which front on the Ashley River which are located within one hundred (100) feet of the River. That portion of any property located within thirty (30) feet of the Ashley River, the River marsh, and flooded rice fields (hereinafter collectively referred to as "River"), shall be preserved substantially in its present natural state except for moderate clearing for view and breeze as approved by the Architectural Review Board. Notwithstanding the foregoing, the Owner hereby reserves to himself, his heirs and assigns, the right to exempt properties from said construction and clearing restrictions in those cases where the Architectural Review Board, in its discretion, determines, in a manner neither arbitrary nor capricious, that such exemption will not materially lessen the natural appearance and scenic beauty of the River or determines that such exemption is necessary to protect the shoreline from erosion or from pollution.

The following horizontal construction set-back restriction from the River is hereby established:

- (a) No house sites, no building or other structure shall be constructed or maintained on any property within fifty (50) feet of the River and no parking areas designed to accommodate more than two (2) automobiles shall be constructed or maintained on any property within one hundred (100) feet of the River.
- (b) In all open space, recreational areas and activity centers, no buildings or other structures shall be constructed or maintained within twenty (20) feet of the River and no parking areas designed to accommodate more than two (2) automobiles shall be constructed or maintained within forty (40) feet of the River.

Section 2. Other Regulations. The use of the Ashley River by Property Owners, their tenants and employees, shall be governed by the applicable ordinance, rules, regulations, and policies of the public agencies having jurisdiction over the use and protection of the River. No Property Owner, however, shall be permitted to construct a dock. The Association, however, may, with the approval of the Owner, his heirs and assigns, construct a dock which is unobtrusive and which serves canoes and other small boats no longer than 16 feet, with power no greater than 3 horsepower.

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PART THREE

MIDDLETON OAKS PROPERTY OWNERS ASSOCIATION

ARTICLE I

MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 1. Membership. Every Property Owner, including the Owner, shall be a Member of the Association. The Company shall designate one person to be an ex-officio Member of the Association.

Section 2. Voting Rights. The Association shall have three types of regular voting membership:

Class "A" - Class "A" Members shall be all those owners (including the Owner and Property Owners) of Residential Lots and any type of Family Dwelling Units, whether detached or multi-family. A Class "A" Member shall be entitled to one vote for each Family Dwelling Unit and each Residential Lot which he owns, thereby apportioning one vote to owners of apartments and two votes to owners of houses constructed on Residential Lots. It is the intent of this provision that, so long as property qualifies as a Residential Lot by virtue of the fact that improvements have not been constructed thereon, the owner thereof shall have only one vote, but once improvements are constructed on said Lot and it loses its character as a Residential Lot and becomes a Family Dwelling Unit, the owner thereof shall have a total of two votes for the ownership of such property.

Class "B" - Class "B" Members shall be all those owners of lands within the Property designated as Public or Private Open Space, Purchased Common Properties, or reserved for future development. A Class "B" Member shall be entitled to one vote for every two acres of such lands which such Member owns, provided, however, that in computing the number of votes such Member shall have, the areas contained in such property shall be rounded off to the nearest 0.25 of an acre.

Class "C" - Class "C" Members shall include all those Owners, other than the Owner and the Company insofar as they might own Unsubdivided Land, of Development Unit Parcels held and intended for future development and owners of lands used for commercial purposes (including but not limited to the proposed Middleton Inn). A Class "C" Member shall be entitled to one vote for each \$180.00 of annual assessments paid to the Association provided, however, that in computing the number of votes such an owner shall have, the amount of assessments shall be rounded off to the nearest \$180.00.

In addition to the Classes "A", "B", and "C" regular voting Memberships described hereinabove, there shall be allowed with respect to each class a Special Voting Membership for the Owner under the following circumstances: So long as the Owner retains ownership of at least fifty percent (50%) of the total Public and Private Open Space and/or fifty percent (50%) of the Residential Lots, Development Unit Parcels, and Unsubdivided Lands on the Property, such computation to be made on an acreage basis, the Owner shall be allowed a Special Voting Membership with respect to each class by which he shall be entitled to the same number of votes in each of Class "A", Class "B", and Class "C" as cumulatively held by all Members of each Class respectively (including himself and the Company), plus one. This provision, without further reference herein, shall be self-operative and its applicability determined, for any purposes, by reference to the Annual Statement for the preceding year, or years, required by this Declaration.

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When any property entitling the Owner to membership as a Class "A", "B", or "C" Member of the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, their acts with respect to voting shall have the following effect:

- (a) If only one votes, in person or by proxy, his act binds all;
- (b) If more than one vote, in person or by proxy, the act of the majority so voting binds all;
- (c) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled its proportionate share of the vote or votes;
- (d) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even split for purposes of this paragraph shall be a majority or even split in interest.
- (e) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

The voting rights of any owner may be assigned by said owner to his lessee who has entered into a lease with a term of two (2) years or more; provided, however, that the owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. The Class "A", "B", and "C" Members are sometimes hereinafter collectively referred to as the "Members."

Section 3. Board of Directors. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7), or nine (9) members. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the By-laws of the Association. Each member of each Membership class shall be entitled to as many votes as equals the number of votes he is ordinarily entitled to, based on his ownership of one or more of the various classifications of property as computed by the formula set out hereinabove in Section 2, multiplied by the number of directors to be elected, and may cast all of such votes for any one director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, provided, however, that all votes must be cast in whole numbers and not fractions thereof. This right, when exercised, is termed "cumulative voting." Members are divided into classes for the sole purpose of computing voting rights and shall, in no event, vote as a class.

Section 4. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum including, without limitation, whether the Association shall accept any offer by the Owner or the Company to convey to the

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Association any "Purchased Common Properties," the levy by the Association of any Special Assessment, and the addition or deletion of functions or services which the Association is authorized to perform. In the event fifty-one percent (51%), or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions therefor.

In the event of a dispute as to whether a Referendum is required, the following action may be taken: Within thirty (30) days after the adoption by the Directors of any action which is, in the opinion of the Members, subject to a Referendum, a petition signed by not less than twenty-five percent (25%) of the total Membership of the Association may be filed with the Secretary of the Association requesting that any such action be either repealed or submitted to a vote of the Members.

Regarding any issue, except those expressly provided for otherwise in this Declaration, which involves Special Assessments, extraordinary expenditures, or commitments by the Association that principally benefit the Owner, to the exclusion of other Property Owners, there shall be a Referendum in which the Owner shall not be permitted to cast his Special Voting Membership votes, as hereinabove described, but shall be limited to the votes allotted him under Classes "A", "B", and "C" designations.

Section 5. Quorum Required for any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such meeting shall be the presence of Members or proxies entitled to cast twenty-five percent (25%) of the total vote of the Membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 5, and any other requirements for such "duly called meeting" which may be established by the By-laws of the Association. This provision shall not apply when the proposed action is the amendment of this Declaration and the quorum requirement established by Part Four, Article II shall govern in that instance. For the purpose of this Section, "proper notice" shall be deemed to be given when given each Member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

Section 6. Proxies. All Members may vote and transact business at any meeting of the Association by proxy authorized in writing, provided, however, that proxies shall not be required for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots mailed to the Association.

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ARTICLE II

COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment in Public Open Space. Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Class "A", "B", and "C" Member, and every tenant and guest of such Class "A", "B", and "C" Member, shall have a right of easement of enjoyment in and to the Public Open Space, and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Multi-Family Tract, or Development Unit Parcel. The privilege granted to guests and tenants of nine (9) months or less of Members to use and enjoy the Public Open Space (but not the right and easement to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use) may be denied to or withdrawn from such guests or tenants of nine (9) months or less by an affirmative vote of ninety percent (90%) of the votes cast at a meeting of the Association called for the purpose of voting on such denial or withdrawal, except that guests of the Middleton Inn shall have such rights neither denied or withdrawn.

Notwithstanding the designation on the Master Plan as Public or Private Open Space or Purchased Common Properties, the Owner, all Class "A", "B", and "C" Members, members and guests of the Middleton Riding and Hunt Club, guests of the proposed Middleton Inn, and such other persons who are granted such privilege by ninety percent (90%) of the votes cast at a meeting of the Association shall have a right of easement of enjoyment in and to a horseback riding and walking path from the entry road through the Rice Fields Park to the Old Boat Landing on the Ashley River, along the Riverfront from the National Historic Landmark through the Riverfront conservation zone to the Rice Fields Park and on and around the Rice Fields bank, and from the proposed Middleton Inn site through the Open Space adjoining the National Historic Landmark to the Riverfront conservation zone.

Section 2. Members Easements of Enjoyment in Private Open Space. Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Class "A" and Class "B" Member and, only to the extent provided in these Covenants, guests of the Middleton Inn shall have a right and easement of enjoyment in and to the Private Open Space, and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Multi-Family Tract, or Development Unit Parcel. By an affirmative vote of ninety percent (90%) of the votes cast at a meeting of the Association called for the purpose of voting on such proposal, lands designated as Private Open Space may be changed into Public Open Space.

Section 3. Title to Public Open Space and Private Open Space. The Owner and Company, their heirs, successors and assigns, whichever of the two parties holds title to such land, may convey to the Association, at nominal or no cost to the Association, by deed or 99-year lease, or other instruments appropriate to convey irrevocably to the Association the entire beneficial use for 99 years, those parcels of land and facilities designated in Section 6 of this Part Three, Article II as Public or Private Open Space, and any other Public Open Space or Private Open Space designated on the Master Plan within one year after the Association, by majority vote of its Class "A", "B", and "C" Members and Special Voting Membership, so elects.

The Owner, his heirs and assigns, shall have the right, in their sole option, to put to the Association all rights in and title to such lands as are designated Public or Private Open Space as long as the purchase price of such lands shall not exceed their fair market value.

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The lands designated on the Master Plan as Rice Fields Park shall be used as Private Open Space and as an area for amenities of the Middleton Inn so long as such facilities are open to use of Property Owners and, upon the election of the Association as described herein, shall be conveyed by the Owner, his heirs or assigns, to the Association for nominal consideration.

Upon such conveyance of Rice Fields Park, or upon completion of any improvements thereon, the Association shall immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors.

Natural areas, trail areas, roads, etc. may be conveyed by the Owner and/or the Company to the Association in large or small parcels from time to time after the Company has completed the surveying and platting of all adjacent parcels planned by the Company for development and which abut such natural areas, trail areas, roads, etc. All said parcels of land may be conveyed to the Association subject to (1) all restrictive covenants of record at the time of the conveyance; (2) all existing mortgages; and (3) a reservation by the Owner and/or the Company of the right to substitute or add new mortgages thereon, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgages.

The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property conveyed to the Association except mortgages on Purchased Common Properties (as described hereinbelow in Section 4 of this Article II) shall continue to be the sole obligation of the Owner and/or the Company, or their respective affiliates as the case may be. Notwithstanding anything in the foregoing to the contrary, the Owner and the Company shall not be required to convey the above referred parcels where such conveyance would be prohibited under agreements existing on the date hereof, including but not limited to the Owner's Lease Agreement with the Middleton Riding and Hunt Club, but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

Section 4. Purchased Common Properties: Subject to the provisions of these Covenants, the rules and regulations of the Association, and any charges established by the Association, every Class "A" Member shall have a right and easement of enjoyment in and to any property now or hereafter designated "Purchased Common Properties" pursuant to this Declaration. "Purchased Common Properties" may not be acquired by the Association unless approved by Referendum of Class "A" Members and, in the event such approval is obtained, the Owner and/or the Company, if agreeable to conveying title to such property, may, at its election, elect to receive in lieu of a cash payment a first mortgage and the Association's promissory note for the purchase of such properties at the then-prevailing interest rates for loans on that type property from commercial lending institutions.

Section 5. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its By-laws, to borrow money from any lender for the purpose of improving and/or maintaining the Public Open Space owned by the Association, Private Open Space and Purchased Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties; and
- (b) The right of the Association to assume and pay any liens or encumbrances against the Purchased Common Property at the time of conveyance; and

- (c) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and
- (d) The right of the Association, as provided in its By-laws, to suspend the rights and easements of enjoyment of any Member or tenant or guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.
- (e) The right of the Association to charge reasonable admission and other fees for the use of the Public Open Space owned by the Association, Private Open Space, and Purchased Common Properties, and any facilities included therein, provided, however, that such rights of the Association shall not be construed to impair or qualify the rights of any Class "A", "B", or "C" Member or their guests to ingress and egress to his property, or to impair or qualify the present rights of the Owner or officers and agents of the Company, and their heirs and successors, to ingress, egress, and use of all Public Open Space, Private Open Space, and Purchased Common Properties.
- (f) The Board of Directors of the Association shall have full discretion to determine the amount of any fee or toll for use of roadways belonging to the Association; provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to the Association to cover the cost of the operation of entry control security stations; to repair, rehabilitate, resurface and otherwise maintain said roadways; to provide for the maintenance and clean-up of right-of-ways; to provide drainage along said roadways; and to provide otherwise for security. The Board of Directors of the Association shall further have the power to place any reasonable restrictions upon the use of the Association's roadways, subject to the rights of ingress and egress expressed in Paragraph (e) above, including but not limited to the types and sizes of vehicles permitted to use said roads (except that appropriate service and guest vehicles shall not be denied ingress and egress rights to the Middleton Inn or its equivalent facility on the Middleton Inn site or to the Rice Fields Park designated on the Master Plan), the maximum and minimum speeds of vehicles using said road, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any State or local government having jurisdiction over the Property shall not make such restrictions unreasonable. This Paragraph (f) establishes a maximum charge restriction on fees which may be charged for road entry and use of roads. The Board of Directors of the Association may supplement, with an allocation of a portion of the receipts from the annual assessment on the Property, the funds (if any) received from road use fees or tolls, to carry out the functions and activities as described in this Paragraph (f).

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- (g) The right of the Owner and/or the Company, their heirs, successors and assigns, or the Association by its Board of Directors, to dedicate or transfer to any public or private utility, utility easements on any part of the Public Open Space, Private Open Space, and Purchased Common Properties.
- (h) The rights of the Association to give or sell all or any part of the Public Open Space owned by the Association and Private Open Space owned by the Association, including lease-hold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the most stringent quorum requirements established herein, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Public Open Space or Private Open Space prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.
- (i) The rights of reversion of the Lessor of any Public Open Space or Private Open Space leased by the Association upon expiration of the lease.

Section 6. The Owner and the Company covenant for themselves, their heirs, successors and assigns that the certain enumerated parcels of land so designated below and on the Master Plan shall be used, subject to the easements set forth in this Declaration, only for the purposes here noted:

- (a) Middleton Place National Historic Landmark: maintenance and operations of landscaped gardens, historic buildings, stable yards, food and beverage facilities, festivals and special occasions hosted thereon by the Middleton Place National Historic Landmark, its successors, assigns, lessees, guests, invitees, patrons, and such other users as are not expressly prohibited by the charter of said Landmark Corporation, its By-laws and other governing instruments, and pertinent provisions of the Internal Revenue Code.
- (b) Old Boat Landing Site (Proposed Middleton Inn Site): construction and operation of a hotel, not to exceed 120 rooms, with food and beverage facilities, the architectural character of which shall not be inconsistent with the historic preservation and environmental conservation objectives of the National Historic Landmark and Middleton Oaks; entry roads; Public or Private Open Space; Purchased Common Property; development and operation of tennis courts and/or other recreation facilities; development of not more than twenty-five (25) Family Dwelling Units.
- (c) Pasture Tract: Public or Private Open Space, Purchased Common Property; development of not more than fifteen (15) Family Dwelling Units.

- (d) Phosphate Road Tract: Private Open Space; Purchased Common Property; residential development not to exceed one (1) Family Dwelling Unit.
- (e) Rice Fields Park (including Rice Dike): Private Open Space; Purchased Common Property; development and operations of Middleton Inn amenities so long as such facilities are open for use by Property Owners.
- (f) Pinewood Tract: Public or Private Open Space; Purchased Common Property; residential development not to exceed fifteen (15) Family Dwelling Units.
- (g) Horse Pastures: Public or Private Open Space; Purchased Common Property.

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ARTICLE III

MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Owner and the Company covenant, and each owner of any Residential Lot, Family Dwelling Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, agree to all terms and provisions of this Declaration and to pay to the Association: (1) annual assessments or charges; and (2) special assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and costs of collection therefor as hereinafter provided shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the person who was the owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The annual assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement and operation of the Public Open Space owned by the Association and Private Open Space owned by the Association, but not Purchased Common Properties, and to provide services which the Association is authorized to provide. In carrying out these duties, the Association may make payment of taxes and insurance thereon, make improvements on Public Open Space and Private Open Space, pay the cost of labor, equipment, materials, management, supervision, accounting, and Member information services, maintain offices and equipment, repay any loans made to the Association, and take such other action as is necessary to carry out its authorized functions.

In addition, the Association may make payments of principal and interest as consideration for the conveyance by the Owner and/or the Company, as the case may be, to the Association of Purchased Common Properties, if any such conveyance shall be offered by the Owner and/or the Company and approved by Member referendum as herein provided, such payments being made both at the time of conveyance to the Association and subsequently in payment of promissory note(s) secured by mortgages on such Purchased Common Properties in amounts sufficient to amortize the debt for any such conveyance over a twenty (20) year term.

In the case of annual operation of Purchased Common Properties, all funds necessary for such operation shall not be derived from the assessments levied by the Association, but rather from user charges and annual user dues for the particular facility. Such user charges and user dues shall be in addition to and not in lieu of any other assessments herein provided for. No initiation fee may be charged to those Members who shared in the cost of acquisition of such Property ("Charter Members") as a precondition to use of such Purchased Common Properties facilities, as distinguished from the annual and daily user charges hereinabove referred to. The Association may provide that Charter Members shall be entitled to preferential levels of charges after additional Members commence use of such facilities.

Section 3. Application of "Minimum" and "Maximum" Assessment. The minimum annual assessment, as set forth in the schedule hereinbelow, shall be levied by the Association unless the Board of the Association, by unanimous vote, determines that the important and essential functions of the Association may be properly funded only.

by an assessment above the minimum but not more than the applicable maximum regular assessment, as set forth in the schedule hereinbelow. If the Board of Directors shall levy the applicable minimum assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by the minimum assessment, the Board may, by unanimous decision, levy a supplemental assessment but in no event shall the sum of the minimum and supplemental regular annual assessments for that year exceed the applicable maximum regular assessment.

The "spread" between the minimum and maximum regular annual assessment shall be reduced by the dollar amount of taxes paid by Members to any pertinent Public Service District (exclusive of water and sewage collection assessments), to pay for the costs of operation of such District, debt service, etc.; and the amount of such taxes shall be allowed as a deduction from any supplemental assessment permitted to be made against Members by the Association. For the purposes of this Section 3, the term "supplemental assessment" shall mean any assessment in excess of the amount reflected in the schedule below as the applicable "minimum regular assessment" for such type of property up to the amount reflected as the "maximum regular assessment" for such type of property.

The annual assessment minimum and maximum amounts shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an inflation adjuster as set forth in this Part Three, Article III, Section 3(i) hereinbelow.

	Minimum Regular Annual Assessment	Maximum Regular Annual Assessment Inclusive of Public Service District Non-Utility Taxes
(a) Residential Lots:	\$180.00/lot	\$360.00/lot
Property shall not be classified for purposes of these covenants and these Annual Assessments as a Residential Lot until conveyed to the purchaser by the Owner or the Company, as the case may be.		
(b) Family Dwelling Unit:	\$225.00/unit	\$450.00/unit
(c) Commercial establishments permitted on Public Open Space and Private Open Space under these covenants, including but not limited to the proposed Middleton Inn, and the Middleton Riding and Hunt Club:		
(1) Inns, restaurants, real estate sales offices, and any other commercial facility:	\$.05/sq.ft. of enclosed heated & air-conditioned space	\$.10/sq.ft. of enclosed heated & air-conditioned space
(2) All agencies renting horses, bicycles, electric carts, or other vehicles within the properties shall pay an assessment on their site, whether owned or leased, of:	$\frac{1}{4}$ of 1% of gross receipts	$\frac{1}{4}$ of 1% of gross receipts

Minimum Regular
Annual Assessment

Maximum Regular
Annual Assessment
Inclusive of Public
Service District
Non-Utility Taxes

- (3) All rental management operations operated from land or buildings located within the properties or by means of vehicles circulating within the properties shall pay in addition to the assessment on a square footage basis as set forth herein an assessment of:

$\frac{1}{4}$ of 1% of gross rentals

1% of gross rentals

- (4) Outdoor Recreation Facilities:

$\frac{1}{4}$ of 1% of revenues from hourly, daily, or weekly user fees.

$\frac{1}{4}$ of 1% of revenues from hourly, daily, or weekly user fees.

(For purposes of the above assessment, hourly, daily, or weekly user fees shall be strictly construed to exclude any annual Member dues or initiation fees.)

- (d) Unsubdivided Land:

All Unsubdivided Land contained within the Property, except that which may potentially be used, under these covenants, as Public Open Space or Private Open Space:

\$5.00/acre

\$10.00/acre

- (e) All Development Unit Parcels contained within the Property: (before development & only after conveyance by Owner)

$\frac{1}{10}$ of 1% of bona fide sales price

$\frac{1}{5}$ of 1% of bona fide sales price

(For purposes of the above assessment, "bona fide sales price" shall be the sales price at which such property was originally conveyed by the Owner or the Company, as the case may be, its successors or assigns, to a third party purchaser.)

- (f) For purposes of these assessments and voting rights hereunder, a property will be classed as a Residential Lot or Unimproved Land until roof and windows have been installed in the principal building constructed thereon, and assessment at the improved property rate shall begin on the next January 1st thereafter.
- (g) The Association may, at its sole expense, obtain copies of all plats of Middleton Oaks properties recorded with the County Clerk of Court from such office.
- (h) All assessments charged by the Association shall be rounded off to the nearest dollar.

- (1) From and after January 1, 1980, the minimum and maximum annual assessment may be increased each year by the Board of Directors of the Association by an amount not in excess of five percent (5%) per year, or the percentage increase between the first month and the last month on an annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967=100) (hereafter "C.P.I.") issued by the U.S. City Average, Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas" whichever of these two percentage figures is larger, unless three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirement established by Part Three, Article I, Section 2 hereof, vote against such increase or vote to increase said annual assessment by a greater amount or to decrease the minimum and maximum annual assessment. In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

The Board of Directors of the Association may, by unanimous decision, after consideration of current costs and future needs of the Association, fix the annual regular assessment for any year at an amount less than the applicable minimum regular annual assessment, but such action shall not constitute a waiver by the Association of its right to revert to the full regular assessment in subsequent years. However, if the Board of Directors fixes such regular annual assessment at an amount less than the minimum and it subsequently is determined by the Board that the amount assessed will not be sufficient, the Board shall have the power to make a supplemental regular annual assessment, but in no event shall the sum of the initial and supplemental regular annual assessments in any one year exceed the applicable maximum regular assessment.

Any increase or decrease in the fixed amount of the annual maximum or minimum regular assessment shall be made in such a manner that the proportionate increase or decrease in such maximum or minimum assessment is the same for owners of Residential Lots, Family Dwelling Units, Development Unit Parcels, or Unsubdivided Land, and likewise any time the actual assessment levied by the Board of Directors of the Association is less than the minimum regular annual assessment such decrease shall be apportioned among the owners of Residential Lots, Family Dwelling Units, Development Unit Parcels, and Unsubdivided Land, such that the proportionate decrease received by each class of owners of the various classes of the property may be altered only by the favorable vote of ninety percent (90%) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Part Three, Article I, Section 2 hereof, and by ninety percent (90%) of the votes cast at said meeting by the Members of the classes whose proportionate share is being altered.

Section 4. Special Assessments for Improvements and Additions.

In addition to the annual regular minimum and maximum assessments authorized by Section 3 hereof, the Association may levy special assessments, for the purpose of construction or reconstruction, repair or replacement of capital improvements upon the Public Open Space owned by the Association or Private Open Space owned by the Association, but not Purchased Common Properties, including the necessary fixtures and personal property related thereto, or for additions to both classes of Open Space or to provide for the necessary facilities and equipment to offer the services authorized herein, and to repay any loan made to the Association to enable it to perform the duties and functions authorized herein, provided that such assessment shall have received the assent of a majority of the votes of the Members responding to a mail Referendum within thirty (30) days of mailing, with such mail Referendum to include a statement

prepared by the Directors of the Association favoring such assessments stating the reasons therefor, together with a statement prepared by the Directors dissenting from such assessment provided, however, that neither of such statements may exceed a maximum length of five pages on each proposed assessment. This provision shall be interpreted to mean that the Association may make, in any one year, an annual assessment up to the maximum set forth in Section 3 of this Article plus an additional special assessment, which additional special assessment may not exceed the amount set for the maximum annual assessment on any particular class or type property. The fact that the Association has made an annual assessment for an amount up to the permitted maximum shall not affect its right to make a special assessment during the year.

The proportion of each special assessment to be paid by the owners of the various classifications of assessable property shall be equal to the sum of the total applicable regular maximum assessments of all property in that class, for the assessment year during which such special assessments are approved, expressed as a percentage of the sum of the total applicable maximum regular assessments on all property within the Property for the year during which such assessment is approved. Such special assessment in any one year may not exceed a sum equal to the amount of the maximum annual assessment for such year except for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

The Association may establish reserve funds equal to ten percent (10%) of its receipts from its regular annual assessments to be held in reserve in an interest-drawing account or investments as a reserve for (a) major rehabilitation or major repairs, and (b) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

Should a subdivision within Middleton Place other than Middleton Oaks, be added to the Property and be subject to this Declaration pursuant to Part One, Article II, Section 2 hereof, on petition of sixty percent (60%) of all owners within such additional subdivision, as such may be designated on a recorded subdivision plat, the Board of Directors of the Association may levy a special assessment (within the total maximum limits of such special assessments as set forth hereinabove) applicable only to the owners within that subdivision, to undertake special neighborhood improvements, neighborhood rehabilitation or construction, and neighborhood maintenance. If such special assessment be proposed by the Board of Directors of the Association rather than by petition as provided for hereinabove, then such proposal shall be submitted to a Referendum of all owners within the particular subdivision and such special assessment shall be levied only upon a favorable response to said Referendum, as shall be indicated by not less than seventy-five percent (75%) of the votes cast voting in favor of such special assessment.

In the event of election by the Members of an added subdivision to be assessed by the Association for special improvements, construction, or maintenance within that subdivision, the Association shall be authorized to borrow money to fund such special improvements, construction, or maintenance and to repay any such loan with the receipts from the special assessment authorized therefor.

In the event a general special assessment is levied by the Board of Directors of the Association as may be authorized by this Article, and such general special assessment is levied subsequent to election by the Members of a new subdivision for a special assessment as provided for hereinabove, then the Members of such new subdivision shall be liable for the general special assessment only to the extent of any difference between the special assessment for the new subdivision and the total authorized maximum limits of any special assessment, provided, however, that if the special assessment for the new subdivision shall be for a lesser term than that of the general special assessment, then the Members within the new subdivision shall, upon

final payment of the special assessment for that new subdivision, thereupon become obligated to continue to pay the general special assessment upon any subsequent due dates therefor, in an amount equal to a full proportionate share for such Member notwithstanding the fact that his obligation for the general special assessment was a lesser amount during the term of the special assessment for the new subdivision. It is the purpose of this provision to insure that no Member shall have to pay more than the authorized maximum annual limits for regular and special assessments.

Section 5. Change in Minimum and Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Part One, Article II, Section 2, hereof, and under the By-laws of the Association.

Section 6. Quorum for any Action Authorized Under this Article. The quorum required for any action authorized to be taken by the Association Members under this Article shall be as follows:

The first time any meeting of the members of the Association is called to take action under this Article the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast twenty-five percent (25%) of the total vote of the membership of the Association.

Section 7. Date of Commencement and Pro Ration of Annual Assessments. Due Date. Notwithstanding anything in the foregoing to the contrary, the annual assessments provided for herein shall commence no earlier than January 1, 1980. Unless otherwise provided herein, property shall be assessed according to its character as of January 1 of the assessment year (e.g., Residential Lot).

The first annual assessment shall be made for the calendar year and shall become due and payable ninety (90) days after the day fixed for the commencement. The Board of Directors of the Association shall have the power to change the date upon which annual assessments become due and payable and also to determine the method of payment of annual assessments, i.e., lump sum, monthly installments, etc. provided, however, that the annual assessment shall be due and payable at least annually.

In any instance where assessments, either in whole or in part, are based upon percentages of gross revenues as stated herein, such assessments for the coming year shall be based upon the revenues produced through December 31st of the preceeding year, whether for a full year or a fraction of a year.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against each Residential Lot, Family Dwelling Unit, Development Unit Parcel, or Unsubdivided Land, within the minimum and maximum assessment range as provided hereinabove, and shall, at that time, direct the preparation of an index of the properties and assessments applicable thereto which shall be kept in the office of the Association and which shall be open to inspection by any Property Owner. Written notice of assessment shall thereupon be sent to every Property Owner subject thereto.

The Board of Directors shall not have authority to levy a special assessment above the maximum regular assessment unless such special assessment is approved by a Referendum relative thereto as herein provided.

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The Association shall, upon demand at any time, furnish to any Property Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Property Owner of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Property Owner; the Lien; Remedies of Association. If the assessment is not paid on or before the past-due date specified in Section 7 hereof, then such assessment shall become delinquent and shall, together with interest thereon at the rate of eight percent (8%) per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Property Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Property Owner at the time when the assessment first became due and payable to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Property Owner personally and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding or deed in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by mortgagee to a subsequent owner, provided, however, that the mortgagee shall not be liable for assessments until it has held title to the property for more than one (1) year.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyance made for the purpose of granting utility easements;
- (b) Owners of all Private Open Space;
- (c) Owners of places of worship; community, civic and cultural clubs; woodland and other conservancies including any lands subject to conservation or scenic easements duly recorded and held by appropriate public-interest agencies; libraries; utilities; nursery and other schools and instructional centers; medical centers, hospitals, clinics; nursing, care, rest and convalescent homes; facilities of non-profit associations; and charitable institutions;
- (d) Owners of all submerged lands.

Section 12. Annual Statements. The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the

Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$1,000. Such officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

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ARTICLE IV

FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Common Public and Private Open Spaces. The Association shall be authorized to own and maintain, among other lands, Public Open Spaces and Private Open Spaces, and equipment, furnishings, and improvements devoted to the following uses:

- (a) for roads, parkways along said roads, and transportation facilities throughout the Property;
- (b) for sidewalks, walking paths or trails, bicycle paths, and bridle paths throughout the Property;
- (c) for police and fire protection, emergency health care, and buildings used in maintenance and storage functions;
- (d) for providing any of the services which the Association is authorized to offer under this Declaration;
- (e) for purposes set out in deeds or long-term leases by which Public Open Spaces and Private Open Spaces are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set out herein;
- (f) for lakes, playing fields, tennis and golf facilities, historic parks, wildlife areas, fishing facilities, and other recreational facilities of any nature; community meeting facilities serving the Property; and
- (g) for water and sewage facilities and any other utilities.

Section 2. Ownership and Maintenance of Purchased Common Properties. The Association shall be authorized to purchase, own and maintain recreation and other facilities located on the Property. In the event such facilities are purchased from the Owner or the Company, the purchase price may be paid as hereinbefore provided, and the debt amortized over a twenty (20) year period from receipts of regular annual assessments or special assessments. The Association shall not be authorized to maintain Purchased Common Properties from receipts of regular annual assessments or special assessments but shall be authorized to require the payment of user fees, annual user dues, and, in the case of persons who are not owners of property within Middleton Oaks, initiation charges for membership, and the Association shall be authorized and required to maintain Purchased Common Properties from the receipts of such charges. All functions or services which the Association shall be authorized to provide for Purchased Common Properties as may be expressed elsewhere in this Declaration shall be subject to this provision.

Section 3. Services. The Association shall be authorized but not required to provide the following services:

- (a) clean-up, maintenance, landscaping, and lighting of all roads, parkways, lakes, Public Open Spaces and Private Open Spaces within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;
- (b) transportation facilities other than privately-owned automobiles, paid for by special assessment as provided for herein;

- (c) police and fire protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the Property, and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Property;
- (d) garbage and trash collection and disposal;
- (e) insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the State and local governments;
- (f) the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration;
- (g) to take any and all actions necessary to enforce all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;
- (h) to set up and operate an architectural review board in the event that the Association is designated by the Owner as his agent for such purpose;
- (i) to conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;
- (j) to provide safety equipment for storm emergencies;
- (k) to monitor and support the operation of transportation services between key points of the Property and the airports, other public transportation terminals, downtown Charleston, schools, and public centers serving the area surrounding the Property by the collection of user fees for the use thereof;
- (l) to construct improvements on Public Open Spaces and Private Open Spaces for any of the purposes or as may be required to provide the services as authorized in this Article;
- (m) to provide administrative services including but not limited to: legal; accounting and financial; and communication services informing Members of Activities, Notice of Meetings, Referendums, etc., incident to the above listed services;
- (n) to provide liability and hazard insurance covering improvements and activities on the Public Open Spaces, Private Open Spaces, and Purchased Common Properties, independently or in collaboration with the Owner insofar as (i) his blanket policies for Middleton Place may permit cost and other efficiencies to the Association, and (ii) he elects.
- (o) to provide water, sewage, and any necessary utility services, subject however to the right of the Company hereby reserved to itself, its successors and affiliates to provide, at its election, such services.

In computing the public service district taxes for purposes of the credit toward the maximum annual assessment described hereinabove, there shall be excluded therefrom any water and sewage collection charges and assessments.

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified or implied in this Declaration. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members. Special assessments shall be submitted for Referendum as herein provided. The functions and services which the Association is authorized to provide may be added or reduced at any time upon the affirmative vote of fifty-one percent (51%) or more of those voting in a Referendum conducted by the Board of Directors under the same procedures as for a special assessment.

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions.

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PART FOUR

GENERAL PROVISIONS

ARTICLE I

DURATION

Section 1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company, the Owner, or any Property Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty-five (25) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the official real estate records for Dorchester County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

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ARTICLE II.

AMENDMENTS

Section 1. The Owner specifically reserves to himself, his heirs and assigns, the right to amend, with the consent of the Company, this Declaration, or any portion thereof, on his own motion, from the date hereof until January 1, 1982, so long as the voting power of existing Members is not diluted thereby, nor the amounts of assessments of such existing Members raised or changed in any manner which would adversely affect such Members, after which time the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, and the total number of votes cast against the amendment. Such Addendum shall be recorded in the official real estate records of Dorchester County, South Carolina.

The quorum required for any action authorized to be taken by the Association under this Section 1 shall be as follows:

Section 2. The first time any meeting of the Members of the Association is called to take action under this Article, the presence at the meeting of the Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty percent (50%) of the total vote of the Association.

ARTICLE III

NOTICES

Section 1. Any notice required to be sent to any Member or Property Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as owner in the public records of Dorchester County, South Carolina, on the first day of the calendar month in which said notice is mailed.

Section 2. Notice to one of two or more co-owners of a Residential Lot, Family Dwelling Unit, Development Unit Parcel, or Unsubdivided Land shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address.

Section 3. Any person who becomes an owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

ARTICLE IV

INTERPRETATIONS

Section 1. Enforcement. Enforcement of these Covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants.

Failure by the Association, any Property Owner, the Owner, or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 2. Severability. Should any covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 3. Interpretation. In all cases, the provisions of this Declaration shall be given that interpretation of construction that will best tend toward the consummation of the general plan of development of the Property.

Section 4. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-laws of the Association, unless the terms of this instrument provide otherwise.

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ARTICLE V

TERMINATION OF ASSOCIATION

Section 1. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording this Declaration, all Public Open Space, Private Open Space, and Purchased Common Properties belonging to the Association at the time of such adjudication shall revert to the Owner.

Section 2. The Owner shall own and operate said Public Open Space, Private Open Space, and Purchased Common Properties as Trustee for use and benefit of owners of Residential Lots, Family Dwelling Units, and Development Unit Parcels within the Property, subject to the conditions and easements set forth herein and as set forth herein.

Section 3. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for herein or all Public Open Space, Private Open Space, and Purchased Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the appropriate Court of Dorchester County, South Carolina, which Trustee shall own and operate said land for the use and benefit of owners within the Property as set forth herein.

- (a) Each lot or parcel of land located within the Property shall be subject to an annual assessment which shall be paid by the owner of each such lot or parcel to the Owner or Trustee, whichever becomes the successor in title to the Association. The amount of such annual assessment and its due date shall be determined solely by the Owner or the Trustee, as the case may be, but the amount of such annual assessment on any particular lot or parcel shall not exceed the amount actually assessed against that lot or parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in paragraph (b) below.
- (b) The amount of the minimum and maximum annual assessment which may be charged by the Owner or Trustee hereunder on any particular lot or parcel shall be automatically increased each year by either five percent (5%) or the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967=100) (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas," whichever of these two percentage figures is larger. The actual amount of such increase in the regular minimum and maximum annual assessment on a lot or parcel shall equal the regular minimum and maximum annual assessments on such lot or parcel for the previous year each multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured.

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- (c) Any past due annual assessment together with interest thereon at a rate of eight percent (8%) per annum from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Property Owner at the time the annual assessment became past due, and it shall also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon, against which the assessment has been made, in the hands of the then owner, his heirs, devisees, personal representatives and assigns.
- (d) The Owner and the Trustee, as the case may be, shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Public Open Space, Private Open Space, and Purchased Common Properties. The Owner or Trustee may charge, as part of the cost of such functions, the reasonable value of its services in carrying out the duties herein provided for. Neither the Owner nor the Trustee shall have the obligations to provide for operation, maintenance, repair and upkeep of the Public Open Space, Private Open Space, or Purchased Common Properties, once the funds provided by the annual assessment have been exhausted.
- (e) The Owner shall have the right to convey title to the Public Open Space, Private Open Space, and Purchased Common Properties and to assign his rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.
- (f) The Trustee shall have the power to dispose of the Public Open Space, Private Open Space, and Purchased Common Properties free and clear of the limitations imposed hereby, provided, however, that such disposition shall first be approved in writing by fifty-one percent (51%) of the Property Owners or, in the alternative, shall be found to be in the best interest of the Property Owners by the appropriate court of Dorchester County, South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Public Open Space, Private Open Space, or Purchased Common Properties, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such properties, then for the payment of any obligations distributed among the owners of property within the Property, exclusive of the Trustees, in a proportion equal to the portion that the maximum annual assessment of property owned by a particular owner bears to the total maximum annual assessments for all property located within the Property.

Dated this 20th day of December, 1979.

WITNESSES:

OWNER

Michael B. Green
Charles A. Leam

Charles H.P. Duell
Charles H.P. Duell

VOL 398 302

FIRST SOUTHERN PROPERTIES, INC.

Chas. A. Parker
Sims A. Parker

By Theodore B. Guerd
 President
 By Carolyn M. Huffie
 Secretary

MIDDLETON OAKS PROPERTY OWNERS
 ASSOCIATION, INC.

Charles A. Scam
Theodore B. Guerd

By Charles A. Scam
 President
 By Mary Punter
 Secretary

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)

PROBATE

Personally appeared before me Theodore B. Guerd and
 made oath that he saw the within named Charles A. Scam
 execute the foregoing Covenants as Owner of Middleton Place and acknow-
 ledged to and before me that he executed the same, and that he with
Charles A. Scam witnessed the execution thereof.

Theodore B. Guerd

SWORN TO before me
 this 20th day of
December, 1979.

Charles A. Scam
 Notary Public, South Carolina
 My Commission expires
May 25, 1988

VOL 398 PAGE 303

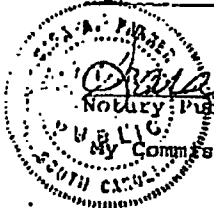
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PROBATE

Personally appeared before me Charles A. Scarminach
and made oath that he saw the within named Philip Lader
and Carolyn M. Guffie execute the foregoing Covenants
as President and Secretary, respectively, of First Southern Pro-
perties, Inc., and severally acknowledged to and before me that they
executed the same as the act and deed of said corporation, and that
he with Sara A. Parker witnessed the execution thereof.

Charles A. Scarminach

SWORN TO before me,
this 20th day of
December, 1979.



Charles A. Parker
Notary Public, South Carolina
My Commission expires 1/10/85

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PROBATE

Personally appeared before me Theodore B. Guerard
and made oath that he saw the within named Charles A. B. Duell
and Mae Puntererri execute the foregoing Covenants
as President and Secretary, respectively, of Middleton Oaks Property
Owners Association, Inc., and severally acknowledged to and before
me that they executed the same as the act and deed of said corporation,
and that he with Charles A. Scarminach witnessed the
execution thereof.

Theodore B. Guerard

SWORN TO before me
this 20th day of
December, 1979.

Charles A. Scarminach
Notary Public, South Carolina
My Commission Expires
May 25, 1988

Ret. Charles A. Scarminach
att'y
P.O. Box 5962
Hilton Head Island, S.C.
29928

4.50

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Vol. 504 : 317

FILED-RECORDED
MARGIE K. CARM
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

AMENDMENT TO DECLARATION
OF COVENANTS AND
RESTRICTIONS running with
Middleton Oaks and
Provisions For the MIDDLETON
OAKS PROPERTY OWNERS

This Amendment made this 31st day of October, 1983, at a duly called meeting of the Members of Middleton Oaks Property Owners Association, Inc., (the Association) held this date at which meeting a quorum was present and notice of which meeting was given on September 30, 1983. It was necessary for a vote of 49 votes in favor of this Amendment for it to be adopted; this Amendment was approved by a vote of 64 votes in favor, one abstention, and none opposed. This Amendment is to the "DECLARATION OF COVENANTS AND RESTRICTIONS running with Middleton Oaks and provisions for the MIDDLETON OAK PROPERTY OWNERS ASSOCIATION" dated December 14, 1979, and recorded in the office of the Clerk of Court for Dorchester County, South Carolina, on December 21, 1979, in Volume 398, at page 255, (the Covenants). The Covenants are hereby amended as follows:

1. Subsection(1), Section 1, of Article I, Part One, thereof, is amended to read as follows:

(1) "Proposed Middleton Inn Site" shall mean and refer to the Old Boat Landing Site so designated on the Master Plan and the lots lettered "A", "B", "C", "D" and "E", which may be used for construction, operation, use, and enjoyment of a public Inn including, not more than 120 bed rooms, restaurant, lounge, tennis, traditional recreation facilities, and meeting and conference rooms, or for such other purposes as permitted in Subsection(b), Section 6, of Article II, Part Three hereof.

2. Subsection(b), Section 6, of Article II, Part Three, is hereby amended to read as follows:

(b) Old Boat Landing Site and Lots "A", "B", "C", "D", and "E" (Proposed Middleton Inn Site): construction and operation of a hotel, not to exceed 120 bed rooms, with food and beverage facilities, and meeting and conference rooms, the architectural character of which shall not be inconsistent with the historic preservation and environmental conservation objectives of the National Historic Landmark and Middleton Oaks; entry roads; Public or Private Open Space; Purchased Common Property; development and operation of tennis courts and/or other recreation facilities; development of not more than sixty-five (65) Family Dwelling Units.

3. All other terms, conditions, covenants, easements and rights granted under the Covenants are hereby confirmed and ratified in full.

4. This amendment becomes effective as of the 30th day of December, 1983.

IN WITNESS WHEREFORE, Middleton Oaks Property Owners Association, Inc. has caused this Amendment to be executed by Charles H. P. Ducif, its President, and its Seal affixed and attested by A. Thomas Spencer, Jr., its Secretary, all on this 30th day of December, 1983.

MIDDLETON OAKS PROPERTY OWNERS ASSOCIATION, INC.

(SEAL)

By: Charles H. P. Ducif
President

ATTEST:

A. Thomas Spencer, Jr.
Secretary

WITNESSES:

Diana L. Smith
W. J. Apple

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Vol. 504 Page 319

PERSONALLY APPEARED before me W.F. Ansgale who, being duly sworn, say that (s)he saw the official Seal of Middleton Oaks Property Owners Association, Inc., affixed to the foregoing Amendment, and that (s)he also saw Charles H. P. Duch, as President, sign, and A. Thomas Spencer Jr., as its Secretary, attest the same and that (s)he with Diana L. Smith witnessed the execution and delivery thereof as the act and deed of the said Middleton Oak Property Owners Association, Inc.

W.F. Ansgale

SWORN to before me this

30th day of December, 1983

Julie A. Mount (L.S.)
Notary Public for South Carolina

My Commission expires: 5/30/85

Mc Kay & Guernard, attys.
P.O. Box 1119
Char. S.C. 29402

9.00

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03571

Vol. 551 p. 450

86-1180

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

SUPPLEMENTARY DECLARATION
OF COVENANTS AND RESTRICTIONS

This Supplementary Declaration of Covenants and Restrictions is made as of the 2nd day of February, 1987, by Charles H. P. Duell (hereinafter sometimes referred to as "Owner") and by Middleton Development Corporation (hereinafter sometimes referred to as "Company").

STATEMENT OF FACT

Owner has previously executed and caused to be recorded that certain "Declaration of Covenants and Restrictions Running With Middleton Oaks and Provisions for the Middleton Oaks Property Owners Association" dated December 14, 1979, and recorded December 21, 1979, at Volume 398, Page 255, Office of the Clerk of Court for Dorchester County, as previously amended by instrument dated October 31, 1983, and recorded December 30, 1983, at Volume 504, Page 317, said Clerk's office (hereinafter sometimes called "Covenants of December, 1979").

The Covenants of December, 1979, provide at Part One, Article II, Section 2, Subparagraph (a) as follows:

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MIDDLETON
COUNTY
DORCHESTER
SOUTH CAROLINA
FEB 11 1987

The Owner and the Company, their heirs, successors and assigns, by mutual consent, shall have the right, without consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development. The additions authorized under this and the succeeding subsections, shall be made by filing a Supplementary Declaration of Covenants and Restrictions (hereinafter referred to as "The Supplementary Declaration") with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

2/1/87 86-1180 j 2

-1-

STATE OF SOUTH CAROLINA
DORCHESTER CO.

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5:21 PM
CLERK OF COURT

Vol. 581 REC 451

The Covenants of December, 1979, further provide at Part One, Article II, Section 1, at the third paragraph thereof, in part, as follows:

... and [Company] may bring within the plan of these Covenants additional lands, and develop the same before completing the development of the Property. Other than as stated in this Section, the Company shall have full power, subject to the Owner's consent in each instance, to add to, subtract from, or make changes in the Master Plan, including the addition of other nearby lands owned by Owner, such actions potentially altering membership of the Association.

The interest of First Southern Properties Inc., a South Carolina corporation, as Company pursuant to the Covenants of December, 1979, has passed to Middleton Development Corporation (hereinafter known as "Company") by proper assignment and substitution.

Owner and Company wish to amend the Covenants of December, 1979, as provided above so as to bring within the plan and operation of the Covenants of December, 1979, the property described on Exhibit A attached hereto and incorporated herein by reference.

AGREEMENT

NOW, THEREFORE, in consideration of the within mutual covenants, and pursuant to the provisions of the original Declaration recorded at Volume 398, Page 255, Office of the Clerk of Court for Dorchester County, South Carolina, as more fully referenced above, as amended, and pursuant to other enabling provisions thereof, and in further consideration of the benefits to flow to the purchasers of all property described in the

2/1/87 86-1180 j 2

-2-

Covenants of December, 1979, and on Exhibit A, and in the further consideration of Five and no/100 (\$5.00) Dollars each paid to the other, the receipt and sufficiency of which is hereby acknowledged, Owner and Company agree as follows:

1. The property described on Exhibit A is made subject to the provisions of the "Declaration of Covenants and Restrictions Running with Middleton Oaks and Provisions for the Middleton Oaks Property Owners Association" dated December 14, 1979, and recorded December 21, 1979, at Volume 398, Page 255, Office of the Clerk of Court for Dorchester County, South Carolina, as previously amended or as the same may hereafter be amended, as fully and effectively and to the same extent as if the Additional Property had been originally described as "Existing Property" under Part One, Article II, Section 1 of the Covenants of December, 1979.

2. Except as expressly stated herein or as previously amended, or as the same may be hereafter amended from time to time, the Covenants of December, 1979, shall be and remain in full force and effect as originally stated.

IN WITNESS WHEREOF, the undersigned Owner and Company have executed this instrument as of the 2nd day of February, 1987.

WITNESSES:

John J. P. J.
William J. Bates

OWNER:

Charles H. P. Duell
Charles H. P. Duell

2/1/87 86-1180 J 2

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IVOL 581 Page 453

COMPANY:

MIDDLETON DEVELOPMENT CORPORATION
(SEAL)

John J. J. J.
William J. J. J.

By: Philip J. J. J.
Its: President
By: Robert J. J. J.
Its: Secretary

2/1/87 86-1180 j 2

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

YOC 581 JAE 454

AS TO OWNER

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named CHARLES H. P. DUELL sign, seal and as his act deliver the within Supplementary Declaration of Covenants and Restrictions and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 2nd
day of February, 1987.

William J. Baker (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

2/1/87 86-1180 } 2

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IVOL 581 FILE 455

AS TO COMPANY

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MIDDLETON DEVELOPMENT CORPORATION, by Charles H. P. Duell, its Pres., and by Roderick P. Duell, its Sec., sign, seal and as its act deliver the within Supplementary Declaration of Covenants and Restrictions and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 2nd
day of February, 1987.

William D. Bales (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IVL 581 INC 456
CONSENT

Middleton Place Property Owners Association, Inc.,
(formerly Middleton Oaks Property Owners Association, Inc.) a
South Carolina, non-profit corporation, joins in the within
instrument for the purpose of expressing its consent to the
provisions of the within Supplementary Declaration of Covenants
and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this
consent as of the 2nd day of February, 1987.

WITNESSES:

John P. Yarns, Jr.
William J. Baker

MIDDLETON PLACE PROPERTY OWNERS
ASSOCIATION, INC. (formerly
MIDDLETON OAKS PROPERTY OWNERS
ASSOCIATION, INC.) (SEAL)

By: John P. Yarns, Jr.
Its: PRESIDENT
By: William J. Baker
Its: SECRETARY

NO. 561-457

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MIDDLETON OAKS PROPERTY
OWNERS ASSOCIATION

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MIDDLETON PLACE PROPERTY OWNERS ASSOCIATION, (formerly MIDDLETON OAKS PROPERTY OWNERS ASSOCIATION, INC.) by Charles N. P. Duell, its Pres., and by Roderick P. Duell, its Sec., sign, seal and as its act deliver the within Consent and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 2nd
day of February, 1987.

William J. Baker (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

J. Mike Jones, Jr.

Ret:
Mrs. Clement, Harris + Tiedale
28 Broad St.
Charleston, S.C.
29401

EXHIBIT A

Vol. 581 p. 458

ALL that certain piece, parcel or tract of land, situate, lying and being in the county of Charleston, State of South Carolina, on the Northeast side of S. C. Highway 61, as shown on that plat of W. L. Gaillard, dated May 3, 1976, and entitled "Plat of A Part of Millbrook Plantation St. Andrews Parish, Charleston County, S.C., owned by Grace H. Carter about to be conveyed to Ashby Farrow and Emily R. Farrow." and recorded in Plat Book W, Page 106, in the R.M.C. Office for Charleston County, S. C., containing according to said plat Fifty-five (55) acres, more or less, be all the dimensions and measurements shown thereon a little more or less.

BUTTING AND BOUNDING and measuring and containing according to said plat as follows: Beginning at a point marked by a concrete post on the Northeastern edge of the 60' foot right-of-way of South Carolina Highway 61, which said point of beginning is approximately 5.1 miles West of the Beas Ferry Road; proceeding thence North 72° 30' West, a distance to 500' to a point; thence North 70° 30' West a distance of 100' feet to a point; thence North 67° 15' West a distance of 100' feet to a point; thence North 10° 00' East a distance of 996' feet to a point; thence North 12° 50' East a distance of 361.02' feet to a point; thence North 5° 00' East a distance of 600.39' feet to a point; thence North 10° 30' East a distance of 540.18' feet to a point; thence South 56° 30' East a distance of 383.46' feet to a point; thence North 83° 00' East a distance of 594.22' feet to a point; thence North 59° 00' East a distance of 278.19' feet to a point; thence South 17° 00' West a distance of 2,833.5' feet to a concrete post, being the point of beginning. Bounded on the Southwest by the said 60' right-of-way of S. C. Highway 61, on the West by "Middleton Gardens," lands of Charles H. P. Duell; on the North by marsh and lands of Charles H. P. Duell; and on the East by lands now or formerly of W. O. Hanahan.

The within-described property was conveyed to Charles H. P. Duell by deed of Ashby Farrow and Emily P. Farrow dated June 15, 1981, and recorded June 17, 1981, at Book S-125, Page 356, RMC Office, Charleston County, South Carolina.

WB

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FILED-RECORDED
MARGIE A. LANG
CLERK OF COURT
DORCHESTER COUNTY

Vol. 581:459

86-1180

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
SECOND AMENDMENT TO DECLARATION
OF COVENANTS AND RESTRICTIONS
Recorded at Vol. 398, Page 255,
Dorchester County Clerk of
Court's Office

This Second Amendment is executed to evidence amendment as set forth below of the instrument originally entitled "Declaration of Covenants and Restrictions of Charles H. P. Duell as pertain to Middleton Oaks" and also entitled "Declaration of Covenants and Restrictions Running With Middleton Oaks and provisions for the Middleton Oaks Property Owners Association" dated December 14, 1979, and recorded December 21, 1979, at Volume 398, Page 255, Office of the Clerk of Court for Dorchester County, South Carolina, as amended previously by instrument dated October 31, 1983, and recorded December 30, 1983, at Volume 504, Page 317, said Clerk's Office, which instrument is hereinafter sometimes referred to as the "Covenants of December, 1979." Pursuant to the provisions of the Covenants of December, 1979, as previously amended, including without limitation the provisions of Part Four, Article II, concerning "Amendments", Section 1 and Section 2 thereof, notice is hereby given that the Covenants of December, 1979, as amended, were further amended on February 2, 1987, by the adoption of the following resolution at a duly called meeting of the members of Middleton Oaks Property Owners Association, Inc., a South Carolina non-profit corporations:

RESOLVED that the name of the Association be and is hereby changed to "Middleton Place Property Owners Association, Inc." and that

2/10/87 86-1180 j 3

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STATE OF SOUTH CAR
DORCHESTER CO.
Filed for record 9:39 A.
day of Feb 1987, and recorded
in book 581, page 459
MARGIE A. LANG
Clerk of Court

rw: 581 112 460

the name given to the area which is subject to the Covenants of December, 1979, recorded at Dorchester County Clerk of Court's Office at Volume 398, Page 255, as amended, be changed to "Middleton Place" and that wherever in the said Covenants of December, 1979, as amended, the term "Middleton Oaks" or "Middleton Oaks Property Owners Association, Inc." or "Middleton Oaks Property Owners Association" or similar term or terms shall appear, such shall be amended to read "Middleton Place" or "Middleton Place Property Owners Association, Inc." or "Middleton Place Property Owners Association" or such similar terminology as may be appropriate to reflect the change of name of both the Association and the name given to the area described in the said Covenants of December, 1979.

The above resolution and amendment to the Covenants of December, 1979, shall be effective as of February 2, 1987.

The date on which the meeting of the Association was held was February 2, 1987, at which a quorum was present and acting throughout.

The date on which the notice of the meeting was given to members of the Association was December 29, 1986.

The number of votes necessary to adopt the Amendment was 81.

The number of votes in favor of the Amendment was 108. The number of votes opposed to the Amendment was -0-. The number of abstentions was -0-.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed as of the 2nd day of February, 1987.

2/10/87 86-1180 j 3

-2-

WITNESSES:

J. Page Young, Jr.
William G. Baker

MIDDLETON PLACE PROPERTY OWNERS
ASSOCIATION, INC. (formerly
MIDDLETON OAKS PROPERTY OWNERS
ASSOCIATION, INC.) (SEAL)

By: Charles H. P. Duell
Its: President
By: Roderick P. Duell
Its: Secretary

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PROBATE

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MIDDLETON PLACE PROPERTY OWNERS ASSOCIATION, INC., (formerly MIDDLETON OAKS PROPERTY OWNERS ASSOCIATION, INC.), by Charles H. P. Duell, its President, and by Roderick P. Duell, its Secretary, sign, seal and as its act deliver the within Second Amendment to Declaration of Covenants and Restrictions and that (s)he with the other witness named above witnessed the execution thereof.

J. Page Young, Jr.

SWORN to before me this 2nd
day of February, 1987.

William G. Baker (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

NYL 581 462

The following join in execution of this instrument to evidence the consent of the undersigned to the adoption of the resolution of name change as set out above:

WITNESSES

S. Ruse Yary, Jr.
William J. Baker

Charles H. P. Duell (SEAL)
CHARLES H. P. DUELL, as Owner

MIDDLETON DEVELOPMENT CORPORATION,
as Company (SEAL)

S. Ruse Yary, Jr.
William J. Baker

By: Charles H. P. Duell
Its: PRESIDENT

By: Patrick P. Duell
Its: Secretary

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PROBATE : VOL. 581 OF 463

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named CHARLES H. P. DUELL, as Owner, sign, seal and as his act deliver the within Second Amendment to Declaration of Covenants and Restrictions and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 2nd
day of February, 1987.

William J. Butts (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

2/1/87 86-1180 j 3

-3-

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PROBATE

Vol. 581 of 464

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MIDDLETON DEVELOPMENT CORPORATION, as Company, by its above-signed officer(s) sign, seal and as its act deliver the within instrument and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 2nd
day of February, 1987.

William G. Baker (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

Ret:
Young, Clement, Kering & Tisdale
28 Broad St.
Charleston, S.C.
29401

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Mar 11 9 45 AM '87

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Vol. 581 P. 465

86-1180

FILED
MAR 11 1987
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

THIRD AMENDMENT TO DECLARATION
OF COVENANTS AND RESTRICTIONS
Recorded at Vol. 398, Page 255
Dorchester County
Clerk of Court's Office

This Third Amendment made this 2nd day of February, 1987, at a duly called meeting of the members of Middleton Place Property Owners Association, Inc. (formerly known as Middleton Oaks Property Owners Association, Inc., and hereinafter sometimes known as the Association), held this date at which meeting a quorum was present and acting throughout and notice of which meeting was given on December 29, 1986. It was necessary for a vote of 81 votes in favor of this Amendment for it to be adopted; this Amendment was approved by a vote of 108 votes in favor, -0- abstentions and -0- opposed. This Amendment is an amendment to the "Declaration of Covenants and Restrictions Running with Middleton Oaks and Provisions for the Middleton Oaks Property Owners Association" dated December 14, 1979, and recorded December 21, 1979, in Vol. 398, Page 255, in the Office of the Clerk of Court for Dorchester County, South Carolina, as previously amended by instrument dated October 31, 1983, and recorded December 30, 1983, at Vol. 504, Page 317, said Clerk's Office, and as amended by instrument entitled "Second Amendment to Declaration of Covenants and Restrictions Recorded at Vol. 398, Page 255, Dorchester County Clerk of Court's Office" dated and to be recorded substantially simultaneously herewith, and as

2/10/87 86-1180 ; 3

-1-

STATE OF SOUTH CAR
DORCHESTER CO.
Filed for record on 2/10/87 at 11:00 AM
day of February 1987, and recorded
in book 581 page 465
M. J. R. [Signature]
Clerk of Court

Vol. 581 Page 466

supplemented by instrument entitled "Supplementary Declaration of Covenants and Restrictions" dated as of the 2nd day of February, 1987, and to be recorded substantially simultaneously herewith (which instrument and amendments are hereinafter sometimes referred to as the Covenants).

The Covenants are hereby amended as follows:

1. Subsection (1), Section 1, of Article I, Part One, is amended to read as follows:

(1) "Proposed Middleton Inn Site" shall mean and refer to the Old Boat Landing Site so designated on prior Master Plan; the lots lettered "A", "B", "C", "D" and "E", so designated on prior Master Plan, Lots No. "2", "4" and "5", so designated on prior Master Plan, Pasture Tract, so designated on prior Master Plan; Pasture, so designated on prior Master Plan; all of which may be used for construction, operation, use and enjoyment of a public inn including without limit not more than 195 bedrooms, restaurant, lawns, tennis, traditional recreation facilities, and meeting and conference rooms or for such other purposes as permitted in Subsection (b), Section 6, of Article II, Part Three hereof. Upon acquisition by Owner of either Lots designated "1" and "3", as shown on prior Master Plan, Owner may, by filing a Supplementary Declaration consented to by Company in writing, add said Lots "1" and/or "3" to the Proposed Middleton Inn Site. The current location of the Proposed Middleton Inn Site may be more fully seen by reference to current Master Plan Drawing by Robert E. Marvin & Associates dated January 1, 1987, entitled "Middleton Place, Ashley River Road, Charleston, South Carolina 29407," as revised from time to time, and shall be more fully and exactly shown on such survey and modifications thereof of Middleton Inn Site as may be recorded in the Office of the Clerk of Court for Dorchester County, South Carolina, from time to time.

2/10/87 86-1180 j 3

-2-

2. Subsection (b), Section 6, of Article II, Part Three, is hereby amended to read as follows:

(b) Old Boat Landing Site, Lots "A", "B", "C", "D" and "E", Lots "2", "4", and "5", Pasture Tract, Pasture (Proposed Middleton Inn Site); construction and operation of a hotel, not to exceed 195 bedrooms, with food and beverage facilities and meeting and conference rooms, the architectural character of which shall not be inconsistent with the historic preservation and environmental conservation objectives of the National Historic Landmark and Middleton Place; entry roads; Public or Private Open Space; Purchased Common Property; development and operation of tennis courts and/or other recreation facilities; development of not more than one hundred fifty (150) Family Dwelling Units. (This is intended to include, in addition to other property, generally land shown on prior Master Plan dated July 1, 1979, by Robert E. Marvin & Associates between the road leading from Highway 61 to Rice Fields Park on the east, Middleton Place National Historic Landmark boundary on the west, Highway 61 on the south, and the northern boundary of Old Boat Landing Tract on the north.)

3. Section 6, of Article II, Part Three, is further amended to delete subparagraph (c) dealing with "Pasture Tract."

4. Subsection (f), Section 6, of Article II, Part Three, is hereby deleted, in order to reflect that the former Pinewood Tract no longer appears as a separate tract on the current Master Plan but is a part of the proposed Residential Lots constituting House Sites at Middleton Place, on current Master Plan.

5. Section 6, of Article II, Part Three, is amended to add Subsection (h) to read as follows:

WOL 581 ME 468

(h) Future development: The area designated "Future Development" on current Master Plan and bounded east by property now or formerly of W. O. Hanahan, south by Lot 37, a proposed lake, Lot 23 and an entrance road, west by Lot 21 and by a line drawn from the northeast corner of Lot 21 parallel to the common boundary with W. O. Hanahan to marsh and north by marsh may be used for Public or Private Open Space, Purchased Common Property and residential development of not more than fifteen (15) Family Dwelling Units.

6. Part One, Article I, Section 1, is amended to delete the "Ravine" from the definition of "Private Open Space" appearing at Subsection (k) thereof and to redefine "Ravine" as a part of "Public Open Space" defined at Subsection (j) thereof.

7. Notwithstanding any other provision or provisions of the Covenants to the contrary, the Rice Field Park tract may be used for the construction, operation, and maintenance of facilities related to operation of the Middleton Inn Site and improvements thereon, and the Rice Field Park tract shall be available for use by guests of the Middleton Inn as to any such facilities constructed by or on behalf of the owner (from time to time) of the Middleton Inn Site.

8. The Covenants are further amended as may be necessary in order to bring other provisions thereof into compliance with the provisions and intent of the within stated amendments to the Covenants whether such amendments are expressly stated herein or not, it being the intention to amend the

2/10/87 86-1180 j 3

-4-

Vol 581 p. 469

Covenants as set forth herein with particularity and to amend any other provisions of the Covenants which may be inconsistent or incompatible with the within stated amendments.

9. As of the time hereof, the Master Plan for Middleton Place as defined in the Covenants, as amended, as shown on drawing by Robert E. Marvin & Associates, dated January 1, 1987, entitled "Middleton Place, Ashley River Road, Charleston, South Carolina 29407" in the possession of the Company and/or Owner, but nothing herein is intended nor shall be construed to be in derogation of the power of the Company, subject to the Owner's consent, to review and modify the Master Plan at its sole option from time to time as stated in the Covenants.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the 2nd day of February, 1987.

2/10/87 86-1180 j 3

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WT. 581 112 470

WITNESSES:

MIDDLETON PLACE PROPERTY OWNERS
ASSOCIATION, INC. (formerly
MIDDLETON OAKS PROPERTY OWNERS
ASSOCIATION, INC.) (SEAL)

J. Ruffe Jones Jr.
William J. Ruffe

By: Chas. H. P. D.
Its: President
By: Frederick P. D.
Its: Secretary

2/1/87 86-1180 j 3

-6-

WV. 581 471

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PROBATE

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MIDDLETON PLACE PROPERTY OWNERS ASSOCIATION, INC. (formerly MIDDLETON OAKS PROPERTY OWNERS ASSOCIATION, INC.), by Charles H. P. Duell, its President, and by Roderick P. Duell, its Secretary, sign, seal and as its act deliver the within Third Amendment to Declaration of Covenants and Restrictions and that (s)he with the other witness named above witnessed the execution thereof.

J. Duke Jones, Jr.

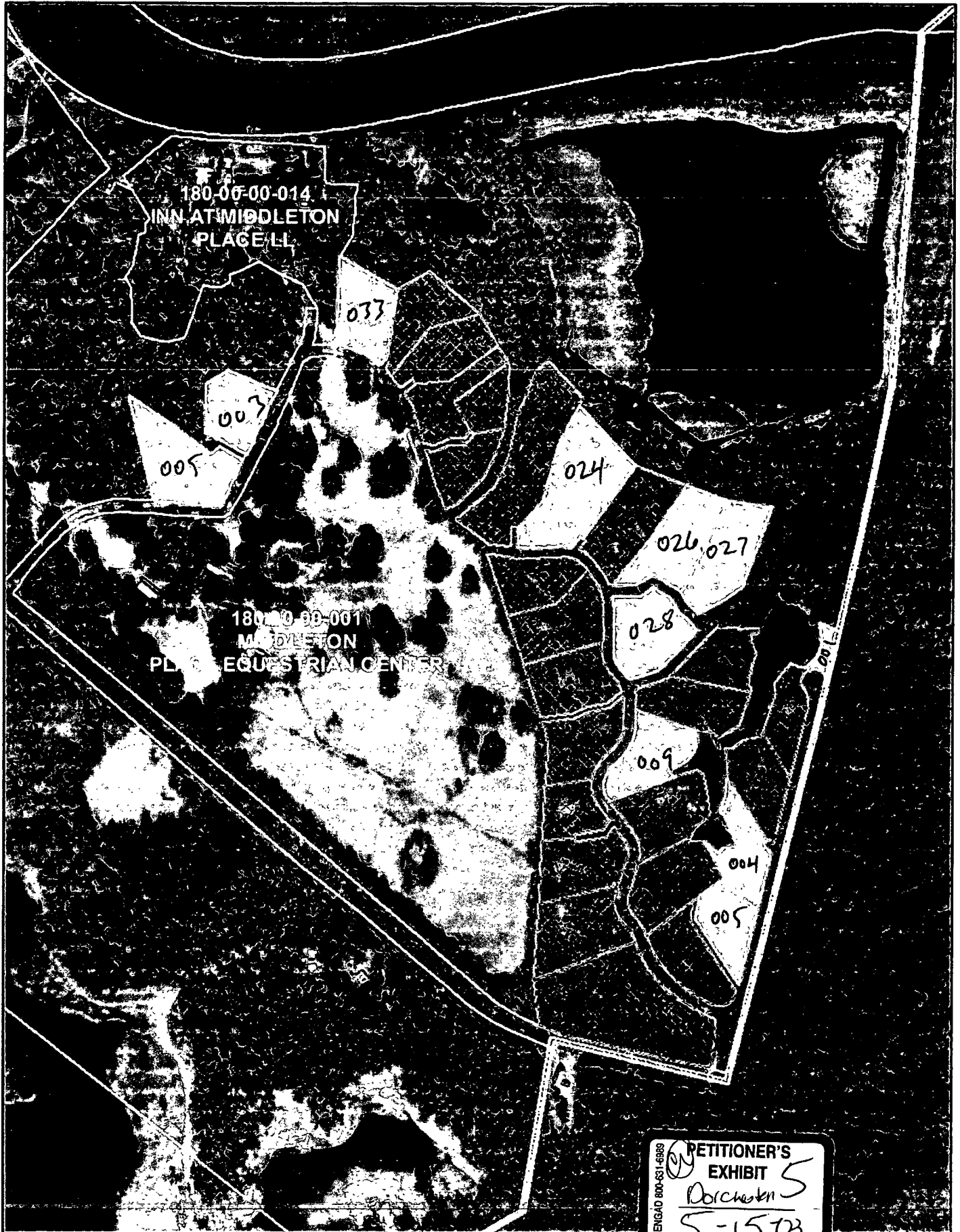
SWORN to before me this 2nd
day of February, 1987.

William G. Parker (SEAL)
Notary Public for South Carolina
My Commission expires: 2-14-88

Ref:
Mrs. Clement, Harris & Tidwell
28 Broad St.
Charleston, S.C.
29401

2/1/87 86-1180 j 3

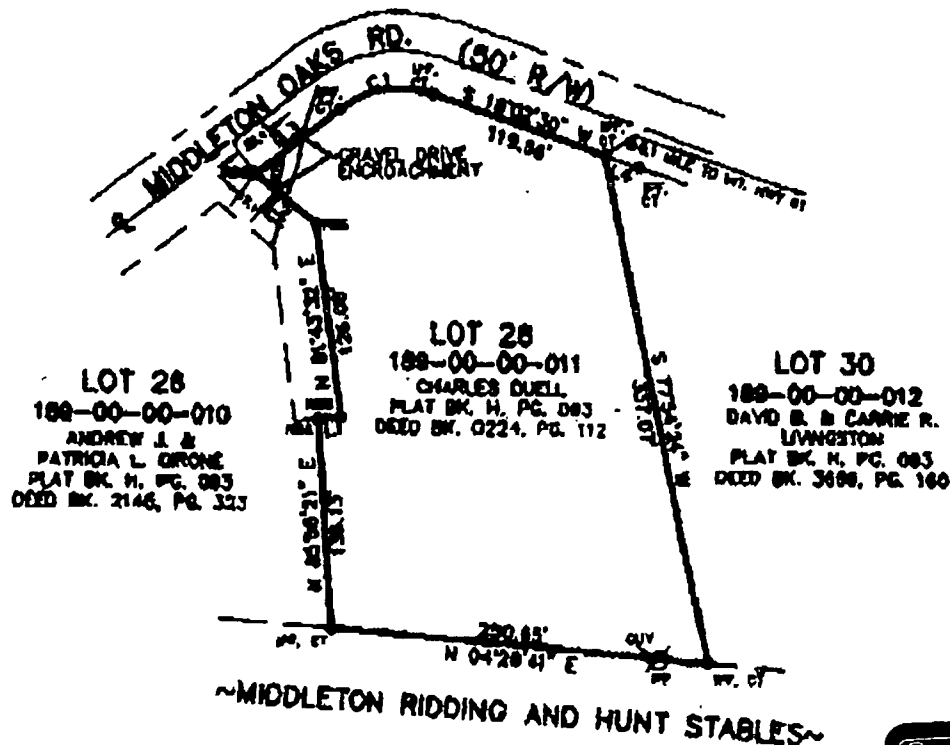
-7-



CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	87.70	88.88	38.78	63.07	N 08°48'38" W	98°41'01"

LINE TABLE		
LINE	LENGTH	BEARING
L1	15.00	S 08°18'28" E
L2	80.84	N 77°34'21" E
L3	89.08	S 72°38'47" E
L4 (100)	23.13	S 18°02'30" W

Z ————— MAGNETIC



TAX MAP NO. 188-00-00-011

REFERENCE PLAT BY JOEL P. PORCHER DATED NOVEMBER 20, 1980, RECORDED IN SLIDE H, PAGE 93 IN THE CHARLESTON COUNTY R.M.C. OFFICE.

BY FEMA FIRM 4500088-0310 C DATED APRIL 15, 1984 (INDEX DATE SAME) THIS PROPERTY IS LOCATED IN FLOOD ZONE X. AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN.

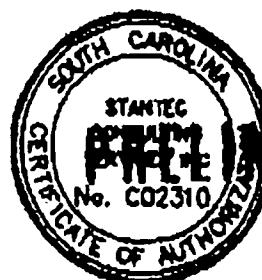
TOTAL AREA OF LOT 28 IS 1.748 AC. (78,042 SQ. FT.)

LEGEND:

W/F, CT - 3/4" IRON PIPE FOUND, CRAMPED TOP
RBS - 5/8" REBAR SET

I, Richard L. Wooten, Jr., a Professional Land Surveyor of the State of South Carolina, hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown.

RICHARD L. WOOTEN, JR.
LAND SURVEYOR
S.C. Reg. No. 19898



X:\17733\Survey\1770000000\LOT28\Lot28.dwg
1/27/2008 2:04:31 PM ADAMS, Sherrill A.

100 50 0 100
SCALE IN FEET

SEPTEMBER 27, 2008

Stantec Consulting Services Inc.
800 Morrison Drive
Charleston SC U.S.A.
29403

843.577.4926
843.723.0440

PREPARED FOR McDonald Law Offices
LOT 28 - THE HOUSE SITE AT MIDDLETON PLACE
BORCHERTON COUNTY, SOUTH CAROLINA

Drawn By: LK-2014
No.

LOT SURVEY

Middleton Place

August 11, 1993

Mr. Joe Murray, Assessor
Dorchester County
P. O. Box 613
St. George, SC 29477



Dear Joe,

As we discussed by telephone, I am following up in writing to ask for your understanding and help in correcting the eighteen (18) recently received Notices of Classification, Appraisal & Assessment of Real Estate for the 1993 Tax Year including tax map numbers 180-00-00-024 through 029, 031 through 033, and 189-00-00-001 through 009. Last year and in previous years, this property was all included in tax map number 180-00-00-001, appraised for agricultural use and assessed at the 4% ratio.

Please be advised that there has been no change in the ownership or land use of the above referenced property. We have for some years now had available for sale a number of residential building sites. And with the exception of one that I gave to my half-brother Rod Duell (#23), all that have been sold on the recorded plat dated November 20, 1990 (#9, 10, 11, 13, 14, 16, 18, 22, 24 and 26) are in a group along the road bordering the pastures of the Middleton Riding and Hunt Stables. As part of the preservation and conservation planning for Middleton Place, these sites have been sold at the rate of less than one a year over the past fifteen years.

To wit, we are not developers on a fast track, but rather farmers simply trying to conserve as best we can lands that have benefitted from the stewardship of our family for some three hundred years. The remaining housesites are today just broad stretches of open woodlands that are managed as part of the Middleton Place timber farming program that covers over six thousand acres still recovering from Hurricane Hugo.

While the overall plan to sell a limited number of housesites at a slow pace and only record each housesite as it was sold was originally approved by the Dorchester County Zoning Board, three years ago the Board requested that we record a complete plat to facilitate future closings. At a meeting of the Board that I attended in the fall of 1990, the subject of taxation was specifically discussed, and it was stated that Middleton Place could not record the mapping of future housesites within its woodlands (that someday might or might not be sold) if it would jeopardize the agricultural land use status of that part of our woodlands. I was assured at that time that there would be no tax-status change until these properties were sold or the land use changed.

Joe, I hope and trust that with your consideration of the above facts, you can rescind the above-referenced notices and return the property to its appropriate woodland status as part of 180-00-00-001 with an agricultural land use designation as provided by the South Carolina Tax Code.

Thanks for your advice and assistance and do call me if you would like to talk further. I will look forward to hearing from you at your convenience.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line.

Charles Duell



DORCHESTER COUNTY ASSESSOR'S OFFICE

201 Johnston Street
St. George, SC 29477
(843) 563-0162 or (843) 832-0162

January 24, 2012

Middleton Place Equestrian Center LLC
21 E. Battery Street
Charleston, SC 29401-2740

RE: Agricultural Use on TMS#'s
180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026,
180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001,
189-00-00-004, 189-00-00-005, 189-00-00-009 owned by Middleton
Place Equestrian Center LLC

To Whom It May Concern,

This office is in the process of checking parcels with less than 5 acres of land that are currently receiving the Agricultural Use Value to make sure that they qualify for this special valuation.

The above parcels do not qualify for the Agricultural Use. They are part of Middleton Oaks Subdivision. The subdivision restrictions prohibit the removal of any trees without the written approval of the Architectural Board. Therefore, the Agricultural Use Value will be removed from these parcels for the 2012 tax year.

If you have any questions concerning this change, please contact me.

Sincerely,

Wayne Welch
Dorchester County Assessor
WWelch@DorchesterCounty.net
843-832-0156



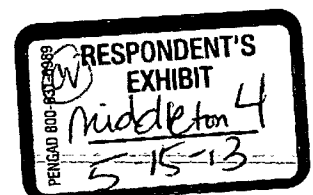
DORCHESTER COUNTY TAX ID'S OF HOUSE SITES AT MIDDLETON PLACE

HOUSE SITES THAT COULD BE SOLD		
HOUSE SITE #/DESC.	TMS NUMBER	ACRES
HOUSE SITE #19	180-00-00-026 C	1.98
HOUSE SITE #20*	180-00-00-028 C	1.90
HOUSE SITE #21	180-00-00-027 C	1.92
HOUSE SITE #27	189-00-00-009 C	1.63

Combined into
single site

*#20 Not for Sale except combined with #19 & #21

HOUSE SITES NOT FOR SALE AND ABANDONED		
HOUSE SITE #/DESC.	TMS NUMBER	ACRES
HOUSE SITE #1	180-00-00-005 C	2.20
HOUSE SITE #3	180-00-00-003 C	1.30
HOUSE SITE #6	180-00-00-033 C	1.60
HOUSE SITE #15	180-00-00-024 C	3.08
HOUSE SITE #33	189-00-00-005 C	1.25
HOUSE SITE #34	189-00-00-004 C	1.34
HOUSE SITE #37	189-00-00-001 C	.29





**RESPONDENT'S EXHIBIT NUMBER FIVE
LARGE PLAT**

FILED SEPARATELY – OVERSIZED

RESPONDENT'S EXHIBIT NUMBER SIX
GLOSSY ARCHITECTURAL PHOTO
FILED SEPARATELY - OVERSIZED

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

Case No. 12-ALJ-17-0542-CC

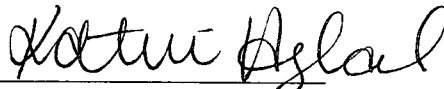
Dorchester County Assessor Appellant,

v.

Middleton Place Equestrian Center, LLC Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material included by any of the parties and not any other material.



Katherine H. Hyland, S.C. Bar No. 76436

kate@hartfirm.com

HART HYLAND SHEPHERD, LLC
207 East 1st North Street (29483)

Post Office Box 130

Summerville, SC 29484

(843) 410-0711

ATTORNEYS FOR RESPONDENT

July 17, 2014

Summerville, South Carolina

RECEIVED

JUL 22 2014

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

Case No. 12-ALJ-17-0542-CC

Dorchester County Assessor.....Appellant,

v.

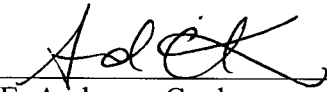
Middleton Place Equestrian Center, LLC.....Respondent.

CERTIFICATE OF SERVICE

I, E. Andersen Cook, an employee of Hart Hyland Shepherd, LLC, certify that I have served the following documents on the Respondents:

- Appellant's Final Brief;
- Final Reply Brief; and
- Record on Appeal, not including the two oversized exhibits filed separately, which are already in the possession of the Respondents;

by depositing a copy of each in the United States Mail, postage prepaid, on July 21, 2014, addressed to their attorney of record, Thomas Pritchard, Pritchard Law Group, 129 Broad St., Charleston, South Carolina 29401.


E. Andersen Cook
HART HYLAND SHEPHERD, LLC
Post Office Box 130
Summerville, SC 29484
(843) 410-0711
ATTORNEY(S) FOR APPELLANT

Summerville, South Carolina
July 21, 2014

RECEIVED

JUL 22 2014

SC Court of Appeals