THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

RECEIVED
OCT 25 2018
SC Court of Appeals

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Appellate Case No. 2016-001789

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The Edgewater on Broad Creek Owners Association, Inc.
and
the Council of Co-Owners of the Edgewater on Broad Creek Horizontal Property Regine Phase I, .....Plaintiffs

Of which The Edgewater on Broad Creek Owners Association, Inc. is the .....Respondent

v.

Ephesian Ventures, LLC.....Appellant.

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RECORD ON APPEAL
VOLUME I

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**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF BEAUFORT**
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2011-CP-07-2994**

The Edgewater on Broad Creek Owners Association, Inc.,
PLAINTIFF(S)

Ephesian Ventures, LLC,
DEFENDANT(S)

| **Submitted by:** Wm. Weston J. Newton | **Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant |
|---|---|

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Order Granting Plaintiff's Motion for Partial Summary Judgment

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

**INFORMATION FOR THE JUDGMENT INDEX**

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

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

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

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

**Circuit Court Judge** | 3069 **Judge Code** | 2/19/16 **Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the 26 day of Feb, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of March, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT** Marlene Kinard Judicial Clerk

**Court Reporter:**

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

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

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| | ) | **FOURTEENTH JUDICIAL CIRCUIT** |
| **COUNTY OF BEAUFORT** | ) | **CIVIL ACTION NO. 2011-CP-07-2994** |
| **THE EDGEWATER ON BROAD CREEK OWNERS ASSOCIATION, INC.,** | ) | |
| **Plaintiff,** | ) | **ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** |
| **v.** | ) | |
| **EPHESIAN VENTURES, LLC,** | ) | |

2016 FEB 26 PM 3:56
BEAUFORT COUNTY, S.C.
CLERK OF COURT

| | |
|---|---|
| **Date/Time of Hearing:** | **Monday, September 21, 2015, 1:30 p.m.** |
| **Presiding Judge:** | **Hon. Marvin H. Dukes, III** |
| **Certified Court Reporter:** | **Ceil Weser** |
| **Plaintiffs' Counsel:** | **Wm. Weston J. Newton, Esq.; Michael W. Mogil, Esq. F. Ward Borden, Esq.** |
| **Defendant's Counsel:** | **M. Dawes Cooke, Jr., Esq. and Michael Barfield, Esq.** |

This matter came before me on the 21st day of September, 2015 at 1:30 p.m. on Plaintiff's Motion for Partial Summary Judgment (hereinafter "Plaintiff's Motion"), the Affidavit of William J. Eisenman in Support of Motion for Partial Summary Judgment (hereinafter "Eisenman Affidavit"), and Plaintiff's Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment (hereinafter "Plaintiff's Memo"), at which time counsel for the respective parties presented oral arguments to the Court on the referenced motion and associated documents.

Having reviewed the pleadings, the evidence presented and considered the arguments of counsel, I find there to be, pursuant to Rule 56, South Carolina Rules of Civil Procedure and other applicable law, no genuine issues of material fact as to the relief considered and to be granted, and that partial summary judgment is merited as a matter of law. Accordingly, Plaintiff's Motion for Partial Summary Judgment is granted in part as follows:

a) There is no restrictive covenant that is controlling to, conflicts with, or prohibits Plaintiff from making improvements on the property of the Regime; any claim of the Defendant of a right to improve the 7.64-acre Regime is non-exclusive and is expressly limited to improvements "pertaining to The Edgewater on Broad Creek Horizontal Property Regime";

b) Plaintiff may construct a swimming pool and/or other common or recreational amenities on the common elements of the Regime, subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from any prior approval or veto by the Defendant;

c) Plaintiff has the right to construct improvements on the unimproved portions of common elements of the Regime, to wit, the Plaintiff may construct or build upon, use, sell or encumber its remaining common elements subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from any prior approval or veto by the Defendant;

d) Any claim of the Defendant as successor to the Declarant of a right to use the existing Clubhouse as a sales office is extinguished;

e) Any claim of the Defendant as successor to the Declarant of rights to relocate the Association's ingress and egress to Marshland Road, being located within the 7-64-acre Regime, is extinguished.

## Findings Of Fact

1. Any Finding of Fact that should be more properly designated as a Conclusion of Law is so relabeled and any Conclusion of Law that might need to be a Finding of Fact is so amended in order to allow for the efficient implementation of these results.

2. This Court has jurisdiction of the parties before it, and over the subject matter raised in this case.

3. Plaintiff is a South Carolina non-profit corporation created by recordation with the S.C. Secretary of State on September 16, 2002 of Articles of Incorporation.[1] Plaintiff is the business entity established to be the incorporated "council of co-owners"[2] of Edgewater on Broad Creek Horizontal Property Regime (hereinafter "Regime"). The "declarant" of the Regime was Broad Creek Edgewater, L.P., a South Carolina limited partnership. The Regime came into existence by recordation of a Master Deed dated December 19, 2002 which, with exhibits, was recorded on December 31, 2002, in the Office of the Beaufort County Register of Deeds in Book 1689 at Page 0574.[3]

4. Phase I of the Regime consists of 7.64 acres. Construction of 23 units in addition to common elements associated therewith occurred. An additional 16.01 adjacent acres were designated to possibly be added/"phased into" the Regime ("Additional Land"). (Plaintiff's Memo, Exhibit 2, Exhibit A-1 therein)

5. As initially described, the Regime, were it to have included all Additional Land, would have had a maximum of 147 units, plus multiple amenities. (Plaintiff's Memo, Exhibit 2, Section 6(b)(1)) Pursuant to the Master Deed, the declarant had until December 31, 2010 to

[1] Exhibit 1 to Plaintiff's Memo is a certified copy of Plaintiff's Articles of Incorporation.
[2] S.C. Code § 27-31-20(e) (1976 as amended); and Plaintiff's Memo, Exhibit 2, Section 4(l).
[3] Plaintiff's Memo contains a certified copy of the Master Deed, with exhibits attached and incorporated as Exhibit 2. A copy of a plat of the site is attached to Plaintiff's Memo as Exhibit 2A. *See, also*, S.C. Code § 27-31-30 (1976 as amended).

submit Additional Land to the Regime. (Plaintiff's Memo, Exhibit 2, Section 6(b)(2)) Neither the Declarant, nor its successor Defendant Ephesian Ventures, LLC, added Additional Land to the initial 7.64-acre Regime in the time allotted in the Master Deed.[4]

6. By October 2006, all 23 units of Phase I of the Regime, which together with common elements constituted the entire Regime to that time, had been conveyed to *bona fide* purchasers for value.[5] Moreover, a court of competent jurisdiction on or about October 31, 2006, ruled, without limit, that a board of directors had been elected to, with its appointed officers, operate Plaintiff Association to the extent of the 7.64 acres then constituting the Regime.[6]

7. Creditors caused filing of an Involuntary Petition putting Declarant Broad Creek Edgewater, L.P. into Chapter 7 bankruptcy on or about May 9, 2007 in the United States Bankruptcy Court, District of South Carolina. That Court, by Order entered May 28, 2008, approved the Chapter 7 Trustee's proposal to sell the 16.01 acres ("Edgewater Property") owned by the debtor to "Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the Buyer)."[7]

8. Subsequently, the Chapter 7 Trustee entered with others into a "Bill of Sale and Instrument of Assignment and Assumption."[8] According to the recitals of the Bill of Sale and Instrument of Assignment and Assumption, Bear Properties, LLC entered into an Agreement of Purchase and Sale of Real Property dated May 6, 2008 and assigned all rights and interests in the Agreement to Appian Visions, LLC, a Georgia limited liability company. Appian Visions, LLC, according to the referenced recitals, assigned all of its rights and interests in the Agreement to the Defendant in this case, Ephesian Ventures, LLC, a Nevada limited liability company. (Plaintiff's Memo, Exhibit 6, Page 1) The Chapter 7 Trustee subsequently executed a Quit Claim Deed to Ephesian Ventures, LLC.[9] In addition to the 16.01 acres of property adjacent to, but never added to the Regime, the Bill of Sale and the Quit Claim Deed purported to transfer to Defendant Ephesian Ventures, LLC certain Declarant rights formerly held by Declarant Broad Creek Edgewater, L.P.

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[4] The declarant Broad Creek Edgewater, L.P. only submitted the 7.64 acres of Phase I to the Regime.
[5] A certified copy of the initial deeds to Regime units and common elements is attached and incorporated in Plaintiff's Memo as Exhibit 3a – 3y.
[6] A certified copy of the referenced order, from Beaufort County Court of Common Pleas, Civil Action No. 2006-CP-07-2556 is attached and incorporated into Plaintiff's Memo as Exhibit 4.
[7] A copy of the Bankruptcy Court's May 28, 2009 Order Approving Sale is attached and incorporated to Plaintiff's Memo as Exhibit 5.
[8] A true copy of the Bill of Sale and Instrument of Assignment and Assumption is attached and incorporated into Plaintiff's Memo as Exhibit 6.
[9] A certified copy of the Quit Claim Deed is attached and incorporated into Plaintiff's Memo as Exhibit 7.

9. As described in paragraphs 6 through 9 of Plaintiff's Complaint, a swimming pool had been constructed entirely upon part of the 16.01 acres to which Defendant Ephesian Ventures, LLC had become owner.

10. When Plaintiff began undertaking changes and improvements to the 7.64-acre Regime, disagreements with Defendant arose. In rough chronological order, Plaintiff, Defendant Ephesian Ventures, LLC and the Town of Hilton Head Island played out, without limit, the following events.

• March 2010 – Plaintiff sought a pool permit to construct on Regime (7.64 acres) common elements a swimming pool, and the Design Review Board for the Town of Hilton Head Island approved the proposal after an April 2010 merits hearing.[10]

• Plaintiff began constructing a tabby walk without permit and was stopped by the Town of Hilton Head Island.

• April 12, 2010 – Plaintiff submitted an XDPR permit application for tabby walk.[11]

• April 15, 2010 – The Town of Hilton Head Island issued a Notice of Action (approval) for sidewalk (tabby walk).[12]

• April 15, 2010 – Letter of Defendant Ephesian Ventures, LLC, by counsel, informed Nicole Dixon of the Town of Hilton Head Island that in addition to specific records relating to the Plaintiff, that Defendant desired "receiving copies of any applications submitted by the Edgewater HOA [Plaintiff] with respect to the sidewalk or other pathway installation which is underway last week, which we understand has been stopped by the Town."[13]

• April 20, 2010 – E-mail from Nicole Dixon to counsel for Ephesian Ventures, LLC informing that an applicant for the Plaintiff came in and got an XDPR for the tabby walk last week and it was approved and work completed. Ms. Dixon also said that when Plaintiff came in for the "DPR" for the pool, she would let Defendant's counsel know.[14]

• April 28, 2010 – Ephesian Ventures, LLC, by letter of its counsel demanded that the Notice of Action issued for the tabby walk be rescinded. It appears that only a portion of the statutory authority for the request was excerpted. Defendant also sought, without hearing, a rescission based upon Plaintiff allegedly having misrepresented itself concerning restrictive covenants in a manner violating the S.C. Code § 6-29-1145(B)(3) (1976 as amended)[15]

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[10] A true copy of Plaintiff's pool permit application is attached and incorporated into Plaintiff's Memo as Exhibit 8.

[11] A true copy of Plaintiff's XDPR application for the tabby walk is attached and incorporated into Plaintiff's Memo as Exhibit 9.

[12] A true copy of the Notice of Action for Plaintiff's tabby walk is attached and incorporated in Plaintiff's Memo as Exhibit 10.

[13] A true copy of the April 15, 2010 letter of Defendant's counsel is attached and incorporated in Plaintiff's Memo as Exhibit 11.

[14] A true copy of the e-mail of Nicole Dixon to Defendant's counsel is attached and incorporated in Plaintiff's Memo as Exhibit 12.

[15] A true copy of the April 28, 2010 letter of Defendant's counsel [unsigned] is attached and incorporated in Plaintiff's Memo as Exhibit 13.

• April 30, 2010 – Town of Hilton Head Island notified the Plaintiff its Notice of Action for the tabby walk was rescinded.[16]

• May 17, 2010 – Plaintiff appealed the rescission of the Notice of Action by the Town of Hilton Head Island.[17]

• June 25, 2010 – The Town of Hilton Head Island issued a letter which stated that granting Ephesian Ventures, LLC its requested relief of rescission of Plaintiff's Notice of Action had been error, since making a finding of a misrepresentation about a restrictive covenant required a public hearing to make such a finding. The Town determined to hold the April 30, 2010 Notice of Action in abeyance until the covenant issue was resolved.[18]

• July 8, 2010 – Ephesian Ventures, LLC wrote a letter to Town of Hilton Head Island official Teri B. Lewis informing her it was her duty to rescind Plaintiff's Notice of Action.[19]

• July 9, 2010 – Ephesian Ventures, LLC filed an appeal to the Planning Commission.

• July 26, 2010 – Teri B. Lewis of the Town of Hilton Head Island, by letter, informed Ephesian Ventures, LLC that she would not grant relief it requested without resolution of the covenant issue.

• August 9, 2010 – Ephesian Ventures, LLC appealed to the Board of Zoning Appeals and the Planning Commission.[20]

• August 19, 2010 – Teri B. Lewis decided that the Planning Commission was not the correct body to hear the Ephesian Ventures, LLC appeal.[21]

• September 7, 2010 – Ephesian Ventures, LLC appealed the latest ruling of Teri B. Lewis to the Board of Zoning Appeals and the Planning Commission for the Town of Hilton Head Island.

• September 8, 2010 – Teri B. Lewis decided that the Planning Commission was not the correct body to hear the Ephesian Ventures, LLC appeal.

• March 24, 2011 – Town of Hilton Head Island, by counsel, opined to the Board of Zoning Appeals that rescission by a Town official of Plaintiff's XDPR prior to resolution of the covenants issue would be error.[22]

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[16] A true copy of Teri B. Lewis's communication to Plaintiff dated April 30, 2010 is attached and incorporated in Plaintiff's Memo as Exhibit 14.
[17] A true copy of Plaintiff's appeal of rescission of XDPR is attached and incorporated in Plaintiff's Memo as Exhibit 15.
[18] A true copy of the June 25, 2010, letter of Teri B. Lewis is attached and incorporated in Plaintiff's Memo as Exhibit 16.
[19] A true copy of the July 8, 2010 letter of Defendant's counsel to Teri B. Lewis [unsigned] is attached and incorporated in Plaintiff's Memo as Exhibit 17.
[20] A true copy of Defendant's August 9, 2010 appeal to the Board of Zoning Appeals similar to that sent to the Planning Commission is attached and incorporated in Plaintiff's Memo as Exhibit 18.
[21] A true copy of a Teri B. Lewis letter to Defendant's counsel dated August 19, 2010 is attached and incorporated in Plaintiff's Memo as Exhibit 19.

• September 21, 2015 – There are four separate pending appeals by Ephesian Ventures, LLC with the Town of Hilton Head Island opposing a shell walkway and a small swimming pool proposed for the 7.64 acres owned by Plaintiff. Given the four referenced pending appeals at the Town of Hilton Head Island, the parties came to be before this Court now because of tolling on hearing the appeals at the Town of Hilton Head Island until this Court had made a determination on the existence and applicability of restrictive covenants being referenced.

11. In appeals by Defendant Ephesian Ventures, LLC to the Town of Hilton Head Island Board of Zoning Appeals, and the Planning Commission, the Defendant did not articulate specifics regarding how the Plaintiff's added sidewalk and/or Notice of Action for same, tangibly conflicted with a right or easement held by the Defendant.[23] The Defendant did not in writing assert that its easements or rights over the 7.64-acre Regime are exclusive.

12. The unit owners comprising Plaintiff Association were comparatively passive observers to the events that caused their neighbor to be Defendant Ephesian Ventures, LLC, and bear little if any responsibility for the basic circumstances. Ephesian Ventures, LLC was conveyed title to 16.01 acres and was assigned certain rights – said assignment being subject to existing vested rights of others and to the laws of the State of South Carolina. No one waived their rights simply because Defendant was assigned rights.

13. A review of the Master Deed of the Regime shows that: (a) the Regime is a horizontal property regime consisting of 7.64 acres in which there are 23 condominium units and common elements appurtenant thereto which were part of the conveyancing of the fee simple title to the units; (b) the common elements within the 7.64-acre Regime is owned *pro rata* as tenancy in common by the unit owners; (c) the time for a Declarant or the Defendant as assignee to Declarant rights to add land to the Regime thereby potentially diluting the interest of unit owners in common elements expired on December 31, 2010, and no such power remains for the declarant or the Defendant; (d) easements held by the Declarant and/or Defendant, with minor exception, are not held for exclusive use; and (e) some provisions of the Master Deed could be deemed to conflict with public policy.

14. While inquiring of its right to file a written response to the motion, affidavit and memorandum submitted by the Plaintiff, and having been granted the opportunity, the Defendant did not submit written opposition to Plaintiff's submissions now considered.

---

[22] Attached hereto and incorporated herein as Exhibit 20 of Plaintiff's Memo is a true copy of a March 24, 2011 Memorandum of Curtis L. Coltrane, of Alford, Wilkins & Coltrane, L.L.C., for the Town of Hilton Head Island, opining that under § 16-3-310, Code of the Town of Hilton Head Island (1983 as amended) the disputed covenant issue between Plaintiff and Defendant would, without limit, need to be resolved by declaratory judgment action brought in Circuit Court.

[23] Attached and incorporated in Plaintiff's Memo as Exhibit 21 is the Affidavit of William Eisenman.

## Conclusions of Law

1. Plaintiff Association has made its Motion for Partial Summary Judgment pursuant to Rule 56, South Carolina Rules of Civil Procedure, and other applicable law, seeking a declaratory judgment. Law applicable to Plaintiff's request for relief includes the following. Rule 56 states in relevant part as follows:

> **(c) Motions and Proceedings Thereon.** ... The judgment sought shall be rendered forthwith *if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law*. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. .
>
> * * *
>
> **(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and *opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence*, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. ... When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, *by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.* If he does not so respond, summary judgment, if appropriate, shall be entered against him. Rule 56(c) and (e), SCRCP (2014). (emphasis added)

2. In applying Rule 56, SCRCP, the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party. However, a party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of his pleading. "'When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011), *quoting*, Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. ... In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id., *citing*, Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330-331, 673 S.E.2d 801, 803 (2009). Here, Defendant has submitted no evidence to avoid summary judgment.

3. Plaintiff has sought the approval of Town of Hilton Head Island authorities to build a swimming pool on a common element portion of the 7.64-acre Regime, and with a Notice of Action to an XDPR application that was briefly rescinded, to also build a tabby walk, again on common elements of the 7.64-acre Regime. Defendant has administratively opposed each. (Plaintiff's Memo, Exhibits 11, 13, 18 and 21) In this lawsuit, among other things, Defendant argues in defenses an alleged lack of standing of Plaintiff. (*See*, Paragraph 34 of Defendant's Answer and Counterclaims)

Upon best information, Defendant references Article VII, Section 15 of the Regime Bylaws, which are Exhibit D to the Master Deed attached as Exhibit 2 to Plaintiff's Memo as support for its position that the Plaintiff lacks standing to maintain this action without prior approval of its owners. First, by Court Order of October 31, 2006, the viability of a unit owner-constituted Board of Directors was recognized for administering Plaintiff Association. Second, Exhibit 21 of Plaintiff's Memo, the Affidavit of William Eisenman, makes clear that the Article VII, Section 15 member approval requirement was revoked after January 1, 2010 by the Board of Directors, as permitted. For the reasons stated, the standing argument of Defendant has no merit.

4. There is no basis to "turn back the clock" on the decision of Declarant Broad Creek Edgewater, L.P. to submit the 7.64-acre Phase I to the S.C. Horizontal Property Act. Accordingly, the Regime property's purpose and its density remain unchanged from that initially decided upon and marketed. As a *developer* on December 31, 2002, Declarant Broad Creek Edgewater, L.P. took *development action* of creating The Edgewater at Broad Creek Horizontal Property Regime by causing at that time the recording in the Office of the Beaufort County Register of Deeds a Master Deed prepared for the most part in accordance with the Act. Broad Creek Edgewater, L.P. was thus a developer and Declarant. That Master Deed dedicated 7.64 acres at that time to the Act. Before *Defendant* ever received an instrument assigning it property, rights or easements, the units together with appurtenant common elements of the 7.64 acres submitted to the Act had been conveyed for value to *bona fide* purchasers.

In paragraph 56 of its Answer and Counterclaim, Defendant claims not only to be assignee of separate and distinct developer rights versus Declarant rights, but seems to imply that since development rights preceded Declarant rights, that Defendant possesses some power that purportedly *relates back* to pre-condominium days; despite the fact that no such reservation of rights existed at the time of submission of the 7.64 acres to the Act, and the conveyance of units to *bona fide* purchasers.

An assignee such as the Defendant generally can obtain no more than that held by the assignor. "Whether Washington's role in the present litigation is that of assignee or equitable subrogee is, we think, relatively unimportant. In either event Washington stands in the shoes of the receiver, who in turn stood in the shoes of Hamlet. If Washington be regarded as an assignee, it can, by virtue of code section 10-706, have no higher right against Kirkland than did Hamlet." W.M. Kirkland, Inc. v. Providence Washington Insurance Co., 264 S.C. 573, 579, 216 S.E.2d 518, 520-521 (1975). "An assignee of a chose in action can claim no higher rights than his assignor had at the time of the assignment." Singletary v. Aetna Casualty & Surety Co., 316 S.C. 199, 202, 447 S.E.2d 869, 870 (Ct. App. 1994).

In looking at an assignment of development rights, the appellate court in Cullen v. McNeal, 390 S.C. 470, 702 S.E.2d 378 (Ct. App. 2010), was guided largely by the applicable "Declarations," i.e., a document equivalent to the Master Deed here. The court approvingly noted the ruling of the circuit court, stating in part, "§ 1.12 of the Declarations provides for a successor-in-title or successor-in-interest to the Developer of Wright's Point. ... In June 2007, Anthony Porter and Jimmy Porter assigned their development rights in Wright's Point to McNeal Partnership, L.P. ... The circuit court noted the conveyance met the requirements of § 1.12 by expressly identifying Anthony Porter and Jimmy Porter 'collectively as developer.'" Id. at 486, 702 S.E.2d at 386.

Unlike the Cullen case, *supra.*, in this case the "Phase I" referenced is Phase I of a horizontal property regime, a creature of statute unlike the Cullen phased development (Wright's Point). "The term *condominium* refers to *a form of ownership* in which a buyer owns a *unit* with an additional ownership interest in the development 'common property'. (In common parlance, however, ... a condominium is a 'thing' that is sold to individuals.) This unit may be an air space or a platted lot." Wayne S. Hyatt, Condominium and Homeowner Association Practice: Community Association Law, 3rd Edition, § 1.06(a)(1), pp. 13-14 (2000).

Accordingly, any assigned developer interest of Ephesian Ventures, LLC in Phase I property is subject to the Master Deed and the Act. Cullen. Any interest claimed by Ephesian Ventures, LLC in the Phase I property, regardless of origin, must have been reserved prior to submission of the 7.64 acres to the Act, and conveyance to individual owners. While under the Master Deed at Section 6(b)(2), certain Additional Land could be added to the Regime, those rights expired on December 31, 2010. Whatever its assigned rights, Defendant acquired them in May 2008, and took no action thereafter, to submit any Additional Land to the Regime.

5. With respect to rights and easements concerning the 7.64-acre Regime, Defendant asserts a pre-emptive capacity to approve or disapprove, in advance, actions

undertaken by the Plaintiff to improve common elements of the Regime. Defendant's rights and easements as to the 7.64-acre Regime are, with a single exception[24], shared with Plaintiff and not exclusive. Defendant does not possess veto power over actions of Plaintiff. If Defendant claims that a right or easement it possesses in the 7.64-acre Regime has been violated by the Plaintiff, it must show with particularity the encroachment or injury to its rights. Defendant merely having rights and easements in the Regime does not make acts of Plaintiff presumptively injurious to Defendant. Further, Defendant's assertion of a statutory obligation (S.C. Code § 6-29-1145) to notify the Town of restrictive covenants is a misrepresentation of that statute. While Defendant has asserted, based upon its rights and easements, that Plaintiff must get permission to undertake improvements, Defendant has no basis for objection unless a right is being expressly violated and/or an easement encroached.

The Master Deed, the Quit Claim Deed to the Defendant of 16.01 acres plus other identified rights, the Bill of Sale and Instrument of Assignment and Assumption of which Defendant is a party, and the U.S. Bankruptcy Court Order entered May 28, 2008 all contain reference to reservations, rights and easements pertaining to Broad Creek Edgewater, L.P., as well as to development rights of Broad Creek Edgewater, L.P. As stated in the Master Deed, the reservations, rights and easements are the following:

> **Master Deed, Exhibit A, pp. 38-39**
>
> **1. The right of ingress and egress unto the Declarant herein, its successors, assigns, and Grantees.**
>
> **2. The right of ingress and egress over and across all roads and walkways within the said Phase I Property shown on the above-described plat of Edgewater on Broad Creek.**
> **Said reservation being unto the Declarant herein, its successors and assigns and Grantees; said reserved easement expressly for, but not limited to, the purpose of construction and all construction related activities on the Phase I Property and on the Additional Property described at Exhibit "A-1".**
>
> **3, [Further save and except from the above described property] title to the ownership of all water and sewer lines located on said Parcels or hereafter installed thereon, together with all pipes, pumps, pumping stations, or other equipment or facilities located thereon, together with an easement to such lines, equipment or facilities to allow for the maintenance repair or replacement of such lines, facilities or equipment or for the purpose of installing additional lines, equipment or facilities thereon from time to time.**

[24] Plaintiff's Memo, Exhibit 2, Page 38 states, "title to the ownership of all water and sewer lines located on said Parcels, or hereafter installed thereon, together with all pipes, pumps, pumping stations, or other equipment or facilities located thereon, together with an easement to such lines... ."

**4. The Declarant expressly reserves the right to improve the aforementioned property by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, lagoons, and the like, pertaining to The Edgewater on Broad Creek Horizontal Property Regime.**

**5. Declarant expressly reserves the right to install lines, equipment and facilities for utility and drainage purposes and to grant easements over the property for the installation of additional lines, equipment or facilities for utility and drainage purposes from time to time.**

Additionally, the Declarant reserved the right to "Phase In" additional property as subsequent phases described in Exhibit A-1 to the Master Deed; however, such rights expressly expired on December 31, 2010. (*See*, Master Deed, Section 6(b))

Furthermore, the reservation for the Declarant to utilize the Phase I Clubhouse as a sales office has expired as a consequence of Phase In.[25] Also, any claim of the Declarant and/or the Defendant (as successor to the Declarant) to relocate the Association's ingress and egress to Marshland Road, being within the 7.64-acre Regime, is extinguished.

Of the above rights and easements, exclusive ownership and/or control only apply to that described in the paragraph numbered 3.

Plaintiff has sought in its motion the right to engage in certain activities on its own land and confirmation that certain claims of Defendant have expired: to-wit

a) Plaintiff may construct a swimming pool and other common or recreational amenities on its land, subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from interference, supervision or veto by the Defendant;

b) Plaintiff has the right to construct improvements on the unimproved portions of common elements of the Regime, to wit, the Plaintiff may construct or build upon, use, sell or encumber its remaining common elements subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from any prior approval or veto by the Defendant;

c) The Defendant's claim as successor to the Declarant of rights to use the existing Clubhouse as a sales office has extinguished;

[25] As the Master Deed, Section 6(b)(2) provides that the period to elect to add phases to the horizontal property regime expires on December 31, 2010; there was no determination to add property to the Regime beyond Phase I by the "Phase In" date; and as of the Phase In date all Phase I lots had been sold (*see*, Plaintiff's Memo, Exhibit 3); it follows that there is no purpose for a sales office in the Clubhouse beyond December 31, 2010.

d) The Defendant's claim as successor to the Declarant of the right to relocate the Association's ingress and egress to Marshland Road, being within the 7.64-acre Regime, is extinguished; and

Notwithstanding Defendant's substantially non-exclusive rights and easements to the Regime, it asserts that the following provision of the Master Deed is a basis for Defendant to pre-empt Plaintiff acts and to exercise veto power over improvements planned by the Plaintiff:

> **"(9) Any additional amenities or recreational facilities, which may or may not be in the additional Phases, are solely at the option of Declarant. The description in any sales or promotion literature of Declarant of any potential additional amenities or recreational facilities shall not, of itself, oblige the Declarant to construct such or to convey them to the Regime as Common Elements." Master Deed, § 6(b)(9). (Emphasis added)**

The Defendant's reliance on Master Deed § 6(b)(9) for authority over the Plaintiff is misplaced. In the above-quoted provision, the Declarant reserved its discretion as to what, if any, additional amenities might be built by it. The Declarant essentially left itself a way out of any amenity shown in any sales or promotional literature, by disclaiming any obligation to so construct such an amenity. Furthermore, nothing in the referenced provision provides the Declarant or assignee Defendant the exclusive right to construct, approve, authorize, interfere with, supervise or veto amenities in Phase I. In fact, the Bylaws at Article IV, § 3 and Article VII, §7 expressly charge the Board of Directors of the Plaintiff Association to be responsible for repairs, additions, improvements to or alterations of Regime common elements.

Moreover, Master Deed § 6(b)(9) refers to the *additional* Phases. It does not mention Phase I, and its plain meaning would not include Phase I. That is the only Declarant right assigned to the Defendant in that section.

"'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." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998), *quoting* Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985). "Restrictive covenants are to be construed most strictly against the grantor and persons seeking of enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and against restrictions." Sprouse v. Winston, 212 S.C. 176, 184, 46 S.E.2d 874, 878 (1948) *citing* C.J.S. Deeds § 163. *See also*, Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E. 2d 891, 893-894 (1987). Master Deed § 6(b)(9) does not bestow veto power on the Defendant as to the 7.64-acre Regime, or the *exclusive* right to make improvements to the same. Moreover, any claim of the Defendant of a right to improve the 7.64-acre Regime is expressly

limited to improvements "pertaining to The Edgewater on Broad Creek Horizontal Property Regime."

6. Also, in objecting to Plaintiff's actions, the Defendant has before the Town of Hilton Head Island asserted an incorrect application to S.C. Code § 6-29-1145(B)(3) (1976 as amended). Defendant advanced the proposition that Plaintiff purportedly wrongfully failed to disclose its proposed acts being allegedly in conflict *with a restrictive covenant*, and that *notice of the restrictive covenant* from the Defendant should result in rejection or rescission of permits sought by Plaintiff. (*See*, Plaintiff's Memo, Exhibits 13 and 18) First and foremost there is no restrictive covenant prohibiting the Plaintiff's walkway or proposed swimming pool, or any other improvement on the property of the Regime. Defendant cited to the Town of Hilton Head Island a materially incomplete excerpt from the statute. The omitted portion of the statute, herein below, does not support the objection about which it was raised. It additionally states,

> "(C) As used in this Section: ... (2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and (3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land." S.C. Code § 6-29-1145(C)(2) and (C)(3) (1976 as amended).

The definitions set forth in S.C. Code § 6-29-1145(C)(2) and (C)(3) *exclude* from their description the type *permit* being sought by the Plaintiff, and the *building of structures* for which the Plaintiff was seeking permission. Furthermore, there is no "restrictive covenant" that is contrary to, conflicts with, or prohibits the improvements to the Regime property. Therefore, there was no requirement of Plaintiff to give notice to the Town of Hilton Head Island of "restrictive covenant" as it is defined by statute, and no act by Plaintiff meriting rescission by the Town of Hilton Head Island of Plaintiff's permission to erect structures.

7. Defendant's assertion of rights contravenes the Horizontal Property Act and might thus be considered to violate public policy in some instances. "The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions." White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). Particularly relevant to the Regime Master Deed are S.C. Code §§ 27-31-100 and 27-31-150.

> "The master deed or lease creating and establishing the horizontal property regime shall be executed by the owner or owners of the real property making up the regime and shall be recorded with the register of mesne conveyance or clerk of court of the county where such property is located. The master deed or lease shall express the following particulars: ... (f) **A description of the full legal rights and obligations, both currently existing and which may occur, of the**

**apartment owner, the co-owners, and the person establishing the regime.** The master deed of any horizontal property regime developed under the provisions of this chapter that contains any submerged land shall contain a notice of restriction stating that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to, the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. The notice shall further state that any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical area.
(g) In the event the owner of property submitting it for establishment of a horizontal property regime proposes to develop the property as a single regime but in two or more states or proposes to annex additional property to the property described in the master deed, the master deed shall also contain a general description of the plan of development, including: (1) The maximum number of units in each proposed stage of development; (2) The dates by which the owner submitting such property to condominium ownership will elect whether or not he will proceed with each stage of development; (3) **A general description of the nature and proposed use of any additional common elements which the owner submitting property to condominium ownership proposes to annex to the property described in the master deed, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners ... .**" S.C. Code § 27-31-100 (1976 as amended). (emphasis added)

* * *

"**The administration of the property constituted into horizontal property, whether incorporated or unincorporated, shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease.**" S.C. Code § 27-31-150 (1976 as amended). (emphasis added)

The Plaintiff has a Board of Directors that prepares a budget, levies assessments consistent therewith, and which is tasked to fulfill the Board's obligations to operate the Regime. Having to potentially honor and bear the expense of indeterminate improvements to Regime common elements made by Defendant, Defendant initiated ingress and egress, and Defendant tree pruning and planting on the Regime common elements could make it virtually impossible for Plaintiff's Board to plan, budget and operate in an informed manner. (Plaintiff's Memo, Exhibit 21) In the list of reservations, *supra., page 11,* reservation numbers 4 and 5 may be considered to contravene, without limit, S.C. Code §§ 27-31-100 and 27-31-150 (1976 as amended). The verbiage set forth at Master Deed, Section 15, Subparagraph 15.14 contravenes common law rules of application, enforcement and interpretation as to covenants. However, these issues are not ripe for determination in Plaintiff's Motion for Partial Summary Judgment.

8. In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 606 S.E.2d 752, 757 (2004). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007). In this instance, purchasers for value acquired from the initial Declarant condominium units with appurtenant common elements relying upon a scheme of development that they rightly expected was an upscale condominium development. Despite the contents of the Master Deed, there was no notice to purchasers of units at the Regime of the type of eventualities that have occurred. To indiscriminately subject the owners of the 7.64 acres of the Regime to all of the claims of veto and exclusive powers of Defendant to have been assigned from the Chapter 7 bankruptcy trustee reflects absence of meaningful choice and fundamental fairness for the Plaintiff and its constituent members. That could form a basis for finding some reservations of rights of the Master Deed unconscionable and unenforceable. As with questions of public policy, this issue is not ripe for determination in Plaintiff's Motion for Partial Summary Judgment heard and considered. Accordingly, Plaintiff's Motion for Partial Summary Judgment is granted in part as follows:

IT IS ORDERED AND DECLARED THAT:

a) There is no restrictive covenant that is controlling to, conflicts with, or prohibits Plaintiff from making improvements on the property of the Regime; any claim of the Defendant of a right to improve the 7.64-acre Regime is non-exclusive and is expressly limited to improvements "pertaining to The Edgewater on Broad Creek Horizontal Property Regime";

b) Plaintiff may construct a swimming pool and other common or recreational amenities on the common elements of the Regime, subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from any prior approval or veto by the Defendant;

c) Plaintiff has the right to construct improvements on the unimproved portions of common elements of the Regime, to wit, the Plaintiff may construct or build upon, use, sell or encumber its remaining common elements subject to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, but free from any prior approval or veto by the Defendant;

d) Any claim of the Defendant as successor to the Declarant of a right to use the existing Clubhouse as a sales office is extinguished; and

e) Any claim of the Defendant as successor to the Declarant of rights to relocate the Association's ingress and egress to Marshland Road, being within the 7.64-acre Regime, is extinguished.

IT IS SO ORDERED. THIS CASE SHALL CONTINUE.

Hon. Marvin H. Dukes, III, Master in Equity and
Special Circuit Court Judge for Beaufort County

2/19, 2016
Beaufort, South Carolina

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-02994

EDGEWATER ON BROAD CREEK OWNERS ASSOCIATION INC., ET AL.

EPHESIAN VENTURES, LLC

PLAINTIFF(S)

DEFENDANT(S)

| Submitted by: BEAUFORT COUNTY MASTER IN EQUITY | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant |
|---|---|

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

2016 JUL 12 AM 11:33

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

THIS CASE BEFORE ME ON DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT, FILED 3/8/2016. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case:
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| N/A | N/A | $N/A |
| | | $ |
| | | $ |

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

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

| | | |
|---|---|---|
| **Circuit Court Judge** | 3069<br>**Judge Code** | 7/12/16<br>**Date** |

## For Clerk of Court Office Use Only

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

| | |
|---|---|
| F. WARD BORDEN | M. DAWES COOKE, JR. |
| MICHAEL W. MOGIL | STEPHEN A. SPITZ |
| **ATTORNEY(S) FOR THE PLAINTIFF(S)** | **ATTORNEY(S) FOR THE DEFENDANT(S)** |
| | **CLERK OF COURT** |

**Court Reporter:** N/A

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT | ) | CIVIL ACTION NO. 2011-CP-07-2994 |
| THE EDGEWATER ON BROAD CREEK OWNERS ASSOCIATION, INC., | ) | |
| | ) | CERTIFICATE OF SERVICE |
| Plaintiff, | ) | |
| EPHESIAN VENTURES, LLC, | ) | |

I, the undersigned, do hereby certify that I have served a true and accurate copy of the filed **Master in Equity's Order Denying Defendant's Motion to Alter or Amend Judgment (SCRCP Form 4C)** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following:

M. Dawes Cook Jr., Esquire
Barnwell Whaley Patterson & Helms, LLC
P. O. Drawer H
Charleston, SC 29402

Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms, LLC
P. O. Drawer H
Charleston, SC 29402

JONES, SIMPSON & NEWTON, P.A.

Brenda Perkins

Brenda Perkins
Legal Assistant

Bluffton, South Carolina

July 19, 2016

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )
)
Edgewater on Broad Creek Owners Association, Inc. et al )
Plaintiff(s) )
)
vs. )
)
Ephesian Ventures, LLC )
Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 07- 02994

2011 JUL 19 PM 2:19
JERRI ANN RUSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

(Please Print)
Submitted By: MICHAEL W. MOGIL
LAW OFFICE OF MICHAEL W. MOGIL P. A.
Address: 2 CORPUS CHRISTIE, SUITE 303
HILTON HEAD ISLAND, SC 29928

SC Bar #: 11933
Telephone #: 843-785-8110
Fax #: 843-785-9676
Other:
E-mail: MMOGIL@MOGILLAW.COM

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

## DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

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

## NATURE OF ACTION (*Check One Box Below*)

**Contracts**
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

**Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☒ Other (299) Nuisance

**Torts – Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

**Real Property**
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499)

**Inmate Petitions**
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

**Judgments/Settlements**
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

**Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

**Appeals**
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

**Special/Complex /Other**
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) Declaratory Judgment
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

**Submitting Party Signature:** _____ **Date:** JULY 19, 2011

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT | ) | |
| | ) | |
| Edgewater on Broad Creek Owners Association, Inc. and the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I Plaintiff(s) | ) | CIVIL ACTION NO.: |
| | ) | SUMMONS |
| v. | ) | |
| Ephesian Ventures, LLC Defendant | ) | |

2011 JUL 19 PM 2:49
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**TO: THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at the Law Office of Michael W. Mogil, P.A.,2 Corpus Christie Place, Ste. 303, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

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| STATE OF SOUTH CAROLINA<br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br>FOURTEENTH JUDICIAL CIRCUIT |
| Edgewater on Broad Creek Owners Association, Inc. and the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I<br>Plaintiff(s) | ) | CIVIL ACTION NO.: |
| v. | ) | COMPLAINT |
| Ephesian Ventures, LLC<br>Defendant | ) | |

2011 JUL 19 PM 2:49
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: EPHESIAN VENTURES, LLC AND THE HONORABLE COURT:

Plaintiffs Edgewater on Broad Creek Owners Association, Inc. and the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I (hereinafter "Plaintiffs"), through their undersigned counsel, respectfully assert their Complaint in this matter as follows:

1. Plaintiff Edgewater on Broad Creek Owners Association, Inc. (hereinafter the "Association") is a South Carolina not for profit corporation formed pursuant to the "By Laws of the Edgewater on Broad Creek Horizontal Property Regime and Edgewater on Broad Creek Owners Association" recorded within the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime Phase I that was recorded December 31, 2002 in the Register of Deeds for Beaufort County in Book 1689 at Page 574 et seq. (the "Master Deed"). The Association was and more formally constituted by Order of the Court of Common Pleas for Beaufort County, South Carolina dated and entered October 30, 2006 in Case No. 2006-CP-07-2556. A copy of the of the

Master Deed and By Laws is attached as **Exhibit A** and a copy of the Court Order is attached as **Exhibit B,** hereto. The Association has operated as an independent property owners' association since October 30, 2006.

2. Plaintiff Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I are the 23 unit Co-owners within Phase I of the Horizontal Property Regime formed by the Master Deed (the "Regime").

3. The Co-Owners own 23 apartment units situate on 7.64 acres within the Broad Creek Edgewater development on Marshland Road, proximate to the Cross Island Expressway interchange, on Hilton Head Island. The 7.64 acres is referred to in the vesting documents as Phase I and was intended by the original developer, Broad Creek Edgewater, LLC, to be the first completed Phase in a six building luxury condominium development on a combined 23 acres, to be referred to as "Edgewater". The development as planned and sold to the Co-Owners contemplated a common pool, waterfront, club house, tennis courts, recreational amenities and security shared by a total of no more than 147 units. Prior to October, 2006 the Co-Owners at Phase I had unrestricted use of the swimming pool and waterfront which are situate on land outside of Phase I, accessed by common walkways.

4. In or about October, 2006 the original developer, Broad Creek Edgewater, LLC, defaulted on its ongoing obligations and abandoned the project.

5. On or about May 9, 2007, Broad Creek Edgewater was placed into an involuntary Chapter 7 bankruptcy proceeding by its creditors and insiders. The case was filed as In Re Broad Creek Edgewater, LLC in the District of South Carolina, 07-2546. Ultimately a Chapter 7 trustee, Kevin Campbell, was appointed by the Court to manage and sell its assets.

6. From October, 2006 through the term of the bankruptcy case, the Co-owners enjoyed continued unrestricted use and access to the swimming pool, waterfront amenities and other common amenities at Edgewater.

7. Defendant Ephesian Ventures, LLC is a South Carolina limited liability company which purchased 16.01 acres from the Chapter 7 bankruptcy trustee on July 7, 2008. The 16.01 acres is directly adjacent to the Plaintiffs' property and consists of the remaining developer interest and land at Edgewater, exclusive of the 7.64 acres already deeded into Phase I. Presently, the 16.01 uses a common entrance and gate maintained by the Plaintiffs.

8. Shortly after acquiring the 16.01 acre tract, Ephesian proposed to the Plaintiffs a month to month license agreement whereby Ephesian would permit the Co-owners continued access to the swimming pool and other amenities on the Ephesian property in exchange for a monthly fee. Reserving any rights that they might possess regarding the swimming pool, other amenities, or challenges to the necessity of a license agreement, the Co-owners entered into a license with Ephesian for three months. Thereafter, from October, 2008 through July, 2009 Ephesian and the Co-owners engaged in discussions relating to the future land use plan and relationship between the parties at Edgewater. Specifically, Ephesian proposed a plan whereby the remainder of Edgewater would be converted from the luxury condominium development contemplated by the Master Deed into a higher density, eight building interval ownership project with a larger common pool and other amenities. During this period, the Co-owners continued to use the pool.

9. On July 1, 2009, a day before the commencement of the July 4th holiday weekend, Ephesian unilaterally closed the swimming pool and removed the attendant furniture. The pool has not been opened since.

10. The Co-owners did not have use of the pool for the remainder of 2009, in 2010, or in 2011.

11. In late 2009 the Co-owners voted to fund and build a pool on undeveloped property on Phase I. In March, 2010, an application for Design Review was filed with the Town of Hilton Head Island by Year Round Pool, Inc. on behalf of the Plaintiffs, seeking a permit to build a pool (the "Pool Permit") on Phase I property.

12. The Pool Permit received Design Review approval from the Town, without objection, after a merits hearing in April, 2010. Thereafter, Ephesian issued a letter to the Town, through its attorney Chester Williams, dated April 28, 2010, opposing the issuance of a development permit for a tabby walk project, discussed herein in the following paragraph, on the grounds that in its view, development on Phase I required approval by Ephesian due to its asserted Declarant Rights under the Master Deed. A copy of Williams' letter of April 28, 2010 is attached as **Exhibit C** hereto. Ultimately, the Town rescinded the Design Approval for the pool, by letter from Terri Lewis dated April 30, 2010, as set forth below, and the Pool Permit project was and is frozen until the issue of the restrictive covenants is resolved. A copy of Ms. Lewis' letter of April 30, 2010 is attached hereto as **Exhibit D.**

13. During the same time period, in or about April, 2010, the Plaintiffs constructed a simple tabby walk path (the "Tabby Walk") on their land, connecting the parking lot of their building with their clubhouse and exercise facility. The Plaintiffs deemed the Tabby Walk necessary to allow unrestricted access to the clubhouse without traveling on the main road, and without need to walk through wooded ground in accessible to those handicapped residents. The Tabby Walk did not encroach on any land owned by Ephesian and at the time, the Plaintiffs did not believe that a project

of this minimal scope and impact required a formal permit. However, a representative from Ephesian noticed the work on the Tabby Walk and notified the appropriate Town of Hilton Head Island official(s), who then notified Plaintiffs' agent that the Town believed that the construction of such a path required a formal permit.

14. Thereafter, the property manager for the Plaintiffs, IMC Resort Management Services, Inc., applied for a formal permit for the Tabby Walk, which was initially issued by the Town as XDPR10013. Ephesian objected to the permit by letter from its attorney, Chet Williams dated April 28, 2010, asserting that the permit was improper because the application itself did not reference Ephesian's Declarant rights or the alleged restrictive burdening the property.

15. The Town rescinded the Tabby Walk permit by letter dated April 30, 2010, acknowledging that Mr. Williams raised issues that the Town believed needed formal resolution. In the same letter, the Town voided the Design Approval for the swimming pool, citing the same issue regarding covenants raised by Mr. Williams in his April 28 letter. The Tabby Walk permit and its issuance and rescission are pending matters before the Town Planning Commission and Board of Zoning Appeals.

16. As a result of the Town's letter, the Pool Permit application terminated and the Co-owners have been unable to construct a pool, and thus reside on land without use of a pool, which they initially had use of when the purchased their property.

17. While the Tabby Walk matter is pending before the Planning Commission and Board of Zoning Appeals, the Town planning department has suggested that it cannot approve a pool development permit until the issues regarding the asserted restrictive covenants at Edgewater are resolved.

18. Ephesian's objections to the development on Phase I appear to rely on its interpretation of Section 6 (b) (9) of the Master Deed which states:

Any additional amenities or recreational facilities, which may or may not be in the additional Phases, are solely at the option of the Declarant.....

19. The restriction within the original Master Deed was a logical component of the Master Deed when the Owner still had the right and option to continue a common development, and intended to do so, but clearly any such restriction expired, by it terms, on December 31, 2010 when any remaining right owned by Ephesian, as successor to the Owner, expired. To wit, Section 6 (b) (2) within the same section of the Master Deed states:

The dates by which the Owner submitting such property to condominium ownership will elect whether or not he will proceed with each Phase. For all proposed Phases, the election whether or not each Phase will proceed shall be made by December 31, 2010.

20. To the extent that Ephesian, as successor in interest to the Owner, possessed any rights to exercise control over development on Phase I, and any development rights for Phase I, which the Plaintiffs dispute, any and all such development rights expired on December 31, 2010 because Ephesian did not before that date elect to proceed with any Phase of the project or to incorporate any of its land into the Horizontal Property Regime at Edgewater.

21. In April, 2011 Ephesian submitted a preliminary development application to construct eight additional buildings, comprising a total of 283 units, for an interval ownership development on its 16.01 acres. Pre Application Permit PAPP110007 resulted in a meeting at the Town in which both Ephesian, through Mr. Williams, and the Plaintiffs participated in exchange with the various Town departments responsible for different aspects of the proposed development. The Plaintiffs asserted preliminary objections to the Ephesian project. Ephesian's initial application presumes that it owns

the density rights allocated to the 7.4 acres in Phase I, a presumption which the Plaintiffs oppose. A copy of the April 25, 2011 meeting notice is attached as **Exhibit E** hereto.

**For a First Cause of Action (Declaratory Judgment)**

22. Plaintiffs re allege paragraphs 1 through 21 above as though fully set forth herein.

23. As a party to a Master Deed wherein the rights and obligations of the parties are unsettled. Plaintiffs have standing to seek a Declaratory Judgment from the Court of Common Pleas in this matter.

24. The South Carolina Declaratory Judgment Act, South Carolina Code Section 15-53-30 et seq. provides:

Determination of Questions Under Deed, Will , Written Contract, Statute, Municipal Ordinance, Contract or Franchise—

> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status, or other legal relations are effected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

25. Ephesian has placed Plaintiffs' rights in dispute by objecting to its Tabby Walk Permit and Swimming Pool permit as set forth above.

26. Further, the Town of Hilton Head Island has suggested that it is unwilling to determine the legal construction of the Master Deed, rendering a Declaratory Judgment of the parties rights and obligations essential to the determination of the future relationships at Edgewater and use(s) of the land there.

27. Ephesian's rights to control development on Phase I or to use the development rights allocated to Phase I terminated, of necessity, on December 31, 2010 when it did not elect to phase

in or incorporate any of its land into the Horizontal Property Regime at Edgewater. Any contrary interpretation would result in an indefinite and undefined restriction on the Plaintiffs use of their own land, which is a restriction on alienation and use of property not favored in South Carolina.

28. Plaintiffs seek an Order in the form of a Declaratory Judgment from this Court as follows:

a. The Association has the right to construct improvements upon the unimproved portions of the Regime Phase I property.

b. Any rights Ephesian owned to add Phases to the Regime terminated on December 31, 2010.

c. The Declarant's rights in Section 6(a) of the Master Deed to relocate Regime owners' access to Marshland Road have extinguished.

d. The reserved right of ingress and egress across the Regime property reserved in Exhibit "A" to the Master Deed either terminated effective December 31, 2010 when Ephesian lost rights to add phases to the Regime, or is limited to the extent necessary to tie into existing utility infrastructure in connection with the development of Ephesian's property.

e. The right of ingress and egress across roads and walkways within the Regime property reserved in Exhibit "A" to the Master Deed terminated December 31, 2010 when Ephesian's rights to add phases to the Regime terminated.

f. Either title to the utility infrastructure located on the Regime property is vested in the Association, or if Ephesian has title to such utility infrastructure then Ephesian's ownership is subject to the Association's right to continued use of all utility infrastructure for the benefit of the Regime and its owners.

g. Any reserved utility installation and maintenance easements vested in Ephesian are limited only to those areas necessary to tap into existing utility infrastructure and do not burden all of the Regime

property, nor materially limit the Association's right to construct improvements on Regime property.

h. Ephesian does not have approval rights over the Association's improvement of Regime property, and Ephesian's objections to Association improvements are not grounds for the Town of Hilton Head to deny or revoke building permits or development permits.

i. Ephesian has no rights to approval, block or otherwise hinder any attempt by the Association or the Regime owners to sell portions of Regime property or develop the same.

j. Ephesian no longer has the right to use the Clubhouse for an office.

k. Ephesian has no claim or right to use the Regime's development rights or residential density allocations under the Town of Hilton Head Island's Land Management Ordinance.

l. Until such time as the Town of Hilton Head grants permission to the Plaintiffs to construct a swimming pool on their premises, Ephesian shall open its pool and permit the Plaintiffs use and access during the swimming season, being April1 through October 31.

**For a Second Cause of Action (Nuisance)**

29. There exists, on Ephesian's property, proximate to the building inhabited by the Plaintiffs, a partially constructed building consisting of five concrete framed floors, walls and associated structure with exposed interiors and wiring. The original developer, Broad Creek Edgewater, ceased construction on this building in early 2006 and no further construction has taken place since.

30. Ephesian has, upon information and belief, sold or given away the flooring, drywall and other supplies that Broad Creek Edgewater had purchased to complete the building, and has expressed its view that it has no plan to continue construction of the present structure.

31. Ephesian applied for and was granted an extension of the Town building permit for said structure, without notice to the Plaintiffs.

32. The continued existence of a large, abandoned building immediately proximate to the Plaintiffs' property diminishes the Plaintiffs' views, the aesthetics of Plaintiff's property and further diminishes Plaintiff's use and enjoyment of their own property.

33. Further, the existence of an abandoned building immediately proximate to Plaintiffs' property harms their ability to sell their land.

34. The abandoned building on Ephesian's property is a nuisance.

35. Plaintiffs request the Honorable Court to issue an Order declaring the abandoned building a nuisance and further ordering Ephesian to timely remove the building.

WHEREFORE, Plaintiffs Edgewater on Broad Creek Owners Association, Inc. and the Co-owners of Edgewater on Broad Creek Horizontal Property Regime request that the Honorable Court issue its Order as follows:

1) A Declaratory Judgment that states:

a. The Association has the right to construct improvements upon the unimproved portions of the Regime property.

b. Any rights Ephesian possessed to add Phases to the Regime terminated on December 31, 2010.

c. The Declarant's rights in Section 6(a) of the Master Deed to relocate Regime owners' access to Marshland Road have extinguished.

d. The reserved right of ingress and egress across the Regime property reserved in Exhibit "A" to the Master Deed either terminated effective December 31, 2010 when Ephesian lost rights to add phases to the Regime, or is limited to the extent necessary to tie into existing utility infrastructure in connection with the development of Ephesian's property.

e. The right of ingress and egress across roads and walkways within the Regime property reserved in Exhibit "A" to the Master Deed terminated December 31, 2010 when Ephesian's rights to add phases to the Regime terminated.

f. Either title to the utility infrastructure located on the Regime property is vested in the Association, or if Ephesian has title to such utility infrastructure then Ephesian's ownership is subject to the Association's right to continued use of all utility infrastructure for the benefit of the Regime and its owners.

g. Any reserved utility installation and maintenance easements vested in Ephesian are limited only to those areas necessary to tap into existing utility infrastructure and do not burden all of the Regime property, nor materially limit the Association's right to construct improvements on Regime property.

h. Ephesian does not have approval rights over the Association's improvement of Regime property, and Ephesian's objections to Association improvements are not grounds for the Town of Hilton Head to deny or revoke building permits or development permits.

i. Ephesian has no rights to approval, block or otherwise hinder any attempt by the Association or the Regime owners to sell portions of Regime property or develop the same.

j. Ephesian no longer has the right to use the Clubhouse for an office.

k. Ephesian has no claim or right to use the Regime's development rights or residential density allocations under the Town of Hilton Head Island's Land Management Ordinance.

l. Until such time as the Town of Hilton Head grants permission to the Plaintiffs to construct a swimming pool on their premises, Ephesian shall open its pool and permit the Plaintiffs use and access during the swimming season, being April1 through October 31.

2. For an Order declaring the abandoned building on Ephesian's property a nuisance which harms the use and enjoyment of Plaintiff's land, and further ordering that said nuisance be abated by removing the abandoned building.

3. For such other relief as the Honorable Court deems just and proper.

Hilton Head Island, South Carolina

July 19, 2011

Law Office of Michael W. Mogil, P.A.
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2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com
Attorney for Plaintiffs

AS/Edgewater
9/97 RB NAS 8542

BEAUFORT COUNTY SC - ROD
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Sharon O. Burris
BEAUFORT COUNTY AUDITOR

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| **STATE OF SOUTH CAROLINA** | ) |
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| **COUNTY OF BEAUFORT** | ) |
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| **BROAD CREEK EDGEWATER, LP** | ) |
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| | ) |
| **TO** | )**MASTER DEED ESTABLISHING** |
| | )**THE EDGEWATER ON BROAD** |
| | )**CREEK HORIZONTAL** |
| | )**PROPERTY REGIME (PHASE I)** |
| | ) |
| | ) |
| **THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME** | ) |
| | ) |
| | ) |

At Hilton Head Island, County of Beaufort, State of South Carolina, on this 19th day of December, 2002, **BROAD CREEK EDGEWATER, LP**, a limited partnership organized under the laws of South Carolina, with its principal place of business on Hilton Head Island, South Carolina (hereinafter referred to as "Declarant"), does hereby declare:

## 1. LAND.

Declarant is the sole owner of the land described in **Exhibit "A"** attached hereto and made a part hereof which is more particularly shown on the plat thereof, said plat being designated as **Exhibit "B"** and being attached hereto and made a part hereof and being recorded in the Register of Deeds Office for Beaufort County, South Carolina (the "ROD"), in Plat Book 91 at Page 5.

## 2. PROPERTY; REGIME; ASSOCIATION.

Declarant does hereby, by duly executing this Master Deed, submit the land referred to in Section 1, together with the buildings and improvements erected thereon, and all easements, rights and appurtenances belonging thereto

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(hereinafter referred to as the "Property") to the provisions of the Horizontal Property Act of South Carolina, Section 27-31-10, et seq., 1976 Code of Laws of South Carolina, as amended (the "Act"), and does hereby state that it proposes to create and does hereby create, with respect to the Property, a Horizontal Property Regime that shall be known as "Edgewater on Broad Creek Horizontal Property Regime" (hereinafter sometimes referred to as the "Regime") to be governed by and be subject to the provisions of this Master Deed and the provisions of the Act. Declarant does further declare that it has caused to be incorporated under the laws of the State of South Carolina, an association known as "Edgewater on Broad Creek Owners' Association, Inc." (hereinafter referred to as the "Association") which shall, pursuant to the provisions of Section 27-31-90 of the Act, constitute the incorporated Council of Co-Owners of the Regime and shall be governed by this Master Deed and the By-Laws attached hereto.

## 3. IMPROVEMENTS.

The improvements constructed on and forming a part of the Property are constructed in accordance with the as-built survey attached as **Exhibit "B"** hereto and the floor plans attached as **Exhibit "C-1"** hereto and made a part hereof, which survey was prepared by Surveying Services, Inc., and which floor plans were prepared by NCG Architects, Inc. duly licensed to practice in the State of South Carolina under Registration Certificate Number B-78019. Attached to this Master Deed as **Exhibit "C-2"** is a certificate by said architect and the Condominium Units constructed on the Property were constructed substantially in compliance with said plans.

## 4. DEFINITIONS.

The terms used in this Master Deed and in the Exhibits hereto shall have the meanings stated in the Horizontal Property Act and as follows, unless the context otherwise requires:

(a) **"Act"** means the Horizontal Property Act as currently set forth in Title 27, Chapter 31 of the Code of Laws of South Carolina, 1976, as heretofore amended, and as the same may be hereafter amended from time to time.

(b) **"Assessment"** means a Co-Owner's pro rata share of the Common Expenses which from time to time is assessed against a Co-Owner by

the Association in the manner herein provided and other costs and expenses, which from time to time are assessed against a Co-Owner in accordance with the terms of the Master Deed.

(c) **"Association"** means the Council of Co-Owners as defined by the Act, and also means Edgewater on Broad Creek Owners' Association, Inc., a South Carolina not for profit corporation, its agents, successors, and assigns, the corporate form by which the Council of Co-Owners shall operate the Regime.

(d) **"Board of Directors"** or **"Board"** means the group of persons selected, authorized and directed to manage and operate the Association as provided by the Act, this Master Deed, and the By-Laws.

(e) **"Building"** means a structure or structures, comprising a part of the Property.

(f) **"Common Elements"** means the general and Limited Common Elements, as defined herein in Section 7 and in the Act.

(g) **"Common Expenses"** means the expenses for which the Co-Owners are liable to the Association, including:

(1) Expenses of administration, expenses of maintenance, insurance, operation, repair or replacement of the Common Elements, and of the portions of Units which are the responsibility of the Association, if any.

(2) Expenses declared Common Expenses by provisions of the Master Deed.

(h) **"Common Surplus"** means the excess of all receipts of the Association, including, but not limited to, Assessments over the amount of Common Expenses.

(i) **"Co-Owner"** means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns a Unit.

(j) **"Condominium"** means a Unit in The Edgewater on Broad Creek Horizontal Property Regime.

(k) **"Condominium Ownership"** means the individual ownership of a particular Unit in a building and the common right to a share, with other Co-Owners, in the General and Limited Common Elements of the Property.

(l) **"Council of Co-Owners"** means all the Co-Owners as defined herein and shall also refer to the Association as herein defined.

(m) **"Declarant"** means BROAD CREEK EDGEWATER, LP a South Carolina limited partnership with its principal place of business located on Hilton Head Island and its successors and assigns.

(n) **"Majority of Co-Owners"** means the Co-Owners owning fifty-one (51%) percent or more of the statutory value of the Property as a whole as referenced in Section 9.

(o) **"Master Deed"** means this deed or declaration, establishing and recording the property of the Regime and all exhibits hereto.

(p) **"Owner"** (See "Co-Owner") above in Section 4(i)).

(q) **"Percentage Interest"** means such percentage that each Co-Owner owns (in common with all other Co-Owners) in the Property of the Regime and the percentage appertains to each Co-Owner in the expenses of and ad rights in the elements of the Regime held in common.

(r) **"Person"** means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(s) **"Property"** means and includes the land, the Buildings, all improvements and structures thereon, as shown and depicted on **Exhibits "A", "B", "C"** and all easements, rights and appurtenances belonging thereto. **"Additional Property"** shall mean such land and-or improvements of the Declarant described in the **Exhibit "A-1"** hereto before such property shall have been submitted to the provisions of the Act by this Master Deed and thereby made subject to the Horizontal Property Regimes established by this Master Deed.

(t) **"Regime"** means The Edgewater on Broad Creek Horizontal Property Regime created by the Master Deed, and all references to the Association, as herein defined, shall likewise include reference to the Regime and vice versa.

(u) **"Unit"** as used herein has the same connotation as the term "Apartment" as used in the Act and means a part of the Property intended for any independent residential use, including one or more rooms or enclosed spaces located on one floor (or parts thereof) in a Building, and with a direct exit to a public street or highway, or to a common area or areas leading to such street or highway. (NOTE: In some of the project documentation the Units may be referred to as "residences" or "villas").

(v) **"Utility services"** means and shall included, but shall not be limited to, electric power, hot and cold water, heating, refrigeration, air conditioning, telephone, cable or satellite television, gas, garbage, and sewage disposal.

## 5. DESCRIPTION OF UNITS; USE; REPAIRS; ALTERATIONS.

### 5.01 GENERAL DESCRIPTION OF UNITS.

Phase I includes one (1) Building of five (5) residential stories, containing twenty-three (23) individual Units, all of which are to be used for residential purposes only. This Building contains up to 48,444 square feet of heated area. Of this total of twenty-three (23) residential Units thirteen (13) are Type A Units, eight (8) are Type B Units, and two (2) are Type C Units. The Units are capable of individual utilization on account of having their own exits to the Common Elements of the Property and a particular and exclusive property right thereto, and also an undivided interest in the general and Limited Common Elements of the Property, as hereinafter listed in this Master Deed, necessary for their adequate use and enjoyment all of the above in accordance with the Horizontal Property Act of South Carolina.

### 5.02 INDIVIDUAL UNIT TYPES.

There are three (3) basic types of Units in The Edgewater on Broad Creek Horizontal Property Regime. The number, location, vertical location, dimensions, area, and design of each Residential Unit in Phase I of the Regime are set forth in the attached Plat and Building Plans issued by NCG Architects, Inc., which constitute **Exhibit "C-1,"** or by way of Amendment thereto. Units are and shall be numbered according to Building, Floor, and Unit number.

**5.03 WALK THROUGH DESCRIPTION OF UNITS.**

(a) A Type A Unit is a residential Condominium, consisting of three bedrooms, three bathrooms, kitchen, utility room, living/dining room areas, and foyer. The Unit contains approximately 1905 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type A Unit shall be as set forth at Section 9.

(b) A Type B Unit (end Unit) is a residential Condominium, consisting of four bedrooms, three bathrooms, kitchen, den, utility room, living/dining room areas, and foyer. The Unit contains approximately 2150 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type B Unit shall be as set forth at Section 9.

(c) A Type C Unit (top floor end Unit) is a residential Condominium, consisting of four bedrooms, three bathrooms, kitchen, utility room, den, living/dining room areas, and foyer. The Unit contains approximately 2390 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type C Unit shall be as set forth at Section 9.

**5.04 BOUNDARIES GENERAL RULE.**

The boundaries of each Unit shall be as follows:

(a) The upper and lower boundaries shall be the following boundaries extended to an intersection with vertical boundaries:

(1) Upper boundary: the horizontal plane of the bottom undecorated surface of the ceilings of each Unit; in the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter walls bounding the Unit, the upper boundary of that part of that Unit shall be the horizontal plane of the bottom undecorated surface of said projecting area.

(2) Lower boundary: the horizontal plane of the upper surface of the undecorated concrete floor slab of each Unit; in the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter

walls bounding the Unit, the lower boundary of that part of the Unit shall be the horizontal plane of the undecorated and unfinished upper surface of said projecting area.

(b) The vertical boundaries of each Unit shall be the vertical plane of all undecorated and unfinished inner surfaces of all perimeter walls, doors, windows, and sliding glass doors, bounding the Unit, extended to the intersections with each other and with the upper and lower boundaries of each Unit. In the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter walls bounding the Unit, the vertical boundary of that part of the Unit shall be the vertical plane of the undecorated and unfinished inner surface of said projecting area.

(c) The balconies, if any, abutting any Unit are Limited Common Elements appurtenant to that Unit to which they attach, and their use is restricted to that Unit to which they are appurtenant. Abutting the Type A Units are exterior balconies containing approximately 205 square feet of area except for Unit #2102, 2103 and 2104 which have exterior balconies containing 307 square feet. Abutting the Type B Units are exterior balconies containing approximately 269 square feet of area. Abutting the Type C Units are exterior balconies containing approximately 220 square feet of area. Maintenance, other than structural, and upkeep of each balcony shall be the primary responsibility of the Owner of the Unit to which that balcony is appurtenant and the secondary responsibility of the Association.

(d) All doors and windows, which are inside the Unit, within the perimeter walls of a Unit, shall be deemed a part of said Unit. All doors and windows, including sliding glass doors that connect directly to the exterior of the Unit shall not be deemed a part of said Unit and shall be a Limited Common Element.

(e) All pipes, wires, or other conduits, running to and from all electrical, heating, air conditioning, or ventilation systems, television, telephone, water, and sewer installations within a particular Unit, which branch off or run from a common pipe or wire serving more than one Unit, shall be part of a Unit from that point at which it branches off the common pipe or wire regardless of whether or not said pipe or wire is within the perimeter of a Unit. the upkeep and maintenance of said pipe and wires shall be the responsibility of the Owner of the Unit. All other pipes and wires are parts of the Common Elements, and

the upkeep and maintenance of the same shall be the responsibility of the Association.

(f) All load bearing walls located within a Unit constitute a part of the Common Elements up to the unpainted, finished surface of said walls. All load bearing columns located within a Unit constitute a part of the Common Elements up to the unpainted, finished surface of said columns. In the event that the columns are surrounded by non-load bearing walls, the area within the unpainted, finished surface of the surrounding walls constitute a part of the Common Elements.

(g) Ownership of each Unit shall encompass, and there shall pass with each Unit as appurtenances thereto, whether or not separately described, all of the rights, title, and interest of an Owner in the Property, which shall include, but not be limited to:

(1) Membership in the Association composed of all Owners: Membership in the Association shall include the right to vote on all matters, which under the Master Deed and By-Laws are to be decided by the Owners. Each Owner shall be entitled to a vote equal to his percentage of ownership in the Common Elements as set forth in Section 9.02 herein; and

(2) The Owners' undivided Total Percentage Interest as hereinafter defined in the Common Elements, which shall be the percentage allocated to each Unit as set forth in Section 9 herein.

**5.05 UNITS/NUMBERING SYSTEM/TYPE.**

The twenty-three (23) Units contained in one (1) Building are located and numbered as follows:

| Floor | Unit No./Type |
|---|---|
| 1 | Unit 2101/B |
| 1 | Unit 2102/A |
| 1 | Unit 2103/A |
| 1 | Unit 2104/A |
| 1 | Unit 2105/B |
| 2 | Unit 2201/B |

| | |
|---|---|
| 2 | Unit 2202/A |
| 2 | Unit 2203/A |
| 2 | Unit 2204/A |
| 2 | Unit 2205/B |
| 3 | Unit 2301/B |
| 3 | Unit 2302/A |
| 3 | Unit 2303/A |
| 3 | Unit 2304/A |
| 3 | Unit 2305/B |
| 4 | Unit 2401/B |
| 4 | Unit 2402/A |
| 4 | Unit 2403/A |
| 4 | Unit 2404/A |
| 4 | Unit 2405/B |
| 5 | Unit 2501/C |
| 5 | Unit 2502/A |
| 5 | Unit 2503/C |

All of the aforementioned Units are more particularly shown on the plans thereof attached hereto as **Exhibit "C-1,"** which plans are incorporated herein in the same manner as if expressly set forth in this Section 5.05, and said plans, together with the Unit numbers and square footage of area in each Unit, and likewise together with the description of Unit boundaries as herein set forth in Section 5.04, shall constitute a complete description of the Units within the Regime.

**5.06 OWNER'S RESPONSIBILITIES FOR MAINTENANCE AND REPAIR.**

(a) While generally an Owner is responsible for the maintenance and repair of the area described above in Section 5.05 as being included in a Unit, notwithstanding the generality of the foregoing description of Unit boundaries, each Unit Owner shall also be responsible for maintenance and repair of the following, whether it shall be defined as within a Unit or not:

(1) the doorways, windows, vents and other structural elements in the walls, floors, and ceilings of the Unit, which are regarded as enclosures of space;

(2) the doors opening into the Unit and into any mechanical area integral to the Unit, including the frames, easings, hinges, handles, and other fixtures which are part of the doors;

(3) the window glasses, screens, frames, wells, and casings which are part of the windows opening from the Unit;

(4) the plumbing and mechanical vents which exclusively serve the Unit;

(5) the appliances, air conditioning and heat pump Units, (compressors, air handlers and condensers), water heaters, lavatories, bath tubs, toilets, carpeting, floor covering, flooring, trim, ceilings, walls, insulation, and other fixtures, furnishings, and building materials which are part of the Unit at the time of initial closing from Declarant to the Unit Owner, and any subsequent replacements thereof;

(6) the screens, lattice work, partitions, railings, or balustrades bounding or enclosing any deck, walkways, porch or service area that is integral and exclusive to the Unit and the concrete surface, and/or topping within any such area;

(7) all pipes, wires, ducts, and other plumbing, mechanical, and electrical appurtenances which are integral an exclusive to the Unit, including lamps attached to the exterior of the Unit;

(8) the Owner's outside storage closets which constitute a Limited Common Element; and

(9) any damage to the Unit itself or to a contiguous (i.e. either adjacent, upstairs or downstairs) Unit caused by a negligent action or inaction within the Owner's Unit, which directly or indirectly causes damage to the other Unit or to the Unit itself.

Notwithstanding the foregoing by allocating responsibilities of maintenance and repair to Owners, it is not the intention of Declarant to affect the ultimate insurance obligations as well as the reconstruction obligations of the Regime.

(b) Except in the event of an emergency situation, in the event that the Association determines that any Owner has failed or refused to discharge

properly his obligations with respect to the maintenance cleaning, repair, or replacement of items for which he is responsible under this Master Deed, then the Association shall give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at such Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repair, or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days in which to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide any such maintenance, cleaning, repair, or replacement at such Owner's sole cost and expense, and said cost shall be added to an become a part of the Assessment to which such Owner and his Unit are subject and shall become a lien against such Unit as provided herein.

**5.07 USES OF UNITS.**

(a) Each Unit is restricted as to use by the Owner or Owners thereof, their lessees and invitees, it being the intent of the Declarant that the Building be used for residential purposes only which are consistent with and appropriate to the design of the Building.

(b) The Declarant herein subjects the Regime to the further limitation and restriction that it shall be used and occupied for whole-time residential dwelling Units only. Reference is made to Section 14 infra regarding prohibition of time-sharing plans and reservation of rights regarding multiple ownership plans.

(c) No Unit Owner shall do, suffer, or permit to be done, anything in his Unit which would impair the soundness or safety of the Regime, or which would be noxious or offensive or an interference with the peaceful possession and proper use of other Units, or which would require any alteration of or addition to any of the Common Elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) In case of any emergency originating in or threatening any Unit, regardless of whether the Owner or his tenant, if any, is present at the time of

such emergency, the Association's Board of Directors and all managerial personnel shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Owner of each Unit, if required by the Association, shall deposit under the control of the Association a key to such Unit.

(e) Reference is made to Section 14 infra, regarding the recorded Covenants applicable to the Unit.

(f) Reference is made to the By-Laws attached hereto as **Exhibit "D"** for specific rights and authority of the Board with respect to Common Elements.

(g) Notwithstanding anything else to the contrary in this Section 5.07, the Declarant shall be permitted to use one or more Units for purposes of a real estate sales model and office. Declarant also reserves the right to use a portion of the Clubhouse designated by the Declarant for real estate sale office and as an office for the Management Agent for as long as Declarant owns more than one (1) Unit on the Property

(h) The Declarant hereby declares and affirms that the use restrictions described herein shall be deemed restrictive covenants running with the land and are imposed as a limitation and burden upon each Unit and upon the Declarant and upon all future Owners of Units.

**5.08 DEEDS TO UNITS.**

On the transfer of a Unit, a deed effecting that transfer conveys all the seller's interests in that Unit to the purchaser, including the seller's interest in the real and personal property of the Association, any reserve accounts applicable to that Unit, and in any cause of action or chose in action either of the Association or arising out of his ownership of that Unit, whether or not those interests are expressly described in the deed.

**5.09 ASSESSMENTS FOR COMMON EXPENSES; RESPONSIBILITIES FOR MAINTENANCE.**

The obligations of all Unit Owners with regard to assessments for Common Expenses and the maintenance and repair of the individual Units shall

be as provided in the By-Laws of the Association which are attached hereto as **Exhibit "D"**.

**5.10 SUBDIVISION AND RELOCATION OF BOUNDARIES BETWEEN UNITS.**

(a) Declarant intends to provide a flexible and certain method consistent with the Act in the best interest of the Association and all of its members by which individual Units may be subdivided into two or more Condominium Units (i.e. Units). Subject to the provisions of this Master Deed and other provisions of law, a Unit Owner may apply to subdivide a Unit subject to the conditions and procedures described below in Section 5.10 (b) et seq.

(b) The Owner of a Unit or Owners of adjoining Units may, at any time, deliver a letter to the President of the Association requesting approval from the Board to subdivide or relocate the boundaries between their Units, together with a plan of their Units which conforms with Sections 27-31-100, 27-31-110 and 27-31-120 of the Act, showing the proposed relocated boundaries of those Units. In such case, with respect to every proposed Unit which will result from the proposed subdivision or relocation:

(1) each Unit to be created must contain at least 950 square feet of Unit space as herein defined for a Type A Unit, 1050 square feet for a Type B Unit and 1150 square feet for a Type C Unit; and

(2) at least one boundary of each Unit to be created must be coterminous with a partitions wall, extending in one plane for at least 6 feet, which divides the Unit from a hallway constituting a Common Element in the Building; and

(3) each Unit must comply with all applicable laws, rules, regulations, codes and/or ordinances, including, but not limited to, those relating to health, fire, safety, and parking, and adequate provision must be made for any required fire and emergency exits, mechanical and support systems of the Building, utilities, as well as assurance that there is no impairment of the structural integrity of the Unit and/or Building or that there is no increase in any Owner's insurance costs; and

(4) the subdivision shall not result in an increase in the number of Units allocated or otherwise permitted to exist on the Property

under the existing permits, covenants of record, or applicable zoning ordinances; and

(5) all expenses of the Association, including legal fees, architectural, surveying and consultant's fees, shall be borne by the requesting Unit Owner(s).

(c) The President shall submit the above request for subdivision to the Board members upon receipt. If said subdivision is approved by a majority vote of the Board, either at a meeting thereof or by written consent and by the Declarant during the period the Declarant has reserved to add Future Phases to the Regime, the President shall:

(1) cause an Amendment to the Master Deed to be prepared which conforms to this Master Deed and the Act, together with a certified Amendment to the plans, which conforms to the requirements of the Act. The Amendment to the Master Deed shall reallocate the assigned appurtenant interests among all the Units resulting from the subdivisions or relocation of boundaries in proportion to the relative sizes of those Units, but shall not affect in any manner the percentage of interest appertaining to the other Units not otherwise redefined. The Amendment to Master Deed shall to the extent necessitated by the subdivision, take into consideration potential redefinition of boundaries of the newly constituted Unit(s) as compared to the definition above in Section 5.05. In the event that the subdivision of a Unit results in the creation of what would normally be a Common Element within the Building so subdivided (e.g. the roof, foundation, structural elements, mechanical systems, exterior walls) such Common Elements shall be a Limited Common Element to those resulting Units within said subdivided Unit; provided, in no event shall the Owner(s) of the other Units be responsible for the costs of operation, maintenance, repair or replacement of any such Limited Common Element appurtenant to such a subdivided Unit; and

(2) upon payment by the affected Unit owners of all permit, recording, legal, architectural, and other fees incurred by the Association, the President of the Association shall execute the Amendment to the Master Deed and record same, including the plats and plans subdividing or relocating the Unit(s) and showing the altered boundaries of the Units and their dimensions and identifying numbers.

(d) The Amendments to the Master Deed and plans to reallocate Units are only effective when executed in the manner required by this Section 5.10 and recorded. The consents to the Amendment by the mortgagees of the affected Units shall also be recorded.

(e) In the event of a subdivision per Section 5.10(b) above, and to further Declarant's intent of providing a flexible and certain method consistent with the Act and the best interests of the Association and all its members, by which the boundaries of or between Units may be adjusted to meet the needs of individual Unit owners, subject to the conditions and procedures described in Section 5.10(b), Unit Owners are entitled to relocate the boundaries between adjoining Units and reallocate the assigned appurtenant interests of those Units accordingly.

**5.11 ALTERATIONS IN UNITS.**

(a) A Unit Owner may make any improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems, or lessen the support of, any portion of any other Unit.

(b) Subsequent to a subdivision of a Unit pursuant to Section 5.10 or in the situation where a Unit Owner already owns adjoining Units, after giving notice to the Association, a Unit Owner may alter a partition wall between such adjoining Units owned by him to create an opening in the wall. Such an alteration does not constitute a relocation of boundaries between Units as defined in Section 5.10 above.

(c) Any Unit Owner altering a Unit pursuant to this Section or Section 5.11 shall: (1) provide for waivers of all mechanics lien rights which may arise as a result of the alteration; (2) provide certificates of insurance insuring against all losses commonly insured against, arising out of the work naming the Association as an additional insured; (3) indemnify and hold the Association and other Unit Owners harmless from the effect of the work and the acts or omissions of anyone under such Unit Owner's direction or control; (4) minimize the disturbances of other Unit Owners and their business activities during the work; and (5) reimburse the Association for any expenses incurred by the Association, including but not limited to legal and other consulting fees.

(d) Any Owner, including Declarant, may remove all or a portion of any non-load bearing wall located within the perimeter walls bounding the Unit, provided the Owner obtains the advance written approval of the Association to

do so, which approval shall be given to the Owner upon the Association's satisfaction that the wall is in fact non-load bearing and non-structural and that its removal shall not cause any harm or damage to the Owner's Unit, the Building(s), or other Units contained in the Building(s), and upon the Owner agreeing to be solely responsible for all losses, costs, and liabilities which may arise on account of or in connection with the removal of the wall. The Association may impose reasonable conditions upon such approval, including, but not limited to the requirement for liability and/or property damage insurance, insuring the Association or other Owners. The removal of all or a portion of any wall shall not have the effect of changing the type of the Unit, the statutory value attributable to the Unit, or the Percentage Interest in the Common Elements and Limited Common Elements, attributable to the Unit.

(e) When any alterations approved by the Association are completed, the affected Unit Owners shall deliver to the Association a copy of the 'as built' plans and specifications certified to by an architect licensed to practice in South Carolina.

**6. AREAS COMPRISING PROPERTY.**

(a) Land. The lands which may be made subject to this Master Deed are those certain tracts or parcels described in **Exhibits "A," "A-1," and "B"** attached hereto and consisting of approximately 23.65 acres, which are owned by Declarant in fee simple subject to certain liens, encumbrances, rights-of-way, easements, covenants, and restrictions.

Hereafter, at one time, or from time to time, Declarant has constructed or may, in the future, construct roadways ("Roadways") providing ingress and egress to and from the Property. Declarant shall not be obliged to convey to the Association these Roadways as a Common Element (but may do so at Declarant's sole discretion). However, Declarant herewith conveys to each Owner of a Unit and to every permitted occupant of that Unit, a non-exclusive, temporary easement over, upon, and across such Roadways which are not included in the description of the Property at **Exhibit "A"**, if any, for ingress and egress to and from Marshland Road. These non-exclusive easements are temporary and shall automatically terminate and become null and void immediately upon merger by incorporation of any part of the Roadways into another Horizontal Property Regime, the Master Deed of which establishes or conveys a permanent, non-exclusive, unrestricted easement for passage over that portion of the Roadways by Owners of Units created by this Master Deed. Declarant reserves the right, in its sole discretion, to relocate these areas and the

temporary easements over them without notice to any Owner or occupant of a Unit. In such event, Declarant shall and is hereby especially empowered to prepare and record in the ROD Office for Beaufort County, South Carolina, an Amendment to this Master Deed, amending **Exhibit "A"** hereto, to show the areas and revised areas of these non-exclusive easements, without notice to or consent by Owners or occupants of Units. Such Amendment to be effective upon recordation of same in the ROD Office for Beaufort County, South Carolina.

(b) Incorporation of Additional Property. Hereafter, at one time or from time to time, Declarant, its successors and assigns hereby expressly reserves the right to be exercised in its sole discretion to submit one or more parcels of Additional Property to the provisions of the Act by incorporating them within this Master Deed. Additional Property shall be submitted to the Act subject to all recorded utility easements and other easements discussed in this Master Deed and any Amendments hereto. The maximum extent of additional land that the Declarant may submit to the provisions of this Master Deed is that property containing approximately 16.01acres of land, as described on **Exhibit "A-1,"** attached hereto and incorporated herein by reference.

A general description of the plan of development follows:

(1) The maximum number of Units in each proposed stage of development. There are six (6) proposed stages ("Phases") of development. Phase I consists of twenty-three (23) Units; subsequent Phases ("Future Phases"), if developed, will have together no more than one hundred twenty-four (124) additional Units.

(2) The dates by which the Owner submitting such property to Condominium ownership will elect whether or not he will proceed with Phase. For all proposed Phases, the election whether or not each Phase will proceed shall be made by December 31, 2010.

(3) A general description of the nature and proposed use of any additional Common Elements, which the Owner submitting Property to Condominium ownership proposes to annex to the Property described in the Master Deed, if such Common Elements might substantially increase the proportionate amount of the Common Expenses payable by the existing Unit Owners. There are no such additional Common Elements contemplated in the plan of development, which, reasonably considered, might substantially increase the proportionate amount of the

Common Expenses payable by existing Unit Owners. At present, it is contemplated that Future Phases may include a large waterfront pool and a community observation pier on Broad Creek.

(4) In Section 9.04 herein is a chart showing the Percentage Interest in the Common Elements of each original Unit Owner at each stage of development, if the Owner submitting property to Condominium ownership elected to proceed with all contemplated stages of development.

(5) Declarant, its successors and assigns may, in its sole discretion, incorporate one or more Future Phases into the Regime.

(6) Declarant may, in its sole discretion, vary the order of inclusion of any and all Future Phases, such that a Phase may be included out of numerical order.

(7) Declarant may, in its sole discretion, vary the design of each Phase and the design of Units within each Phase that may be incorporated or submitted to this Master Deed.

(8) If Declarant exercises its rights to incorporate any one or Future Phases, the ownership of Common Elements of the Association and voting rights attributable to any particular Unit shall be determined by the ratio of the statutory value of that particular Unit to the statutory value of all the Units in the Regime from time to time. It is understood that if and as Additional Property is brought into the Regime by Amendment of the Master Deed, the relative Percentage Interest of the Owners will change.

(9) Any additional amenities or recreational facilities, which may or may not be in the additional Phases, are solely at the option of Declarant. The description in any sales or promotion literature of the Declarant of any potential additional amenities or recreational facilities shall not, of itself, oblige the Declarant to construct such or to convey them to the Regime as Common Elements.

(10) If Declarant shall elect to incorporate one or more Future Phases into the Regime or to submit Additional Property to the Regime, such shall be accomplished by recordation of an Amendment, which shall include the revised Percentage Interest which each Owner owns, to

this Master Deed in ROD Office for Beaufort County, South Carolina, and such election shall be effective on the date of recordation.

(11) The Units which may be included in Additional Property, which may later be added to this Regime, include the Types A, B, and C Units herein described. Notwithstanding the foregoing, the Declarant reserves the right to include other types of Units in the Future Phases.

## 7. COMMON ELEMENTS.

The Common Elements of the Property are as follows:

### 7.01 GENERAL COMMON ELEMENTS.

General Common Elements are as follows:

(a) The Property, excluding the Limited Common Elements and the Units, and including but not limited to the land on which the Units are constructed, the foundations, stairways, exterior portions of perimeter walls, including exterior stucco wall surfaces, those portions of partitions and walls separating Units not otherwise part of the Unit, load-bearing columns or walls, slabs, public utility lines; and pipes, wires or conduits located within slabs or elsewhere in the Building other than as described in Section 5.05. In each instance there shall also be included the space actually occupied by the above.

(b) Parking facilities located on the Property which are shown on the plat of the Property attached hereto and identified as **Exhibit "B"**.

(c) All roads (except such "Roadways" as described in Section 6 (a)), walkways, paths, wood decking and boardwalks, trees, shrubs, yards, (except such as are designated as Limited Common Elements) gardens, planter areas, fountains, etc.

(d) The fire equipment rooms, elevator and appurtenant equipment room, and sprinkler systems and area occupying same.

(e) All installations, and are occupying same, outside of the Units for services such as power, light, gas (including underground storage tanks) telephone, television, water and other similar utilities.

(f) All sewer, drainage and irrigation pipes, excluding those which are the property of the utility district.

(g) The mail box and all appurtenances thereof.

(h) Such easements through the Units for pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units. General Common Elements and Limited Common Elements and easements for access, maintenance, repair, reconstruction or replacement of structural members, equipment, installations and appurtenances and for all other services necessary or convenient to the existence, maintenance, safety and use of the property, whether or not such easements are erected during construction of the Property or during re-construction of all or any part thereof, except such easements as may be defined as Limited Common Elements.

(i) The Community Center building (the "Clubhouse") and two (2) tennis courts as depicted on the as-built survey.

(j) The gatehouse as depicted as One-Story Stucco Building on the as-built survey referenced above.

(k) All areas not designated as a Limited Common Element and not described as lying within the boundary of a Unit as described in Section 5.05 hereof and all other elements of the Property constructed or to be constructed on the Property, rationally of common use or necessary to the existence, upkeep, and safety of the Property and in general all other devices or installations existing for common use.

**7.02 LIMITED COMMON ELEMENTS.**

Limited Common Elements as defined in the Act are those Common Elements reserved for the use of certain Unit owners to the exclusion of other owners. In **The Edgewater on Broad Creek Horizontal Property Regime**, the Limited Common Elements are as follows:

(a) All balconies and decks immediately adjacent to each Unit or to which each Unit has direct access from the interior thereof as shown on the floor plans identified as **Exhibit "C-1"** and on the as-built survey identified as **Exhibit "B".**

(b) The space lying between the upper boundary of each Unit as described in Section 5.05 and the floor or roof above such Unit subject to easements for utilizing service as previously described.

(c) The Owner's remote storage areas (lockers) located on the garage level beneath the Building as shown on the floor plans identified at **Exhibit C-1** and on the as-built survey identified as **Exhibit "B"**, which are numbered consistent with the Unit numbers and which are assigned specifically to each Unit for the sole and exclusive use of the Co-Owner.

(d) The ground level parking spaces located on the garage lever beneath the Building as shown on the floor plans identified at **Exhibit "C-1"** and on the as-built survey identified as **Exhibit "B"**, which are numbered consistent with the Unit Numbers and are assigned specifically to each Unit for the sole and exclusive use of the Co-Owner. Each Unit will be assigned one (1) parking space.

(e) All other areas depicted as Limited Common Elements to the Units on the floor plans attached as **Exhibit "C-1"**.

## 8. REVOCATION AND AMENDMENT.

The dedication of the Property to the Regime herein shall not be revoked, nor the Property removed from the Regime, nor any of the provisions herein materially amended unless all of the Co-Owners and the mortgagees of all the mortgages covering the Units unanimously agree to such revocation, or Amendment, or removal of the Property from the Regime by duly recorded instrument; provided, however, that without the consent of the Unit Owners or mortgagees, the Declarant, or its successors, or assigns in title to all or any portion of the Future Phase Property, may at any time prior to the termination of the reservation of rights period specified in Section 6 herein, amend the Master Deed and the Bylaws, if required, (i) in the manner set forth in Section 5.10(c) as it relates to subdivision and relocations of boundaries between units; (ii) so as to subject the Future Phases to the provisions of this Master Deed and the Act so

as to make the Future Phases Property or any part thereof an integral part of the Regime; and (iii) to correct any scriveners error, to correct conflicts between this document and the Act, to address any issues of probable concern to the Regime which may not be adequately herein addressed, to effect compliance with any requirements of any governmental law or ordinance, insurer, guarantor or purchaser of mortgage loans, and/or to enable any reputable title insurance company to issue title insurance coverage with respect to the Units. Notwithstanding any provision herein in this Section 8, the Association may amend the provisions of the By-Laws attached hereto as **Exhibit "D"** as provided for therein in Article XIII or elsewhere in said By-Laws. Any such Amendment shall, when read in concert with the Master Deed, contain all of the particulars required by said Act as the same is now constituted or may hereafter be amended and from and after the recording of such Amendment the Regime shall include all of said applicable Future Phases Property. The Future Phases Units are to be as described in Section 6 hereof and this Section 8. The designation of each Unit in the Future Phases by Unit type and its proportionate interest in the Common Elements is set forth in Section 9 herein.

If Declarant elects to make all or any portion of the Future Phases Property a party of this Regime as herein provided, Declarant shall cause to be prepared and made a part of the Amendments by which each Phase is incorporated into the Regime a schedule designating Unit types reflecting each Unit's proportionate interest in the Common Elements, which schedule shall be similar in content and format to the Schedule set forth in Section 9 hereof, prepared using the requirements and guidelines set forth in Section 6 hereof and this Section 8. Upon the recordation of the Amendments to make the applicable Phase of Future Phases Property a part of the Regime, the provisions regarding revocation and Amendment set forth in this Section 8 shall have equal application thereto. The Declarant shall not be required to obtain the consent of the Unit Owners or mortgagees for any amendments to this Master Deed for the purpose of adding the Future Phases.

## 9. PERCENTAGE INTEREST OF UNITS.

### 9.01 STATUTORY PERCENTAGE INTEREST.

The percentage of title and interest appurtenant to each Unit and the Unit Owner's title and interest in the Common Elements (both General and Limited) of the Property and the proportionate share in the profits and common monthly expenses, as well as the proportionate representation for voting purposes in the meeting of the Association is

based on the proportionate statutory value of each Unit to the statutory value of the total Property set forth below.

For purposes of the Act and pursuant to the terms of the Master Deed, the Percentage Interest appurtenant to each Unit of the Regime shall be established in accordance with the following formula:

$$\frac{V}{A} = P$$

"P" - Percentage Interest of each Unit.

"V" - Valuation of the respective Units as set forth in Section 9.03 and in the Amendments to Master Deed for Phase I - VI.

"A" - Aggregate Valuation of all Units existing in the Regime and added to the Regime as provided in Sections 6 and 8 of the Master Deed.

## 9.02 STATUTORY PERCENTAGE INTEREST/ALL UNITS.

The three (3) basic types of Units have the statutory values in the table below, varying with dependence on Floor number. Based upon the below statutory values, the percentage of undivided interest in the Common Elements appurtenant to each Unit in Phase I of the Regime is set forth below:

| Unit No./Type | Statutory Value | Percentage Phase I |
|---|---|---|
| Unit 2101/B | $462,194.00 | 4.6% |
| Unit 2102/A | $409,946.00 | 4.08% |
| Unit 2103/A | $409,946.00 | 4.08% |
| Unit 2104/A | $409,946.00 | 4.08% |
| Unit 2105/B | $462,194.00 | 4.6% |
| Unit 2201/B | $462,194.00 | 4.6% |

| | | |
|---|---|---|
| Unit 2202/A | $409,946.00 | 4.08% |
| Unit 2203/A | $409,946.00 | 4.08% |
| Unit 2204/A | $409,946.00 | 4.08% |
| Unit 2205/B | $462,194.00 | 4.08% |
| Unit 2301/B | $462,194.00 | 4.6% |
| Unit 2302/A | $409,946.00 | 4.08% |
| Unit 2303/A | $409,946.00 | 4.08% |
| Unit 2304/A | $409,946.00 | 4.08% |
| Unit 2305/B | $462,194.00 | 4.6% |
| Unit 2401/B | $462,194.00 | 4.6% |
| Unit 2402/A | $409,946.00 | 4.08% |
| Unit 2403/A | $409,946.00 | 4.08% |
| Unit 2404/A | $409,946.00 | 4.08% |
| Unit 2405/B | $462,194.00 | 4.6% |
| Unit 2501/C | $513,437.00 | 5.11% |
| Unit 2502/A | $409,946.00 | 4.08% |
| Unit 2503/C | $513,437.00 | 5.11% |
| **Totals** | **$10,047,700.00** | **100%** |

## 9.03 OVERALL SUMMARY - COMPOSITE CHART.

Subsequent to the filing of this Master Deed the total number of Units by Type and Percentage Interest is as follows:

| Unit Type | Individual % Interest | Total # of Units | Total Percentage |
|---|---|---|---|
| 1. A | 4.08% | 13 | 53.04% |
| 2. B | 4.60% | 8 | 36.80% |
| 3. C | 5.11% | 2 | 10.22% |
| | **Totals** | **23** | **100%*** |

* Total Total Percentage may not equal 100% due to rounding.

## 9.04 FUTURE PHASES.

In the event Declarant elects to expand the Regime as provided herein, all Units added to the Regime shall have the same statutory valuations as set forth above provided, however, that Declarant does reserve the right to modify floor plans for Future Phase Units, and in such event the statutory valuation may vary.

The following chart demonstrates the adjustment in the Percentage Interest assuming that Phase II-VI are added to the Regime comprising a total of one hundred twenty-four (124) Units in such Phases and assuming the same average statutory valuation of Units as Phase I. There are eighteen (18) A Units; eight (8) B Units; two (2) C Units contemplated in Phase II. The anticipated mix of Units for each Phase is slightly different and is subject to modification by Declarant. However, the exact adjustment of Percentage Interest is not subject to calculation until the exact number and size of all Units to be added to the Regime is established. There may be a fewer number of Units. In the event that addition of Units to the Regime results in a calculation of Percentage Interest in accordance with the above formula which does not

total one hundred (100%) percent; the amount necessary to bring such total to one hundred (100%) percent shall be allocated by the Board of Directors or its designated Management Agent.

**Assigned Percentage Interests Future Phases II - VI**

| Unit Type | Estimated # of Units | Statutory Valuation | Phase I Percent | Projected Phase I-VI (147 Units) Percent |
|---|---|---|---|---|
| 1. A | 89 | $409,946.00 | 4.08% | 0.64% |
| 2. B | 50 | $462,194.00 | 4.60% | 0.73% |
| 3. C | 8 | $513,437.47 | 5.11% | 0.81% |

**9.05 TOTAL VALUE.**

The total statutory value of the Property in Phase I is Ten Million Forty Seven Thousand Seven Hundred and NO/100 ($10,047,700.00) Dollars. The total statutory value projected for Phase I through Phase VI combined is Sixty Three Million Seven Hundred Two Thousand Three Hundred Ninety Four and NO/100 ($63,702,394.00) Dollars. Subject to the overall limitations described in Section 6 of the Master Deed, Declarant will not exceed these estimated numbers for the Future Phase.

**NOTE: THESE VALUATIONS ARE FOR PURPOSES OF THE SOUTH CAROLINA HORIZONTAL PROPERTY ACT.**

**9.06 NO ALTERATION.**

The proportionate representation for voting purpose and the percentage of the undivided interest in the Common Elements (both General and Limited) provided in this Section 9 shall not be altered without the acquiescence of the Co-Owner representing all of the Units expressed in an Amendment to this Master Deed duly recorded as required by Section 8 hereof or except as provided in Sections 6, 8, and 9 with regard to the Amendment of the Master Deed to admit the Future Phases Units.

## 10. ADMINISTRATION AND BY-LAWS.

### 10.01 ASSOCIATION; BY-LAWS.

As noted in Section 2 hereof, Declarant has caused to be incorporated under the laws of the State of South Carolina a corporation known as The Edgewater on Broad Creek Owners' Association, Inc., which shall be an incorporated Council of Co-Owners to serve as the body by which the Unit Owners will manage the affairs of the Regime. Each Unit Owner shall have voting rights in said Association in the same percentage as the percentage of interest his Unit has in the Common Elements. The administration of the Regime, and consequently of the Association, consisting as aforesaid of the Property described above shall be in accordance with the provisions of the By-Laws which are incorporated herein, made a part hereof and are attached hereto as **Exhibit "D"**.

### 10.02 AUTOMATIC MEMBERSHIP IN ASSOCIATION.

Each Unit Owner shall automatically become and be a member of the Association so long as he continues to be a Unit Owner and shall exercise such percentage of vote in all matters as shown in Section 10 hereof. In the event that a Unit is owned by more than one Person, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by all the record Owners of the said Unit and filed with the Secretary of the Association. Further, should such Unit Owner be a corporation, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or Vice President of the corporation and attested by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. All such certificates shall be valid until revoked, superseded by a subsequent certificate, or until there has been a change in ownership of the Unit concerned.

## 11. HORIZONTAL PROPERTY REGIME CONSTITUTED.

As appears above, a Horizontal Property Regime is hereby constituted under and subject to the provisions of the Horizontal Property Act of the State of South Carolina, so that the Units may be conveyed and recorded as individual properties capable of independent use and each having its own exit to the Common Elements of the Property, and each Unit Co-Owner having an

exclusive and particular right over his respective Unit and, in addition, the specified undivided interest in the Common Elements of the Property.

## 12. DECLARANT SUBJECT TO MASTER DEED; DECLARANT USE.

### 12.01 DECLARANT USE; GENERAL.

So long as the Declarant owns one or more of the Units, it shall be subject to the provisions of this Master Deed and the Exhibits attached hereto and the Declarant covenants to take no action which will adversely affect the rights of the Regime with respect to the assurances against latent defects in the Property or other rights assigned to the Regime by reason of the establishment of said Regime; provided, however, that Declarant as in the case with any other Unit Owner, shall have the absolute right and privilege of leasing any or all of the Units owned by it on a short or long term basis for the uses permitted by this Master Deed , and that Declarant's lessees, invitees, guest, etc., shall be entitled to all of the privileges and rights, and be subject to the requirements hereunder, of a Co-Owner with respect to the use of the Property excluding voting rights which shall remain with the Declarant.

### 12.02 DECLARANT USE AS SALES MODEL.

Provided further, that Declarant, and its successors and assigns, shall be entitled to use one or more of the Units and/or the Clubhouse for purposes of a sales model and/or office until the entire project, to include the Future Phases have been sold, it being the intent of Declarant that said reserved rights do not conflict with the residential use restriction described herein above. The Declarant may reserve portions of the Clubhouse designated by the Declarant for use as a sales office and as an office for the Management Agent.

## 13. TIME-SHARING/INTERVAL AND FRACTIONAL OWNERSHIP.

The Declarant herein subjects the Phase I Property of the Regime to the further limitation and restriction that it shall be used and occupied for whole-time residential dwelling Units in the same manner as other Condominium Units constructed as such within the multi-family residential areas of Hilton Head

Island, and such dwelling Units shall not be utilized for purposes of time-sharing or interval ownership, time-sharing or interval licenses, time-sharing or interval leases, fractional interest or similar plans as those items are currently generally utilized in the real estate industry or as those or similar terms are expresses or defined in Chapter 32, Code of Laws of South Carolina, 1976, as amended, i.e. the South Carolina Vacation Time Sharing Act and the South Carolina Multiple Ownership Act.

## 14. PROVISIONS AND COVENANTS APPLICABLE TO UNITS.

Each Co-Owner shall comply with the provisions of this Master Deed and authorized Amendments thereto. Failure to comply with such provisions, decisions, or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief. The Units shall also be conveyed subject to the recorded plat and plans of the Property and Amendments thereto and those certain covenants, restrictions, easements and other matters of title as more particularly described at **Exhibit "A"** hereto.

## 15. GENERAL CONDITIONS/MISCELLANEOUS MATTERS.

### 15.01 COMMON ELEMENTS NOT PARTITIONED.

Except as provided herein, the Common Elements shall remain undivided and no Co-Owner shall bring any action for partitioning and/or division.

### 15.02 COMMON ELEMENTS NOT SEVERABLE FROM UNITS.

The undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

### 15.03 NONUSE NOT EXEMPTION OF LIABILITY FOR COMMON EXPENSES.

No Co-Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or

enjoyment of any of the Common Elements or by the abandonment of his Unit.

**15.04 ALL USERS OF PROPERTY SUBJECT TO MASTER DEED.**

All present or future Co-Owners, tenants, future tenants, or any other person that might use the facilities of the Property in any manner, including those who may lease from the Declarant, are subject to the provisions of this Master Deed and any authorized Amendments thereto, and that the mere acquisition or rental of any of the Units shall signify that the provisions of this Master Deed and any authorized Amendment thereto are accepted and ratified.

**15.05 ASSESSMENTS SUBORDINATE TO MORTGAGEE TAKING TITLE.**

Where a mortgagee or other purchaser of a Unit obtains title by reason of foreclosure or deed in lieu of foreclosure of a mortgage covering a Unit, such acquirer of title, his or its heirs, successors, assigns or grantees, shall not be liable for assessments by the Association which became due prior to the acquisition of title by such acquirer, it being understood, however, that the above shall not be construed to prevent the Association from filing and claiming liens for such assessments and enforcing same as provided by law, and that such assessment shall be subordinate to such mortgage.

**15.06 INSURANCE.**

The Board of Directors of the Association shall be required to obtain and maintain those types and forms of insurance as are required by ARTICLE VIII of the By-Laws set forth in **Exhibit "D"** attached hereto and made a part hereof.

**15.07 RECONSTRUCTION AND REPAIRS.**

In the event of casualty loss or damage to the Property the provisions of Article IX of the By-Laws as set forth in **Exhibit "D"** shall govern all matters pertaining to reconstruction and repair.

**15.08 CONDEMNATION.**

In the event of a condemnation of a portion of the Property which is subject to this Master Deed, no reallocation of interests in the Common Elements resulting from a partial condemnation may be effected without the prior approval of the Unit Owners and the eligible holders holding mortgages on all remaining Units, whether existing in whole or in part, and which have at least seventy-five (75%) percent of the votes of such remaining Units subject to eligible holder mortgages.

The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof. Each Unit Owner appoints the Association as attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or the Insurance Trustee for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

**15.09 EASEMENT FOR ENCROACHMENT.**

If any portion of the Common Elements now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of: (a) settling of the Building or Buildings; (b) alteration or repair to the Common Elements made by or with consent of the Board or; (c) as a result of repair or restoration of any Building or any Unit necessitated by damage by fire other casualty; or (d) as a result of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Building or Buildings stand.

**15.10 OTHER REGIME EASEMENTS.**

Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements, if any, located in any of the other Units and serving his Unit. Each Unit shall be subject

to an easement in favor of the Owners of all other Units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board shall have the right of access to each Unit to inspect the same to remove violations therefrom and to maintain repair or replace Common Elements contained therein or elsewhere in the building.

**15.11 SEVERABILITY.**

The provisions hereof shall be deemed independent and severable and the invalidity in whole or part of any sections, sub-section, sentence, clause, phrase, or word, or other provision of the Master Deed and the By-Laws or any authorized Amendment thereto shall not impair or affect in any manner the validity or enforceability of the remaining portions thereof and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included therein.

**15.12 NON-WAIVER.**

No provision contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**15.13 GENDER AND NUMBER.**

The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine and neuter gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

**15.14 APPLICABLE LAW/INTERPRETATION.**

This Master Deed is set forth to comply with the requirements of the Act as presently constituted or as hereafter amended. In case any of the provisions stated above conflict with the provisions of said statue, the provisions of said statute shall control. On all cases, the provisions of this Master Deed shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of

land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed herein and which will preserve the Property as a situs for an attractive, well maintained, retirement community.

Should any provision of this Master Deed or any section, paragraph, sentence, clause, phrase or term in this Master Deed be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof such judgement shall in no way affect the other provisions hereof which are hereby declared to be severable.

Contrary to the restrictive common law rule of construction, this Master Deed shall by this covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Master Deed, to covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant and/or Association, and any other covenant condition, restriction or obligation within this Master Deed is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement or economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

**15.15 CAPTIONS.**

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed or the intent of any provisions hereof.

**15.16 EXHIBITS.**

All Exhibits to this Master Deed shall be an integral part of this instrument.

**15.17 TRADEMARK USE.**

Each Owner, by acceptance of a deed to any lands, tenements or hereditaments within the Property hereby acknowledges that "The Edgewater on Broad Creek" and designs are service marks and

trademarks of the Declarant. Each Owner agrees to refrain from misappropriating or infringing these service marks or trademarks.

**16. LIMITED WARRANTIES.**

The purpose of the following Section relating to warranties is to provide actual notice to successors-in-title to original purchasers:

"At Closing, Seller shall transfer to Purchaser all of Seller's right, title and interest in and to any manufacturer's warranty furnished to Seller covering any equipment or appliance. If written notice is given to Seller by Purchaser within thirty (30) days of discovery of any defect not caused by Purchaser, his agents, guests, or invitees, then Seller will, at no cost to the Purchaser for a period of one (1) year from the date of closing, repair or replace the defective portion of the Property. The warranty shall not apply to fixtures and appliances covered by a warranty of a manufacturer or dealer for which defects the Purchaser shall have such rights as are defined in the applicable warranty documents. Seller shall not be responsible for any incidental or consequential damages arising from any defect. This warranty is personal to Purchaser, and shall automatically terminate and be of no further force or effect upon Purchaser's sale, transfer or conveyance of the Property. SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED AS TO THE FITNESS, DESIGN, OR CONDITION OF ITEMS OF TANGIBLE PERSONAL PROPERTY OR FIXTURES, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE."

**[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**

**IN WITNESS WHEREOF**, Declarant has executed this Master Deed, and the appropriate corporate seal affixed hereto this 19th day of December the year of Our Lord Two Thousand and Two and in the Two Hundred and Twenty Sixth year of the Sovereignty and Independence of the United States of America.

**WITNESSES:**

**BROADCREEK EDGEWATER, LP,**
**a South Carolina Limited Partnership**

BY: WINNETKA ASSOCIATES
EDGEWATER, LLC
ITS: SOLE GENERAL PARTNER

BY: WINNETKA ASSOCIATES I
LIMITED PARTNERSHIP
ITS: SOLE MEMBER

BY: BAIRD PACIFIC WEST, INC.
ITS: SOLE GENERAL PARTNER

Birdie Sargent

BY: Wyllys T. Baird
**Wyllys T. Baird**

ITS: **President**

**STATE OF SOUTH CAROLINA** )
) **PROBATE**
**COUNTY OF BEAUFORT** )

**PERSONALLY** appeared before me Birdie Sargent who, on oath, says that s/he saw the within named **BROADCREEK EDGEWATER, LP, a South Carolina Limited Partnership** by Winnetka Associates Edgewater, LLC, its sole General Partner, by Winnetka Associates I Limited Partnership, its sole Member, by Baird Pacific West, Inc., its sole General Partner, by **Wyllys T. Baird**, its President, sign the Master Deed, and the said Company by said officer, seal said Deed, and as its act and deed, deliver the same and that s/he with Regina M Strickroth witnessed the execution thereof.

Birdie Sargent
(Non Notary Signature)

SWORN to before me this 19th
Day of December, 2002.

(L.S.)
Notary Public for South Carolina
My commission Expires: 3-16-05

## INDEX OF EXHIBITS

## THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME

| | |
|---|---|
| Exhibit "A" | Description of Land (Phase I Property – The Edgewater on Broad Creek), Description of Future Phase Land, Description of Reserved Rights and Permitted Exceptions. |
| Exhibit "A-1" | Description of "Additional Land," to wit: Maximum Extent of Land that may be brought into the Regime |
| Exhibit "B" | Plat/As-Built Survey (Phase I and Recreational Parcel) |
| Exhibit "C-1" | Architectural Drawings of Floor Plans of Building and Units |
| Exhibit "C-2" | Architect's Certificate |
| Exhibit "D" | By-Laws of the Edgewater on Broad Creek Horizontal Property Regime and the Edgewater on Broad Creek Property Owners' Association, Inc. |
| Exhibit "E-1" | Joinder of Mortgagee |

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**EXHIBIT "A"**
**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

DESCRIPTION OF LAND

PHASE I PROPERTY

ALL that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina consisting of approximately 7.64 Acres and shown as "REGIME PARCEL 1" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME – PHASE I" prepared by Surveying Services Inc. certified to by James W. Edwards SCRLS #15515 dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the ROD Office for Beaufort County, South Carolina on _____.

SAVE AND EXCEPT THEREFROM, the right of ingress and egress unto the Declarant herein, its successors, assigns, and Grantees.

FURTHER, SAVE AND EXCEPT THEREFROM, the right of ingress and egress over and across all roads and walkways within the said Phase I Property shown on the above-described plat of Edgewater on Broad Creek.

Said reservation being unto the Declarant herein, its successors and assigns and Grantees; said reserved easement expressly for, but not limited to, the purpose of construction and all construction related activities on the Phase I Property and on the Additional Property described at **Exhibit "A-1"**.

FURTHER, SAVE AND EXCEPT from the above described property, title to and ownership of all water and sewer lines located on said Parcels or hereafter installed thereon, together with all pipes, pumps, pumping stations, or other equipment or facilities located thereon, together with an easement to such lines, equipment or facilities to allow for the maintenance repair or replacement of such lines, facilities or equipment or for the purpose of installing additional lines, equipment or facilities thereon from time to time.

FURTHER, the Declarant expressly reserves the right to improve the aforementioned property by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to

recreational facilities, drainage facilities, lagoons, and the like, pertaining to The Edgewater on Broad Creek Horizontal Property Regime.

FURTHER, Declarant expressly reserves the right to install lines, equipment and facilities for utility and drainage purposes and to grant easements over the property for the installation of additional lines, equipment or facilities for utility and drainage purposes from time to time.

FURTHER, the above property is submitted to The Edgewater on Broad Creek Horizontal Property Regime subject to all easements as shown on the above plat of record and to all existing utility easements or easements to be granted in favor of the Hilton Head Public Service District Number 1, Palmetto Electric Cooperative, Hargray Telephone Company or any other utility or cable television provider of record in the ROD Office for Beaufort County, South Carolina.

In addition to the foregoing matters, the property described above is conveyed subject to the following:

1. Taxes and assessment for the year 2003 and subsequent years, a lien not yet due and payable.

2. Easements, utility lines, wires and pipes, transformers, sewer manholes, grate inlets, curb inlets, water valves, well, and all other equipment or related improvements shown on that certain plat prepared by Surveying Services, Inc., James W. Edwards, SCRLS 15515, entitled "Edgewater on Broad Creek ALTA/ACSM Land Title Survey" dated September 10, 2001; revised December 13, 2002; also, any unrecorded rights of use or maintenance of said equipment and improvements.

3. Title to that portion of the Property which is or may be filled-in-land, or which is or has been under water, or which lies below the mean high water mark of Broad Creek.

4. Rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme water line, or other apparent boundary line separating the publicly used area from the upland private areas.

5. Interests created by or limitations on use imposed by the Federal Coastal Zone Management Act or other federal law, or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.

6. Easement to Palmetto Electric Cooperative, Inc. recorded in said Register's Office in Book 1353 at Page 508.

7. Notice of Project Commencement recorded in said Register's Office in ORB 1429 at Page 241.

The property described above is a portion of the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

**EXHIBIT "A-1"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

DESCRIPTION OF "ADDITIONAL LAND," TO WIT: MAXIMUM EXTENT OF LAND THAT MAY BE BROUGHT INTO THE REGIME

ALL that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 Acres and shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME – PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD Office for Beaufort County, South Carolina on 12/31/02.

**EXHIBIT "B"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

PLAT/AS-BUILT SURVEY OF PROPERTY

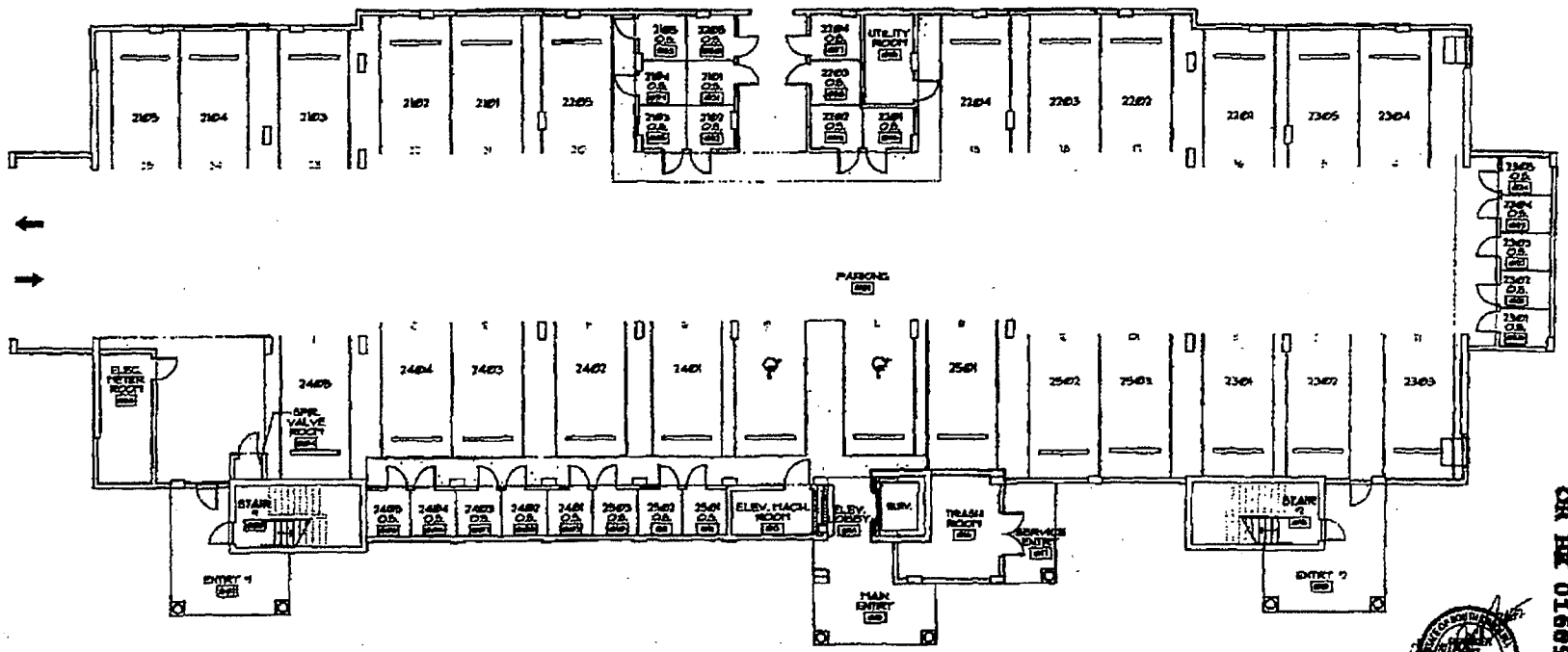
Attached hereto is a plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME, PHASE I, prepared by Surveying Consultants, Inc., James W. Edwards, SCRLS #15515, dated December 19, 2002 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 91 at Page 5 on Dec. 31, 2002.

**EXHIBIT "C-1"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

ARCHITECTURAL DRAWINGS OF FLOOR PLANS

Attached hereto are the floor plans and elevations.



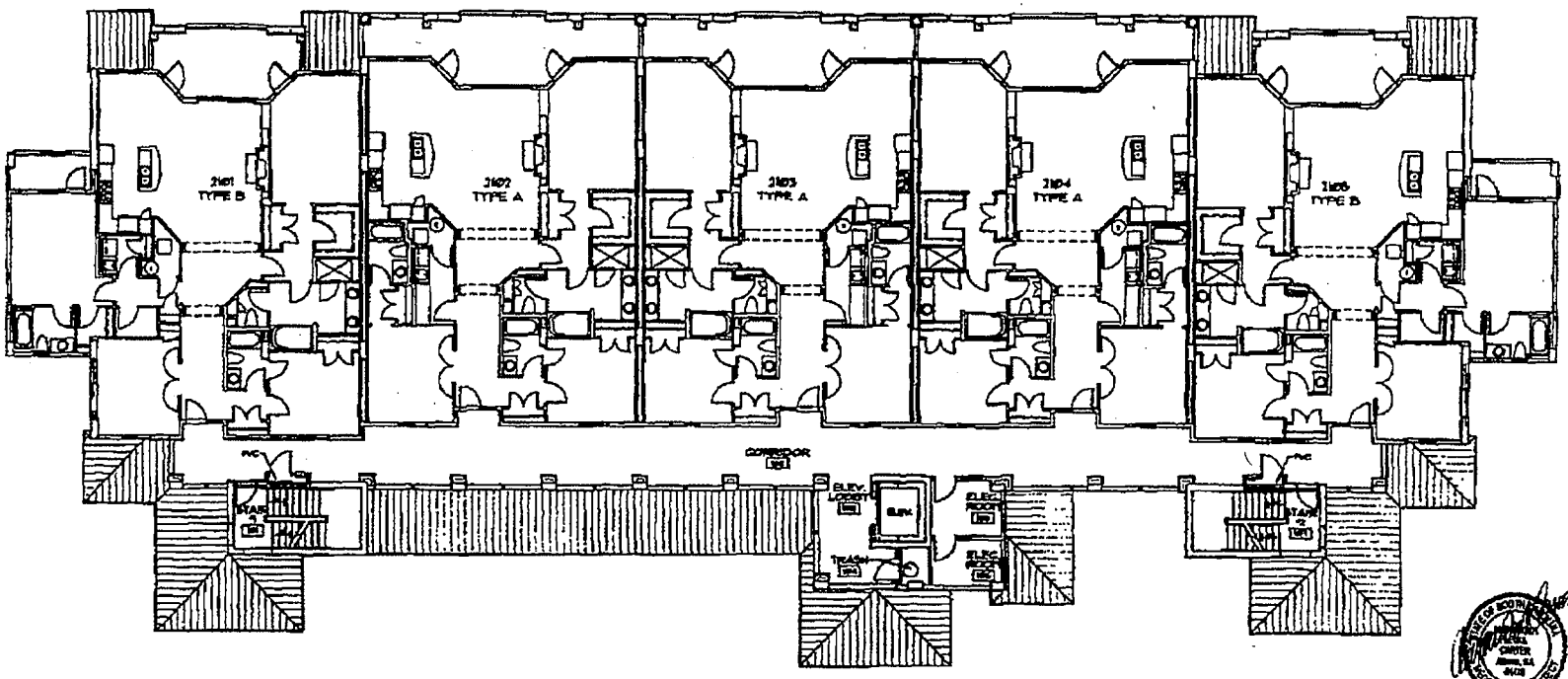

PARKING LEVEL FLOOR PLAN

NOT TO SCALE

# EDGEWATER - PHASE 1

DECEMBER 12, 2002

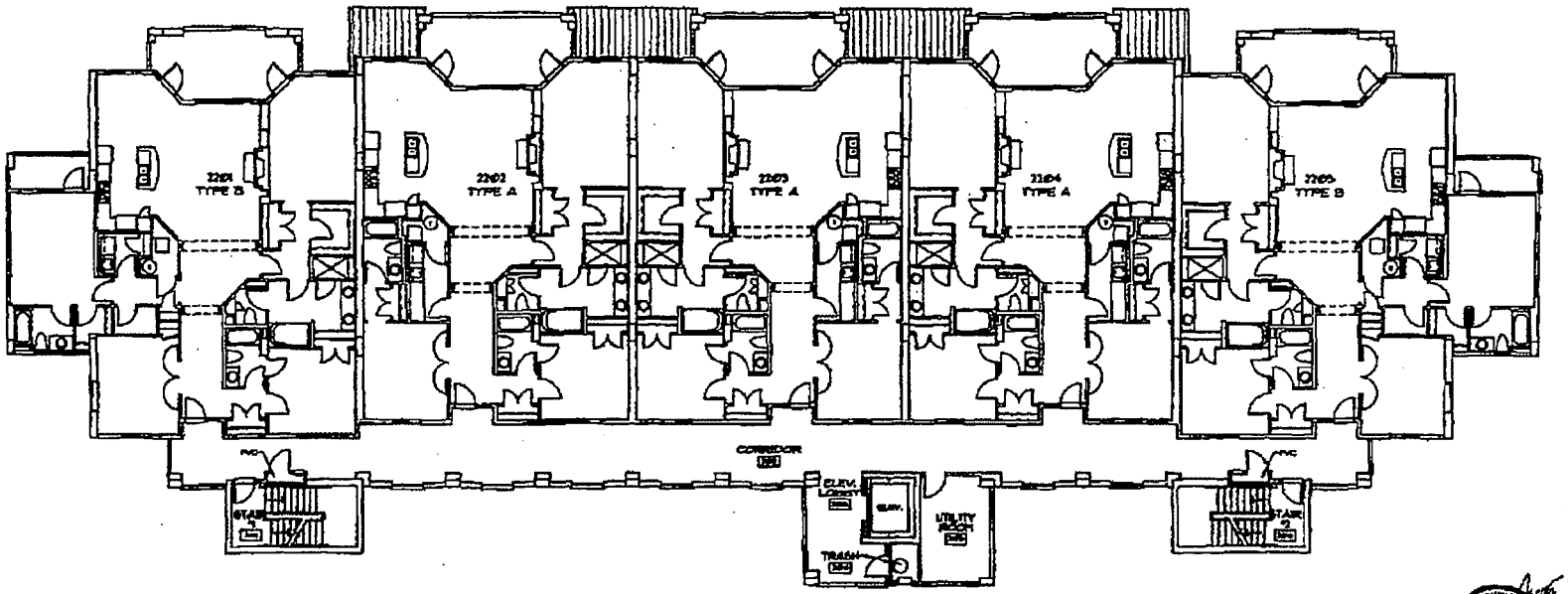
OR BK 01609 PAGE 0618




EDGEWATER - PHASE I

DECEMBER 17, 2002

OR BK 01669 PAGE 0619



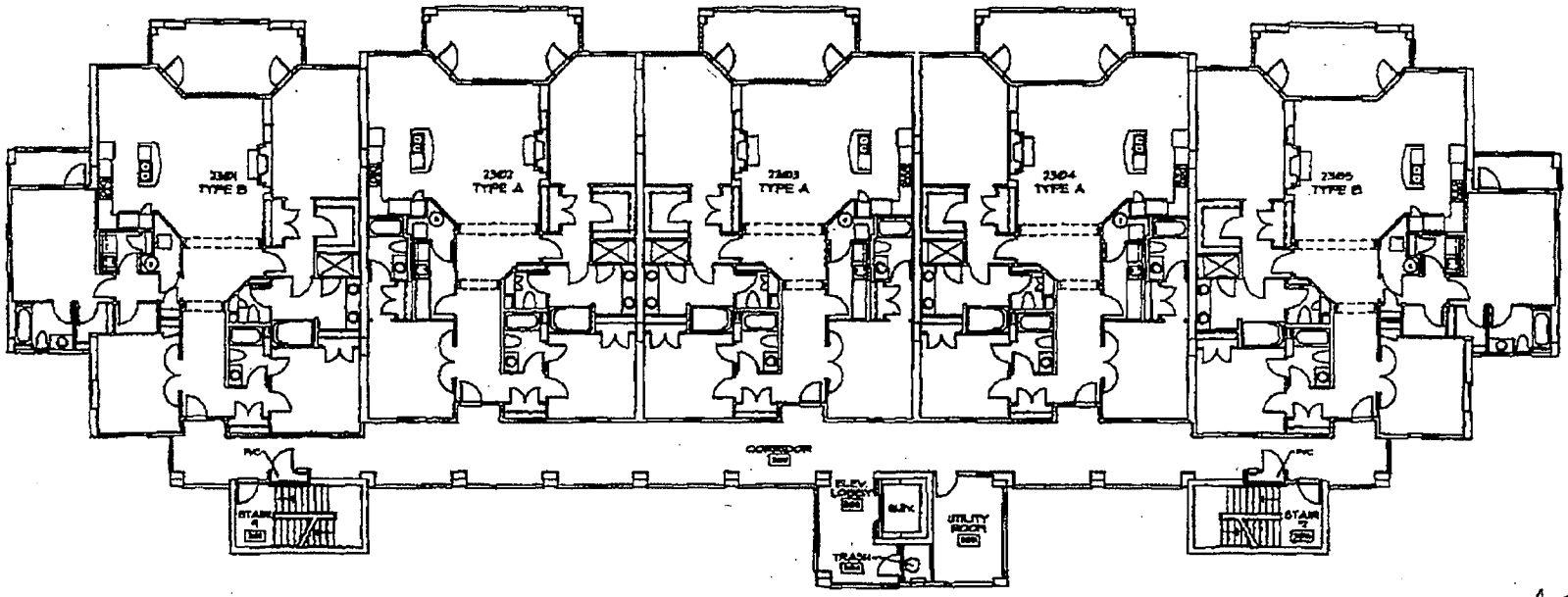

SECOND LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0620



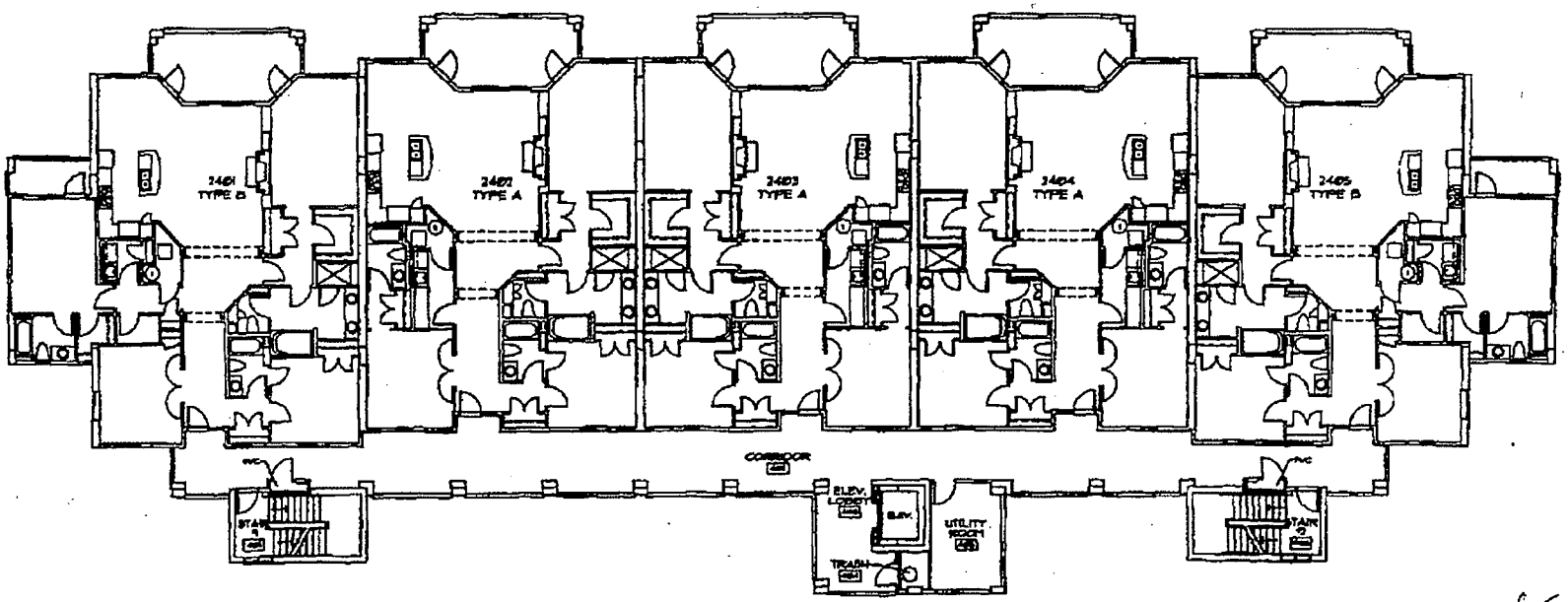

THIRD LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0621



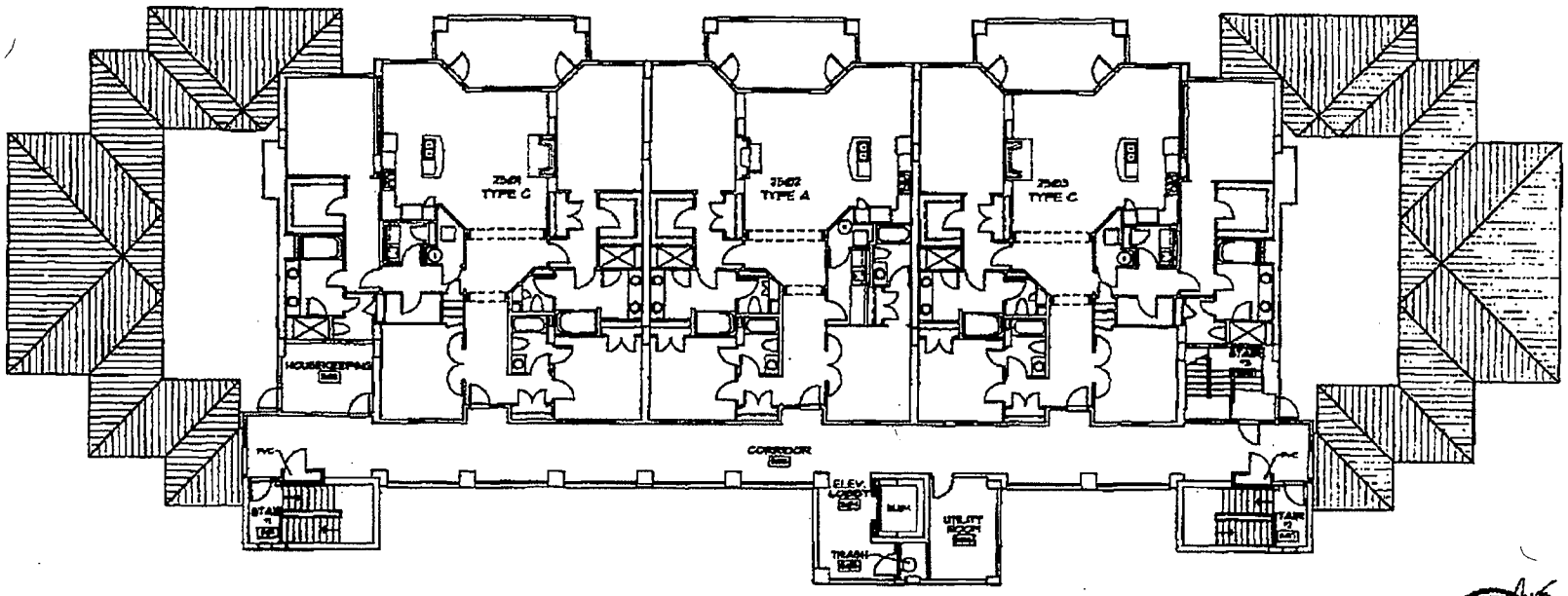

FOURTH LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0622



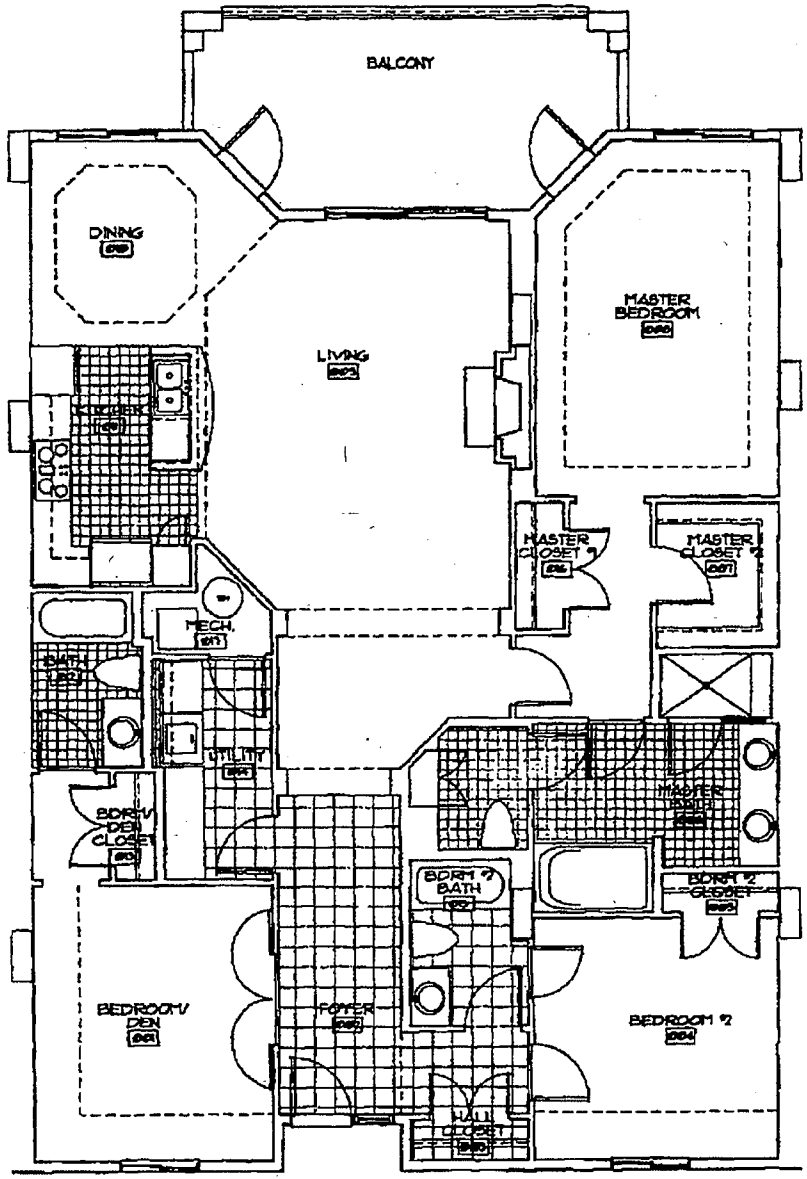

FIFTH LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0623



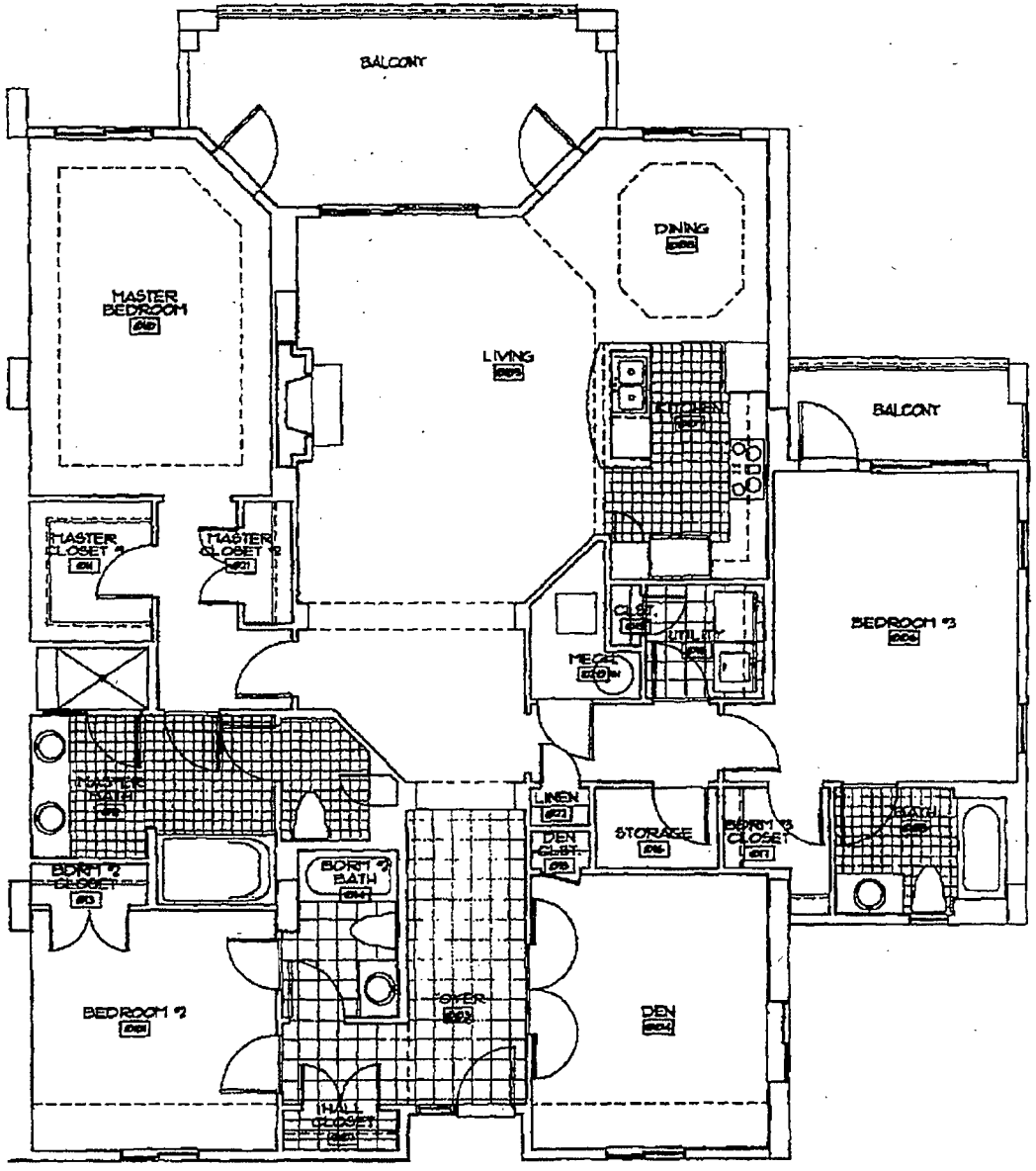

TYPE 'A' - FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE 1

DECEMBER 12, 2002

OR BK 01689 PAGE 0624



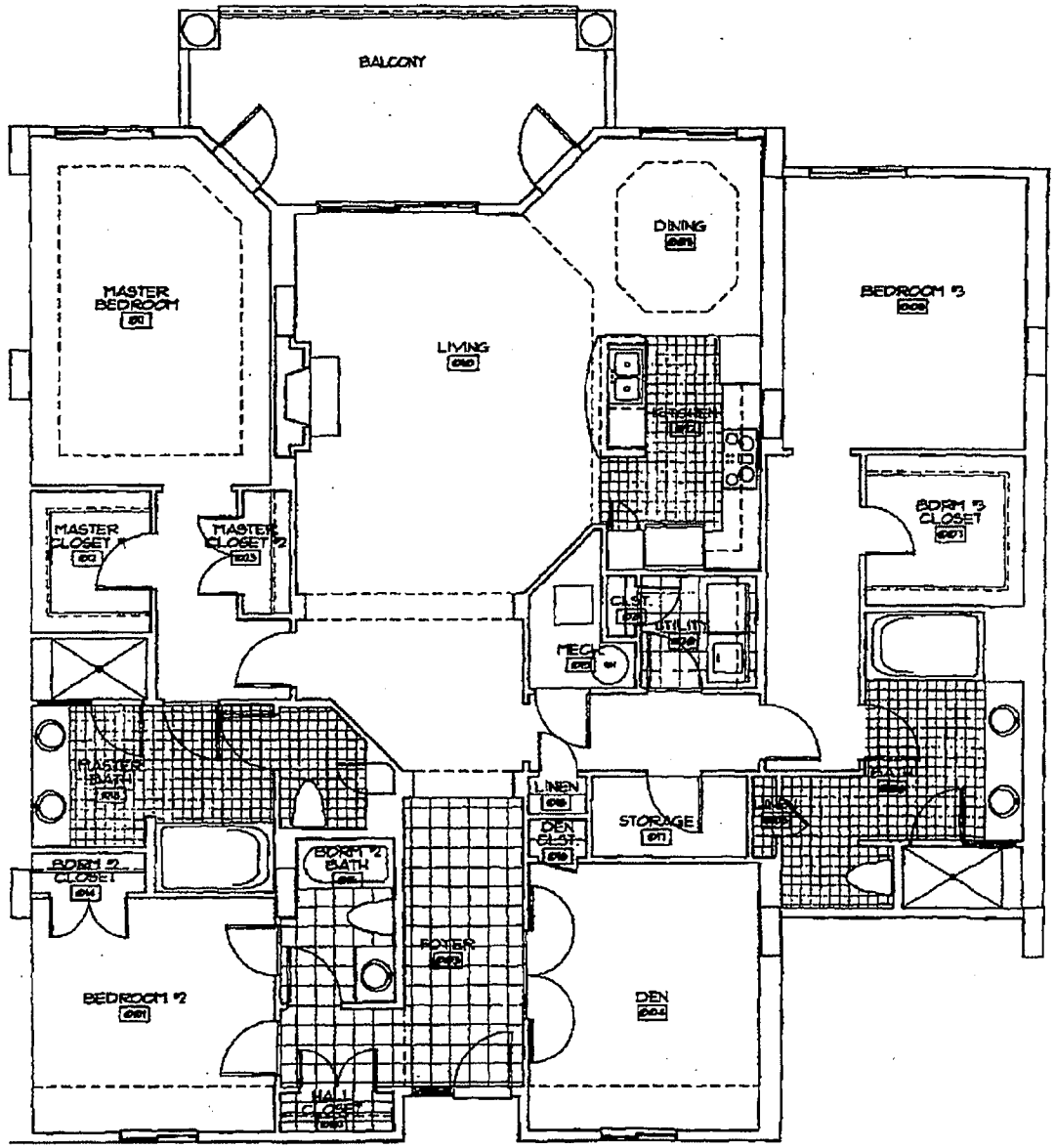

TYPE 'B'- FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PG 0625



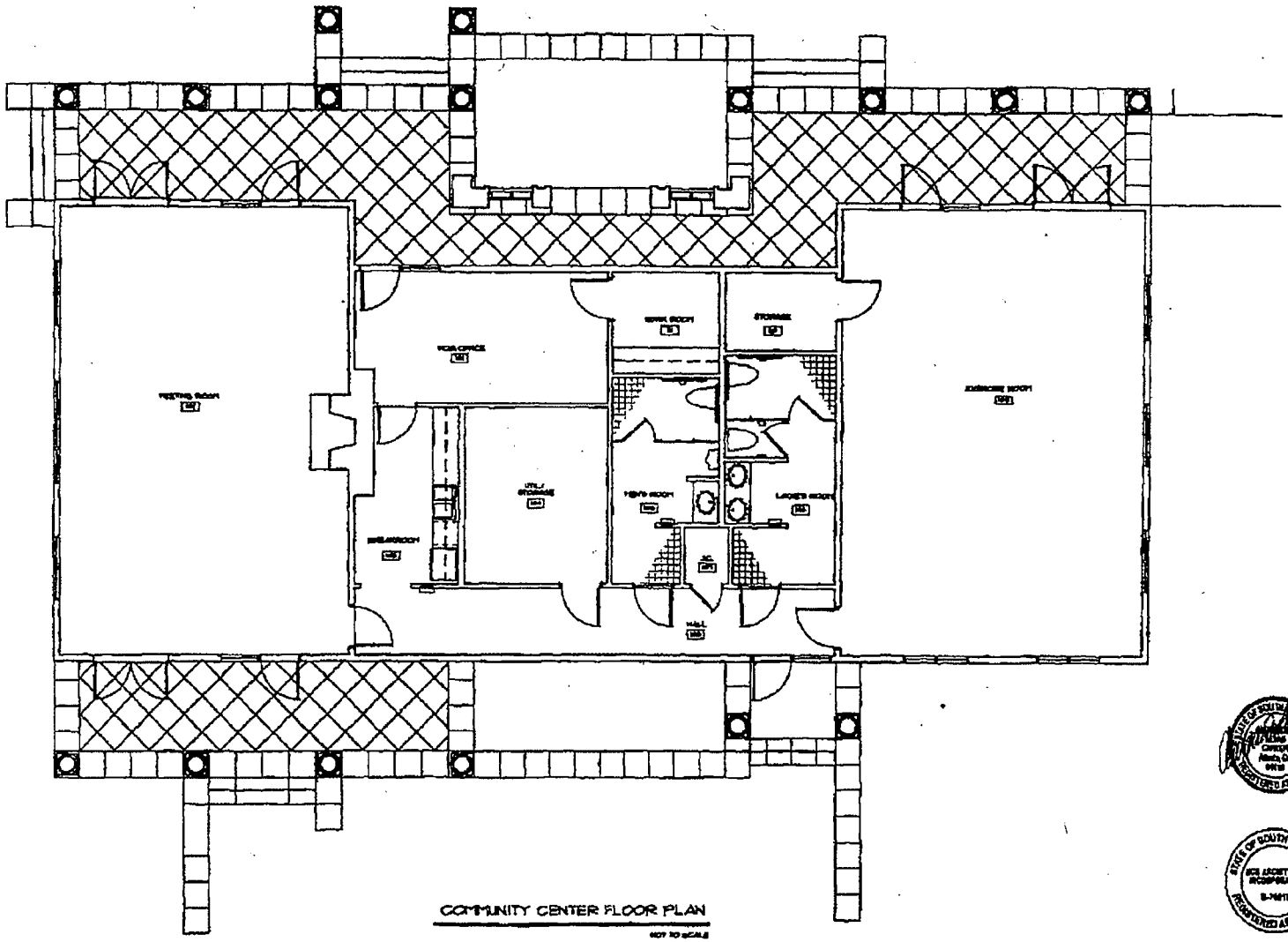

TYPE 'C'- FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0626



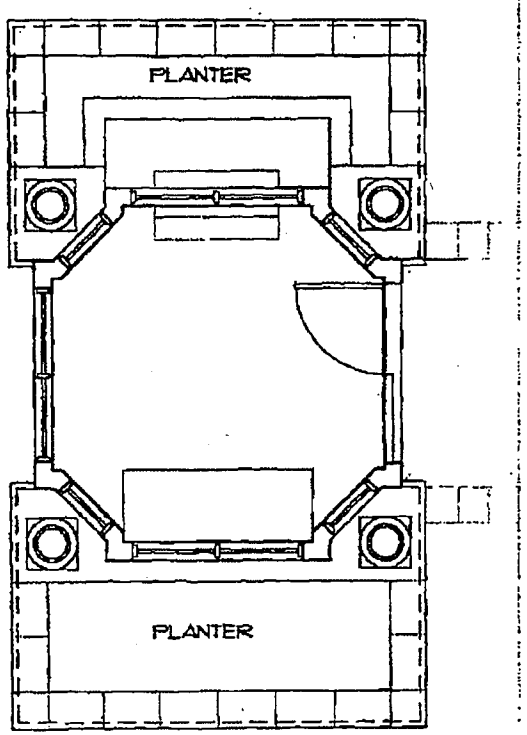

COMMUNITY CENTER FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE 1

DECEMBER 12, 2002

OR BK 01669 PAGE 0627




GATEHOUSE FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 17, 2007

OR BK 01689 PAGE 0628

OR BK 01689 PAGE 0629

**EXHIBIT "C-2"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

ARCHITECT'S CERTIFICATE

This is to certify that, to the best of the undersigned's knowledge, The Edgewater on Broad Creek Horizontal Property Regime, Phase I consisting of the Twenty Three (23) Units numbered as follows: 2101, 2102, 2103, 2104, 2105, 2201, 2202, 2203, 2204, 2205, 2301, 2302, 2303, 2304, 2305, 2401, 2402, 2403, 2404, 2405, 2501, 2502, 2503 are built substantially in accordance with the floor plans attached to the Master Deed creating said Regime, as Exhibit "C-1" to be recorded in the ROD Office for Beaufort County, South Carolina, except for minor variations which are customary in projects of this nature.

_____ NCG, INC.

_____ By: _____

S.C. Registration # 4416

Certified to this 18th Day of December 2002

Henrietta Hastie (L.S.)

Notary Public for South Carolina

My Commission Expires: _____

HENRIETTA HASTIE
Notary Public, DeKalb County, Georgia
My Commission Expires Dec. 12, 2003

**EXHIBIT "D"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

**BY-LAWS OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME AND THE EDGEWATER ON BROAD CREEK OWNERS' ASSOCIATION, INC.**

ARTICLE I

PLAN OF UNIT OWNERSHIP

The following By-Laws shall govern the operation of The Edgewater on Broad Creek Owners' Association Inc.

Section 1. HORIZONTAL PROPERTY REGIME. The term "Property" as used herein means and includes the land, the buildings, improvements and structures thereon) located on Hilton Head Island, in Beaufort County, South Carolina, known as THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME has been, by Master Deed, submitted to the provisions of the Horizontal Property Act of South Carolina, which said Property shall hence be known as THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (hereinafter referred to as "Regime").

Section 2. ASSOCIATION. In conjunction of the creation of above described Regime there also has been incorporated under the laws of the State of South Carolina as Association known as The Edgewater on Broad Creek Property Owners Association, Inc. (hereinafter referred to as "Association") which pursuant to the provisions of the aforementioned Master Deed, constitutes the incorporated The Edgewater on Broad Creek council of Co-Owners. The offices of the Association shall be at the offices of Broad Creek Edgewater, LP (hereinafter referred to as "Declarant"), at 52 New Orleans Road, Hilton Head Island, South Carolina 29928, or such other place as subsequently designated by the Board of Directors of the Association.

Section 3. BY-LAWS APPLICABILITY. The provisions of these By-Laws are applicable to the Property and the Regime. All terms used herein and not otherwise defined shall have the meaning ascribed to them in the

MASTER DEED, certain provisions of which Master Deed may be repeated in full or in part.

Section 4. PERSONAL APPLICATION. All present or future Co-Owners, tenants, future tenants, or their employees, or any other person who might use the facilities of the Property in any manner, are subject to the regulations set forth in these By-Laws and in the Master Deed establishing said Regime as they may be amended from time to time. The mere acquisition or rental of any of the Dwelling Units (hereinafter) usually referred to as "Unit") as defined in the Master Deed of the Property or the mere act of occupancy of any of said Units will signify that these By-Laws, the provisions of the Master Deed. The Covenants as defined in Section 14 of the Master Deed and any authorized, recorded Amendments to the foregoing Master Deed are accepted and ratified, and will be complied with.

## ARTICLE II

## VOTING, MAJORITY OF CO-OWNERS QUORUM, PROXIES

Section 1. ELIGIBILITY. Any person who acquires title to a Unit in the Regime is deemed to have consented to be a Member of the Association. There shall be one membership for each Unit owned. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit is vested in more than one person, then all of the persons so owning such Unit shall agree upon the designation of one of the Co-Owners of such Unit to act as a Member of the Association. If Unit ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation to act as a Member of the Association.

Section 2. VOTING. Voting shall be on a percentage basis and the percentage of the vote to which the Co-Owner is entitled is the statutory percentage assigned to the Unit or Units in the Master Deed.

Section 3. MAJORITY OF CO-OWNERS. As used in these By-Laws, the term "majority of Co-Owners" shall mean those Co-Owners holding fifty-one (51%) percent or more of the total statutory value of the Property, in accordance with the statutory percentages assigned in the Master Deed, and any authorized Amendments thereto.

Section 4. QUORUM. Except as otherwise provided in Article III, Section 7 and elsewhere in these By-Laws, the presence in person or by proxy of a majority of Co-Owners as defined in Section 3 of this Article shall constitute a quorum.

Section 5. PROXIES. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting.

Section 6. MAJORITY VOTE. The vote of a majority of the Unit Owners present at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where in the Master Deed or in these By-Laws or by law, a higher percentage is required.

## ARTICLE III

## THE EDGEWATER ON BROAD CREEK OWNERS' ASSOCIATION

Section 1. ASSOCIATION RESPONSIBILITIES. The Co-Owners of the Unit will constitute the Association which will have the responsibility of administrating the Property and electing the Board of Directors. Except as otherwise provided herein or in the Master Deed or By-Laws, decisions and resolutions of the Association shall require approval by a majority of Co-Owners.

Section 2. PLACE OF MEETINGS. All meetings, annual and special, of the Association shall be at the offices of the Association, or at such other place and at such time convenient to the Co-Owners, as shall be designated by the Board of Directors of the Association or the Management Agent and state in the Notice of Meeting.

Section 3. ANNUAL MEETINGS. The annual meetings of the Association shall be held at the call of the President once a year during the month of March or at such other time as a majority of the Co-Owners may agree upon. At such meetings there shall be elected by ballot of the Co-Owners a Board of Directors in accordance with the requirements of Section 5 of Article IV of these By-Laws and there shall be a report by the President or Secretary-Treasurer on the activities and financial condition of the Association. The Co-Owners may also transact such other business of the Association as may properly come before them.

Section 4. SPECIAL MEETINGS. It shall be the duty of the Secretary to call a special meeting of the Co-Owners as directed by: (i) resolution of the Board of Directors; (ii) at the request by a majority of the Directors; (iii) or upon a petition signed by Co-Owners holding at least twenty-five percent (25%) of the total voting power of the Association and having been presented to the Secretary. A notice of any special meeting shall state the time and place of such meeting and the purpose or purposes thereof. No business shall be transacted at a special meeting except as stated in the notice. If a Co-Owner intends to raise a matter at a special meeting, said Co-Owner shall submit such request in writing to the Secretary or President at least ten days before the date notice is to be mailed to the Co-Owners in order for such matter to be included in the Notice of Special meeting.

Section 5. FIRST MEETING. The first meeting of the Association shall be held within one hundred twenty (120) days from the date that a minimum of ninety (90%) percent of the Units in the Regime have been conveyed by the Declarant to individual Co-Owners.

Section 6. NOTICE OF MEETINGS. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, to each Co-Owner of record, at least fifteen (15), but not more than forty-five (45) days prior to such meeting. The mailing of a notice in the manner provided in this Section 6 shall be considered notice served. The notice of meeting shall include any matters the Co-Owners intend to raise at the meeting if a request is submitted to the Secretary or President in writing at least ten (10) days prior to notice being mailed, which requests sets forth the matters to be raised.

Section 7. ADJOURNED MEETING. If any meeting of the Association cannot be organized because a quorum has not attended, the Co-Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. The time, date, and place of the meeting shall be set and announced before adjournment of the first meeting. Upon the reconvening of said meeting a quorum shall be constituted is Co-Owners holding at least 33% of the total statutory value of the property in accordance with the percentages assigned in the Master Deed are present in person or by proxy at said reconvened meeting.

Section 8. ORDER OF BUSINESS. The order of business at all Annual Meetings of the Association shall be as follows:

(a) Roll Call.
(b) Proof of Notice of Meeting or Waiver of Notice.
(c) Reading of Minutes of Preceding Meeting.
(d) Reports of Officers.
(e) Reports of Committees.
(f) Election of Inspectors of Election.
(g) Election of Directors.
(h) Unfinished Business.
(i) New Business.

The order of business at a Special Meeting of the Association shall include items (a) through (d) above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

Section 9. RECORD DATE. The Board of Directors shall fix a record date for determining Co-Owners entitled to notice of and to vote at each annual or special meeting. Such record date shall be at least ten (10) but not more than forty (40) days before the meeting.

Section 10. WAIVER AND CONSENT. Whenever the vote of Co-Owners of a meeting is required or permitted by an provision of these By-Laws to be taken in connection with action of the Association, the meeting and vote of Co-Owners may be waived if a majority of Co-Owners who would have been entitled to vote on the action is such meeting were held, shall consent be given to all Co-Owners, unless all Co-Owners participated in the approval of such action.

Further, any Co-Owner may waive any notice of meeting required by these By-Laws if the waiver is submitted in writing, signed by the Co-Owner entitled to notice, and delivered to the Association prior to the date of the meeting. A Co-Owner's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the Co-Owner, at the beginning of the meeting, objects to holding the meeting or transacting business at a meeting. Further, a Co-Owner's attendance at a meeting waives objection to considerations of a particular matter at the meeting that is not within the purpose described in the notice for the meeting, unless the Co-Owner objects to the consideration of the matter at the time when it is presented at the meeting.

Section 11. MEMBERSHIP LIST. After a record date for a notice of meeting has been fixed by the Board of Directors, a complete list of Members

of the Association shall be prepared by the Secretary-Treasurer. This Membership list shall list the Members by classification of Membership and shall include the addresses and number of votes each Member is entitled to vote at the meeting. Such list shall be maintained in the office of the Association beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting.

Section 12. RULES OF ORDER. Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Master Deed or these By-Laws.

## ARTICLE IV

## BOARD OF DIRECTORS

Section 1. NUMBER AND QUALIFICATIONS. The affairs of the Association shall be governed by a Board of Directors (hereinafter referred to as the Board") comprised of not less than three (3) nor more than five (5) persons, provided, however, that the Board shall be comprised of three (3) persons selected by the Declarant until the first meeting of the Association. Until succeeded by the Board members elected by the Unit Owners, members of the Board of Directors need not be Unit Owners. So long as the Declarant (as defined in the Master Deed) owns one or more Units, the Declarant shall be entitled to elect at least one member of the Board of Directors, who need not be a Unit Owner. After the Declarant has conveyed all Units and is no longer entitled to elect one member of the Board of Directors, all Board members shall be Unit Owners.

Section 2. GENERAL POWERS AND DUTIES. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, or by these By-Laws, directed to be executed and done by the Association or individual Co-Owners.

Section 3. SPECIFIC POWERS AND DUTIES. In addition to the general powers and duties referenced above, duties imposed by these By-Laws, or by resolutions of the Association, the Board shall be responsible for the following:

(a) Compliance with all of the terms and conditions of the Master Deed and any Amendments thereto and enforcement of same.

(b) Care, upkeep and surveillance of the Property and the Common Elements.

(c) Collection from the Co-Owners (excluding the Declarant), at the time of the closing of the initial sale of each Unit, at least two (2) month's estimated Common Expense assessments for the purpose of establishing a working capital fund for the Association. These funds shall be maintained for the use and benefit of the Association. Co-Owners are not entitled to reimbursement of the working capital fund from the Association upon the sale of their Unit.

(d) Establishment of the annual budget. The budget shall be distributed by the Board to all Members of the Association at least thirty (30) days in advance of its effective date and at least thirty (30) days in advance of the Association's Annual Meeting. Notwithstanding the responsibilities and authority of the Board, the budget may be modified by the Association at the Annual Meeting or a Special Meeting of the Association by a two-thirds (2/3) vote of the Co-Owners present at such meeting, in person or by proxy.

(e) As a part of the annual budget described in (d) above, establishment and maintenance on behalf of the Association of an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Elements.

(f) Employment, dismissal and control of the Management Agent (defined in Section 4 of this Article IV) and any personnel necessary for the maintenance and operation of the Common Elements.

(g) Collection of all assessments and fees from the Co-Owners.

(h) Performing repairs caused by any natural disaster or manmade damage using funds from the reserve account and any special assessment, or causing the same to be done.

(i) Obtaining of insurance for the Property, pursuant to the provisions hereof and the provisions of the Master Deed, or

causing the same to be done as set forth in ARTICLE VIII hereof.

(j) Grant or relocate easements which are not inconsistent with the owners' full use and enjoyment of the common properties.

(k) Making of, or causing to be made, repairs, additions and improvement to or alterations of, the Property and repairs to and restoration of the Property in accordance with the other provisions of these By-Laws.

(l) To make available, for inspection, upon request during normal working hours or under other reasonable circumstances, to Unit Owners, the holders, insurers or guarantors of any first mortgage on any Unit, current copies of the Master Deed, By-Laws, other Rules or Regulations pertaining to the Association, and the books, records and financial statements of the Association.

(m) To adopt and implement a policy regarding resale of Units within the regime, the purpose of said policy to assist owners to provide timely information to prospective buyers while not burdening the Association financially.

Section 4. MANAGEMENT AGENT. The initial Management Agent shall be Allied Management Group, 1036 Coastal Building,, William Hilton Parkway, Hilton Head Island, South Carolina 29928, an independent professional management company selected by the Declarant but not affiliated with the Declarant, whose contract extends for a period of one (1) year from the establishment of the Regime. The Declarant at its option shall have the right to select the Management Agent until all Futures Phase have been submitted to the Regime. Thereafter, the Board may employ a Management Agent at the compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to the duties listed in Section 3 of this Article. Any such management contracts shall be for a reasonable term and shall contain reasonable provisions regarding the right of the Association to terminate said contracts. Since an independent professional management company is being employed from the outset, and if at any time during the management of the Property by this or some other professional Management entity, any holders, insurers or guarantors of mortgages on Units within the Regime shall require that professional management of Regime/Association matters be maintained, and the Association is so advised in writing, any decision

thereafter by the Association to establish self management by the Association shall require the prior consent of Unit Owners holding sixty-seven (67%) percent of the votes in the Association and the approval of holders holding mortgages on Units within the Regime which have at least fifty-one (51%) percent of the votes of all Units in the Regime subject to holder mortgages.

Section 5. BOARD OF DIRECTORS. The first Board of Directors consisting of three (3) members shall be designated by the Declarant at any time after creation of the Regime as determined by Declarant. These appointments will be temporary and will continue only until the first annual meeting of the Unit Owners held pursuant to the provisions of these By-Laws. At the first Annual Meeting of the Association, the Association shall expand the Board to five (5) members and the initial term of office for two (2) members of the Board shall be fixed at three (3) years. The term of office of two (2) members of the Board shall be fixed at two (2) years, and the term of office of one (1) member of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the Board, his successor shall be elected to serve a term of three (3) years. The members of the Board shall hold office until their successors have been elected and hold their first meeting. Any an all of said Board members shall be subject to replacement, in the event of resignation or death, in the manner set forth in Section 6 of this Article. During the period in which the Declarant's designees constitute a majority of the Board of Directors, the Board of Directors shall not enter into any contract having a term which extends beyond the term of the Management Agreement with the Management Agent described in Section 4 above.

Section 6. VACANCIES. After the first Annual Meeting, vacancies in the Board of Directors caused by reason other than the removal of a member of the Board by a vote of the Association shall be filled by vote of the majority of the remaining members, even though they constitute less than a quorum; and each person so elected shall be a member of the Board until a successor is elected at the next meeting of the Association.

Section 7. REMOVAL OF MEMBERS OF THE BOARD. After the firs Annual Meeting, at any annual or special meeting of the Association duly called, any one or more of the members of the Board may be removed with or without cause by a majority of Co-Owners and a successor may then and there by elected to fill the vacancy thus created. Any member of the Board whose removal has been proposed to the Association shall be given an opportunity to be heard at the meeting. No Board member shall continue to serve on the Board if during the term of office, he shall cease to be a Unit

Owners at such time, said Board member shall either resign or be removed by the Board (except as provided in Section 5 regarding Declarant's appointee). Notwithstanding any other provision contained herein, any member of the Board who was elected by the Co-Owners shall only be removed by the Co-Owners at a meeting where the purpose or one of the purposes, as stated in the Notice of Meeting, is the removal of said Board member.

Section 8. ORGANIZATIONAL MEETING. The first meeting of a newly elected Board shall be held within thirty (3) days of election at such place as shall be fixed by the Board at the meeting at which such Board members were elected by the Association, and no notice shall be necessary to the newly elected Board members in order to legally constitute such a meeting, providing a majority of the Board shall be present.

Section 9. REGULAR MEETINGS. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least one (1) such meeting shall be held each fiscal year. Notice of regular meeting of the Board shall be given by the Secretary-Treasurer or other designated person, to each Board member, personally or by mail, express delivery service such as Federal Express, telephone, telefax or telegraph, at least ten (10) days prior to the day named for such meeting. Telephonic meetings are expressly authorized based upon the likelihood that Board members will be from different geographical locations.

Section 10. SPECIAL MEETINGS. Special meetings of the Board may be called by the President on three (3) days notice to each Board member, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided), and the purpose or purposes of the meeting. Special meetings of the Board shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least two (2) Board members.

Section 11. WAIVER OF NOTICE. Before or at any meeting of the Board, any member of the Board may, in writing, signed by that Board member, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice and shall be filed with the minutes of the meeting in the corporate records. Attendance at or participation by a Board member at any meeting of the Board shall be a waiver of notice by him of the time, place an purpose thereof unless the Board member, upon arriving at the meeting or prior to a vote on a matter not noticed in conformity with these By-Laws, objects to lack of notice and does not thereafter vote for or assents to the objected action.

If all members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. ACTION WITHOUT A MEETING. Actions required or permitted by law, the Articles or these By-Laws may be taken without a meeting if the action is taken by all members of the Board and evidence by one or more consents describing the action taken, signed by each Director, and included in the Minutes filed in the Corporate records reflecting the action taken.

Section 13. BOARD QUORUM. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business, and acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. Any or all Board members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other simultaneously during the meeting, and directors so participating by this means shall be deemed to be present in person at the meeting. If, at any meeting of the Board, there is less than a quorum present, the majority of the Board members present may adjourn the meeting to another time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. Unless subsequently approved by Co-Owners by an Amendment to these By-Laws, proxies shall not be available for either a Board quorum or for voting purposes.

Section 14. FIDELITY BONDS. The Board may require that any and all officers and employees of the Regime handling or responsible for Regime funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Regime.

Section 15. COMPENSATION. No member of the Board of Directors shall receive any compensation from the Regime for acting as such. However, any Director may be reimbursed for his actual expenses incurred in the performances of his duties.

Section 16. LIABILITY OF THE BOARD OF DIRECTORS. Except as required under the laws of the State of South Carolina, the members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. To the extent permitted under the laws of the State of

South Carolina, the Unit Owners shall indemnify and hold harmless each of the Members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. It is understood an permissible for the original Board of Directors, who are members of or employed by Declarant to contract with Declarant and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors, shall be limited to such proportions of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements. Every agreement made by the Board of Directors or by the Managing Agent or by the Manager on behalf of the Association shall provide that the members of the Board of Directors, or the Managing Agent, or the Manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owners' liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

## ARTICLE V

## OFFICERS

Section 1. DESIGNATION. The principal officers of the Association shall be a President, a Vice President, and a Secretary-Treasurer all whom shall be elected by and from the Board. The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as, in their judgement may be necessary. One person may hold more than one of the aforementioned offices.

Section 2. ELECTION OF OFFICERS. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. REMOVAL OF OFFICERS. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. No officer shall

continue to serve as such if, during his term of office, he shall cease to be a Unit Owner.

Section 4. VACANCIES. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 5. PRESIDENT. The President shall be the Chief Executive Officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of a Regime or incorporated Association, including but not limited to the power to appoint committees from among the Co-Owners from time to time as he may, in his discretion, feel appropriate to assist in the conduct of the affairs of the Association. The President shall sign all leases, mortgages, deeds and other written contracts and instruments and shall co-sign all checks and promissory notes, and perform all of the duties which may be delegated to him from time to time by the Board of Directors.

Section 6. VICE PRESIDENT. The Vice President shall take the place of the President and perform his duties when the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

Section 7. SECRETARY-TREASURER. The Secretary-Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board may direct and shall authenticate the records of the Association; and he shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board. He shall, in general, perform all the duties incident to the office of the Secretary and Treasurer.

## ARTICLE VI

## NOTICES

Section 1. DEFINITION. Whenever under the provisions of the Master Deed or of these By-Laws notice is required to be given to the Board of Directors, the Management Agent or Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, by first class, certified or registered mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to the Board of Directors, such Manager or such Unit Owners at such address as appears on the books of the Association. Notice shall be deemed given as of the date of mailing.

Section 2. SERVICE OF NOTICE-WAIVER. Whenever any notice is required to be given under the provisions of the Master Deed, or law, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice and delivered to the President or Secretary-Treasurer of the Association, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE VII

## OBLIGATIONS OF THE CO-OWNERS

Section 1. ASSESSMENTS FOR COMMON EXPENSES. All Co-Owners shall be obligated to pay the periodic assessments imposed by the Association to meet all Association Common Expenses, which shall include, among other things, liability insurance policy premiums and an insurance policy premium to cover repair and reconstruction work in case of hurricane, fire, earthquake, and other hazards (hereinafter sometimes referred to as "Common Charges," "Common Expenses," and "assessments"). The Common Expenses may also include such amounts as the Board may deem proper for the operation and maintenance of the Property and any authorized additions thereto. Such may include without limitation, any amount for general working capital, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the Common Expenses for any prior year. No less than thirty (30) days prior to the Annual Meeting, the Board shall furnish all Unit Owners with a copy of the budget for the next fiscal year and shall likewise advise them of the amount of the Common Charges payable by each of them respectively, as determined by the Board as aforesaid. Declarant will be liable for the amount of any assessment against completed Units dedicated to the Regime which have

not been sold and Declarant shall have all voting rights attendant to the ownership of said Unit until said Units are sold. Until all Future Phases are dedicated to the Regime by Declarant, Declarant may elect to pay the Common Expense Assessments on the Units it owns or in the alternative, fund any deficit in the annual budget approved by the Board of Directors in an amount equal to the difference between the approved budget and the revenues collected from the Co-owners other than the Declarant. The Declarant shall not be obligated to fund capital reserve budget allocations for Units owned by the Declarant whichever option it selects. Payment of the periodic assessments shall be in equal monthly or quarterly (as determined by the Board) installments on or before the first day of each month or quarter, as appropriate, or in such other reasonable manner as the Board shall designate.

The transfer of ownership of an individual Unit within the Association shall carry with it the proportionate equity of that Unit's ownership in the Association operating escrow, working capital or reserve accounts set aside to provide a contingency fund for the maintenance and repair of the Association Property. Transfer of ownership and resignation or termination of a Co-Owner of the Association shall not relieve the Co-Owner from any obligations the Co-Owner may have to the Association as a result of obligations incurred or commitments made before resignation or termination.

Section 2. ASSESSMENTS TO REMAIN IN EFFECT UNTIL NEW ASSESSMENTS MADE. The omission by the Board of Directors before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of the Master Deed and By-Laws or a release of any Owner from the obligation to pay the assessments, or an installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed by the Board at a duly held Board meeting. Amendments to this paragraph shall be effective upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

Section 3. RECORDS. The Management Agent or Board of Directors shall keep detailed records of the receipts and expenditures affecting the General and Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owner during reasonable business hours.

Section 4. DEFAULT IN PAYMENT OF COMMON CHARGES. The Board shall take prompt action to collect any common charge due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default by any Unit Owner in paying to the Board the common charges as determined by the Board, such Unit Owner shall be obligated to pay a late charge of one and one-half (1½%) percent of the delinquent amount per month on such unpaid Common Charge from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid Common Charges. The Board shall have the right and duty to attempt to recover such Common Charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees in action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by Section 27-31-210, Code of Laws of South Carolina, 1976. With regard to the subordinate nature of such liens as it relates to mortgages recorded prior to the recording of any evidence of such lien, the provisions of Section 27-31-210, Code of Laws of South Carolina, 1976, as amended, shall be controlling. In addition to the foregoing, during the period a Unit Owner remains in default, the Board may suspend said Owner from use of amenities to include the tennis courts, clubhouse and swimming pool.

Section 5. STATEMENT OF COMMON CHARGES. The Board shall, for a reasonable fee, promptly provide any purchaser, Unit Owner, mortgagee or prospective mortgagee of a Unit so requesting the same in writing, with a written statement of all unpaid Common Charges due from the Owner of that Unit and the purchaser's liability therefor shall be limited to the amount as set forth in the statement. Any mortgagee holding a lien on a Unit may pay any unpaid Common Charges payable with respect to such Unit and upon such payment such mortgagee shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance. Any mortgagee holding mortgages on more than five (5) Units within the Association shall be entitled, upon request, to receive a statement of account on the Units securing all of said mortgages once each calendar year without any fee or charge.

Section 6. STATEMENT UPON RESALE. Any Unit may be conveyed by an Owner free of any restrictions except for those set forth herein, except that no Owner shall convey, sell, or lease his Unit unless and until all unpaid Association expenses assessed against the Unit shall have been paid as directed by the Board of Directors. Such unpaid Association expenses, however, may be paid out of the proceeds from the sale of a Unit or by the

grantee. Upon the written request of an Owner or Owner' s prospective buyer, the Board or the Management Agent shall furnish a written statement of the unpaid charges due form such Owner which shall be conclusive evidence of the payment of amount assessed prior to the date of the statement, but unlisted thereon. Further, the Association shall undertake to provide copies of these By-Laws or other materials described by the Association upon the written request of a Co-Owner in connection with the sale or lease of their Unit. A reasonable charge may be made by the Board for the issuance of statements and other materials.

The provisions of this Section shall not apply to the acquisition of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. In such event, the unpaid assessments against the Unit which were assessed and became due prior to the acquisition of title to such Unit by such mortgagee shall be deemed waived by the Association and shall be charge to all other Co-Owners of the Association as a Common Expense. Such a provision shall not however apply to any assessments which are assessed and become due after the acquisition of title to such Unit by the mortgagee and to any purchaser to such mortgagee.

Section 7. MAINTENANCE AND REPAIR

(a) Each Co-Owner must perform work within his own Unit, which, if omitted, would affect the Property in its entirety or in a part belonging to another Co-Owner, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(b) All the repairs of the Units and of those items described in Section 5.06 of the Master Deed, and of all other accessories and Limited Common Elements appertaining or belonging to the Unit shall be at the expense of the Co-Owner.

(c) All maintenance, repair and replacement to the Common Elements as defined in the Master Deed, unless otherwise provided in the Master Deed, shall be made by the Board or its agent and shall be charged to all the Unit Owners as a Common Expense, excepting to the extent that the same may be necessitated by the negligence, misuse or neglect of the Unit Owner, in which such case the expense shall be charged to such Unit Owner.

Section 8. UTILITIES.

(a) WATER CHARGES AND SEWER RENTS. Water shall be supplied and sewer services shall be supplied to all Units and the Common Elements through one or more meters by the Hilton Head Public Service District Number 1, or its successors, (the "District") and each Owner shall be required to pay for all charges for water consumed and sewer services in his Unit and to the Common Elements promptly after the bill for the same have been rendered. The Board and each Owner shall conform to the billing procedures established by the District, and shall pay the excess usage fees on an equal Unit by Unit basis if that is the billing methodology in effect for the District.

(b) ELECTRICITY. Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for electricity consumed or used in his Unit. The electricity serving the Common Elements shall be separately metered, and the Board shall pay all bills for electricity consumed in such portions of the Common Elements, as a Common Expense.

(c) CABLE TELEVISION/SATELLITE COMMUNICATIONS. Except with the prior written approval of the Board of Directors, its Management Agent, or a Board designated Committee, which approval shall not be unreasonably withheld, no outside television or radio aerial or antenna, satellite dish, or other device, for the reception or transmission of radio or television, or other electronic signals, shall be erected or maintained on any Unit or upon the exterior of any Unit, Common Element or the Limited Common Elements appurtenant to any Unit. The Board of Directors or its Management Agent or its designated Committee, may approve any applications for the installation if the installation is for the personal use of the Owner, and either (a) the device shall not be visible from neighboring Units, streets or common area; or (b) the Unit Owner, prior to installation, has received the written consent of all of the Owners of all Units who would have views of the installation from their Units; (c) and all other private and public approvals, as applicable, have been obtained. In approving such applications, the Board of Directors, its Management Agent, or its designated Committee shall have the power to require such specific forms of placement of the device as it deems appropriate in order to effectuate the intent of this Section 8(c) that such devices be as inoffensive as possible to other Owners and Residents. All installations must comply with local zoning requirements and building codes, of applicable. Any Owner requesting such a device may be required to pay a reasonable charge to the

Association for the reviewing of such Application by the board, its Management Agent, or its designated Committee. Further, the Owner shall be required to pay the installation costs for installing such device and to pay all bills associated with such Owner's use of the device.

The Board may approve the use of such devices to serve the Common Elements and the Board shall pay all costs of installation and bills for use of such devices in such portions of the Common Elements as a Common Expense.

Section 9. USE OF UNITS - INTERNAL OR EXTERNAL CHANGES

(a) A Co-Owner may make internal structural modifications or alterations in his Unit or installations located therein subject to Sections 5.10 and 5.11 of the Master Deed. As provided in Section 5.10 of the Master Deed, the Association shall have the obligation to answer within sixty (60) days from the actual receipt of such notice.

(b) A Co-Owner shall make no changes or additions whatsoever to the exterior of the Unit, any stairs or decks, appurtenant thereto, or to any of the Limited Common Elements without prior written approval of the Board. The Board may also approve minor additions to landscaping and other exterior minor changes or additions of this nature which in its sole discretion will not interfere or conflict with the overall scheme and appearance of the common areas. If any changes as described herein are approved by the Board, the Co-Owner requesting such change shall be totally financially responsible for the cost of such change and the incurred costs, if applicable, of the maintenance and repair of such change. The Board, through its agent, may include this additional maintenance cost in the periodic assessment for the Unit in question.

Section 10. USE OF COMMON ELEMENTS. Except as authorized by Section 9(b) a Co-Owner shall not place or cause to be placed in the passages, parking areas, roads, or other common areas any furniture, packages or obstructions of any kind. Such areas shall be held in common for the enjoyment of the Co-Owners and shall be used for no other purpose than for normal transit through or use of them and for normal vehicular parking.

Section 11. RIGHT OF ENTRY.

(a) A Co-Owner shall grant the right of entry to the Management Agent or to any person authorized by the Board in case of any emergency originating in or threatening his Unit, whether the Co-Owner is present at the time or not.

(b) A Co-Owner shall permit other Co-Owners, or their representatives, when so required, to enter his Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the Co-Owner. In case of emergency, the right of entry shall be immediate.

Section 12. RULES OF CONDUCT. In order to assure the peaceful and orderly use and enjoyment of the Units and Common Elements of the Association, the Co-Owners may from time to time adopt, modify, and revoke in whole or in part by a vote of the Members present in person or represented by proxy whose aggregate interest in the Common Elements constitutes two-thirds of the total interest, at any meeting duly called for the purpose, such reasonable rules and regulations, to be called Rules of Conduct, governing the conduct of persons on said property of the Association as it may deem necessary. Such Rules of Conduct, upon adoption, and every Amendment, modification, and revocation thereof, shall be delivered promptly to each Owner by posting same with postage prepaid addresses to the Owner at the last registered address of the Owner and shall be binding upon all Unit Owners and the occupants of Units in the Regime. The following shall constitute the initial Rules of Conduct for the Regime:

(a) Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, televisions and amplifiers that may disturb other residents.

(b) No Co-Owner shall:

(1) Post any advertisements or posters of any kind in or on the Property except as authorized by the Association;

(2) Hang garments, towels, rugs, or similar objects from the windows or balconies or from any of the facades of the Property;

(3) Clean dust mops, rugs or similar objects from the windows or balconies by beating on the exterior part of the Property;

(4) Throw trash or garbage outside the disposal installation provided for such purpose in the service areas;

(5) Act so as to interfere reasonably with the peace and enjoyment of the residents of the other Units in the Property;

(6) Maintain any pets which cause distress to Co-Owners through barking, biting, scratching or damaging of property or persons. No more than two (2) pets may be maintained in any Unit unless otherwise approved by the Board. Aggressive breeds as determined by the Board may be prohibited.

(7) Operate or utilize any charcoal or gas grills, either permanent or portable, on the decks or balconies or in the close proximity of the Units, it being understood that such use is a violation of local fire ordinances.

(8) Operate, park, or store on the Property any recreational vehicles, motor homes, motorcycles, mopeds, trucks, trailers, commercial vans or boats.

(9) Maintain on the property more than two (2) vehicles unless otherwise approved by the Board, all said vehicles being operational and properly registered under South Carolina law.

(c) No Co-Owner, resident, or lessee shall install wiring for electrical or telephone installations, televisions or radio antenna, air conditioning fixtures, or similar objects outside of his dwelling or which protrudes through the walls or the roof of his Unit except as authorized by the Board and where appropriate Subject to Section 8(c) of this Article VII.

(d) Until the Board is elected by the Co-Owners, the Declarant may amend, delete or add to the Rules of Conduct at its sole discretion. Thereafter

the Board shall have this right. Any amendment to the Rules of Conduct shall be effective upon distribution in writing to the Co-Owners.

Section 13. ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS. The violation of any rules or regulations adopted by the Board or the breach of any By-Laws contained herein, or the breach of any provisions of the Master Deed, shall give the Board the right, in addition to any other rights set forth in these By-Laws: (a) to enter the Unit in which or as to which such violations or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition, that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach and to recover the cost of such enforcement, including attorney's fees, and until such expense is recovered it shall be a lien upon said Unit which lien shall be inferior to the lien of all prior mortgages; or (c) to impose fines for violations thereof in amounts determined by the Board, said five to be added to the assessments payable hereunder by the defaulting Unit Owner.

Section 14. FISCAL YEAR. The fiscal year for the Association shall begin on the 1st day of April of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 15. LITIGATION. No judicial proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Owners and as long as Declarant owns not less than ten (10%) percent of the Units. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving taxation, including, e.g., challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. In the event any litigation is instituted, then the Association shall access all Owners for the costs of litigation, including, without limitation, attorney's fees incurred, and funds from regular assessments shall not be used for any such claim or litigation; provided, however, that this 75%

threshold requirements may be eliminated by the Board at any time after January 1, 2010.

ARTICLE VIII

INSURANCE

The Board of Directors shall be required to obtain and maintain, as set forth below, in forms and amounts as hereinafter prescribed and which are also satisfactory to any mortgagee holding mortgages on five or more Units, the following insurance, without prejudice of the right of the Co-Owner to obtain additional individual insurance at his own expense:

Section 1. HAZARD INSURANCE. The Board of Directors shall insure the Property, as it may be constituted from time to time, against loss or damage due to fire, windstorm, lightning, and flood, with extended coverage, in an amount not less than the maximum insurable replacement value of the Property as determined by the Board upon recommendation made by the Regime's insurer, it being understood that the Board, at its discretion may have an appraisal made of the Property for this purpose, or in the amount reasonably obtainable as it relates to the flood coverage. The Board of Directors shall have the Authority also to insure against other hazards and risks as it may deem desirable for protection of the Property. All hazard insurance shall cover the entire Property, exclusive only of the contents and furnishings of the individual Units.

(a) All hazard insurance policies obtained by the Board of Directors shall designate the Board of Directors as the named insured as Insurance Trustee for the benefit of all the Owners and their mortgagees collectively, as their respective interests may appear. In the event of loss or damage, all insurance proceeds shall be paid jointly to the Board of Directors as Insurance Trustee under the provisions of this Master Deed and to any mortgagee holding mortgages on five or more Units, it being understood and acknowledged that the distribution of such proceeds shall be controlled by the Horizontal Property Act and the provisions of this Master Deed.

(b) All hazard insurance policies obtained by the Board of Directors shall provide for the issuance of Certificates of Insurance to each Unit Owner. Each Certificate shall evidence the issuance of the Master Policy and shall indicate the amount of insurance covering the

building within which the respective Unit is located. If a Unit is mortgaged, a Certificate of Insurance shall be issued to the mortgagee bearing a standard mortgagee endorsement, if requested.

(c) If obtainable, all hazard insurance policies upon the Property shall include provisions waiving (i) any rights of the insurer to subrogation against the Association, its agents and employees, and against the individual Owners and their servants, agents, and guests; and (ii) any rights of the insurer to contribution from hazard insurance purchased by the Unit Owner upon the contents and furnishings of their Units.

(d) Each mortgagee of which the Board has notice as herein provided shall be entitled to receive upon request, a statement of the replacement value as determined herein this Section 1. If any such mortgagee disagrees with the values assigned to the Property by such determination and presents an appraisal prepared at such mortgagee's expense showing higher values which has been performed by a qualified appraiser, then the Board shall either adopt the higher value or shall cause a reappraisal to be made by a qualified appraiser approved by the Board and by the appraisers who conducted the prior appraisals and the findings of the third appraiser shall be conclusive to determining such value for insurance purposes.

(e) Each hazard insurance policy shall contain a loss payee provision designating the interest of the various mortgagees as to the various Units within the Regime which are covered by the Master Policy. Such policies shall also provide that they shall not be cancelled without giving thirty (30) days prior written notice to all such mortgagees about which the insurer has been given written notice.

Section 2. PUBLIC LIABILITY INSURANCE. The Board of Directors shall obtain comprehensive public liability insurance with limits and provisions as it deems desirable and as may be obtainable. All such policies shall contain severability of interest clauses or endorsements extending coverage to liabilities of the Association to an individual Unit Owner and to liabilities of one Unit Owner to another Unit Owner.

Section 3. WORKMEN'S COMPENSATION INSURANCE. The Board of Directors, as necessary, shall obtain Workmen's Compensation Insurance to meet the requirements of law.

Section 4. PREMIUMS. All premiums upon insurance policies purchased by the Board of Directors shall be assessed as Common Expenses to be paid by the Unit Owners through periodic assessment as herein provided.

Section 5. ADJUSTMENT. Each Unit Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association, subject to the rights of mortgagees of such Unit Owners.

Section 6. INSURANCE BY UNIT OWNERS. Each Unit Owner shall be responsible for obtaining, at his sole expense, insurance covering the personal property, wall coverings, decorations, and furnishings within his own Unit and the additions and improvements made by him to the Unit. Each Unit shall be responsible for obtaining, at his sole expense, insurance covering the personal property, wall coverings, decorations, and furnishings within his own Unit and the additions and improvements made by him to the Unit. Each Unit Owner shall also be responsible for obtaining at his own expense, insurance covering his liability for the safety of the premises within his Unit. All such insurance policies shall included, however, provisions waiving (i) any right of the insurer to subrogation claims against the Association and against individual Unit Owners, as well as their agents, servants, employees, and guests; and (ii) any right of the insurer to contribution or proration because of the master hazard policy.

As set forth in Section 5.06 of the Master Deed, the Co-Owner is responsible for any damage to his Unit or another Unit caused by his negligent action or inaction. If a claim is made against the Association's policy as a result of such negligence by a Co-Owner, then the Board may make a determination to assess any non-reimbursable expenses, such as the deductible, attorney's fees, and the like, against the negligent Co-Owner, and such assessment shall be collectible just as any other assessment described in Section 1 of Article VII.

Section 7. DISTINCTION ON OWNER'S COVERAGE AND REGIME COVERAGE. As reflected above, both the Association and the Co-Owner have certain insurers' responsibilities. The Board, acting through the Management Agent, shall have the discretion to balance competing interests of

said insurers, should such an occasion arise. Each Co-Owner shall, upon request, provide to the Management Agent, the name and address of his insurer.

Section 8. SUBSTITUTION OF INSURANCE TRUSTEE. The Board of Directors, in its discretion, may decline to serve as Insurance Trustee and may appoint in its place any financial institution which is qualified and willing to act as Trustee and which also has offices in Beaufort County, South Carolina. Any substitute Insurance Trustee appointed by the Board of Directors shall succeed to all of the powers and responsibilities vested in the Board as Insurance Trustee under the terms of this Master Deed.

## ARTICLE IX

## RECONSTRUCTION AND REPAIR

In the event of casualty loss or damage to the Property, the Board of Directors shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of this ARTICLE IX. Reconstruction or repair shall be mandatory unless otherwise provided in the Act, as amended from time to time, or unless seventy-five (75%) percent or more of the Unit Owners vote, at a duly authorized meeting, not to reconstruct. In situations where reconstruction or repair is not to be undertaken, the insurance indemnity received by the Board of Directors shall be distributed pro-rate to the Unit Owners and their mortgagees jointly in proportion to their respective statutory interests. The remaining portion of the Property shall be subject to an action for partition at the suit of any Unit Owner or lien or as if owned in common. In the event of suit for partition, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered one fund and distributed pro-rate among all Unit Owners and their mortgagees jointly in proportion to their respective statutory interests. In the situation where reconstruction or repair is undertaken, then such Property shall be repaired in the following manner:

(1) Any reconstruction or repair must follow substantially the original plans and specifications of the Property (attached as Exhibit "C-1" to the Master Deed) unless the Unit Owners holding seventy-five percent (75%) or more of the total interest in Common Elements and their mortgagees, if any, vote to adopt different plans and specifications and all Owners whose Units are being reconstructed or repaired unanimously consent to the adoption of such different plans and specifications. The approval of such plans by Declarant as provided

by the covenants set forth in Section 16 of the Master Deed shall likewise be required.

(2) The Board of Directors shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include such professional fees and premiums for bids as the Board of Directors deems necessary.

(3) If the insurance proceeds paid to the Board are insufficient to cover the cost of reconstruction , the Association may use funds out of its reserve or replacement accounts, and, if still not sufficient, the Association shall levy and collect an assessment against all Owners in an Amount which shall provide the funds required to pay for the repair, replacement or reconstruction.

(4) The insurance proceeds received by the Board of Directors and the mortgagees, and any special assessments collected to cover a deficiency in insurance shall constitute a construction fund from which the Board of Director and the mortgagees, shall disburse payment of the costs of reconstruction and repair. The first disbursements from the construction fund shall be insurance proceeds; and if there is a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to the Unit Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall be retained by the Association.

## ARTICLE X

## INSURANCE TRUST

In the event of casualty loss to the Property, all insurance proceeds indemnifying the loss or damage shall be paid jointly to the Board of Directors as Insurance Trustee and to any mortgagee holding mortgages on five or more Units. The Board of Directors, acting as Insurance Trustee, shall receive and hold all insurance proceeds in trust for the purposes stated in this ARTICLE X and the benefit of the Association, the Unit Owners, and their respective mortgagees in the following share:

(1) Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units.

**EXHIBIT "E-1" TO MASTER DEED**
**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK**
**HORIZONTAL PROPERTY REGIME**

**STATE OF SOUTH CAROLINA )**
**) JOINDER OF MORTGAGEE**
**COUNTY OF BEAUFORT )**

**WHEREAS**, Regions Bank ("Lender"), is the owner and holder of a construction loan mortgages upon certain real property located on Hilton Head Island, South Carolina, described on **Exhibit "A"** to said Master Deed of The Edgewater on Broad Creek Horizontal Property Regime, said property being known and described therein as the Property; and

**WHEREAS**, said construction loan documentation is evidenced by a mortgage in the original principal sum of Twelve Million Nine Hundred Thousand and NO/100 ($12,900,000.00) DOLLARS, said mortgage dated October 19, 2001 and recorded in the ROD Office for Beaufort County, South Carolina, on October 26, 2001, in Book 1488 at Page 2003, et seq. and a mortgage in the original principal sum of Five Hundred Thousand and NO/100 ($500,000.00) DOLLARS, dated _____, 2002 and recorded on _____ in said ROD Office in Book _____ at Page _____.

**NOW, KNOW ALL MEN BY THESE PRESENTS,** that the Lender joins in the Master Deed of The Edgewater on Broad Creek Horizontal Property Regime and the provisions of the Horizontal Property Act of South Carolina for the sole purpose of consenting to the creation by the Declarant of The Edgewater on Broad Creek Horizontal Property Regime. The Lender makes no representations or warranties as to the validity of the documents creating the initial Phase to the Regime nor the development and physical construction of the Buildings and Units within the Regime.

This Joinder of Mortgagee shall in no way affect or diminish the lien of the existing mortgage on the remaining portions of the property described in the aforementioned mortgage described hereinabove.

**WITNESSES:**

**REGIONS BANK**
By: Richard Harmon
**RICHARD HARMON**
Its: Vice President

OR BK 01689 PAGE 0664

**STATE OF SOUTH CAROLINA )**
**COUNTY OF** Aiken **)**

**PROBATE**

**PERSONALLY** appeared before me Tamika Tyler who, on oath, says that s/he saw the within named **REGIONS BANK** by Richard Harmon, its Senior Vice-President sign the within Joinder of Mortgagee, and the said Corporation, by said officer, seal said instrument, and as its act and deed, deliver the same, and that s/he with Erica Davey witnesses the execution thereof.

(Non Notary Witness)

SWORN to before me this
27 day of December, 2002.

(L.S.)
Notary Public for South Carolina

My Commission Expires: My Commission Expires June 12, 2010

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BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT

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| STATE OF SOUTH CAROLINA<br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br>FOURTEENTH JUDICIAL CIRCUIT<br>CIVIL ACTION NO. 06-CP-07-2556 |
| PAUL A. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR. JAQUELIN HEISS KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1-20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME<br><br>PLAINTIFFS, | ) | CONSENT ORDER RESOLVING RULE TO SHOW CAUSE AND EMPOWERING BOARD OF DIRECTORS FOR EDGEWATER ON BROAD CREEK OWNERS' ASSOCIATION |
| vs.<br>BROAD CREEK EDGEWATER, LP, THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME WYLLYS T. BAIRD, BANK OF AMERICA, N.A. and ALLIED MANAGEMENT COMPANY<br><br>DEFENDANTS | ) | |

This matter comes before me upon the Rule to Show Cause filed by Michael W. Mogil, Attorney for the Plaintiffs, and upon the pleadings and affidavits in this matter, and the findings of fact incorporated herein.

IT IS THEREFORE ORDERED that:

1. On October 30, 2006, at a properly noticed meeting of the Edgewater on Broad Creek Owners' Association (hereinafter the "Association"), twenty-two of the twenty-three Units within Phase I were present in person or by duly executed proxy, representing a meeting quorum under the Master Deed (hereinafter "Master Deed") for The Edgewater on Broad Creek Horizontal Property Regime and Edgewater on Broad Creek Owners' Association.



CLL#1 of 4

Phase I as described in the Master Deed and exhibits thereto, incorporates all of the real property presently conveyed and deeded into the within The Edgewater on Broad Creek Horizontal Property Regime.

2. At the meeting on October 30, 2006, the twenty two co-owners present in person or by proxy unanimously voted to establish a Board of Directors empowered to manage the Association pursuant to its By Laws and the aforementioned Master Deed. The co-owners further elected five co-owner members to serve as initial Directors of the Association. These Directors are noted in the minutes of the Association.

3. It is therefore agreed and Ordered, that the Association has been duly formed, and that its elected Directors and their appointed Officers have full authority to manage the affairs of the Association pursuant to its By-Laws and the Master Deed.

4. It is further Ordered that Bank of America shall authorize the persons appointed by the Board of Directors, as indicated by written resolution, with full and exclusive authority over the bank accounts and funds of the Association, and that the Association may establish separate, additional accounts in its discretion.

5. It is further Ordered, that the Association shall negotiate in good faith the terms of a binding Memorandum of Understanding to be entered into between the Association and the Distinct Development II, LLC, which is contemplated to be the new general partner of the Defendant Broad Creek Edgewater, LP. The Memorandum of Understanding shall set forth and establish the terms and conditions under which the Defendant Broad Creek Edgewater, LP., as managed by the new general partner, may incorporate one or more of the remaining Phases of development, as more fully described in "Exhibit A-1" to the Master Deed, into the

Association, and assume representation on the Board and input as to its affairs. As between these parties, the Memorandum of Understanding shall supercede the terms of this Consent Order. As the specific terms of the contemplated Memorandum of Understanding are not yet finalized, the parties agree that this Court shall retain jurisdiction over the matter and shall be available to decide upon the terms of said Memorandum of Understanding in the event that the parties are not be able to reach final agreement on its terms. If Distinct Development II, LLC fails to tender a Memorandum of Understanding for review by the Association on or before the close of business on November 3, 2006, then the Association's obligation to enter into a Memorandum of Understanding is null and void, and the remaining terms of this Order shall be controlling upon the affairs of the Association.

WE SO CONSENT:

For Plaintiffs:

Michael W. Mogil
Law Office of Michael W. Mogil, P.A.
303 Professional Building
Hilton Head Island, SC 29928
(843) 785-8110
mmogil@mogillaw.com



cm #3 of 4

MWM
DKS

For Defendants Broad Creek Edgewater LLP and Wylyss Baird:

David Schmitt
Golan and Christie LLP
70 West Madison - Suite 1500
Chicago, Illinois 60602
(312) 696-2036
dkschmitt@golanchristie.com

IT IS SO ORDERED:

Curtis L. Coltrane, Master in Equity and Special Circuit Judge

This 31st day of October 2006.
Beaufort, South Carolina

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 28, 2010

Teri B. Lewis, AICP
LMO Official
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

**HAND DELIVERED**

RE: Edgewater on Broad Creek; Tabby Pathway; Expedited Development Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We represent Ephesian Ventures, LLC ("Ephesian"), which owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was established by the Master Deed (the "Master Deed") recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, SC in Record Book 1689 at Page 574. A copy of the Master Deed is enclosed herewith.

The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the "Act"). Ephesian is the owner of property at Edgewater on Broad Creek not submitted to the provisions of the Act by the Master Deed.

Ephesian is also the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the "Quitclaim Deed"). A copy of the Quitclaim Deed is enclosed herewith.

It has come to Ephesian's attention that Edgewater on Broad Creek Owners' Association, Inc. (the "Edgewater HOA") filed the above-referenced application for Expedited Development Plan Review (the "XDPR Application") on April 12, 2010 in connection with the construction of a tabby pathway and related recreational amenities on the Regime property. A Notice of Action on the XDPR Application was issued on April 15, 2010.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



By way of our letter of April 15, 2010 to Nicole Dixon, we had asked that Nicole advise of us the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants. A copy of our April 15, 2010 letter to Nicole is enclosed. However, despite our written request, we were not advised by Nicole of the filing of the XDPR Application until we received her email of April 20, 2010, in which Nicole also advised us of the issuance of the Notice of Action on the XDPR Application. We obtained a copy of the XDPR Application on April 26, 2010 when we reviewed the Town's file on the XDPR Application.

Among the rights reserved under the Master Deed to the Declarant, as defined in the Master Deed, and held by Ephesian pursuant to the Quitclaim Deed, are the right to improve the Regime by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, drainage facilities, lagoons, and the like. In addition, Ephesian holds rights of ingress and egress across the Regime property, the rights to install utility and drainage lines, equipment and facilities over the Regime property, and the right to grant easements over the Regime property. Further, Ephesian owns all water and sewer lines, pipes, pumps, pumping stations, and other equipment and facilities on the Regime property. We refer you to Exhibit A to the Master Deed.

Our review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued. The XDPR Application also represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As you can readily ascertain from this letter, Ephesian believes this representation is clearly false, as the Edgewater HOA's tabby pathway and related recreational amenities are in conflict with, and prohibited by, the provisions of the Master Deed.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended provides, in part,

> (B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
>
> (3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



Ephesian does not intend to relinquish any rights reserved to the Declarant under the Master Deed and the Quitclaim Deed, and is opposed to the project contemplated by the XDPR Application. Accordingly this letter provides the Town of Hilton Head Island with actual notice of a restrictive covenant on the Regime property that is contrary to, conflicts with, or prohibits the permitted activity.

We trust that the Town will take the appropriate action by rescinding the Notice of Action on the XDPR Application, and by not issuing any permit or other Notice of Action in connection with the XDPR Application until the XDPR Application is complete, and there is full compliance with the provisions of Section 1145(B)(3) of the South Carolina Code.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosures

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
Http://www.hiltonheadislandsc.gov

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE Edgewater on Broad Creek tabby walkway
XDPR10013

April 30, 2010

Dear Mr Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013) The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application After further review by the Town's attorney the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1) According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants Therefore prior to the review of any subsequent applications you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above

Please contact me if you have any additional questions concerning this matter

Sincerely,

Ten Lewis AICP
LMO Official

Cc: Chester C Williams

# PRE-APPLICATION MEETING AGENDA

**Monday, April 25, 2011**
**10:30 AM in Conference Room 4**

[redacted]

Facilitator: Nicole Dixon

| | |
|---|---|
| A. | **PAPP110007, Edgewater**<br><br>The project proposes to amend the original DPR (DPR000052) to increase the dwelling units on site to 283 multi-family units and proposes other site plan revisions as well. |

The applicant or representative of the proposed project must be present at this meeting in order to receive comments from Town Staff and other outside agencies. If you cannot be present please notify this office at (843) 341-4757 prior to the scheduled meeting.

To view the agenda materials, contact the Pre-Application Facilitator at 341-4697.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF BEAUFORT | )<br>) | IN THE COURT OF COMMON PLEAS<br>C/A: 2011-CP-07-02994 |
| Edgewater on Broad Creek Owners Association, Inc. and the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I,<br><br>Plaintiffs,<br><br>-vs-<br><br>Ephesian Ventures, LLC,<br><br>Defendant. | ) | **ANSWER, MOTIONS TO DISMISS AND COUNTER-CLAIM** |

11 SEP 15 PM 3:18

Defendant, Ephesian Ventures, LLC, ("Ephesian") by and through its undersigned counsel, hereby answers the Complaint of the Plaintiffs dated July 19, 2011, as follows:

1. All allegations of the Plaintiffs' Complaint not specifically admitted herein are hereby denied.

2. The allegations of paragraph 1 of the Plaintiffs' Complaint are hereby admitted with the exception that Defendant is unclear as to the meaning of the statement that the Association has operated as an independent property owners' association since October 30, 2006, and therefore denies the same and demands a more definite statement.

3. Answering paragraph 2, Defendant denies that the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I is a legitimate entity; therefore, it would allege that it is not a proper party to this case and denies that it has the authority to represent the 23 Co-owners within Phase I of the Regime as alleged.

4. To the extent that the Co-owners referred to in paragraph 3 of Plaintiffs' Complaint is intended to be a reference of the improper entity, counsel of Co-owners, the allegations of paragraph 3 are hereby denied.

5. The allegations of paragraph 4 are hereby denied.

6. The allegations of paragraph 5 are admitted only insofar as on or about May 9, 2007, Broad Creek Edgewater was placed into Chapter 7 bankruptcy by its creditors and that the case was filed as *In Re: Broadcreek Edgewater, LP* (improperly identified as "Broadcreek Edgewater, LLC") in the District of South Carolina. It is further admitted that Kevin Campbell was appointed the Chapter 7 Trustee. All remaining allegations of paragraph 5 are hereby denied.

7. The allegations of paragraph 6 are hereby denied.

8. The allegations of paragraph 7 are admitted only insofar as said paragraph alleges that Defendant, Ephesian Ventures, LLC, purchased 16.01 acres from the Chapter 7 bankruptcy Trustee on July 7, 2008 and that the 16.01 acres is directly adjacent to property owned by the members of the Plaintiff Association. The remaining allegations of said paragraph are hereby denied.

9. Answering paragraph 8, Defendant admits that beginning October 2008, Defendant and Plaintiffs engaged in discussions relating to future use of the property owned by the Defendant. All remaining allegations of paragraph 8 are hereby denied.

10. The allegations of paragraph 9 are hereby denied.

11. The allegations of paragraph 10 are hereby admitted.

12. Defendant lacks sufficient information with which to respond to the allegations of paragraph 11 and therefore denies the same and demands strict proof thereof.

13. The allegations of paragraph 12 are hereby denied insofar as said paragraph mischaracterizes the chronology of events that it attempts to depict. Defendant admits that Plaintiff Association's pool permit initially received design review approval from the Town after a merits hearing in April 2010 for which the Defendant received no notice. It is further admitted that Ephesian issued a letter to the Town through its attorney dated April 28, 2010 opposing the issuance of a development Permit for a tabby walk project and that ultimately the Town rescinded the design approval for the pool. The remaining allegations of paragraph 12 are hereby denied.

14. The allegations of paragraph 13 are admitted insofar as said paragraph alleges that during the same time period in or about April 2010, the Plaintiffs constructed a tabby walk path on the 7.64 acre parcel. It is further admitted that a representative from Ephesian notified the appropriate Town of Hilton Head Island officials of the construction of the path and that the officials then notified Plaintiffs' agent that the Town believed that the construction of such a path required a formal Permit. All remaining allegations of paragraph 13 are hereby denied.

15. The Defendant lacks sufficient information with which to respond to the allegations contained within paragraph 14 that the property manager for the Plaintiffs applied for a formal Permit for the tabby walk which was initially issued by the Town as XDPR10013. The remaining allegations of paragraph 14 are admitted.

16. The allegations of paragraph 15 are admitted only insofar as said paragraph alleges that the Town rescinded the tabby walk Permit by letter dated April 30, 2010 and that the same letter voided the design approval for the swimming pool. All remaining allegations of paragraph 15 are hereby denied.

17. The allegations of paragraph 16 are hereby denied.

18. The allegations of paragraph 17 are denied insofar that the use of the word "suggested' mischaracterizes the Town's position when in fact the Town has made it clear that it cannot approve a pool development Permit until the issues regarding the restrictive covenants at Edgewater are resolved.

19. Responding to the allegations of paragraph 18, Defendant admits that its objections to the further development of amenities or structures on the Phase I property in part rely on the language of Section 6(b)(9) of the Master Deed, as well as other authority not referred to in the Plaintiffs' Complaint.

20. The allegations of paragraphs 19 and 20 are hereby denied.

21. The allegations of paragraph 21 are admitted with the exception of the allegation that the plan for preliminary development submitted by Defendant referred to therein included any reference to an interval ownership development and allocation of density.

22. Answering paragraph 22 of Plaintiffs' Complaint, Defendant repeats and realleges the allegations contained in paragraphs 1 through 16 of its Answer and Counter-Claim hereinabove as fully as if repeated verbatim herein.

23. The allegations of paragraph 23 state conclusions of law and therefore require no response. To the extent that a response is required, they are hereby denied.

24. Paragraph 24 of the Plaintiffs' Complaint includes quoted language from the South Carolina Declaratory Judgment Act. Defendant craves reference to that statute in its entirety and denies any allegation or implications of paragraph 24 that are inconsistent therewith.

25. The allegations of paragraph 25 of Plaintiffs' Complaint are hereby denied.

26. The allegations of paragraph 26 of Plaintiffs' Complaint are hereby denied.

27. The allegations of paragraph 27 are hereby denied.

28. To the extent that paragraph 28 and any of its subparts require a response from Defendant, they are hereby denied.

29. The allegations of paragraph 29 are hereby denied.

30. The allegations of paragraph 30 are hereby denied.

31. The allegations of paragraph 31 are hereby admitted with the exception of the allegation that Defendant's activities with regard to the extension of its building permit for the structure referenced therein was without notice to the Plaintiffs.

32. The allegations of paragraphs 32, 33, 34 and 35 are denied.

**FOR A SECOND DEFENSE**
**AND BY WAY OF A MOTION TO DISMISS**
**FOR LACK OF STANDING /**
**IMPROPER PARTY AS TO COUNSEL OF CO-OWNERS**

33. Defendant repeats and realleges the allegations contained in paragraphs 1 through 32 of its Answer and Counter-Claim hereinabove as fully as if repeated verbatim herein.

34. Upon information and belief, the parties who have brought this action purportedly in the name of the Edgewater on Broad Creek Owners Association, Inc. and the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I have not complied with the governing documents of those organizations with regard to filing suit in their name and therefore lack standing to prosecute this action. Therefore, Defendant moves for an Order dismissing the Plaintiff's claims.

35. Upon information and belief, there is no such entity as the Council of Co-owners of the Edgewater on Broad Creek Horizontal Property Regime Phase I and therefore, that

non-entity is not a proper party to this action and all claims brought by it should be dismissed.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND BY WAY OF COUNTER-CLAIM**

36. Counter-Claimant Ephesian repeats and realleges its responses to the allegations of the Plaintiff's Complaint as well as its Motions to Dismiss and Affirmative Defenses asserted thereto and incorporates the same herein for purposes of its counter-claims.

37. This Court has jurisdiction to hear the matters set forth below.

FACTUAL ALLEGATIONS

38. Broad Creek Edgewater, LP ("Broad Creek") was the owner of the property that is the subject of this action as of August 2000.

39. In or around August 2000, Broad Creek submitted to the Town of Hilton Head Island a proposed Plan of Development for the 23 acres that it owned wherein it sought approval for the construction of several multi-family structures thereon.

40. The Town approved Broad Creek's Development Plan in accordance with the applicable zoning guidelines. By right of the property status under the applicable zoning laws, Broad Creek was authorized to develop up to twelve (12) multi-family units per acre of the property. The location and configuration of those units within its 23 acres were left to the discretion of Broad Creek as the Developer.

41. Broad Creek's development rights were freely assignable.

42. In 2002, Broad Creek created the Edgewater on Broad Creek Horizontal Property Regime ("Regime") by filing the Master Deed establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) ("Master Deed").

43. Broad Creek is described in the Master Deed as the Declarant.

44. The Property as defined in the Master Deed consists of 7.64 acres as depicted on Exhibits A, B and C of the Master Deed and an enjoining tract referred to in the Master Deed as "Additional Property" consisting of 16.01 acres on an adjacent tract and set forth on Exhibit A-1 to the Master Deed.

45. The Master Deed contemplates that Phase I of the Regime will consist of a single multi-family building. The Master Deed further contemplates that additional phases may be constructed in the future at the Declarant's discretion. Paragraph 6 of the Master Deed reads, in part:

> (a) Land. The lands which **may** be made subject to this Master Deed are those certain tracts or parcels described in Exhibits "A," "A-1," and B attached hereto and consisting of approximately 23.65 acres, which are owned by Declarant in fee simple subject to certain liens, encumbrances, rights-of-way, easement, covenants, and restrictions (emphasis added).
>
> Hereafter, at one time, or from time to time, Declarant has constructed or **may**, in the future, construct roadways ("Roadways") providing ingress and egress to and from the Property. Declarant shall not be obliged to convey to the Association these Roadways as a Common Element (but **may** do so at Declarant's sole discretion). However, Declarant herewith conveys to each Owner of a Unit and to every permitted occupant of that Unit, a non-exclusive, temporary easement over, upon, and across such Roadways which are not included in the description of the Property at Exhibit "A," **if** any, for ingress and egress to and from Marshland Road. These non-exclusive easements are temporary and shall automatically terminate and become null and void immediately upon merger by incorporation of any part of the Roadways into another Horizontal Property Regime, the Master Deed of which establishes or conveys a permanent, non-exclusive, unrestricted easement for passage over that portion of the Roadways by Owners of Units created by this Master Deed. Declarant reserves the right, in its sole discretion, to relocate these areas and the temporary easements over them without notice to any Owner or occupant of a Unit. In such event, Declarant shall and is hereby especially empowered to prepare and record in the ROD Office for Beaufort County, South Carolina, an Amendment to this Master Deed, amending Exhibit "A" hereto, to show the areas and revised areas of these non-exclusive easements, without notice to or consent by Owners or occupants of Units. Such Amendment to be effective upon recordation of

same in the ROD Office for Beaufort County, South Carolina (emphasis added).

(b) Incorporation of Additional Property. Hereafter, at one time or from time to time, Declarant, its successors and assigns hereby expressly reserves the right to be exercised in its sole discretion to submit one or more parcels of Additional Property to the provisions of the Act by incorporating them within this Master Deed. Additional Property shall be submitted to the Act subject to all recorded utility easements and other easements discussed in this Master Deed and any Amendments hereto. The maximum extent of additional land that the Declarant **may** submit to the provisions of this Master Deed is that property containing approximately 16.01 acres of land, as described on Exhibit "A-1," attached hereto and incorporated herein by reference (emphasis added).

A general description of the plan of development follows:

(1) The maximum number of Units in each proposed stage of development. There are six (6) proposed stages ("Phases") of development. Phase I consists of twenty-three (23) units; subsequent Phases ("Future Phases"), **if** developed, will have together no more than one hundred twenty-four (124) additional Units.

(2) The dates by which the Owner submitting such property to Condominium ownership will elect whether or not he will proceed with Phase. For all proposed Phases, the election whether or not each Phase will proceed shall be made by December 31, 2010.

(3) A general description of the nature and proposed use of any additional Common Elements, which the Owner submitting Property to Condominium ownership proposes to annex to the Property described in the Master Deed, such Common Elements might substantially increase the proportionate amount of the Common Expenses payable by the existing Unit Owners. There are no such additional Common Elements contemplated in the plan of development, which, reasonably considered, might substantially increase the proportionate amount of the Common Expenses payable by existing Unit Owners. At present, it is contemplated that Future Phases **may** include a large waterfront pool and a community observation pier on Broad Creek (emphasis added).

* * *

(5) Declarant, its successors and assigns **may**, in its sole discretion, incorporate one or more Future Phases into the Regime (emphasis added).

(6) Declarant **may**, in its sole discretion, vary the order of inclusion of any and all Future Phases, such that a Phase may be included out of numerical order (emphasis added).

(7) Declarant **may**, in its sole discretion, vary the design of each Phase and the design of Units within each Phase that **may** be incorporated or submitted to this Master Deed (emphasis added).

* * *

(9) Any additional amenities or recreational facilities, which **may or may not** be in the additional Phases are solely at the option of Declarant. The description in any sales or promotion literature of the Declarant of any potential additional amenities or recreational facilities shall not, of itself, oblige the Declarant to construct such or to convey them to the Regime as Common Elements (emphasis added).

(10) **If** Declarant shall elect to incorporate one or more Future Phases into the Regime or to submit Additional Property to the Regime, such shall be accomplished by recordation of an Amendment, which shall include the revised Percentage Interest which each Owner owns, to this Master Deed in ROD Office for Beaufort County, South Carolina, and such election shall be effective on the date of recordation (emphasis added).

(11) The Units which **may** be included in Additional Property, which **may** later be added to this Regime, include the Types A, B, and C Units herein described. Notwithstanding the foregoing, the Declarant reserves the right to include other types of Units in the Future Phases (emphasis added).

46. Broad Creek did complete Phase I of the Edgewater condominiums. In addition, it constructed a pool on the Additional Property. However, the pool was never submitted to the Master Deed, nor was it required to do so, and therefore has never been under the ownership or control of the Regime.

47. On or about May 9, 2007, Broad Creek was placed in involuntary bankruptcy. The Regime was a party to the bankruptcy as a purported creditor of Broad Creek . On May

28, 2008, the Bankruptcy Court presiding over the Broad Creek bankruptcy issued an Order, attached hereto as Exhibit 1, stating in part as follows.

> **ORDER APPROVING SALE**
>
> * * *
>
> ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.
>
> * * *

Exhibit A to the above-referenced Order describes the property referred to above as:

> All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, ... consisting of approximately 16.01 acres ... together with:
>
> * * *
>
> b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits licenses, appurtenances and other rights pertaining thereto, if any, for the property and the Adjacent Tract; ...
>
> c. ...water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), ...
>
> * * *
>
> e. all rights and obligation as the Declarant ... under the Master Deed, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property ... (emphasis added)

48. Pursuant to the Order, the bankruptcy Trustee issued a Bill of Sale for the property attached hereto as Exhibit 2. The buyer of the property was Counter-Claimant Ephesian Ventures, LLC. The Bill of Sale states in part:

**BILL OF SALE AND INSTRUMENT OF ASSIGNMENT AND ASSUMPTION**

...by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, ... and Ephesian Ventures, LLC, a Nevada limited liability company ...

* * *

... by Orders Authorizing Sale, entered on May 26, 2008 and may 31, 2008 on direction of 1 the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully ...

* * *

... Pursuant to the Agreement Seller agreed to sell to Purchaser certain real and personal property including all Declarant's rights (as that term is defined in the Master Deed establishing the Edgewater on Broad Creek Horizontal Property Regime, dated 12/19/2002 and recorded 12/31/2002 with the Register of Deeds, for Beaufort County, South Carolina, in Deed Book 1689 at Page 574, as amended from time to time), title to real estate, covenants, restrictions, improvements and <u>any other rights</u>, including all personal property, <u>now held by Seller as owner or Declarant</u> in that property containing 16.01 acres, more or less, located in Beaufort County, South Carolina ... <u>and all of Seller's right, title and interest in and to that certain tract of land containing 7.64 acres, more or less</u> (the 'Adjacent Tract') previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the 'Master Deed') <u>which has not been conveyed by the Master Deed or otherwise</u>, ... together with:

* * *

b. <u>all developmental rights</u>, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

* * *

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations ... and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property ...

* * *

I. DEVELOPER'S RIGHTS

... Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser all of the Declarant's Rights to the real property described in Exhibit A and as such are defined hereinabove.

Further, Seller assigns all rights it has in the development of any and all undeveloped Property transferred in the Deed or hereunder.

* * *

Seller hereby sells, conveys, transfers, assigns and delivers all of its rights and benefits, if any, ... under any and all contracts and permits to which Seller has any right, including but not limited to those set forth in Exhibit B.

* * *

(emphasis added)

49. Additionally, the Trustee issued a Quit Claim Deed to Ephesian Ventures, LLC, attached hereto as Exhibit 3 which states in part:

**QUIT CLAIM DEED**

* * *

WHEREAS, by Order Authorizing Sale, ...

...Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, ... EPHESIAN VENTURES, LLC, ... (hereinafter the 'Grantee'), ... granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property:

See Exhibit A ...

* * *

Exhibit A

* * *

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County ... containing approximately 7.64 ... "REGIME PARCEL I" ...

* * *

Together with all Declarant (as that term is defined in the Master Deed...) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property: (emphasis added)

* * *

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, ... (emphasis added)

c. ...water and sewage capacity and spray field rights ... and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), ...

* * *

d. all rights and obligations as the Declarant... under the Master Deed, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property ... (emphasis added)

50. Subsequent to Ephesian taking possession of the 16.01 acre parcel, Plaintiff Regime entered into a contract with Ephesian attached as Exhibit 4 pertaining to the Association's continued use of the pool constructed by Broad Creek on the 16.01 acre parcel. This contract constitutes the Regime's acknowledgement of both Ephesian's ownership and control of the pool located on its 16.01 acre parcel.

51. The Association made some payments under the contract in exchange for use of the pool but abruptly stopped, citing a lack of funds.

52. Ephesian permitted the Association to continue to use the pool for a period of time despite the Association's non-payment.

53. Ephesian eventually revoked the Association's access to the pool. Ephesian has never been paid the money owed under the pool use contract for those months that the Association failed to make its scheduled payments.

54. Prior to filing bankruptcy, Broad Creek received Permits for the construction of a new multi-family building on the 16.01 acre parcel. Broad Creek began but never completed construction of that building. In 2010, the South Carolina General Assembly

passed the Permit Extension Joint Resolution of 2010 which extended the validity of any existing construction permits such as those issued to Broad Creek in order to provide relief to developers affected by the economic downturn. On August 30, 2010, Ephesian, as the successor to Broad Creek for purposes of permits DPR000052 and DPR000027 to construct a five-story multi-family building on the 16.01 acre parcel and received written confirmation from the Town of Hilton Head Island by letter dated August 9, 2007, attached hereto as Exhibit 5 stating as follows.

> This letter is in reference to your request for a written confirmation that you do not need to file for an application for extension for the approvals of DPR000052 & DPR000027, Edgewater on Broad Creek.
>
> According to the Permit Extension Joint Resolution of 2010 (H.B. 4445), the period for development approvals and any vested right is suspended during the period beginning January 1, 2008 and ending December 31, 2012. Therefore, the clock does not start ticking again for the above referenced project until January 1, 2013. The one year extension you applied for in August of 2009 will be given back to you and on January 1, 2013 you will have five, one year extensions you may apply for before the application will be considered expired.
>
> Should you have any further questions regarding this issue, please contact me at 341-4686.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND BY WAY OF COUNTER-CLAIM FOR A FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

55. Counter-Claimant Ephesian repeats and realleges its responses to the allegations of the Plaintiff's Complaint as well as its Motions to Dismiss and Affirmative Defenses asserted thereto and incorporates the same herein for purposes of its counter-claims.

56. The developer rights for the combined 23.65 acres of property granted to Broad Creek Edgewater, LP by the Town of Hilton Head Island predate the formation of the

Regime and are therefore separate and distinct from any rights or obligations of the Declarant under the Master Deed of the Regime.

57. No developer rights were ever conveyed by Broad Creek Edgewater, LP or its bankruptcy Trustee to the Regime or to any of its individual members.

58. All developer rights and any Declarant rights held by Broad Creek Edgewater, LP were conveyed by Broad Creek Edgewater, LP's bankruptcy Trustee to Ephesian.

59. Along with the developer rights conveyed to Ephesian, it received density rights to the entire 23.65 acres previously owned by Broad Creek.

60. Additionally, by right of Ephesian's extension of time to recommence construction of the multi-family building begun by Broad Creek Edgewater, LP in 2006 until January 1, 2013, Ephesian's Declarant rights to submit the building to the Master Deed must be extended along with all other Declarant rights enumerated in the Master Deed to December 31, 2014.

61. Further, Plaintiffs have attempted to circumvent Ephesian's rights as the approved developer of the entire 23.65 acres and, as the Declarant under the Master Deed, by applying to the Town of Hilton Head for permission to construction a pool and a tabby walkway on the 7.64 acre parcel, as more fully described in the Plaintiffs' Complaint.

62. In both instances, Plaintiffs have failed to provide Ephesian with notice of its applications to the Town nor has Ephesian's permission been sought for either project.

63. Ephesian has objected to both Applications and the town has responded in Ephesian's favor by withdrawing its initial approval of the pool construction and declining approval for the construction of the path.

64. In both instances, Ephesian's objections were founded upon its assertion that its approval was required as the holder of all development rights to the 7.64 acre parcel and as the Declarant under the Master Deed.

65. Therefore, Ephesian prays for a declaratory judgment from this Honorable Court finding:

a) that Ephesian has all density rights to the 23.65 acres previously owned by Broad Creek, less the number of units already constructed and independent of any rights or obligations set forth in the Master Deed;

b) that Ephesian's Declarant rights under the Master Deed shall be extended beyond the December 31, 2010 deadline set forth in the Master Deed to December 31, 2014.

c) that because of Ephesian's ongoing rights as Developer and/or Declarant, all proposed construction or placement of common elements on the 7.64 acre parcel, including but not limited to the currently proposed pool and tabby walkway, are subject to its express approval before any application may be made to the Town for the same; and

d) that the Plaintiffs have no rights to access or use the existing swimming pool located on Ephesian's property or to otherwise enter onto Ephesian's property without express permission for any reason.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND BY WAY OF COUNTER-CLAIM FOR A SECOND CAUSE OF ACTION: BREACH OF CONTRACT**

66. Counter-Claimant Ephesian repeats and realleges its responses to the allegations of the Plaintiff's Complaint as well as its Motions to Dismiss and Affirmative Defenses asserted thereto and incorporates the same herein for purposes of its counter-claims.

67. As described above, the Plaintiffs failed to make required monthly payments for the use and enjoyment of Ephesian's pool thereby breaching the license agreement described above.

68. As a result of Plaintiffs' breach, Ephesian is entitled to any and all appropriate damages permitted under the law.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND BY WAY OF COUNTER-CLAIM FOR A THIRD CAUSE OF ACTION: TRESPASS / NUISANCE**

69. Counter-Claimant Ephesian repeats and realleges its responses to the allegations of the Plaintiff's Complaint as well as its Motions to Dismiss and Affirmative Defenses asserted thereto and incorporates the same herein for purposes of its counter-claims.

70. Plaintiffs have illegally trespassed onto Ephesian's property, including but not limited to planting trees and other landscaping across the property line, thereby intruding upon Ephesian's right to quiet enjoyment of its property.

71. Ephesian is therefore entitled to any and all damages that it has suffered as a result of Plaintiff's encroachment as well injunctive relief from the Court ordering Plaintiffs to remove any and all encroachments immediately and at their own expense.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the same be dismissed with attorneys' fees and costs and for such

other relief as the Court deems just and proper. Defendant further prays that it be awarded a judgment on its Counter-Claims for declaratory judgment, injunctive relief, actual statutory, actual and consequential damages and that it be awarded interest, costs, and attorneys' fees and for such other and further relief as this Honorable Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

///

///

///

///

Barnwell Whaley Patterson & Helms, LLC

M. Dawes Cooke, Jr., Esquire
K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive (29492)
P.O. Drawer H
Charleston, SC 29402-0197
843-577-7700 (telephone)
mdc@barnwell-whaley.com
mbarfield@barnwell-whaley.com
***Attorneys for Defendant Ephesian Ventures, LLC***

Charleston, South Carolina
Dated: September 12, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed via U.S. Mail, postage prepaid, this 12th day of September 2011, to counsel of record as follows:

Michael W. Mogil, Esquire
Law Offices of Michael W. Mogil, P.A.
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928

***Attorneys for Plaintiff***

11 SEP 15 PM 3:18
CLERK OF COURT

Peggy Belk
Legal Secretary

EXHIBIT B

**U.S. BANKRUPTCY COURT**
**District of South Carolina**

Case Number: 07-02546-DD

**ORDER APPROVING SALE FREE AND CLEAR OF LIENS, JUDGMENTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(f)**

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby **ORDERED.**

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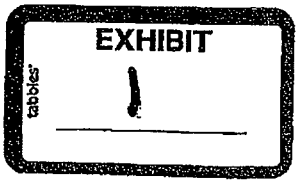
**FILED BY THE COURT**
**05/27/2008**

Entered: 05/28/2008

US Bankruptcy Court Judge
District of South Carolina



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---|---|---|
| IN RE: | ) | |
| | ) | B/K Case No. 07-02546-DD |
| BROAD CREEK EDGEWATER, LP | ) | Chapter 7 |
| | ) | |
| Debtor. | ) | **ORDER APPROVING SALE** |
| | ) | |

THIS MATTER comes before the Court upon the application of Kevin Campbell, the duly appointed and acting Chapter 7 Trustee for the above Debtor (hereinafter referred to as the "Trustee") for authority to sell the property of the estate identified on the attached Exhibit "A" (hereinafter referred to as the "Edgewater Property") free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f). There were no objections to the application.

The Trustee proposes to sell the Edgewater Property to Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the "Buyer"). The Buyer is a good faith purchaser for value under §363(m) and does not have any known adverse interest in this case or any parties involved in this case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not a creditor of the Debtor. The sales price is $9,000,000, with a closing to take place after Court approval at a date not more than thirty (30) days from the entry of a final Order approving the sale (including any appeals or other actions which would limit the finality of this Order), at place and time to be agreed upon by the parties.

**EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE AGREEMENT, THE TRUSTEE IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTY AS TO TITLE. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE TRUSTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.**

**THE TRUSTEE SHALL PROVIDE AT CLOSING "INSURABLE TITLE." INSURABLE TITLE IS DEFINED AS TITLE THAT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES BASED ON AN ORDER ENTERED BY THE BANKRUPTCY COURT ALLOWING THE TRUSTEE TO CONVEY THE PROPERTY FREE AND CLEAR OF ANY SUCH LIENS AND ENCUMBRANCES AND INSURABLE WITHOUT INDEMNITY BY THE TRUSTEE AT NORMAL RATES BY A REPUTABLE NATIONAL TITLE COMPANY (AS CHOSEN BY THE PURCHASER PURSUANT TO THE AGREEMENT BEING APPROVED BY THIS ORDER) AND THAT ALL LIENS AND ENCUMBRANCES ATTACH ONLY TO THE PROCEEDS OF THE SALE AND TITLE IS SUBJECT TO COVENANTS, CONDITIONS**

**AND RESTRICTIONS OF RECORD, INCLUDING, BUT NOT LIMITED TO, THE MASTER DEED AND THE GENERAL OR STANDARD CONDITIONS OF ANY TITLE INSURANCE COMPANY, BUT SPECIFICALLY EXCLUDING PARAGRAPH 5 OF THE OCTOBER 31, 2006 ORDER ISSUED BY THE COURT OF COMMON PLEAS FOR THE COUNTY OF BEAUFORT WHICH SUIT WAS BROUGHT BY PAIL L. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR., JAQUELINE HEISS, KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1 -20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (THE "PLAINTIFFS") AND PLAINTIFF'S COUNSEL STIPULATED AT THE HEARING ON THE APPLICATION FOR SALE OF PROPERTY THAT PARAGRAPH 5 WAS NO LONGER VALID AND WOULD NOT EFFECT THE PROPERTY AND RIGHTS BEING SOLD TO PURCHASER HEREIN.**

**THE BUYER HAS BEEN GIVEN AN OPPORTUNITY TO HAVE TITLE TO THE REAL PROPERTY RESEARCHED AND ACCEPTS THE STATUS OF THE REAL PROPERTY. THE TRUSTEE DOES NOT PROVIDE LIEN OPINIONS. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.**

**THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.**

At closing, with the exception of the real estate commission, the Trustee shall be authorized to pay normal seller's closing costs as set forth in the Purchase Agreement.

Alex Graham, Auctioneer (SC License #3997); Sperry Van Ness Commercial Properties, LLC, 1250 Fairmont Avenue, Mt. Pleasant, SC 29464, has been duly appointed as the Trustee's sale's agent. Except as provided for herein, a sales commission of Four (4%) percent of the contract sales price shall be paid, with the Trustee being responsible for the payment of the Trustee's agent two (2%) percent commission and one (1%) percent Buyer's agent commission. The Buyer shall be responsible for paying the remaining one (1%) percent Purchaser's agent commission. As provided for herein, the real estate commissions will not be paid at closing, but shall attach to the net sale proceeds pending agreement between the parties or further Order of this Court.

There is a disputed first mortgage lien held by Regions Bank, dated May 6, 2005, as assigned to Distinct Edgewater, LLC on January 3, 2007. There are related UCC-1's also of record held by Regions Bank and also assigned to Distinct Edgewater, LLC. The Trustee disputes the amount owed to this creditor. This creditor's lien shall attach to the net sale proceeds until an agreement is reached between the parties, or further order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by Strecansky & Co. (Case No. 06-CP-07-2497). The Trustee believes that this cause of action has been sold and/or assigned to CDCJ Holdings, LLC. The Trustee has filed an adversary proceeding

(Adv. Pro. No. 07-80149-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by KRA, Inc. (Case No. 06-CP-07-2325). The Trustee believes that this cause of action has been sold and/or assigned to Distinct SC Limited, LLC. The Trustee has filed an adversary proceeding (Adv. Pro. No. 07-80105-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

Pursuant to a Court approved lending order filed on August 23, 2007 and May 6, 2008, there is a mortgage from the Debtor to John W. Baird as Trustee for the John W. Baird Trust, dated August 23, 2007. This mortgage secures certain amounts that have already been paid or will be paid to the Estate for expenses, including, but not limited to, adequate protection payments, operating costs, and costs and fees of marketing, as well as potential future advances to the Estate. Pursuant to said Order, this lien is junior and subordinate to all presently existing liens, judgments or encumbrances on the subject property to the extent those liens, judgments or encumbrances are not otherwise voided or avoided by further Order of this Court.

The Trustee disputes a purported lien or security interest held by Landplan Partnership, Inc. as recorded in M/L Book 27 at Page 505. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes that certain Mechanic's Lien action filed by Pro Slab, Incorporated (Case No. 07-CP-07-92). An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported lien or security interest held by Calibogue Enterprises as recorded in M/L Book 28 at Page 1958. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported judgment lien or security interest held by Paul A. Hummel, et al. under Case No. 06-CP-07-3556 as recorded in Judgment Book 2006-2556. The Trustee believes that the lien constitutes an avoidable preference and/or fraudulent conveyance. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee is not aware of any other liens, judgments, encumbrances or other

interests. To the extent they may exist, they are disputed and they shall attach to the estate's interest in the net sale proceeds pursuant to 11 U.S.C. §363(f)(4). This sale is free and clear of all liens, judgments encumbrances and other interests pursuant to 11 U.S.C. §363(f).

Net sale proceeds is defined as those funds remaining after payment of normal seller's closing costs, as set forth in the Purchase Agreement or otherwise provided for in this Order.

In the event that after payment of all valid and perfected superior liens, county real property and other taxes and seller's closing costs and other expenses provided for herein, if there remains insufficient net sale proceeds to pay all Chapter 7 administrative claims, including the real estate/sales commissions, the Chapter 7 administrative claims, including real estate/sales commissions, shall be pro-rated.

In the event the net sale proceeds are sufficient and the administrative claims are paid in full, including the full commission to the Sales Agent/Auctioneer, then the Sales Agent/Auctioneer shall repay to the Estate the costs and expenses incurred in the marketing and sale and/or auction of the property, which could be in the approximate amount of $32,042, which sums have or will be advanced to the Estate by the John W. Baird Trust, pursuant to previous Court Order and secured by the mortgage referenced herein.

If for any reason this sale does not occur within the time set forth herein, the Trustee may instead sell this property to a back-up bid for the same or higher price, provided it closes within 60 days of the date of the final entry of this Order.

I find that this matter is properly before this Court and that there were no objections filed to this Notice of Sale.

I find that ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order. It is, therefore

ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.

IT IS FURTHER ORDERED that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order.

IT IS FURTHER ORDERED that the disputed liens set forth herein shall attach to the net sale proceeds as provided for herein until disbursed pursuant to further Order of this Court;

IT IS SO ORDERED!

**EXHIBIT "A"**

All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 16.01 acres and shown as "Additional Property of Edgewater on Broad Creek" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME - PHASE 1" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515 dated December 19, 2002, and recorded in Plat book 91 at page 5 in the ROD Office for Beaufort County South Carolina on 12/31/02, and all that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, together with:

a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and

d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller; and

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the

Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, as provided in this agreement, to pay the Town of Hilton Head Transfer Tax;

All of which is hereinafter referred to as the "Edgewater Property".

BAE SYSTEMS

Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

# CERTIFICATE OF SERVICE

District/off: 0420-2 User: douglass Page 1 of 1 Date Rcvd: May 28, 2008
Case: 07-02546 Form ID: pdf01 Total Served: 7

The following entities were served by first class mail on May 30, 2008.

| | | |
|---|---|---|
| aty | +J. Ronald Jones, Jr., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492-8144 | |
| aty | +Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684 | |
| aty | Michael W. Mogil, 103 Professional Building, Hilton Head Island, SC 29928 | |
| aty | +R. Geoffrey Levy, 2300 Wayne Street, Columbia, SC 29201-2057 | |
| tr | +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684 | |
| ust | +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953, Columbia, SC 29201-2448 | |
| adb | +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103 | |

The following entities were served by electronic transmission.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Spoetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 30, 2008 Signature: Joseph Spoetjens

**U.S. BANKRUPTCY COURT**
**District of South Carolina**

Case Number: 07-2546

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby **ORDERED**.

**FILED**

at ____ O'clock & ____ min ____ M

FILED BY THE COURT ON MAY 2 2 2008

United States Bankruptcy Court
Columbia, South Carolina (23)

David R. Duncan
US Bankruptcy Court Judge
District of South Carolina

ENTERED: ENTERED

MAY 2 3 2008

R. S. S.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---|---|---|
| IN RE: | ) | |
| | ) | Chapter 7 |
| Broad Creek Edgewater, LP, | ) | |
| | ) | Case No.: 07-02546-dd |
| Debtor. | ) | |
| | ) | |

ORDER APPROVING BIDDING PROCEDURES

This proceeding comes before the Court on the notice and motion of the Chapter 7 trustee for approval of certain bidding proceeding to assist in selling the Debtor's assets.

The Court has been informed that all parties in interest have been notified of the proposed bidding procedures, and no objections to the proposed bidding procedures have been received. The Chapter 7 trustee has represented to the Court that such bidding procedures are in the best interest of the creditors of the estate. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the bidding procedures set forth in the Motion are approved and the Asset Purchase Agreement with Bear Properties LLC is approved, including the termination fee of $200,000, the initial overbid of $350,000 and subsequent bidding increments of $50,000.

The Applicant:

/s/ Kevin Campbell
Kevin Campbell, Chapter 7 Trustee

BAE SYSTEMS
Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

# CERTIFICATE OF SERVICE

District/off: 0420-2 User: shealy Page 1 of 1 Date Rcvd: May 23, 2008
Case: 07-02546 Form ID: pdf01 Total Served: 6

The following entities were served by first class mail on May 25, 2008.

aty +John Timothy Stack, Office of the United States Trustee, 1835 Assembly Street Suite 953, Columbia, SC 29201-2448
aty +Joseph F. Buzhardt, III, Office of the United States Trustee, 1835 Assembly Street Suite 953, Columbia, SC 29201-2448
aty +Michael K. Conrady, 830 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684
tr +Kevin Campbell, PO Box 584, Mount Pleasant, SC 29465-0684
ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953, Columbia, SC 29201-2448
adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission. TOTAL: 0
NONE.

***** BYPASSED RECIPIENTS ***** TOTAL: 0
NONE.

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 25, 2008 Signature: Joseph Speetjens

2/15 PB 7/15 Jefferson

BEAUFORT COUNTY SC- ROD
BK 02742 PGS 2064-2072
DATE: 07/07/2008 02:53:34 PM
INST # 2008043042 RCPT# 55133

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | BILL OF SALE AND |
| | ) | INSTRUMENT OF |
| COUNTY OF BEAUFORT | ) | ASSIGNMENT AND ASSUMPTION |

This Bill of Sale and Instrument of Assignment and Assumption (this "Instrument") is entered into this 1 day of July, 2008, Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership (hereinafter also referred to as "Seller"), in bankruptcy and Ephesian Ventures, LLC, a Nevada limited liability company (hereinafter also referred to as "Purchaser").

## RECITALS

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Orders Authorizing Sale, entered on May 26, 2008 and May 31, 2008 on direction of 1 the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina.

WHEREAS, Seller and Bear Properties, LLC, a Georgia Limited Liability Company entered into that certain Agreement for the Purchase and Sale of Real Property dated May 6, 2008 (hereinafter the "Agreement") and Bear Properties, LLC assigned all rights and interests in the Agreement to Appian Visions, LLC, a Georgia Limited Liability Company; and

Whereas Appian Visions, LLC, assigned all of its rights and interests in the Agreement to Ephesian Ventures, LLC, a Nevada Limited Liability Company.

WHEREAS, Pursuant to the Agreement Seller agreed to sell to Purchaser certain real and personal property including all Declarant's rights (as that term is defined in the Master Deed establishing the Edgewater on Broad Creek Horizontal Property Regime, dated 12/19/2002 and recorded 12/31/2002 with the Register of Deeds, for Beaufort County, South Carolina, in Deed Book 1689 at Page 574, as amended from



EXHIBIT 2

time to time), title to real estate, covenants, restrictions, improvements and any other rights, including all personal property, now held by Seller as owner or Declarant in that property containing 16.01 acres, more or less, located in Beaufort County, South Carolina and more particularly described as in Exhibit "A" attached hereto and incorporated herein by this reference and all of Seller's right, title and interest in and to that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed") which has not been conveyed by the Master Deed or otherwise, all (hereinafter also referred to as the "Property"), together with:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to the Master Deed; and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and
d. the right to use all documents called for in the Agreement dated May 6, 2008, which obligation shall survive the closing of the conveyance described in the aforesaid Agreement; and
e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

WHEREAS, pursuant to the Agreement, Purchaser has agreed to accept, and Seller has agreed to assign, the Declarant's Rights and Seller has further agreed to assign additional rights and obligations; and

WHEREAS, Seller, pursuant to the Agreement, has agreed to transfer additional personal property, control and contract rights to Purchaser;

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

I. DEVELOPER'S RIGHTS

In addition to the ownership of the real property portion of the Property, as defined in the Agreement and Exhibit A attached hereto, conveyed under the deed executed and delivered simultaneously herewith (collectively, the "Deed"), Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser all of the Declarant's Rights to the real property described in Exhibit A and as such are defined hereinabove.

Further, Seller assigns all rights it has in the development of any and all undeveloped Property transferred in the Deed or hereunder.

II. CONTRACTS AND PERMITS

Seller hereby sells, conveys, transfers, assigns and delivers all of its rights and benefits, if any, [but Purchaser assumes none of the obligations]under any and all contracts and permits to which Seller has any right, including but not limited to those set forth in Exhibit B.

III. PERSONAL PROPERTY

Seller hereby sells, conveys, transfers, assigns and delivers all its right, title and interest, if any, unto the Purchaser in and to all:

A. Accommodations, appurtenances, common elements, condominiums, limited common elements, units in connection with the Property to the extent that any such term is not considered real property and therefore not conveyed by the Deed.

B. Unless expressly excluded under the Agreement, all hooks, records, documents, and other assets of any and every type owned by or belonging to Seller along with any and all books and records, condominium documents, declarations and intellectual property and software which belongs to Seller in connection with the Property conveyed under the Deed or conveyed hereby.

C. Any and all furniture, fixtures and equipment or other personal property owned by Seller and located in, on or relating to the Property.

D. Any and all other Property as defined in the Agreement and not otherwise covered under the Deed or expressly covered elsewhere within this Instrument.

IV. MISCELLANEOUS

A, The validity, interpretation and effect of this Instrument shall be construed performed and enforced in accordance with, and governed by, the Law of the State of South Carolina (without giving effect to the principles of conflict of Laws thereof).

B. This Instrument shall bind and shall inure to the benefit of the respective parties hereto and to their respective successors and permitted assigns.

C. This Instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed by their authorized representatives as of the date first above written.

WITNESSES:

PURCHASER:

EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company

By: _____
W. Thomas Vernon
Agent appointed by Manager's Resolution

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF RICHLAND )

I, Clanton Fosk hereby certify that the above-named Purchaser, Ephesian Ventures, LLC, by W. Thomas Vernon, Agent appointed by Manager's Resolution, personally appeared before me this day and acknowledged the due execution of the foregoing instrument..

Witness my hand an official seal this the 7 of July, 2008.

Notary Public for the State of South Carolina
Clanton Fosk
Signature of Notary
My Commission Expires: 6/10/2012

WITNESSES:

SELLER:

BROAD CREEK EDGEWATER, LP

By: _____
Kevin Campbell, Esquire
Trustee for Broad Creek Edgewater, LP in bankruptcy

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON )

I, Michael Conrady Notary Public for the State of South Carolina, do hereby certify that the above-named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand an official seal this 7th day of July, 2008.

Notary Public for the State of South Carolina

Signature of Notary
My Commission Expires: 8/31/14

Exhibit A
Property Description

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02.

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project (which shall herein be used to describe

the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and

d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.

**EXHIBIT B**

**All property not real property, including but not limited to:**

1. **Town of Hilton Head Building Permit B0502636;**
2. **DHEC and Town of Hilton Head Pool Permits, if any;**
3. **Any and all other various sundry permits issued to or assumed by Seller by state, county, town or other governmental or quasi-governmental entities;**

15 PB
21 FOOTER law
1489

RECORDED
2008 Jul -18 12:59 PM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 02742 PGS 2049-2063
FILE NUM 2008043041
07/07/2008 02:53:34 PM
REC'D BY P BAXLEY RCPT# 551338
RECORDING FEES 21.00
County Tax 9,800.00
State Tax 23,400.00
Transfer Tax 22,500.00

Document prepared by
W. Thomas Vernon
Attorney at Law, P.C.
2511 Wilmot Avenue
Columbia, SC 29205

Upon filing, please return
to above address.

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: KEVIN CAMPBELL, TRUSTEE IN BANKRUPTCY FOR BROAD CREEK EDGEWATER, LP, SENDS GREETING:

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Order Authorizing Sale, signed by the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina. (Attached hereto and incorporated by reference as **Exhibit B**)

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, the said Kevin Campbell, Trustee in Bankruptcy for **BROAD CREEK EDGEWATER, LP, a South Carolina Limited Partnership** (hereinafter the "Grantor") in consideration of the sum of Nine Million and no/100s Dollars ($9,000,000.00) to it in hand paid at and before the sealing and delivery of these presents by **EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company** (hereinafter the "Grantee"), in the State aforesaid the receipt of which is hereby acknowledged has granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property:

**See Exhibit A attached hereto and incorporated herein by reference.**

**Grantee's address:** **c/o W. Thomas Vernon**
**2511 Wilmot Avenue**
**Columbia, South Carolina 29205**

EXHIBIT
3

ADD DMP Record 7/15/2008 11:31:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0004 | 0000 | 00 |

ADD DMP Record 7/15/2008 11:31:24 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 0000 | 00 |

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof.

**WITNESS the Grantor's Hand and Seal this 7th day of July in the year of our Lord Two Thousand Eight (2008).**

**Signed, Sealed and Delivered in the Presence of:**

**Broad Creek Edgewater, LP**

**By:**
**Kevin Campbell, Esquire**
**Trustee for Broad Creek Edgewater, LP in bankruptcy**

**STATE OF SOUTH CAROLINA )**
**CHARLESTON )**
**COUNTY OF ~~BEAUFORT~~ )**

**PROBATE**

**PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee sign, seal and as the Grantor's act and deed deliver the within Limited Warranty Deed and that deponent with** Michael Conway **witnessed the execution thereof.**

**(witness 1)**

**SWORN to before me this**
**7th of July, 2008.**

**(Seal)**
**NotaryPublic for South Carolina**
**My Commission expires:** 8/31/11

Exhibit A
Property Description

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. R510-011-000-0004-0000

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and
d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by

action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.

# LICENSE AGREEMENT

This License Agreement (this "Agreement") is entered into as of July 9, 2008, by and between Edgewater on Broad Creek Owners Association, Inc. (hereinafter referred to as "Licensee"), and Ephesian Ventures, LLC (hereinafter referred to as "Licensor").

WHEREAS, Licensor is the owner of certain property described in Exhibit A [the "Property"] which is adjacent to that on which are certain condominium units owned by members of the Licensee [the "Members"], and

WHEREAS, located on the property of Licensor is a pool, a "Kiddie Pool," a "Spa," a "Playground," a "Grassed Area," a "Planter," and two pool houses denominated "Pool Building A" and "Pool Building B," all surrounded by a concrete walkway and a decorative concrete retaining wall, and all as shown and so named on the Plat referenced in Exhibit A, [all together from time to time referred to as the "Pool"] and a dock [the "Dock"], and all described more particularly in Exhibit C, and

WHEREAS, Licensee desires use of the Pool and the Dock for Licensee's Members and their family, guests, lessees and invitees, and

WHEREAS, Licensor is willing to provide the aforesaid access desired by Licensee under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of Ten Dollars in hand paid by each to the other and the promises and covenants set out herein [including the preceding introductory paragraphs of this Agreement] and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Parties agree as follows:

1. Affected Premises. This Agreement is solely for the use of the Pool and the Dock [the "Permitted Areas"] and direct access to same but solely along the concrete walkways as shown on the Plat referenced in Exhibit A. No access to any of the other portions of the Property is permitted. For the safety of the Permitted Users and others, Licensee and the Permitted Users agree immediately to notify Licensor and law enforcement if they observe someone other than an agent of Licensor on any portion of the Property which is not the Permitted Areas.

2. Permitted Users: Access under this Agreement is solely for Licensee's Members and their family,





EXHIBIT 4

guests, lessees and invitees [the "Permitted Users"]. Licensee and the Permitted Users understand that Licensor is not providing any type of security for the Permitted Areas or for the Property. Therefore, for the safety of the Permitted User, Licensee and the Permitted Users agree immediately to notify Licensor and law enforcement if they observe someone who is not a Permitted User in the Permitted Areas.

3. Safety Equipment and Safety Measures. Licensee and the Permitted Users understand that the access herein granted is with the understanding that no lifeguard is present nor is any agent or employee of Licensor present at the Permitted Areas and therefore:

   i. Licensee will provide appropriate life jackets, life saving equipment at both the Permitted Areas.
   ii. Licensee and the Permitted Users will not allow any person under the age of sixteen in the Permitted Areas unless accompanied full-time by a parent or legal guardian.
   iii. Access to the Permitted areas shall be only during daylight hours, and in any event not earlier than 7 am and not later than 8 pm.

4. Removal by Licensor. Licensor reserves the right to deny or remove any individual(s) who does not follow posted policies and procedures concerning the use of the Permitted Areas.

5. Prerequisites to Access.

   i. Documentation Required. Licensee and the Permitted Users will insure that prior to accessing the Permitted Areas, anyone permitted access by this Agreement has executed the attached Agreement, Waiver and Release form, attached hereto as Exhibit B and by reference incorporated herein, and the same delivered to Licensor by fax or email within twenty-four hours with the original to follow within seventy-two hours.
   ii. Insurance. Prior to ANY access, Licensee with provide to Licensor proof of insurance for liability in the amount of One Million Dollars

and property damage in the amount of Fifty-thousand Dollars, with Licensor, its successors and assigns named as additional insureds.

6. Maintenance of the Dock. The Licensor makes no representation as to the condition of the dock or its future maintenance, repair or construction.

7. Maintenance of the Pool: For the present, Licensor will maintain the currently existing contract with the company providing maintenance to the Pool itself [and the Spa and the Kiddie Pool if presently covered by the existing contract]. Licensor reserves the right to change pool maintenance companies at any time without notice to Licensee or the Permitted Users. Licensee and the Permitted Users are responsible for maintenance of the surrounding area including the following: "Playground," a "Grassed Area," a "Planter," and two pool houses denominated "Pool Building A" and "Pool Building B."

8. License Fees: In exchange for the access herein granted to the Permitted Areas for the Permitted Users, in addition to providing the insurance as aforesaid, Licensee will pay to Licensor $3,000.00 per month payable on the first of each and every month beginning July, 2008; provided however that for the month of July, 2008 only, there will be a reduction of the payment for the portion of the month beginning July 7, 2008 to that the total payment shall be $2,419.35, payable $1,500.00 with the signing of this Agreement and the balance on or before July 31, 2008.

9. Term: The term of this Agreement shall commence on the latter of: (a) July 2, 2008 at 5pm or (b) after delivery of proof of insurance as herein provided and payment of that portion of the pool maintenance required for the period July 2, 2008 to July 31, 2008.

10. Termination: Notwithstanding anything to the contrary contained in this Agreement, either party may terminate this Agreement, for any reason, by giving 10 days' prior written notice to the other party.

11. Indemnity: Licensee and the Permitted Users assume full responsibility and liability for any injury to any Permitted User. or damage to property caused, resulting from or arising out of any act or omission on the part of Licensee or any Permitted User under or in connection with this Agreement or use of the Permitted Areas, and shall indemnify and save and hold harmless Licensor, its agents, successors and assigns from and against any and all costs, losses, claims and expenses, including but not limited to attorneys' fees and court costs, which they are charged, suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such acts or omissions of Licensee or any one or more of the Permitted Users which indemnity shall survive this Agreement. And Licensor will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect Licensor financially. Licensee and the Permitted Users will also reimburse Licensor for all expenses reasonably incurred by Licensor to protect itself from or to remedy defaults under this Agreement. The obligations of indemnification and reimbursement are as to the Licensee and the Permitted Users joint and several.

12. Assignment: Licensee shall not assign this Agreement without the prior written consent of Licensor.

13. Waiver: A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies and rights of the parties contained in this Agreement shall be cumulative.

14. Governing Law and Forum: This Agreement shall be governed by the laws of the State of South Carolina and the Court of Common Pleas for Beaufort County shall have jurisdiction to hear dispute arising under- this Agreement.

15. Attorney's' Fees: In the event litigation be commenced by either party hereto against the other in connection with the enforcement of any provision





MW

of this Agreement the losing-party shall pay all court costs and shall pay to the prevailing party all expenses incurred by the prevailing party in litigation including attorneys' fees, in a reasonable amount to be determined by the court. The amount so allowed at attorneys' fees shall be taxed to the losing party as costs of the suit.

16. Relationship: Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.

17. Limitation of Liability: In no event shall Licensor be liable for indirect, incidental for bodily injury or property damage suffered by any Permitted User.

18. Notices: All notices required by this Agreement or deemed advisable by either party to the other shall be in writing and transmitted with property pre-paid postage by Certified U.S. Mail Return Receipt Requested, and unless subsequently changed by either party in writing to the other, shall be addressed as follows:

i. Licensor: W. Thomas Vernon, 2511 Wilmot Avenue, Columbia, South Carolina, 29205, 803.414.7200, fax 803.252.8398, email wtv@sresllc.net.

ii. Licensee: Michael W. Mogil, PA, 303 Professional Building, Hilton Head Island, SC 29928, 843.785.8110, fax 843.785.9676 email mmogil@mogillaw.com

19. No Third Party Beneficiaries: This Agreement does not create any duties to persons or entities other than the parties to this Agreement. This Agreement does not create any rights in any persons or entities other than the parties to this Agreement. No third party beneficiaries, either creditor or donee, are intended or implied, and no parties other than the parties hereto may file suit or otherwise recover damages for breach of any of the provisions o this Agreement.

20. Entire Agreement: This Agreement constitutes the entire agreement between the parties, which supersedes any previous oral or written agreement between the parties with respect to the subject matter

hereof. This Agreement may not be modified, waived, altered, or changed unless in writing signed by the parties hereto. Any attempt or purported modification, waiver or alteration that is no contained in such a signed agreement shall be null and void.

21. No other Agreements. Nothing herein shall be construed to bind the parties hereto to any legal position, in relation to each other or to any third party, beyond the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LICENSOR

Ephesian Ventures, LLC

By: _____
Its: _____

LICENSEE

Edgewater on Broad Creek Owners Association, Inc.

By: _____
Its: President

**Exhibit A**

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded.

Exhibit B

AGREEMENT, WAIVER AND RELEASE

NAME:

_____

HOME ADDRESS:

_____

SOCIAL SECURITY NUMBER

_____

BIRTH DATE

_____

I, have read the Agreement between Edgewater on Broad Creek Owners Association, Inc. and Ephesian Ventures, LLC, and understand that I am a Permitted User as defined in that Agreement and agree to be bound by all the terms of the Agreement.

Further, I hereby release Ephesian Ventures, LLC, its, agents, successors and assigns from any and all liability whatsoever for any injuries, damages or losses which may result, directly or indirectly, from my use of the Permitted Areas [as defined in the Agreement] regardless of any act of omission on the part of Ephesian Ventures, LLC, its agents, successors and assigns.

And I hereby assume the risk of any injury, loss or damage while accessing the Permitted Areas.

And I agree to indemnify and hold harmless Ephesian Ventures, LLC, its agents, successors and assigns from any all liability for any such injury, loss or damage, all as provided under the terms of the Agreement.

_____

Signature

_____

Date

_____

Signature of Parent or Guardian (if under 18 years of age)





MM

# EXHIBIT C

## Property Description

**A portion of that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being shown as .97 acres and designated as "Shared Pool & Dock Area" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, titled "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK", certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, a copy of which is attached hereto.**

Substitute Map Exhibit C





MLL

# TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4600 Fax (843) 842-7728
www.hiltonheadislandsc.gov

Thomas D. Peeples
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Willie (Bill) Ferguson
William D. Harkins
Drew A. Laughlin
John Safay
George W. Williams, Jr.

Stephen G. Riley
Town Manager

RECEIVED
AUG 3 0 2010

August 27, 2010

Mr. Chester C. Williams
17 Executive Park Road, Suite 2
P.O. Box 6028
Hilton Head Island, SC 29938

**Re: Edgewater on Broad Creek – DPR000052 & DPR000027**

Dear Chet:

This letter is in reference to your request for a written confirmation that you do not need to file for an application for extension for the approvals of DPR000052 & DPR000027, Edgewater on Broad Creek.

According to the Permit Extension Joint Resolution of 2010 (H.B. 4445), the period for development approvals and any vested right is suspended during the period beginning January 1, 2008 and ending December 31, 2012. Therefore, the clock does not start ticking again for the above referenced project until January 1, 2013. The one year extension you applied for in August of 2009 will be given back to you and on January 1, 2013 you will have five, one year extensions you may apply for before the application will be considered expired.

Should you have any further questions regarding this issue, please contact me at 341-4686.

Sincerely,

Nicole Dixon, Planner
Development Review & Zoning

EXHIBIT
5

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT | ) | |
| Edgewater on Broad Creek Owners Association, Inc., | ) | CIVIL ACTION NO.: 2011-CP-07-02994 |
| | ) | |
| Plaintiffs | ) | NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT |
| v. | ) | |
| | ) | |
| Ephesian Ventures, LLC, | ) | |
| | ) | |
| Defendant. | ) | |

2015 FEB 26 AM 9:00
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: M. DAWES COOKE, JR. AND K. MICHAEL BARFIELD, ATTORNEYS FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff, Edgewater on Broad Creek Owners Association, Inc. ("Plaintiff"), by its undersigned attorney, will move the Honorable Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting partial summary judgment to the Plaintiff on Plaintiff's Complaint. Specifically, Plaintiff seeks summary judgment on its Cause of Action for a Declaratory Judgment and for an Order by the Court that a) Plaintiff may construct a swimming pool and other common or recreational amenities on its land, subject only to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, free from interference. supervision or veto by the Defendant; b) Plaintiff has the right to construct improvements on the unimproved portions of Phase I property, to wit, the Association may construct or build upon, use, sell or encumber its remaining common elements subject only to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance, and free from interference, supervision or veto by the Defendant; c) the Defendant's claim as successor to the Declarant of rights to use the existing Clubhouse as a sales office has extinguished; d) the Defendant's claim as successor to the Declarant of right to relocate the Association's ingress and egress is extinguished; and e)

the Defendant's right of ingress and egress through and across Plaintiff's property as reserved in the Master Deed is extinguished except to the extent that the Court determines that no other ingress and egress exists for the Defendant.

Said motion shall be argued upon the pleadings in this matter, upon affidavit(s), memoranda of law, and the documents produced through discovery in this matter. Movant reserves the right to expand the issues argued for summary judgment before the Court at hearing, as set forth in any subsequent affidavits or memoranda of law filed prior to hearing. The hearing on said motion shall be at the Beaufort County Courthouse, 102 Ribault Road, Beaufort, South Carolina, 29901, at a date at least ten (10) days after service hereof, or at such other date that the Court sets, after notice.

Hilton Head Island, South Carolina
February 21, 2015

Respectfully Submitted,

Michael W. Mogil, SC # 11933
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br>FOURTEENTH JUDICIAL CIRCUIT<br>CIVIL ACTION NO. 2011-CP-07-2994 |
| THE EDGEWATER ON BROAD CREEK OWNERS ASSOCIATION, INC.,<br><br>Plaintiff,<br><br>v.<br><br>EPHESIAN VENTURES, LLC, | ) | PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT |

2015 SEP 2 PM 1:21
JERRI ANNE BERENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COMES NOW the Plaintiff, The Edgewater on Broad Creek Owners Association, Inc. (hereinafter "Plaintiff" or "Association"), by counsel, and for its Memorandum of Points and Authorities in Support of Its Motion for Partial Summary Judgment, states the following.

## I. STATEMENT OF MATERIAL FACTS

Plaintiff is a South Carolina non-profit corporation created by recordation with the S.C. Secretary of State on September 16, 2002 of Articles of Incorporation.[1] Plaintiff is the business entity established to be the incorporated "council of co-owners"[2] of Edgewater on Broad Creek Horizontal Property Regime (hereinafter "Regime"). The "declarant" of the Regime was Broad Creek Edgewater, L.P., a South Carolina limited partnership (erroneously referenced at times as "Broad Creek Edgewater, LLC"). The Regime came into existence by recordation of a Master Deed dated December 19, 2002 which, with exhibits, was recorded on December 31, 2002, in the Office of the Beaufort County Register of Deeds in Book 1689 at Page 0574.[3]

Phase I of the Regime consists of 7.64 acres as described in Exhibit A to Exhibit 2 herewith. That translated into construction of 23 units in addition to common elements associated therewith. Exhibit A-1 of Exhibit 2 herewith indicates that an additional 16.01 acres were designated to *possibly* be added to the Regime. As initially contemplated, the Regime, were it to have included all Additional Land, would have had a maximum of 147 units, plus

[1] Attached hereto as Exhibit 1 is a certified copy of Plaintiff's Articles of Incorporation.
[2] *See*, S.C. Code § 27-31-20(e) (1976 as amended); also, *Infra.*, Exhibit 2, Section 4(l).
[3] A certified copy of the Master Deed, with exhibits, is attached hereto and incorporated herein as Exhibit 2. A copy of a plat of the site is attached hereto as Exhibit 2A. *See, also*, S.C. Code § 27-31-30 (1976 as amended).

multiple amenities. (*See*, Exhibit 2, Section 6(b)(1)) Pursuant to Section 6(b)(2) of the Master Deed, the declarant had until December 31, 2010 to submit additional land to the Regime. Neither the declarant, nor its successor Ephesian Ventures, LLC, so acted within the time allotted in the Master Deed by which they are governed.[4] By October 2006, all units of Phase I of the Regime, which together with common elements constituted the entire Regime to that date, had been conveyed to *bona fide* purchasers for value.[5] Moreover, notwithstanding powers residing with declarant Broad Creek Edgewater, L.P. in the Master Deed and the Horizontal Property Act (S.C. Code §§ 27-31-10, *et seq.*, hereinafter the "Act"), a court of competent jurisdiction on or about October 31, 2006, ruled, without limit, that a board of directors had been elected to, with its appointed officers, operate Plaintiff Association to the extent of the 7.64 acres then constituting the Regime.[6]

Creditors caused filing of an Involuntary Petition putting declarant Broad Creek Edgewater, L.P. into Chapter 7 bankruptcy on or about May 9, 2007 in the United States Bankruptcy Court, District of South Carolina. That Court, by Order entered May 28, 2008, approved the Chapter 7 Trustee's proposal to sell the 16.01 acres ("Edgewater Property") owned by the debtor to "Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the Buyer)."[7] Subsequently, the Chapter 7 Trustee entered with others into a "Bill of Sale and Instrument of Assignment and Assumption."[8] According to the recitals of the Bill of Sale and Instrument of Assignment and Assumption, Bear Properties, LLC entered into an Agreement of Purchase and Sale of Real Property dated May 6, 2008 and assigned all rights and interests in the Agreement to Appian Visions, LLC, a Georgia limited liability company. Appian Visions, LLC, according to the referenced recitals, assigned all of its rights and interests in the Agreement to the Defendant in this case, Ephesian Ventures, LLC, a Nevada limited liability company. (*See*, Exhibit 6, Page 1) The Chapter 7 Trustee subsequently executed a Quit Claim Deed to Ephesian

[4] The declarant Broad Creek Edgewater, L.P. only submitted the 7.64 acres of Phase I to the Regime.

[5] A certified copy of the initial deeds to Regime units and common elements is attached hereto and incorporated herein as Exhibit 3a – 3y.

[6] A certified copy of the referenced order, from Beaufort County Court of Common Pleas, Civil Action No. 2006-CP-07-2556 is attached hereto and incorporated herein as Exhibit 4.

[7] A copy of the Bankruptcy Court's May 28, 2009 Order Approving Sale is attached hereto and incorporated herein as Exhibit 5.

[8] A true copy of the Bill of Sale and Instrument of Assignment and Assumption is attached hereto and incorporated herein as Exhibit 6.

Ventures, LLC.[9] In addition to the 16.01 acres of property adjacent to, but never added to the Regime, the Bill of Sale and the Quit Claim Deed purported to transfer to Defendant Ephesian Ventures, LLC certain declarant rights formerly held by declarant Broad Creek Edgewater, L.P.

As described in paragraphs 6 through 9 of Plaintiff's Complaint, a swimming pool had been constructed entirely upon part of the 16.01 acres to which Defendant Ephesian Ventures, LLC had become owner. Most important to the issues raised in Plaintiff's Motion is the tone set by Ephesian Ventures, LLC's actions. After there being an understanding in which the Regime occupants could use the pool and waterfront, Defendant abruptly cut off the use of the swimming pool on July 1, 2009. Defendant Ephesian Ventures, LLC then began exercising an extremely "heavy hand" to frustrate Plaintiff in virtually all of its efforts to obtain for its 23 unit owners accessible amenities on the 7.64 acres constituting the Regime.

In rough chronological order, Plaintiff, Defendant Ephesian Ventures, LLC and the Town of Hilton Head Island played out, without limit, the following events.

- March 2010 – Plaintiff sought a pool permit to construct on Regime (7.64 acres) common elements a swimming pool, and the Design Review Board for the Town of Hilton Head Island approved the proposal after an April 2010 merits hearing.[10]

- Plaintiff began constructing a tabby walk without permit and was stopped by the Town of Hilton Head Island.

- April 12, 2010 – Plaintiff submitted an XDPR permit application for tabby walk.[11]

- April 15, 2010 – The Town of Hilton Head Island issued a Notice of Action (approval) for sidewalk (tabby walk).[12]

- April 15, 2010 – Letter of Defendant Ephesian Ventures, LLC, by counsel, informed Nicole Dixon of the Town of Hilton Head Island that in addition to specific records relating to the Plaintiff, that Defendant desired "receiving copies of any applications submitted by the Edgewater HOA [Plaintiff] with respect to the sidewalk or other pathway installation which is underway last week, which we understand has been stopped by the Town."[13]

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[9] A certified copy of the Quit Claim Deed is attached hereto and incorporated herein as Exhibit 7.

[10] A true copy of Plaintiff's pool permit application is attached hereto and incorporated herein as Exhibit 8.

[11] A true copy of Plaintiff's XDPR application for the tabby walk is attached hereto and incorporated herein as Exhibit 9.

[12] A true copy of the Notice of Action for Plaintiff's tabby walk is attached hereto and incorporated herein as Exhibit 10.

[13] A true copy of the April 15, 2010 letter of Defendant's counsel is attached hereto and incorporated herein as Exhibit 11.

• April 20, 2010 – E-mail from Nicole Dixon to counsel for Ephesian Ventures, LLC informing that an applicant for the Plaintiff came in and got an XDPR for the tabby walk last week and it was approved and work completed. Ms. Dixon also said that when Plaintiff came in for the "DPR" for the pool, she would let Defendant's counsel know.[14]

• April 28, 2010 – Ephesian Ventures, LLC, by letter of its counsel demanded that the Notice of Action issued for the tabby walk be rescinded, and upon best information, in so doing omitted a material portion of a South Carolina Code provision referenced, as well as seeking, without hearing, a rescission based upon Plaintiff allegedly having misrepresented itself concerning restrictive covenants in a manner violating the S.C. Code § 6-29-1145(B)(3) (1976 as amended)[15]

• April 30, 2010 – Town of Hilton Head Island notified the Plaintiff its Notice of Action for the tabby walk was rescinded.[16]

• May 17, 2010 – Plaintiff appealed the rescission of the Notice of Action by the Town of Hilton Head Island.[17]

• June 25, 2010 – The Town of Hilton Head Island issued a letter which stated that granting Ephesian Ventures, LLC its requested relief of rescission of Plaintiff's Notice of Action had been error, since making a finding of a misrepresentation about a restrictive covenant required a public hearing to make such a finding. The Town determined to hold the April 30, 2010 Notice of Action in abeyance until the covenant issue was resolved.[18]

• July 8, 2010 – Ephesian Ventures, LLC wrote a letter to Town of Hilton Head Island official Teri B. Lewis informing her it was her duty to rescind Plaintiff's Notice of Action.[19]

• July 9, 2010 – Ephesian Ventures, LLC filed an appeal to the Planning Commission.

• July 26, 2010 – Teri B. Lewis of the Town of Hilton Head Island, by letter, informed Ephesian Ventures, LLC that she would not grant relief it requested without resolution of the covenant issue.

• August 9, 2010 – Ephesian Ventures, LLC appealed to the Board of Zoning Appeals and the Planning Commission.[20]

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[14] A true copy of the e-mail of Nicole Dixon to Defendant's counsel is attached hereto and incorporated herein as Exhibit 12.

[15] A true copy of the April 28, 2010 letter of Defendant's counsel [unsigned] is attached hereto and incorporated herein as Exhibit 13.

[16] A true copy of Teri B. Lewis's communication to Plaintiff dated April 30, 2010 is attached hereto and incorporated herein as Exhibit 14.

[17] A true copy of Plaintiff's appeal of rescission of XDPR is attached hereto and incorporated herein as Exhibit 15.

[18] A true copy of the June 25, 2010, letter of Teri B. Lewis is attached hereto and incorporated herein as Exhibit 16.

[19] A true copy of the July 8, 2010 letter of Defendant's counsel to Teri B. Lewis [unsigned] is attached hereto and incorporated herein as Exhibit 17.

[20] A true copy of Defendant's August 9, 2010 appeal to the Board of Zoning Appeals similar to that sent to the Planning Commission is attached hereto and incorporated herein as Exhibit 18.

• August 19, 2010 – Teri B. Lewis decided that the Planning Commission was not the correct body to hear the Ephesian Ventures, LLC appeal.[21]

• September 7, 2010 – Ephesian Ventures, LLC appealed the latest ruling of Teri B. Lewis to the Board of Zoning Appeals and the Planning Commission for the Town of Hilton Head Island.

• September 8, 2010 – Teri B. Lewis decided that the Planning Commission was not the correct body to hear the Ephesian Ventures, LLC appeal.

• March 24, 2011 – Town of Hilton Head Island, by counsel, opined to the Board of Zoning Appeals that rescission by a Town official of Plaintiff's XDPR prior to resolution of the covenants issue would be error.[22]

• Present – There are <u>four separate pending appeals</u> by Ephesian Ventures, LLC with the Town of Hilton Head Island opposing a shell walkway and a small swimming pool proposed for the 7.64 acres owned by Plaintiff. Given the four referenced pending appeals at the Town of Hilton Head Island, <u>the parties came to be before this Court now because of tolling on hearing the appeals at the Town of Hilton Head Island until this Court had made a determination on the existence and applicability of restrictive covenants being referenced</u>.

In appeals by Defendant Ephesian Ventures, LLC to the Town of Hilton Head Island Board of Zoning Appeals, and the Planning Commission, the Defendant engaged in obfuscation as to actual injuries, and circular reasoning about the presence of alleged "misrepresentation" by the Plaintiff on an XDPR application. First, obfuscation: The Defendant's Appeal 100007 filed August 9, 2010 (*See,* Exhibit 18) repeatedly mentions Defendant possessing as to the 7.64-acre Regime, purported "covenants and easements and other rights," "numerous reserved easements and other interests," and "the Declarant Rights." In no instance of which Plaintiff is aware, did Defendant articulate specifically how the Plaintiff's added sidewalk and/or Notice of Action for same, tangibly conflict with a right or easement held by the Defendant.[23] The Defendant does not assert that its easements or rights over the 7.64-acre Regime are exclusive. Moreover, having an easement or right does not mean any and all acts relating to an easement or right conflict with that easement or right. Only when actions conflict with the purpose of the easement is there conflict or encroachment.

[21] A true copy of a Teri B. Lewis letter to Defendant's counsel dated August 19, 2010 is attached hereto and incorporated herein as Exhibit 19.
[22] A true copy of the Town of Hilton Head Island (counsel) March 24, 2011 letter to the Board of Zoning Appeals opining that covenant issue needed resolution is attached hereto and incorporated herein as Exhibit 20.
[23] Attached hereto and incorporated herein as Exhibit 21 is the Affidavit of William Eisenman.

With respect to circular reasoning, one only need follow the "fact" recitation of the Defendant in its August 9, 2010 appeal. Defendant's reasoning is that, by its counsel, it delivered a letter dated April 28, 2010 seeking rescission of the Plaintiff's then-obtained XDPR. Teri B. Lewis of the Town of Hilton Head Island acceded to this request, and wrote an August 30, 2010 letter substantially parroting the reasons given by Defendant's counsel for rescinding the XDPR. Having gotten Ms. Lewis of the Town of Hilton Head Island to put into a letter what Defendant asserted was actionable error by the Plaintiff, the Defendant now uses Ms. Lewis's correspondence of August 30, 2010 as evidence of the merit of Defendant's assertion – which Defendant started. It is similar to starting a rumor, and after it has circulated among others, relying upon the second-hand comments of others to establish the rumor's validity. (*See,* Exhibit 18, Pages 4, 5 and 7)

The unit owners comprising Plaintiff Association are not to blame for the mess made by the declarant, or the overreaching and profit-dominated conduct of declarant's assignee Ephesian Ventures, LLC. Ephesian Ventures, LLC was conveyed title to 16.01 acres and was assigned certain rights – said assignment being subject to existing vested rights of others and to the laws of the State of South Carolina. No one waived their rights simply because Defendant was assigned rights. A review of the Master Deed of the Regime will show that: (a) the Regime is a horizontal property regime consisting of 7.64 acres in which there are 23 condominium units and common elements appurtenant thereto which were part of the conveyancing of the fee simple title to the units; (b) the common elements within the 7.64 acre Regime is owned *pro rata* as tenancy in common by the unit owners; (c) the time for a declarant or the Defendant as assignee to declarant rights to add land to the Regime thereby potentially diluting the interest of unit owners in common elements expired on December 31, 2010, and no such power remains for the declarant or the Defendant; (d) easements held by the declarant and/or Defendant are not held for exclusive use; and (e) some provisions of the Master Deed violate public policy.

## II. ARGUMENT

### A. Plaintiff sets forth facts entitling it to summary judgment under appropriate standards.

Plaintiff Association has made its Motion for Summary Judgment pursuant to Rule 56, South Carolina Rules of Civil Procedure, and other applicable law. Rule 56 states in

relevant part as follows:

> **(c) Motions and Proceedings Thereon. ...** The judgment sought shall be rendered forthwith *if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.* A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
>
> * * *
>
> **(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and *opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence,* and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. ... When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, *by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.* If he does not so respond, summary judgment, if appropriate, shall be entered against him. Rule 56(c) and (e), SCRCP (2014).
>
> (emphasis added)

In applying Rule 56, SCRCP, the Court must view the facts and inferences there from in the light most favorable to the nonmoving party. However, a party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of his pleading. "'When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011), *quoting*, Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. ... In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id., *citing*, Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330-331, 673 S.E.2d 801, 803 (2009).

B. Plaintiff has standing to seek a declaratory judgment from this Court.

Plaintiff has sought the approval of Town of Hilton Head Island authorities to build a swimming pool on a common element portion of the 7.64-acre Regime, and with a Notice of Action to an XDPR application that was briefly rescinded, to also build a tabby walk, again on common elements of the 7.64-acre Regime. Defendant has administratively opposed each. (Exhibits 11, 13, 18 and 21) Now, among other things, Defendant argues in defenses an alleged lack of standing of Plaintiff. (*See,* Paragraph 34 of Defendant's Answer and Counterclaims)

Upon best information, Defendant references Article VII, Section 15 of the Regime Bylaws, which are Exhibit D to the Master Deed attached herewith as Exhibit 2 as support for its position that the Plaintiff lacks standing to maintain this action without prior approval of its owners. As Plaintiff has previously stated and Defendant chooses to ignore, by Court Order of October 31, 2006, the viability of a unit owner-constituted Board of Directors was recognized for administering Plaintiff Association. Second, Exhibit 21 hereto, the Affidavit of William Eisenman, makes clear that the Article VII, Section 15 member approval requirement was revoked after January 1, 2010 by the Board of Directors, as permitted. Notwithstanding the Board's revocation, the purported limitation of the Plaintiff's right to exercise its legal rights until expiration of a statute of limitation or later period is against public policy and is void. To the extent of alleged lack of standing it should have been pursued preliminarily. In any event, for the reasons stated, the standing argument of Defendant has no merit.

C. There is no legal or equitable basis for post-development assignment of "development rights" to Defendant Ephesian Ventures, LLC to enable retroactive modification of development decisions and actions previously undertaken by the then-developer/declarant Broad Creek Edgewater, L.P. prior to assignment.

As a *developer* on December 31, 2002, Broad Creek Edgewater, L.P. took *development action* of creating The Edgewater at Broad Creek Horizontal Property Regime by causing at that time the recording in the Office of the Beaufort County Register of Deeds a Master Deed prepared for the most part in accordance with the Act. Broad Creek Edgewater, L.P. was thus a developer and declarant. That Master Deed dedicated 7.64 acres at that time to the Act. Before Defendant ever received an instrument assigning it property, rights or easements, the units together with appurtenant common elements of the 7.64 acres submitted to the Act had been conveyed for value to *bona fide* purchasers.

In paragraph 56 of its Answer and Counterclaim, Defendant claims not only to be assignee of separate and distinct developer rights versus declarant rights, but seems to imply that since development rights preceded declarant rights, that Defendant possesses some power that purportedly *relates back* to pre-condominium days; despite the fact that no such reservation of rights existed at the time of submission of the 7.64 acres to the Act, and the conveyance of units to *bona fide* purchasers.

An assignee generally can obtain no more than that held by the assignor. "Whether Washington's role in the present litigation is that of assignee or equitable subrogee is, we think, relatively unimportant. In either event Washington stands in the shoes of the receiver, who in turn stood in the shoes of Hamlet. If Washington be regarded as an assignee, it can, by virtue of code section 10-706, have no higher right against Kirkland than did Hamlet." W.M. Kirkland, Inc. v. Providence Washington Insurance Co., 264 S.C. 573, 579, 216 S.E.2d 518, 520-521 (1975). "An assignee of a chose in action can claim no higher rights than his assignor had at the time of the assignment." Singletary v. Aetna Casualty & Surety Co., 316 S.C. 199, 202, 447 S.E.2d 869, 870 (Ct.App. 1994).

In looking at an assignment of development rights, the appellate court in Cullen v. McNeal, 390 S.C. 470, 702 S.E.2d 378 (Ct.App. 2010) was guided largely by the applicable "Declarations," i.e., equivalent to our Master Deed. The court approvingly noted the ruling of the circuit court, stating in part, "§ 1.12 of the Declarations provides for a successor-in-title or successor-in-interest to the Developer of Wright's Point. ... In June 2007, Anthony Porter and Jimmy Porter assigned their development rights in Wright's Point to McNeal Partnership, L.P. ... The circuit court noted the conveyance met the requirements of § 1.12 by expressly identifying Anthony Porter and Jimmy Porter 'collectively as developer.'" Id. at 486, 702 S.E.2d at 386.

Unlike the Cullen case, *supra.*, in this case the "Phase I" referenced is Phase I of a horizontal property regime, a creature of statute unlike the Cullen phased development (Wright's Point). "The term *condominium* refers to *a form of ownership* in which a buyer owns a *unit* with an additional ownership interest in the development 'common property'. (In common parlance, however, ... a condominium is a 'thing' that is sold to individuals.) This unit may be an air space or a platted lot." Wayne S. Hyatt, Condominium and Homeowner Association Practice: Community Association Law, 3rd Edition, § 1.06(a)(1), pp. 13-14 (2000).

Accordingly, any assigned developer interest of Ephesian Ventures, LLC in Phase I property is subject to the Master Deed and the Act. Cullen. Any interest claimed by Ephesian Ventures, LLC in the Phase I property, regardless of origin, must have been reserved prior to submission of the 7.64 acres to the Act, and conveyance to individual owners. While under the Master Deed at Section 6(b)(2), certain additional land could be added to the Regime, those rights expired on December 31, 2010. Whatever its assigned rights, Defendant acquired them in May 2008, and took no action thereafter, to submit any additional land to the Regime.

D. Defendant claims rights and easements in the Regime which it shares with Plaintiff. Defendant's rights are not exclusive, and do not constitute veto power. If Defendant claims a right or easement it possesses has been violated by the Plaintiff, it must show with particularity the encroachment or injury to its rights. Defendant merely having rights and easements in the Regime does not make acts of Plaintiff presumptively injurious to Defendant.

The Master Deed, the Quit Claim Deed to the Defendant of 16.01 acres plus other identified rights, the Bill of Sale and Instrument of Assignment and Assumption of which Defendant is a party, and the U.S. Bankruptcy Court Order entered May 28, 2008 all contain reference to reservations, rights and easements pertaining to Broad Creek Edgewater, L.P., as well as the development rights of Broad Creek Edgewater, L.P. The reservations, rights and easements as referenced in the Master Deed are the following:

**Master Deed, Exhibit A, pp. 38-39**

**1. The right of ingress and egress unto the Declarant herein, its successors, assigns, and Grantees.**

**2. The right of ingress and egress over and across all roads and walkways within the said Phase I Property shown on the above-described plat of Edgewater on Broad Creek.**

**Said reservation being unto the Declarant herein, its successors and assigns and Grantees; said reserved easement expressly for, but not limited to, the purpose of construction and all construction related activities on the Phase I Property and on the Additional Property described at Exhibit "A-1".**

**3, [Further save and except from the above described property] title to the ownership of all water and sewer lines located on said Parcels or hereafter installed thereon, together with all pipes, pumps, pumping stations, or other**

**equipment or facilities located thereon, together with an easement to such lines, equipment or facilities to allow for the maintenance repair or replacement of such lines, facilities or equipment or for the purpose of installing additional lines, equipment or facilities thereon from time to time.**

**4. The Declarant expressly reserves the right to improve the aforementioned property by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, lagoons, and the like, pertaining to The Edgewater on Broad Creek Horizontal Property Regime.**

**5. Declarant expressly reserves the right to install lines, equipment and facilities for utility and drainage purposes and to grant easements over the property for the installation of additional lines, equipment or facilities for utility and drainage purposes from time to time.**

Additionally, the declarant reserved the right to "Phase In" additional property as subsequent phases described in Exhibit A-1 to the Master Deed; however, such rights expressly expired on December 31, 2010. (*See*, Master Deed, Section 6(b))

Furthermore, the reservation for the declarant to utilize the Phase I Clubhouse as a sales office has expired as a consequence of Phase In.

Plaintiff has sought in its motion the right to engage in certain activities on its own land: to-wit

a) Plaintiff may construct a swimming pool and other common or recreational amenities on its land, subject only to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance;

b) Plaintiff has the right to construct improvements on the unimproved portions of Phase I property, to wit, subject only to the land use requirements imposed by the Town of Hilton Head Island Land Management Ordinance free from interference, supervision or veto by the Defendant;

c) The Defendant's claim as successor to the Declarant of rights to use the existing Clubhouse as a sales office has extinguished;

d) The Defendant's claim as successor to the Declarant of the right to relocate the Association's ingress and egress is extinguished; and

e) The Defendant's right of ingress and egress through and across Plaintiff's property as reserved in the Master Deed is extinguished except to the extent that the Court determines that no other ingress and egress exists for the Defendant.

With the exception of one paragraph of the Regime Master Deed misconstrued by the Defendant, the Plaintiff is unable to identify an irreconcilable conflict between its objectives and the reservations, rights and easements assigned to the Defendant. Defendant asserts the following provision of the Master Deed as the basis of its exclusive improvement veto power:

> **"(9) Any additional amenities or recreational facilities, which may or may not be in the additional Phases, are solely at the option of Declarant. The description in any sales or promotion literature of Declarant of any potential additional amenities or recreational facilities shall not, of itself, oblige the Declarant to construct such or to convey them to the Regime as Common Elements." Master Deed, § 6(b)(9). (Emphasis added)**

In the above-quoted provision, the Declarant reserved its discretion as to what, if any, additional amenities might be built by it. The declarant essentially left itself a way out of any amenity shown in any promotional literature, by disclaiming any obligation to so construct such an amenity. Furthermore, nothing in this provision provides the declarant the exclusive right to construct amenities in Phase I. In fact, the Bylaws at Article IV, § 3 and Article VII, §7 expressly charge the Board of Directors of the Plaintiff Association to be responsible for repairs, additions, improvements to or alterations of Regime common elements.

Moreover, Master Deed § 6(b)(9) refers to the additional Phases. It does not mention Phase I, and its plain meaning would not include Phase I. That is the declarant right assigned to the Defendant. Since the quoted passage does not apply to Phase I, the Defendant must identify with particularity that which Plaintiff seeks to do to the common elements of the Regime which constitutes outright encroachments or violations to Defendant's assigned easements, rights or reservations. Such an encroachment or violation does not exist.

"'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." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998), *quoting* Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985). "Restrictive covenants are to be construed most strictly against the grantor and persons seeking of enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and

against restrictions." Sprouse v. Winston, 212 S.C. 176, 184, 46 S.E.2d 874, 878 (1948) *citing* C.J.S. Deeds § 163. *See also*, Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E. 2d 891, 893-894 (1987).

Also, in objecting to Plaintiff's actions, the Defendant has before the Town of Hilton Head Island, asserted an incorrect application to S.C. Code § 6-29-1145(B)(3) (1976 as amended). Defendant did this to advance the proposition that Plaintiff purportedly wrongfully failed to disclose its proposed acts being allegedly in conflict *with a restrictive covenant*, and that *notice of the restrictive covenant* from the Defendant should result in rejection or rescission of permits sought by Plaintiff. (*See*, Exhibits 13 and 18) First and foremost there is no restrictive covenant prohibiting the Plaintiff's proposed swimming pool. Defendant cloaked its objection in an inapplicable statutory provision. The remainder of that provision, herein below, does not support the objection about which it was raised. It additionally states,

> "(C) As used in this Section: ... (2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and (3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land." S.C. Code § 6-29-1145(C)(2) and (C)(3) (1976 as amended).

The definitions set forth in S.C. Code § 6-29-1145(C)(2) and (C)(3) appear to *exclude* from their description the type *permit* being sought by the Plaintiff, and the *building of structures* for which the Plaintiff was seeking permission. Therefore, there was no requirement of notice to the Town of Hilton Head Island of "restrictive covenant" as it is defined by statute, and no act by Plaintiff meriting rescission by the Town of Hilton Head Island of Plaintiff's permission to erect structures.

E. Defendant's expansive assertion of purported rights contravene the Horizontal Property Act and violate public policy.

"The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions." White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). Particularly relevant to the Regime Master Deed are S.C. Code §§ 27-31-100 and 27-31-150.

> "The master deed or lease creating and establishing the horizontal property regime shall be executed by the owner or owners of the real property making up the regime and shall be recorded with the register of mesne conveyance or clerk of court of the county where such property is located. The master deed or lease shall express the following particulars: ... (f) A description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co-owners, and the person establishing the regime. The master deed of any horizontal property regime developed under the provisions of this chapter that contains any submerged land shall contain a notice of restriction stating that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to, the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. The notice shall further state that any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical area.
> (g) In the event the owner of property submitting it for establishment of a horizontal property regime proposes to develop the property as a single regime but in two or more states or proposes to annex additional property to the property described in the master deed, the master deed shall also contain a general description of the plan of development, including: (1) The maximum number of units in each proposed stage of development; (2) The dates by which the owner submitting such property to condominium ownership will elect whether or not he will proceed with each stage of development; (3) A general description of the nature and proposed use of any additional common elements which the owner submitting property to condominium ownership proposes to annex to the property described in the master deed, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners ... ." S.C. Code § 27-31-100 (1976 as amended).
>
> * * *
>
> "The administration of the property constituted into horizontal property, whether incorporated or unincorporated, shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease." S.C. Code § 27-31-150 (1976 as amended).

The Plaintiff has a Board of Directors that prepares a budget, levies assessments consistent therewith, and which tries to fulfill the Board's obligations to operate the Regime. Potentially having to honor and bear the expense of indeterminate improvements to its common elements by Defendant, Defendant initiated ingress and egress, and tree pruning and planting on the Regime common elements makes it virtually impossible for Plaintiff's Board to plan, budget and operate in an informed manner. (Exhibit 21) In light of Defendant's actual and potential interference with Plaintiff's legal rights and obligations, a number of the provisions the

Defendant would enforce as assignee of the declarant are against public policy. In the list of reservations, *supra., pages 10 and 11*, Exception numbers 2, 4 and 5 contravene S.C. Code § 27-31-150, and are in conflict with Bylaws, Article IV, Section 3. Under the Bylaws the law prevails over the Master Deed and the Master Deed prevails over the Bylaws in those instances where they conflict.

Reservation 4, *supra. Page 10* also violates public policy for further reasons. None of the actions allowed of the Declarant result in one-time cost to the Plaintiff; therefore, it makes Plaintiff keeping a budget and administering to the common elements, as its Board of Directors is tasked to do, impossible with Defendant interference. It also contravenes S.C. Code §§ 27-31-100 and 27-31-150, Master Deed Section 5.09, and Article IV, Sections 3 of the Bylaws.

Reservation 5 violates public policy. It contravenes S.C. Code § 27-31-150 and Bylaws, Article IV, Section 3(j).

One additional provision potentially affecting the Regime is against public policy. Section 15, Subparagraph 15.14 essentially cites to judicially-established standards for interpreting restrictive covenants (*see, supra., p. 12*), and then states that the intent of interpreting this Master Deed is to apply methods contrary to those judicially-accepted. The Subparagraph is against public policy cited about covenants on page 12 of this memorandum, and is contrary to White v. J.M. Brown Amusement Co., Inc. cited on page 13.

F. The above-referenced provisions of the Master Deed, without limit, are unconscionable.

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 606 S.E.2d 752, 757 (2004). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007). In this instance, purchasers for value acquired from the initial declarant condominium units with appurtenant common elements relying upon a scheme of development that they rightly expected was an upscale condominium

development. Despite the contents of the Master Deed, there was no notice to purchasers of units at the Regime of the type of eventualities that have occurred. To indiscriminately subject the owners of the 7.64 acres of the Regime to all of the veto and exclusive powers Defendant claims to have been assigned from the Chapter 7 bankruptcy trustee reflects absence of meaningful choice and fundamental fairness for the Plaintiff and its constituent members. That is a basis for finding some reservations of rights of the Master Deed unconscionable and unenforceable.

## III. Conclusion

Unit owners at the Regime were led to believe that they were buying, in good faith, luxury condominiums in a prime location. The declarant did not complete the condominium described because of its lack of solvency, and the intervention of its creditors and the U.S. Bankruptcy Court in a Chapter 7 case. None of the circumstances leading up to, or resulting from the bankruptcy, were the fault or responsibility of the Plaintiff's unit owners.

Since acquiring the 16.01 acres of additional land, and certain rights, easements and reservations pertaining to the 7.64-acre Regime, the Defendant has gone out of its way to apply pressure to the Regime and its owners. Efforts by the unit owners to lawfully maintain and improve the common elements in their 7.64-acre Regime have been repeatedly objected to by the Defendant. The ultimate objective of the Defendant appears to be to hound the Plaintiff into submission to enable Defendant's use of its 16.01 acres for much higher density interval ownership. As stated above, the assignee's rights in the 7.64 acre parcel are not exclusive or a veto. Plaintiff has not acted or proposed to act in a way that is contrary to easements, reservations or rights of the Defendant. Accordingly, Plaintiff's motion for partial summary judgment should be granted.

Respectfully submitted,

s/ [signature]

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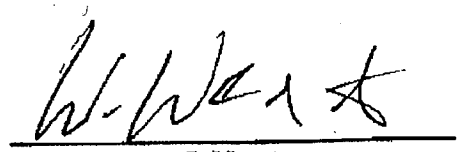
**Mogil Law Firm**
**2 Corpus Christie Place, Suite 303**
**Hilton Head Island, SC 29928**
**(843) 785-8110**
***Co-counsel for the Plaintiff***



**Wm. Weston J. Newton**
**F. Ward Borden**
**JONES, SIMPSON & NEWTON, P.A.**
**7 Plantation Park Drive, Suite 3**
**(843) 706-6111**
***Co-counsel for the Plaintiff***

EXHIBIT
tabbies
1

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

JUN 1 6 2015

SECRETARY OF STATE OF SOUTH CAROLINA

Jim Miles
SECRETARY OF STATE
FILED
SEP 1 6 2002
AM PM
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# STATE OF SOUTH CAROLINA
# SECRETARY OF STATE
# NONPROFIT CORPORATION
# ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information

1 The name of the nonprofit corporation is The Edgewater on Broad Creek Owners Association, Inc.

2 The initial registered office of the nonprofit corporation is 52 New Orleans Road, Suite #400 (Street Address)

Hilton Head Island (City) Beaufort, (County) South Carolina (State) 29928 (Zip Code)

The name of the registered agent of the nonprofit corporation at that office is

Charles A Scarminach (Print Name)

I hereby consent to the appointment as registered agent of the corporation.

(Agent's Signature)

3 Check "a", "b" or "c" whichever is applicable. Check only one box:

a [ ] The nonprofit corporation is a public benefit corporation.

b [ ] The nonprofit corporation is a religious corporation.

c [x] The nonprofit corporation is a mutual benefit corporation.

4 Check "a" or "b" whichever is applicable:

a [x] This corporation will have members.

b [ ] This corporation will not have members.

5 The address of the principal office of the nonprofit corporation is

52 New Orleans Road, Suite #400 Hilton Head Island, Beaufort, South Carolina 29928
Street Address City County State Zip Code

6 If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated

The Edgewater on Broad Creek Owners Association, Inc.
Name of Corporation

exclusively for such purposes.

b ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7 If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8 The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

9 The name and address of each incorporator is as follows (only one is required)

Charles A. Scarminach, 52 New Orleans Road, Suite #400, Hilton Head, S.C. 29928
Name Address Zip Code

Name Address Zip Code

Name Address Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

11. Each incorporator must sign the articles.

Signature of incorporator

Signature of incorporator

Signature of incorporator

R 209

EXHIBIT 2

ns/CAS/Edgewater

BEAUFORT COUNTY SC - ROD
BK 01689 PG 0574
FILE NUM 2002086959
12/31/2002 03:00:17 PM
REC'D BY B BING RCPT# 108238
RECORDING FEES 97.00

RECORDED
2003 Jan -27 08:55 AM
BEAUFORT COUNTY AUDITOR

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|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | |
| | ) | |
| **COUNTY OF BEAUFORT** | ) | |
| | ) | |
| **BROAD CREEK EDGEWATER, LP** | ) | |
| | ) | |
| | ) | |
| | ) | |
| | ) | |
| **TO** | ) | **MASTER DEED ESTABLISHING THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (PHASE I)** |
| | ) | |
| | ) | |
| **THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME** | ) | |

At Hilton Head Island, County of Beaufort, State of South Carolina, on this 19th day of December, 2002, **BROAD CREEK EDGEWATER, LP**, a limited partnership organized under the laws of South Carolina, with its principal place of business on Hilton Head Island, South Carolina (hereinafter referred to as "Declarant"), does hereby declare:

## 1. LAND.

Declarant is the sole owner of the land described in **Exhibit "A"** attached hereto and made a part hereof which is more particularly shown on the plat thereof, said plat being designated as **Exhibit "B"** and being attached hereto and made a part hereof and being recorded in the Register of Deeds Office for Beaufort County, South Carolina (the "ROD"), in Plat Book 91 at Page 5.

## 2. PROPERTY; REGIME; ASSOCIATION.

Declarant does hereby, by duly executing this Master Deed, submit the land referred to in Section 1, together with the buildings and improvements erected thereon, and all easements, rights and appurtenances belonging thereto

ADD DMP Record 1/24/2003 02:09:30 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 0000 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1689 Pg. # 574
On 12-31-02
This Document contains 91 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

(hereinafter referred to as the "Property") to the provisions of the Horizontal Property Act of South Carolina, Section 27-31-10, et seq., 1976 Code of Laws of South Carolina, as amended (the "Act"), and does hereby state that it proposes to create and does hereby create, with respect to the Property, a Horizontal Property Regime that shall be known as "Edgewater on Broad Creek Horizontal Property Regime" (hereinafter sometimes referred to as the "Regime") to be governed by and be subject to the provisions of this Master Deed and the provisions of the Act. Declarant does further declare that it has caused to be incorporated under the laws of the State of South Carolina, an association known as "Edgewater on Broad Creek Owners' Association, Inc." (hereinafter referred to as the "Association") which shall, pursuant to the provisions of Section 27-31-90 of the Act, constitute the incorporated Council of Co-Owners of the Regime and shall be governed by this Master Deed and the By-Laws attached hereto.

## 3. IMPROVEMENTS.

The improvements constructed on and forming a part of the Property are constructed in accordance with the as-built survey attached as **Exhibit "B"** hereto and the floor plans attached as **Exhibit "C-1"** hereto and made a part hereof, which survey was prepared by Surveying Services, Inc., and which floor plans were prepared by NCG Architects, Inc. duly licensed to practice in the State of South Carolina under Registration Certificate Number B-78019. Attached to this Master Deed as **Exhibit "C-2"** is a certificate by said architect and the Condominium Units constructed on the Property were constructed substantially in compliance with said plans.

## 4. DEFINITIONS.

The terms used in this Master Deed and in the Exhibits hereto shall have the meanings stated in the Horizontal Property Act and as follows, unless the context otherwise requires:

(a) **"Act"** means the Horizontal Property Act as currently set forth in Title 27, Chapter 31 of the Code of Laws of South Carolina, 1976, as heretofore amended, and as the same may be hereafter amended from time to time.

(b) **"Assessment"** means a Co-Owner's pro rata share of the Common Expenses which from time to time is assessed against a Co-Owner by

the Association in the manner herein provided and other costs and expenses, which from time to time are assessed against a Co-Owner in accordance with the terms of the Master Deed.

(c) **"Association"** means the Council of Co-Owners as defined by the Act, and also means Edgewater on Broad Creek Owners' Association, Inc., a South Carolina not for profit corporation, its agents, successors, and assigns, the corporate form by which the Council of Co-Owners shall operate the Regime.

(d) **"Board of Directors"** or **"Board"** means the group of persons selected, authorized and directed to manage and operate the Association as provided by the Act, this Master Deed, and the By-Laws.

(e) **"Building"** means a structure or structures, comprising a part of the Property.

(f) **"Common Elements"** means the general and Limited Common Elements, as defined herein in Section 7 and in the Act.

(g) **"Common Expenses"** means the expenses for which the Co-Owners are liable to the Association, including:

(1) Expenses of administration, expenses of maintenance, insurance, operation, repair or replacement of the Common Elements, and of the portions of Units which are the responsibility of the Association, if any.

(2) Expenses declared Common Expenses by provisions of the Master Deed.

(h) **"Common Surplus"** means the excess of all receipts of the Association, including, but not limited to, Assessments over the amount of Common Expenses.

(i) **"Co-Owner"** means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns a Unit.

(j) **"Condominium"** means a Unit in The Edgewater on Broad Creek Horizontal Property Regime.

(k) **"Condominium Ownership"** means the individual ownership of a particular Unit in a building and the common right to a share, with other Co-Owners, in the General and Limited Common Elements of the Property.

(l) **"Council of Co-Owners"** means all the Co-Owners as defined herein and shall also refer to the Association as herein defined.

(m) **"Declarant"** means BROAD CREEK EDGEWATER, LP a South Carolina limited partnership with its principal place of business located on Hilton Head Island and its successors and assigns.

(n) **"Majority of Co-Owners"** means the Co-Owners owning fifty-one (51%) percent or more of the statutory value of the Property as a whole as referenced in Section 9.

(o) **"Master Deed"** means this deed or declaration, establishing and recording the property of the Regime and all exhibits hereto.

(p) **"Owner"** (See "Co-Owner") above in Section 4(i)).

(q) **"Percentage Interest"** means such percentage that each Co-Owner owns (in common with all other Co-Owners) in the Property of the Regime and the percentage appertains to each Co-Owner in the expenses of and ad rights in the elements of the Regime held in common.

(r) **"Person"** means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(s) **"Property"** means and includes the land, the Buildings, all improvements and structures thereon, as shown and depicted on **Exhibits "A", "B", "C"** and all easements, rights and appurtenances belonging thereto. **"Additional Property"** shall mean such land and-or improvements of the Declarant described in the **Exhibit "A-1"** hereto before such property shall have been submitted to the provisions of the Act by this Master Deed and thereby made subject to the Horizontal Property Regimes established by this Master Deed.

(t) **"Regime"** means The Edgewater on Broad Creek Horizontal Property Regime created by the Master Deed, and all references to the Association, as herein defined, shall likewise include reference to the Regime and vice versa.

(u) **"Unit"** as used herein has the same connotation as the term "Apartment" as used in the Act and means a part of the Property intended for any independent residential use, including one or more rooms or enclosed spaces located on one floor (or parts thereof) in a Building, and with a direct exit to a public street or highway, or to a common area or areas leading to such street or highway. (NOTE: In some of the project documentation the Units may be referred to as "residences" or "villas").

(v) **"Utility services"** means and shall included, but shall not be limited to, electric power, hot and cold water, heating, refrigeration, air conditioning, telephone, cable or satellite television, gas, garbage, and sewage disposal.

## 5. DESCRIPTION OF UNITS; USE; REPAIRS; ALTERATIONS.

### 5.01 GENERAL DESCRIPTION OF UNITS.

Phase I includes one (1) Building of five (5) residential stories, containing twenty-three (23) individual Units, all of which are to be used for residential purposes only. This Building contains up to 48,444 square feet of heated area. Of this total of twenty-three (23) residential Units thirteen (13) are Type A Units, eight (8) are Type B Units, and two (2) are Type C Units. The Units are capable of individual utilization on account of having their own exits to the Common Elements of the Property and a particular and exclusive property right thereto, and also an undivided interest in the general and Limited Common Elements of the Property, as hereinafter listed in this Master Deed, necessary for their adequate use and enjoyment all of the above in accordance with the Horizontal Property Act of South Carolina.

### 5.02 INDIVIDUAL UNIT TYPES.

There are three (3) basic types of Units in The Edgewater on Broad Creek Horizontal Property Regime. The number, location, vertical location, dimensions, area, and design of each Residential Unit in Phase I of the Regime are set forth in the attached Plat and Building Plans issued by NCG Architects, Inc., which constitute **Exhibit "C-1,"** or by way of Amendment thereto. Units are and shall be numbered according to Building, Floor, and Unit number.

## 5.03 WALK THROUGH DESCRIPTION OF UNITS.

(a) A Type A Unit is a residential Condominium, consisting of three bedrooms, three bathrooms, kitchen, utility room, living/dining room areas, and foyer. The Unit contains approximately 1905 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type A Unit shall be as set forth at Section 9.

(b) A Type B Unit (end Unit) is a residential Condominium, consisting of four bedrooms, three bathrooms, kitchen, den, utility room, living/dining room areas, and foyer. The Unit contains approximately 2150 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type B Unit shall be as set forth at Section 9.

(c) A Type C Unit (top floor end Unit) is a residential Condominium, consisting of four bedrooms, three bathrooms, kitchen, utility room, den, living/dining room areas, and foyer. The Unit contains approximately 2390 square feet of heated area. The Unit has a detached storage area containing approximately 41 square feet of area. The statutory value of a Type C Unit shall be as set forth at Section 9.

## 5.04 BOUNDARIES GENERAL RULE.

The boundaries of each Unit shall be as follows:

(a) The upper and lower boundaries shall be the following boundaries extended to an intersection with vertical boundaries:

(1) Upper boundary: the horizontal plane of the bottom undecorated surface of the ceilings of each Unit; in the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter walls bounding the Unit, the upper boundary of that part of that Unit shall be the horizontal plane of the bottom undecorated surface of said projecting area.

(2) Lower boundary: the horizontal plane of the upper surface of the undecorated concrete floor slab of each Unit; in the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter

walls bounding the Unit, the lower boundary of that part of the Unit shall be the horizontal plane of the undecorated and unfinished upper surface of said projecting area.

(b) The vertical boundaries of each Unit shall be the vertical plane of all undecorated and unfinished inner surfaces of all perimeter walls, doors, windows, and sliding glass doors, bounding the Unit, extended to the intersections with each other and with the upper and lower boundaries of each Unit. In the event that any structural beam, air conditioning duct, heating duct, or any other structural component projects into the area surrounded by the perimeter walls bounding the Unit, the vertical boundary of that part of the Unit shall be the vertical plane of the undecorated and unfinished inner surface of said projecting area.

(c) The balconies, if any, abutting any Unit are Limited Common Elements appurtenant to that Unit to which they attach, and their use is restricted to that Unit to which they are appurtenant. Abutting the Type A Units are exterior balconies containing approximately 205 square feet of area except for Unit #2102, 2103 and 2104 which have exterior balconies containing 307 square feet. Abutting the Type B Units are exterior balconies containing approximately 269 square feet of area. Abutting the Type C Units are exterior balconies containing approximately 220 square feet of area. Maintenance, other than structural, and upkeep of each balcony shall be the primary responsibility of the Owner of the Unit to which that balcony is appurtenant and the secondary responsibility of the Association.

(d) All doors and windows, which are inside the Unit, within the perimeter walls of a Unit, shall be deemed a part of said Unit. All doors and windows, including sliding glass doors that connect directly to the exterior of the Unit shall not be deemed a part of said Unit and shall be a Limited Common Element.

(e) All pipes, wires, or other conduits, running to and from all electrical, heating, air conditioning, or ventilation systems, television, telephone, water, and sewer installations within a particular Unit, which branch off or run from a common pipe or wire serving more than one Unit, shall be part of a Unit from that point at which it branches off the common pipe or wire regardless of whether or not said pipe or wire is within the perimeter of a Unit. the upkeep and maintenance of said pipe and wires shall be the responsibility of the Owner of the Unit. All other pipes and wires are parts of the Common Elements, and

the upkeep and maintenance of the same shall be the responsibility of the Association.

(f) All load bearing walls located within a Unit constitute a part of the Common Elements up to the unpainted, finished surface of said walls. All load bearing columns located within a Unit constitute a part of the Common Elements up to the unpainted, finished surface of said columns. In the event that the columns are surrounded by non-load bearing walls, the area within the unpainted, finished surface of the surrounding walls constitute a part of the Common Elements.

(g) Ownership of each Unit shall encompass, and there shall pass with each Unit as appurtenances thereto, whether or not separately described, all of the rights, title, and interest of an Owner in the Property, which shall include, but not be limited to:

(1) Membership in the Association composed of all Owners: Membership in the Association shall include the right to vote on all matters, which under the Master Deed and By-Laws are to be decided by the Owners. Each Owner shall be entitled to a vote equal to his percentage of ownership in the Common Elements as set forth in Section 9.02 herein; and

(2) The Owners' undivided Total Percentage Interest as hereinafter defined in the Common Elements, which shall be the percentage allocated to each Unit as set forth in Section 9 herein.

**5.05 UNITS/NUMBERING SYSTEM/TYPE.**

The twenty-three (23) Units contained in one (1) Building are located and numbered as follows:

| Floor | Unit No./Type |
|---|---|
| 1 | Unit 2101/B |
| 1 | Unit 2102/A |
| 1 | Unit 2103/A |
| 1 | Unit 2104/A |
| 1 | Unit 2105/B |
| 2 | Unit 2201/B |

| | |
|---|---|
| 2 | Unit 2202/A |
| 2 | Unit 2203/A |
| 2 | Unit 2204/A |
| 2 | Unit 2205/B |
| 3 | Unit 2301/B |
| 3 | Unit 2302/A |
| 3 | Unit 2303/A |
| 3 | Unit 2304/A |
| 3 | Unit 2305/B |
| 4 | Unit 2401/B |
| 4 | Unit 2402/A |
| 4 | Unit 2403/A |
| 4 | Unit 2404/A |
| 4 | Unit 2405/B |
| 5 | Unit 2501/C |
| 5 | Unit 2502/A |
| 5 | Unit 2503/C |

All of the aforementioned Units are more particularly shown on the plans thereof attached hereto as **Exhibit "C-1,"** which plans are incorporated herein in the same manner as if expressly set forth in this Section 5.05, and said plans, together with the Unit numbers and square footage of area in each Unit, and likewise together with the description of Unit boundaries as herein set forth in Section 5.04, shall constitute a complete description of the Units within the Regime.

**5.06 OWNER'S RESPONSIBILITIES FOR MAINTENANCE AND REPAIR.**

(a) While generally an Owner is responsible for the maintenance and repair of the area described above in Section 5.05 as being included in a Unit, notwithstanding the generality of the foregoing description of Unit boundaries, each Unit Owner shall also be responsible for maintenance and repair of the following, whether it shall be defined as within a Unit or not:

(1) the doorways, windows, vents and other structural elements in the walls, floors, and ceilings of the Unit, which are regarded as enclosures of space;

(2) the doors opening into the Unit and into any mechanical area integral to the Unit, including the frames, easings, hinges, handles, and other fixtures which are part of the doors;

(3) the window glasses, screens, frames, wells, and casings which are part of the windows opening from the Unit;

(4) the plumbing and mechanical vents which exclusively serve the Unit;

(5) the appliances, air conditioning and heat pump Units, (compressors, air handlers and condensers), water heaters, lavatories, bath tubs, toilets, carpeting, floor covering, flooring, trim, ceilings, walls, insulation, and other fixtures, furnishings, and building materials which are part of the Unit at the time of initial closing from Declarant to the Unit Owner, and any subsequent replacements thereof;

(6) the screens, lattice work, partitions, railings, or balustrades bounding or enclosing any deck, walkways, porch or service area that is integral and exclusive to the Unit and the concrete surface, and/or topping within any such area;

(7) all pipes, wires, ducts, and other plumbing, mechanical, and electrical appurtenances which are integral an exclusive to the Unit, including lamps attached to the exterior of the Unit;

(8) the Owner's outside storage closets which constitute a Limited Common Element; and

(9) any damage to the Unit itself or to a contiguous (i.e. either adjacent, upstairs or downstairs) Unit caused by a negligent action or inaction within the Owner's Unit, which directly or indirectly causes damage to the other Unit or to the Unit itself.

Notwithstanding the foregoing by allocating responsibilities of maintenance and repair to Owners, it is not the intention of Declarant to affect the ultimate insurance obligations as well as the reconstruction obligations of the Regime.

(b) Except in the event of an emergency situation, in the event that the Association determines that any Owner has failed or refused to discharge

properly his obligations with respect to the maintenance cleaning, repair, or replacement of items for which he is responsible under this Master Deed, then the Association shall give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at such Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repair, or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days in which to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide any such maintenance, cleaning, repair, or replacement at such Owner's sole cost and expense, and said cost shall be added to an become a part of the Assessment to which such Owner and his Unit are subject and shall become a lien against such Unit as provided herein.

**5.07 USES OF UNITS.**

(a) Each Unit is restricted as to use by the Owner or Owners thereof, their lessees and invitees, it being the intent of the Declarant that the Building be used for residential purposes only which are consistent with and appropriate to the design of the Building.

(b) The Declarant herein subjects the Regime to the further limitation and restriction that it shall be used and occupied for whole-time residential dwelling Units only. Reference is made to Section 14 infra regarding prohibition of time-sharing plans and reservation of rights regarding multiple ownership plans.

(c) No Unit Owner shall do, suffer, or permit to be done, anything in his Unit which would impair the soundness or safety of the Regime, or which would be noxious or offensive or an interference with the peaceful possession and proper use of other Units, or which would require any alteration of or addition to any of the Common Elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) In case of any emergency originating in or threatening any Unit, regardless of whether the Owner or his tenant, if any, is present at the time of

such emergency, the Association's Board of Directors and all managerial personnel shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Owner of each Unit, if required by the Association, shall deposit under the control of the Association a key to such Unit.

(e) Reference is made to Section 14 infra, regarding the recorded Covenants applicable to the Unit.

(f) Reference is made to the By-Laws attached hereto as **Exhibit "D"** for specific rights and authority of the Board with respect to Common Elements.

(g) Notwithstanding anything else to the contrary in this Section 5.07, the Declarant shall be permitted to use one or more Units for purposes of a real estate sales model and office. Declarant also reserves the right to use a portion of the Clubhouse designated by the Declarant for real estate sale office and as an office for the Management Agent for as long as Declarant owns more than one (1) Unit on the Property

(h) The Declarant hereby declares and affirms that the use restrictions described herein shall be deemed restrictive covenants running with the land and are imposed as a limitation and burden upon each Unit and upon the Declarant and upon all future Owners of Units.

**5.08 DEEDS TO UNITS.**

On the transfer of a Unit, a deed effecting that transfer conveys all the seller's interests in that Unit to the purchaser, including the seller's interest in the real and personal property of the Association, any reserve accounts applicable to that Unit, and in any cause of action or chose in action either of the Association or arising out of his ownership of that Unit, whether or not those interests are expressly described in the deed.

**5.09 ASSESSMENTS FOR COMMON EXPENSES; RESPONSIBILITIES FOR MAINTENANCE.**

The obligations of all Unit Owners with regard to assessments for Common Expenses and the maintenance and repair of the individual Units shall

be as provided in the By-Laws of the Association which are attached hereto as **Exhibit "D"**.

**5.10 SUBDIVISION AND RELOCATION OF BOUNDARIES BETWEEN UNITS.**

(a) Declarant intends to provide a flexible and certain method consistent with the Act in the best interest of the Association and all of its members by which individual Units may be subdivided into two or more Condominium Units (i.e. Units). Subject to the provisions of this Master Deed and other provisions of law, a Unit Owner may apply to subdivide a Unit subject to the conditions and procedures described below in Section 5.10 (b) et seq.

(b) The Owner of a Unit or Owners of adjoining Units may, at any time, deliver a letter to the President of the Association requesting approval from the Board to subdivide or relocate the boundaries between their Units, together with a plan of their Units which conforms with Sections 27-31-100, 27-31-110 and 27-31-120 of the Act, showing the proposed relocated boundaries of those Units. In such case, with respect to every proposed Unit which will result from the proposed subdivision or relocation:

(1) each Unit to be created must contain at least 950 square feet of Unit space as herein defined for a Type A Unit, 1050 square feet for a Type B Unit and 1150 square feet for a Type C Unit; and

(2) at least one boundary of each Unit to be created must be coterminous with a partitions wall, extending in one plane for at least 6 feet, which divides the Unit from a hallway constituting a Common Element in the Building; and

(3) each Unit must comply with all applicable laws, rules, regulations, codes and/or ordinances, including, but not limited to, those relating to health, fire, safety, and parking, and adequate provision must be made for any required fire and emergency exits, mechanical and support systems of the Building, utilities, as well as assurance that there is no impairment of the structural integrity of the Unit and/or Building or that there is no increase in any Owner's insurance costs; and

(4) the subdivision shall not result in an increase in the number of Units allocated or otherwise permitted to exist on the Property

under the existing permits, covenants of record, or applicable zoning ordinances; and

(5) all expenses of the Association, including legal fees, architectural, surveying and consultant's fees, shall be borne by the requesting Unit Owner(s).

(c) The President shall submit the above request for subdivision to the Board members upon receipt. If said subdivision is approved by a majority vote of the Board, either at a meeting thereof or by written consent and by the Declarant during the period the Declarant has reserved to add Future Phases to the Regime, the President shall:

(1) cause an Amendment to the Master Deed to be prepared which conforms to this Master Deed and the Act, together with a certified Amendment to the plans, which conforms to the requirements of the Act. The Amendment to the Master Deed shall reallocate the assigned appurtenant interests among all the Units resulting from the subdivisions or relocation of boundaries in proportion to the relative sizes of those Units, but shall not affect in any manner the percentage of interest appertaining to the other Units not otherwise redefined. The Amendment to Master Deed shall to the extent necessitated by the subdivision, take into consideration potential redefinition of boundaries of the newly constituted Unit(s) as compared to the definition above in Section 5.05. In the event that the subdivision of a Unit results in the creation of what would normally be a Common Element within the Building so subdivided (e.g. the roof, foundation, structural elements, mechanical systems, exterior walls) such Common Elements shall be a Limited Common Element to those resulting Units within said subdivided Unit; provided, in no event shall the Owner(s) of the other Units be responsible for the costs of operation, maintenance, repair or replacement of any such Limited Common Element appurtenant to such a subdivided Unit; and

(2) upon payment by the affected Unit owners of all permit, recording, legal, architectural, and other fees incurred by the Association, the President of the Association shall execute the Amendment to the Master Deed and record same, including the plats and plans subdividing or relocating the Unit(s) and showing the altered boundaries of the Units and their dimensions and identifying numbers.

(d) The Amendments to the Master Deed and plans to reallocate Units are only effective when executed in the manner required by this Section 5.10 and recorded. The consents to the Amendment by the mortgagees of the affected Units shall also be recorded.

(e) In the event of a subdivision per Section 5.10(b) above, and to further Declarant's intent of providing a flexible and certain method consistent with the Act and the best interests of the Association and all its members, by which the boundaries of or between Units may be adjusted to meet the needs of individual Unit owners, subject to the conditions and procedures described in Section 5.10(b), Unit Owners are entitled to relocate the boundaries between adjoining Units and reallocate the assigned appurtenant interests of those Units accordingly.

**5.11 ALTERATIONS IN UNITS.**

(a) A Unit Owner may make any improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems, or lessen the support of, any portion of any other Unit.

(b) Subsequent to a subdivision of a Unit pursuant to Section 5.10 or in the situation where a Unit Owner already owns adjoining Units, after giving notice to the Association, a Unit Owner may alter a partition wall between such adjoining Units owned by him to create an opening in the wall. Such an alteration does not constitute a relocation of boundaries between Units as defined in Section 5.10 above.

(c) Any Unit Owner altering a Unit pursuant to this Section or Section 5.11 shall: (1) provide for waivers of all mechanics lien rights which may arise as a result of the alteration; (2) provide certificates of insurance insuring against all losses commonly insured against, arising out of the work naming the Association as an additional insured; (3) indemnify and hold the Association and other Unit Owners harmless from the effect of the work and the acts or omissions of anyone under such Unit Owner's direction or control; (4) minimize the disturbances of other Unit Owners and their business activities during the work; and (5) reimburse the Association for any expenses incurred by the Association, including but not limited to legal and other consulting fees.

(d) Any Owner, including Declarant, may remove all or a portion of any non-load bearing wall located within the perimeter walls bounding the Unit, provided the Owner obtains the advance written approval of the Association to

do so, which approval shall be given to the Owner upon the Association's satisfaction that the wall is in fact non-load bearing and non-structural and that its removal shall not cause any harm or damage to the Owner's Unit, the Building(s), or other Units contained in the Building(s), and upon the Owner agreeing to be solely responsible for all losses, costs, and liabilities which may arise on account of or in connection with the removal of the wall. The Association may impose reasonable conditions upon such approval, including, but not limited to the requirement for liability and/or property damage insurance, insuring the Association or other Owners. The removal of all or a portion of any wall shall not have the effect of changing the type of the Unit, the statutory value attributable to the Unit, or the Percentage Interest in the Common Elements and Limited Common Elements, attributable to the Unit.

(e) When any alterations approved by the Association are completed, the affected Unit Owners shall deliver to the Association a copy of the 'as built' plans and specifications certified to by an architect licensed to practice in South Carolina.

## 6. AREAS COMPRISING PROPERTY.

(a) Land. The lands which may be made subject to this Master Deed are those certain tracts or parcels described in **Exhibits "A," "A-1," and "B"** attached hereto and consisting of approximately 23.65 acres, which are owned by Declarant in fee simple subject to certain liens, encumbrances, rights-of-way, easements, covenants, and restrictions.

Hereafter, at one time, or from time to time, Declarant has constructed or may, in the future, construct roadways ("Roadways") providing ingress and egress to and from the Property. Declarant shall not be obliged to convey to the Association these Roadways as a Common Element (but may do so at Declarant's sole discretion). However, Declarant herewith conveys to each Owner of a Unit and to every permitted occupant of that Unit, a non-exclusive, temporary easement over, upon, and across such Roadways which are not included in the description of the Property at **Exhibit "A"**, if any, for ingress and egress to and from Marshland Road. These non-exclusive easements are temporary and shall automatically terminate and become null and void immediately upon merger by incorporation of any part of the Roadways into another Horizontal Property Regime, the Master Deed of which establishes or conveys a permanent, non-exclusive, unrestricted easement for passage over that portion of the Roadways by Owners of Units created by this Master Deed. Declarant reserves the right, in its sole discretion, to relocate these areas and the

temporary easements over them without notice to any Owner or occupant of a Unit. In such event, Declarant shall and is hereby especially empowered to prepare and record in the ROD Office for Beaufort County, South Carolina, an Amendment to this Master Deed, amending **Exhibit "A"** hereto, to show the areas and revised areas of these non-exclusive easements, without notice to or consent by Owners or occupants of Units. Such Amendment to be effective upon recordation of same in the ROD Office for Beaufort County, South Carolina.

(b) Incorporation of Additional Property. Hereafter, at one time or from time to time, Declarant, its successors and assigns hereby expressly reserves the right to be exercised in its sole discretion to submit one or more parcels of Additional Property to the provisions of the Act by incorporating them within this Master Deed. Additional Property shall be submitted to the Act subject to all recorded utility easements and other easements discussed in this Master Deed and any Amendments hereto. The maximum extent of additional land that the Declarant may submit to the provisions of this Master Deed is that property containing approximately 16.01acres of land, as described on **Exhibit "A-1,"** attached hereto and incorporated herein by reference.

A general description of the plan of development follows:

(1) The maximum number of Units in each proposed stage of development. There are six (6) proposed stages ("Phases") of development. Phase I consists of twenty-three (23) Units; subsequent Phases ("Future Phases"), if developed, will have together no more than one hundred twenty-four (124) additional Units.

(2) The dates by which the Owner submitting such property to Condominium ownership will elect whether or not he will proceed with Phase. For all proposed Phases, the election whether or not each Phase will proceed shall be made by December 31, 2010.

(3) A general description of the nature and proposed use of any additional Common Elements, which the Owner submitting Property to Condominium ownership proposes to annex to the Property described in the Master Deed, if such Common Elements might substantially increase the proportionate amount of the Common Expenses payable by the existing Unit Owners. There are no such additional Common Elements contemplated in the plan of development, which, reasonably considered, might substantially increase the proportionate amount of the

Common Expenses payable by existing Unit Owners. At present, it is contemplated that Future Phases may include a large waterfront pool and a community observation pier on Broad Creek.

(4) In Section 9.04 herein is a chart showing the Percentage Interest in the Common Elements of each original Unit Owner at each stage of development, if the Owner submitting property to Condominium ownership elected to proceed with all contemplated stages of development.

(5) Declarant, its successors and assigns may, in its sole discretion, incorporate one or more Future Phases into the Regime.

(6) Declarant may, in its sole discretion, vary the order of inclusion of any and all Future Phases, such that a Phase may be included out of numerical order.

(7) Declarant may, in its sole discretion, vary the design of each Phase and the design of Units within each Phase that may be incorporated or submitted to this Master Deed.

(8) If Declarant exercises its rights to incorporate any one or Future Phases, the ownership of Common Elements of the Association and voting rights attributable to any particular Unit shall be determined by the ratio of the statutory value of that particular Unit to the statutory value of all the Units in the Regime from time to time. It is understood that if and as Additional Property is brought into the Regime by Amendment of the Master Deed, the relative Percentage Interest of the Owners will change.

(9) Any additional amenities or recreational facilities, which may or may not be in the additional Phases, are solely at the option of Declarant. The description in any sales or promotion literature of the Declarant of any potential additional amenities or recreational facilities shall not, of itself, oblige the Declarant to construct such or to convey them to the Regime as Common Elements.

(10) If Declarant shall elect to incorporate one or more Future Phases into the Regime or to submit Additional Property to the Regime, such shall be accomplished by recordation of an Amendment, which shall include the revised Percentage Interest which each Owner owns, to

this Master Deed in ROD Office for Beaufort County, South Carolina, and such election shall be effective on the date of recordation.

(11) The Units which may be included in Additional Property, which may later be added to this Regime, include the Types A, B, and C Units herein described. Notwithstanding the foregoing, the Declarant reserves the right to include other types of Units in the Future Phases.

## 7. COMMON ELEMENTS.

The Common Elements of the Property are as follows:

### 7.01 GENERAL COMMON ELEMENTS.

General Common Elements are as follows:

(a) The Property, excluding the Limited Common Elements and the Units, and including but not limited to the land on which the Units are constructed, the foundations, stairways, exterior portions of perimeter walls, including exterior stucco wall surfaces, those portions of partitions and walls separating Units not otherwise part of the Unit, load-bearing columns or walls, slabs, public utility lines; and pipes, wires or conduits located within slabs or elsewhere in the Building other than as described in Section 5.05. In each instance there shall also be included the space actually occupied by the above.

(b) Parking facilities located on the Property which are shown on the plat of the Property attached hereto and identified as **Exhibit "B"**.

(c) All roads (except such "Roadways" as described in Section 6 (a)), walkways, paths, wood decking and boardwalks, trees, shrubs, yards, (except such as are designated as Limited Common Elements) gardens, planter areas, fountains, etc.

(d) The fire equipment rooms, elevator and appurtenant equipment room, and sprinkler systems and area occupying same.

(e) All installations, and are occupying same, outside of the Units for services such as power, light, gas (including underground storage tanks) telephone, television, water and other similar utilities.

(f) All sewer, drainage and irrigation pipes, excluding those which are the property of the utility district.

(g) The mail box and all appurtenances thereof.

(h) Such easements through the Units for pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units. General Common Elements and Limited Common Elements and easements for access, maintenance, repair, reconstruction or replacement of structural members, equipment, installations and appurtenances and for all other services necessary or convenient to the existence, maintenance, safety and use of the property, whether or not such easements are erected during construction of the Property or during re-construction of all or any part thereof, except such easements as may be defined as Limited Common Elements.

(i) The Community Center building (the "Clubhouse") and two (2) tennis courts as depicted on the as-built survey.

(j) The gatehouse as depicted as One-Story Stucco Building on the as-built survey referenced above.

(k) All areas not designated as a Limited Common Element and not described as lying within the boundary of a Unit as described in Section 5.05 hereof and all other elements of the Property constructed or to be constructed on the Property, rationally of common use or necessary to the existence, upkeep, and safety of the Property and in general all other devices or installations existing for common use.

**7.02 LIMITED COMMON ELEMENTS.**

Limited Common Elements as defined in the Act are those Common Elements reserved for the use of certain Unit owners to the exclusion of other owners. In **The Edgewater on Broad Creek Horizontal Property Regime**, the Limited Common Elements are as follows:

(a) All balconies and decks immediately adjacent to each Unit or to which each Unit has direct access from the interior thereof as shown on the floor plans identified as **Exhibit "C-1"** and on the as-built survey identified as **Exhibit "B".**

(b) The space lying between the upper boundary of each Unit as described in Section 5.05 and the floor or roof above such Unit subject to easements for utilizing service as previously described.

(c) The Owner's remote storage areas (lockers) located on the garage level beneath the Building as shown on the floor plans identified at **Exhibit C-1** and on the as-built survey identified as **Exhibit "B"**, which are numbered consistent with the Unit numbers and which are assigned specifically to each Unit for the sole and exclusive use of the Co-Owner.

(d) The ground level parking spaces located on the garage lever beneath the Building as shown on the floor plans identified at **Exhibit "C-1"** and on the as-built survey identified as **Exhibit "B"**, which are numbered consistent with the Unit Numbers and are assigned specifically to each Unit for the sole and exclusive use of the Co-Owner. Each Unit will be assigned one (1) parking space.

(e) All other areas depicted as Limited Common Elements to the Units on the floor plans attached as **Exhibit "C-1"**.

## 8. REVOCATION AND AMENDMENT.

The dedication of the Property to the Regime herein shall not be revoked, nor the Property removed from the Regime, nor any of the provisions herein materially amended unless all of the Co-Owners and the mortgagees of all the mortgages covering the Units unanimously agree to such revocation, or Amendment, or removal of the Property from the Regime by duly recorded instrument; provided, however, that without the consent of the Unit Owners or mortgagees, the Declarant, or its successors, or assigns in title to all or any portion of the Future Phase Property, may at any time prior to the termination of the reservation of rights period specified in Section 6 herein, amend the Master Deed and the Bylaws, if required, (i) in the manner set forth in Section 5.10(c) as it relates to subdivision and relocations of boundaries between units; (ii) so as to subject the Future Phases to the provisions of this Master Deed and the Act so

as to make the Future Phases Property or any part thereof an integral part of the Regime; and (iii) to correct any scriveners error, to correct conflicts between this document and the Act, to address any issues of probable concern to the Regime which may not be adequately herein addressed, to effect compliance with any requirements of any governmental law or ordinance, insurer, guarantor or purchaser of mortgage loans, and/or to enable any reputable title insurance company to issue title insurance coverage with respect to the Units. Notwithstanding any provision herein in this Section 8, the Association may amend the provisions of the By-Laws attached hereto as **Exhibit "D"** as provided for therein in Article XIII or elsewhere in said By-Laws. Any such Amendment shall, when read in concert with the Master Deed, contain all of the particulars required by said Act as the same is now constituted or may hereafter be amended and from and after the recording of such Amendment the Regime shall include all of said applicable Future Phases Property. The Future Phases Units are to be as described in Section 6 hereof and this Section 8. The designation of each Unit in the Future Phases by Unit type and its proportionate interest in the Common Elements is set forth in Section 9 herein.

If Declarant elects to make all or any portion of the Future Phases Property a party of this Regime as herein provided, Declarant shall cause to be prepared and made a part of the Amendments by which each Phase is incorporated into the Regime a schedule designating Unit types reflecting each Unit's proportionate interest in the Common Elements, which schedule shall be similar in content and format to the Schedule set forth in Section 9 hereof, prepared using the requirements and guidelines set forth in Section 6 hereof and this Section 8. Upon the recordation of the Amendments to make the applicable Phase of Future Phases Property a part of the Regime, the provisions regarding revocation and Amendment set forth in this Section 8 shall have equal application thereto. The Declarant shall not be required to obtain the consent of the Unit Owners or mortgagees for any amendments to this Master Deed for the purpose of adding the Future Phases.

## 9. PERCENTAGE INTEREST OF UNITS.

### 9.01 STATUTORY PERCENTAGE INTEREST.

The percentage of title and interest appurtenant to each Unit and the Unit Owner's title and interest in the Common Elements (both General and Limited) of the Property and the proportionate share in the profits and common monthly expenses, as well as the proportionate representation for voting purposes in the meeting of the Association is

based on the proportionate statutory value of each Unit to the statutory value of the total Property set forth below.

For purposes of the Act and pursuant to the terms of the Master Deed, the Percentage Interest appurtenant to each Unit of the Regime shall be established in accordance with the following formula:

$$\frac{V}{A} = P$$

"P" - Percentage Interest of each Unit.

"V" - Valuation of the respective Units as set forth in Section 9.03 and in the Amendments to Master Deed for Phase I - VI.

"A" - Aggregate Valuation of all Units existing in the Regime and added to the Regime as provided in Sections 6 and 8 of the Master Deed.

## 9.02 STATUTORY PERCENTAGE INTEREST/ALL UNITS.

The three (3) basic types of Units have the statutory values in the table below, varying with dependence on Floor number. Based upon the below statutory values, the percentage of undivided interest in the Common Elements appurtenant to each Unit in Phase I of the Regime is set forth below:

| Unit No./Type | Statutory Value | Percentage Phase I |
|---|---|---|
| Unit 2101/B | $462,194.00 | 4.6% |
| Unit 2102/A | $409,946.00 | 4.08% |
| Unit 2103/A | $409,946.00 | 4.08% |
| Unit 2104/A | $409,946.00 | 4.08% |
| Unit 2105/B | $462,194.00 | 4.6% |
| Unit 2201/B | $462,194.00 | 4.6% |

| | | |
|---|---|---|
| Unit 2202/A | $409,946.00 | 4.08% |
| Unit 2203/A | $409,946.00 | 4.08% |
| Unit 2204/A | $409,946.00 | 4.08% |
| Unit 2205/B | $462,194.00 | 4.08% |
| Unit 2301/B | $462,194.00 | 4.6% |
| Unit 2302/A | $409,946.00 | 4.08% |
| Unit 2303/A | $409,946.00 | 4.08% |
| Unit 2304/A | $409,946.00 | 4.08% |
| Unit 2305/B | $462,194.00 | 4.6% |
| Unit 2401/B | $462,194.00 | 4.6% |
| Unit 2402/A | $409,946.00 | 4.08% |
| Unit 2403/A | $409,946.00 | 4.08% |
| Unit 2404/A | $409,946.00 | 4.08% |
| Unit 2405/B | $462,194.00 | 4.6% |
| Unit 2501/C | $513,437.00 | 5.11% |
| Unit 2502/A | $409,946.00 | 4.08% |
| Unit 2503/C | $513,437.00 | 5.11% |
| **Totals** | **$10,047,700.00** | **100%** |

## 9.03 OVERALL SUMMARY - COMPOSITE CHART.

Subsequent to the filing of this Master Deed the total number of Units by Type and Percentage Interest is as follows:

| Unit Type | Individual % Interest | Total # of Units | Total Percentage |
|---|---|---|---|
| 1. A | 4.08% | 13 | 53.04% |
| 2. B | 4.60% | 8 | 36.80% |
| 3. C | 5.11% | 2 | 10.22% |
| | **Totals** | **23** | **100%*** |

* Total Total Percentage may not equal 100% due to rounding.

## 9.04 FUTURE PHASES.

In the event Declarant elects to expand the Regime as provided herein, all Units added to the Regime shall have the same statutory valuations as set forth above provided, however, that Declarant does reserve the right to modify floor plans for Future Phase Units, and in such event the statutory valuation may vary.

The following chart demonstrates the adjustment in the Percentage Interest assuming that Phase II-VI are added to the Regime comprising a total of one hundred twenty-four (124) Units in such Phases and assuming the same average statutory valuation of Units as Phase I. There are eighteen (18) A Units; eight (8) B Units; two (2) C Units contemplated in Phase II. The anticipated mix of Units for each Phase is slightly different and is subject to modification by Declarant. However, the exact adjustment of Percentage Interest is not subject to calculation until the exact number and size of all Units to be added to the Regime is established. There may be a fewer number of Units. In the event that addition of Units to the Regime results in a calculation of Percentage Interest in accordance with the above formula which does not

total one hundred (100%) percent, the amount necessary to bring such total to one hundred (100%) percent shall be allocated by the Board of Directors or its designated Management Agent.

**Assigned Percentage Interests Future Phases II - VI**

| Unit Type | Estimated # of Units | Statutory Valuation | Phase I Percent | Projected Phase I-VI (147 Units) Percent |
|---|---|---|---|---|
| 1. A | 89 | $409,946.00 | 4.08% | 0.64% |
| 2. B | 50 | $462,194.00 | 4.60% | 0.73% |
| 3. C | 8 | $513,437.47 | 5.11% | 0.81% |

**9.05 TOTAL VALUE.**

The total statutory value of the Property in Phase I is Ten Million Forty Seven Thousand Seven Hundred and NO/100 ($10,047,700.00) Dollars. The total statutory value projected for Phase I through Phase VI combined is Sixty Three Million Seven Hundred Two Thousand Three Hundred Ninety Four and NO/100 ($63,702,394.00) Dollars. Subject to the overall limitations described in Section 6 of the Master Deed, Declarant will not exceed these estimated numbers for the Future Phase.

**NOTE: THESE VALUATIONS ARE FOR PURPOSES OF THE SOUTH CAROLINA HORIZONTAL PROPERTY ACT.**

**9.06 NO ALTERATION.**

The proportionate representation for voting purpose and the percentage of the undivided interest in the Common Elements (both General and Limited) provided in this Section 9 shall not be altered without the acquiescence of the Co-Owner representing all of the Units expressed in an Amendment to this Master Deed duly recorded as required by Section 8 hereof or except as provided in Sections 6, 8, and 9 with regard to the Amendment of the Master Deed to admit the Future Phases Units.

## 10. ADMINISTRATION AND BY-LAWS.

### 10.01 ASSOCIATION; BY-LAWS.

As noted in Section 2 hereof, Declarant has caused to be incorporated under the laws of the State of South Carolina a corporation known as The Edgewater on Broad Creek Owners' Association, Inc., which shall be an incorporated Council of Co-Owners to serve as the body by which the Unit Owners will manage the affairs of the Regime. Each Unit Owner shall have voting rights in said Association in the same percentage as the percentage of interest his Unit has in the Common Elements. The administration of the Regime, and consequently of the Association, consisting as aforesaid of the Property described above shall be in accordance with the provisions of the By-Laws which are incorporated herein, made a part hereof and are attached hereto as **Exhibit "D"**.

### 10.02 AUTOMATIC MEMBERSHIP IN ASSOCIATION.

Each Unit Owner shall automatically become and be a member of the Association so long as he continues to be a Unit Owner and shall exercise such percentage of vote in all matters as shown in Section 10 hereof. In the event that a Unit is owned by more than one Person, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by all the record Owners of the said Unit and filed with the Secretary of the Association. Further, should such Unit Owner be a corporation, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or Vice President of the corporation and attested by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. All such certificates shall be valid until revoked, superseded by a subsequent certificate, or until there has been a change in ownership of the Unit concerned.

## 11. HORIZONTAL PROPERTY REGIME CONSTITUTED.

As appears above, a Horizontal Property Regime is hereby constituted under and subject to the provisions of the Horizontal Property Act of the State of South Carolina, so that the Units may be conveyed and recorded as individual properties capable of independent use and each having its own exit to the Common Elements of the Property, and each Unit Co-Owner having an

exclusive and particular right over his respective Unit and, in addition, the specified undivided interest in the Common Elements of the Property.

## 12. DECLARANT SUBJECT TO MASTER DEED; DECLARANT USE.

### 12.01 DECLARANT USE; GENERAL.

So long as the Declarant owns one or more of the Units, it shall be subject to the provisions of this Master Deed and the Exhibits attached hereto and the Declarant covenants to take no action which will adversely affect the rights of the Regime with respect to the assurances against latent defects in the Property or other rights assigned to the Regime by reason of the establishment of said Regime; provided, however, that Declarant as in the case with any other Unit Owner, shall have the absolute right and privilege of leasing any or all of the Units owned by it on a short or long term basis for the uses permitted by this Master Deed , and that Declarant's lessees, invitees, guest, etc., shall be entitled to all of the privileges and rights, and be subject to the requirements hereunder, of a Co-Owner with respect to the use of the Property excluding voting rights which shall remain with the Declarant.

### 12.02 DECLARANT USE AS SALES MODEL.

Provided further, that Declarant, and its successors and assigns, shall be entitled to use one or more of the Units and/or the Clubhouse for purposes of a sales model and/or office until the entire project, to include the Future Phases have been sold, it being the intent of Declarant that said reserved rights do not conflict with the residential use restriction described herein above. The Declarant may reserve portions of the Clubhouse designated by the Declarant for use as a sales office and as an office for the Management Agent.

## 13. TIME-SHARING/INTERVAL AND FRACTIONAL OWNERSHIP.

The Declarant herein subjects the Phase I Property of the Regime to the further limitation and restriction that it shall be used and occupied for whole-time residential dwelling Units in the same manner as other Condominium Units constructed as such within the multi-family residential areas of Hilton Head

Island, and such dwelling Units shall not be utilized for purposes of time-sharing or interval ownership, time-sharing or interval licenses, time-sharing or interval leases, fractional interest or similar plans as those items are currently generally utilized in the real estate industry or as those or similar terms are expresses or defined in Chapter 32, Code of Laws of South Carolina, 1976, as amended, i.e. the South Carolina Vacation Time Sharing Act and the South Carolina Multiple Ownership Act.

## 14. PROVISIONS AND COVENANTS APPLICABLE TO UNITS.

Each Co-Owner shall comply with the provisions of this Master Deed and authorized Amendments thereto. Failure to comply with such provisions, decisions, or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief. The Units shall also be conveyed subject to the recorded plat and plans of the Property and Amendments thereto and those certain covenants, restrictions, easements and other matters of title as more particularly described at **Exhibit "A"** hereto.

## 15. GENERAL CONDITIONS/MISCELLANEOUS MATTERS.

### 15.01 COMMON ELEMENTS NOT PARTITIONED.

Except as provided herein, the Common Elements shall remain undivided and no Co-Owner shall bring any action for partitioning and/or division.

### 15.02 COMMON ELEMENTS NOT SEVERABLE FROM UNITS.

The undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

### 15.03 NONUSE NOT EXEMPTION OF LIABILITY FOR COMMON EXPENSES.

No Co-Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or

enjoyment of any of the Common Elements or by the abandonment of his Unit.

**15.04 ALL USERS OF PROPERTY SUBJECT TO MASTER DEED.**

All present or future Co-Owners, tenants, future tenants, or any other person that might use the facilities of the Property in any manner, including those who may lease from the Declarant, are subject to the provisions of this Master Deed and any authorized Amendments thereto, and that the mere acquisition or rental of any of the Units shall signify that the provisions of this Master Deed and any authorized Amendment thereto are accepted and ratified.

**15.05 ASSESSMENTS SUBORDINATE TO MORTGAGEE TAKING TITLE.**

Where a mortgagee or other purchaser of a Unit obtains title by reason of foreclosure or deed in lieu of foreclosure of a mortgage covering a Unit, such acquirer of title, his or its heirs, successors, assigns or grantees, shall not be liable for assessments by the Association which became due prior to the acquisition of title by such acquirer, it being understood, however, that the above shall not be construed to prevent the Association from filing and claiming liens for such assessments and enforcing same as provided by law, and that such assessment shall be subordinate to such mortgage.

**15.06 INSURANCE.**

The Board of Directors of the Association shall be required to obtain and maintain those types and forms of insurance as are required by ARTICLE VIII of the By-Laws set forth in **Exhibit "D"** attached hereto and made a part hereof.

**15.07 RECONSTRUCTION AND REPAIRS.**

In the event of casualty loss or damage to the Property the provisions of Article IX of the By-Laws as set forth in **Exhibit "D"** shall govern all matters pertaining to reconstruction and repair.

## 15.08 CONDEMNATION.

In the event of a condemnation of a portion of the Property which is subject to this Master Deed, no reallocation of interests in the Common Elements resulting from a partial condemnation may be effected without the prior approval of the Unit Owners and the eligible holders holding mortgages on all remaining Units, whether existing in whole or in part, and which have at least seventy-five (75%) percent of the votes of such remaining Units subject to eligible holder mortgages.

The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof. Each Unit Owner appoints the Association as attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or the Insurance Trustee for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

## 15.09 EASEMENT FOR ENCROACHMENT.

If any portion of the Common Elements now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of: (a) settling of the Building or Buildings; (b) alteration or repair to the Common Elements made by or with consent of the Board or; (c) as a result of repair or restoration of any Building or any Unit necessitated by damage by fire other casualty; or (d) as a result of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Building or Buildings stand.

## 15.10 OTHER REGIME EASEMENTS.

Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements, if any, located in any of the other Units and serving his Unit. Each Unit shall be subject

to an easement in favor of the Owners of all other Units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board shall have the right of access to each Unit to inspect the same to remove violations therefrom and to maintain repair or replace Common Elements contained therein or elsewhere in the building.

**15.11 SEVERABILITY.**

The provisions hereof shall be deemed independent and severable and the invalidity in whole or part of any sections, sub-section, sentence, clause, phrase, or word, or other provision of the Master Deed and the By-Laws or any authorized Amendment thereto shall not impair or affect in any manner the validity or enforceability of the remaining portions thereof and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included therein.

**15.12 NON-WAIVER.**

No provision contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**15.13 GENDER AND NUMBER.**

The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine and neuter gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

**15.14 APPLICABLE LAW/INTERPRETATION.**

This Master Deed is set forth to comply with the requirements of the Act as presently constituted or as hereafter amended. In case any of the provisions stated above conflict with the provisions of said statue, the provisions of said statute shall control. On all cases, the provisions of this Master Deed shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of

land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed herein and which will preserve the Property as a situs for an attractive, well maintained, retirement community.

Should any provision of this Master Deed or any section, paragraph, sentence, clause, phrase or term in this Master Deed be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof such judgement shall in no way affect the other provisions hereof which are hereby declared to be severable.

Contrary to the restrictive common law rule of construction, this Master Deed shall by this covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Master Deed, to covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant and/or Association, and any other covenant condition, restriction or obligation within this Master Deed is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement or economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

**15.15 CAPTIONS.**

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed or the intent of any provisions hereof.

**15.16 EXHIBITS.**

All Exhibits to this Master Deed shall be an integral part of this instrument.

**15.17 TRADEMARK USE.**

Each Owner, by acceptance of a deed to any lands, tenements or hereditaments within the Property hereby acknowledges that "The Edgewater on Broad Creek" and designs are service marks and

trademarks of the Declarant. Each Owner agrees to refrain from misappropriating or infringing these service marks or trademarks.

**16. LIMITED WARRANTIES.**

The purpose of the following Section relating to warranties is to provide actual notice to successors-in-title to original purchasers:

"At Closing, Seller shall transfer to Purchaser all of Seller's right, title and interest in and to any manufacturer's warranty furnished to Seller covering any equipment or appliance. If written notice is given to Seller by Purchaser within thirty (30) days of discovery of any defect not caused by Purchaser, his agents, guests, or invitees, then Seller will, at no cost to the Purchaser for a period of one (1) year from the date of closing, repair or replace the defective portion of the Property. The warranty shall not apply to fixtures and appliances covered by a warranty of a manufacturer or dealer for which defects the Purchaser shall have such rights as are defined in the applicable warranty documents. Seller shall not be responsible for any incidental or consequential damages arising from any defect. This warranty is personal to Purchaser, and shall automatically terminate and be of no further force or effect upon Purchaser's sale, transfer or conveyance of the Property. SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED AS TO THE FITNESS, DESIGN, OR CONDITION OF ITEMS OF TANGIBLE PERSONAL PROPERTY OR FIXTURES, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE."

**[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**

**IN WITNESS WHEREOF**, Declarant has executed this Master Deed, and the appropriate corporate seal affixed hereto this 19th day of December in the year of Our Lord Two Thousand and Two and in the Two Hundred and Twenty Sixth year of the Sovereignty and Independence of the United States of America.

**WITNESSES:**

**BROADCREEK EDGEWATER, LP,**
**a South Carolina Limited Partnership**

BY: WINNETKA ASSOCIATES
EDGEWATER, LLC
ITS: SOLE GENERAL PARTNER

BY: WINNETKA ASSOCIATES I
LIMITED PARTNERSHIP
ITS: SOLE MEMBER

BY: BAIRD PACIFIC WEST, INC.
ITS: SOLE GENERAL PARTNER

Birdie Sargent

BY: Wyllys T. Baird
**Wyllys T. Baird**

ITS: President

**STATE OF SOUTH CAROLINA** )
) **PROBATE**
**COUNTY OF BEAUFORT** )

**PERSONALLY** appeared before me Birdie Sargent who, on oath, says that s/he saw the within named **BROADCREEK EDGEWATER, LP, a South Carolina Limited Partnership** by Winnetka Associates Edgewater, LLC, its sole General Partner, by Winnetka Associates I Limited Partnership, its sole Member, by Baird Pacific West, Inc., its sole General Partner, by **Wyllys T. Baird**, its President, sign the Master Deed, and the said Company by said officer, seal said Deed, and as its act and deed, deliver the same and that s/he with Reagan Strickth witnessed the execution thereof.

Birdie Sargent
(Non Notary Signature)

SWORN to before me this 19th
Day of December, 2002.

(L.S.)
Notary Public for South Carolina
My commission Expires: 5/6/05

## INDEX OF EXHIBITS

## THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME

| | |
|---|---|
| Exhibit "A" | Description of Land (Phase I Property – The Edgewater on Broad Creek), Description of Future Phase Land, Description of Reserved Rights and Permitted Exceptions. |
| Exhibit "A-1" | Description of "Additional Land," to wit: Maximum Extent of Land that may be brought into the Regime |
| Exhibit "B" | Plat/As-Built Survey (Phase I and Recreational Parcel) |
| Exhibit "C-1" | Architectural Drawings of Floor Plans of Building and Units |
| Exhibit "C-2" | Architect's Certificate |
| Exhibit "D" | By-Laws of the Edgewater on Broad Creek Horizontal Property Regime and the Edgewater on Broad Creek Property Owners' Association, Inc. |
| Exhibit "E-1" | Joinder of Mortgagee |

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**EXHIBIT "A"**
**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

DESCRIPTION OF LAND

PHASE I PROPERTY

ALL that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina consisting of approximately 7.64 Acres and shown as "REGIME PARCEL 1" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME – PHASE I" prepared by Surveying Services Inc. certified to by James W. Edwards SCRLS #15515 dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the ROD Office for Beaufort County, South Carolina on _____.

SAVE AND EXCEPT THEREFROM, the right of ingress and egress unto the Declarant herein, its successors, assigns, and Grantees.

FURTHER, SAVE AND EXCEPT THEREFROM, the right of ingress and egress over and across all roads and walkways within the said Phase I Property shown on the above-described plat of Edgewater on Broad Creek.

Said reservation being unto the Declarant herein, its successors and assigns and Grantees; said reserved easement expressly for, but not limited to, the purpose of construction and all construction related activities on the Phase I Property and on the Additional Property described at **Exhibit "A-1"**.

FURTHER, SAVE AND EXCEPT from the above described property, title to and ownership of all water and sewer lines located on said Parcels or hereafter installed thereon, together with all pipes, pumps, pumping stations, or other equipment or facilities located thereon, together with an easement to such lines, equipment or facilities to allow for the maintenance repair or replacement of such lines, facilities or equipment or for the purpose of installing additional lines, equipment or facilities thereon from time to time.

FURTHER, the Declarant expressly reserves the right to improve the aforementioned property by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to

recreational facilities, drainage facilities, lagoons, and the like, pertaining to The Edgewater on Broad Creek Horizontal Property Regime.

FURTHER, Declarant expressly reserves the right to install lines, equipment and facilities for utility and drainage purposes and to grant easements over the property for the installation of additional lines, equipment or facilities for utility and drainage purposes from time to time.

FURTHER, the above property is submitted to The Edgewater on Broad Creek Horizontal Property Regime subject to all easements as shown on the above plat of record and to all existing utility easements or easements to be granted in favor of the Hilton Head Public Service District Number 1, Palmetto Electric Cooperative, Hargray Telephone Company or any other utility or cable television provider of record in the ROD Office for Beaufort County, South Carolina.

In addition to the foregoing matters, the property described above is conveyed subject to the following:

1. Taxes and assessment for the year 2003 and subsequent years, a lien not yet due and payable.

2. Easements, utility lines, wires and pipes, transformers, sewer manholes, grate inlets, curb inlets, water valves, well, and all other equipment or related improvements shown on that certain plat prepared by Surveying Services, Inc., James W. Edwards, SCRLS 15515, entitled "Edgewater on Broad Creek ALTA/ACSM Land Title Survey" dated September 10, 2001; revised December 13, 2002; also, any unrecorded rights of use or maintenance of said equipment and improvements.

3. Title to that portion of the Property which is or may be filled-in-land, or which is or has been under water, or which lies below the mean high water mark of Broad Creek.

4. Rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme water line, or other apparent boundary line separating the publicly used area from the upland private areas.

5. Interests created by or limitations on use imposed by the Federal Coastal Zone Management Act or other federal law, or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.

6. Easement to Palmetto Electric Cooperative, Inc. recorded in said Register's Office in Book 1353 at Page 508.

7. Notice of Project Commencement recorded in said Register's Office in ORB 1429 at Page 241.

The property described above is a portion of the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

**EXHIBIT "A-1"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

DESCRIPTION OF "ADDITIONAL LAND," TO WIT: MAXIMUM EXTENT OF LAND THAT MAY BE BROUGHT INTO THE REGIME

ALL that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 Acres and shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME – PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD Office for Beaufort County, South Carolina on 12/31/02.

**EXHIBIT "B"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

PLAT/AS-BUILT SURVEY OF PROPERTY

Attached hereto is a plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME, PHASE I, prepared by Surveying Consultants, Inc., James W. Edwards, SCRLS #15515, dated December 19, 2002 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 91 at Page 5 on Dec. 31, 2002.

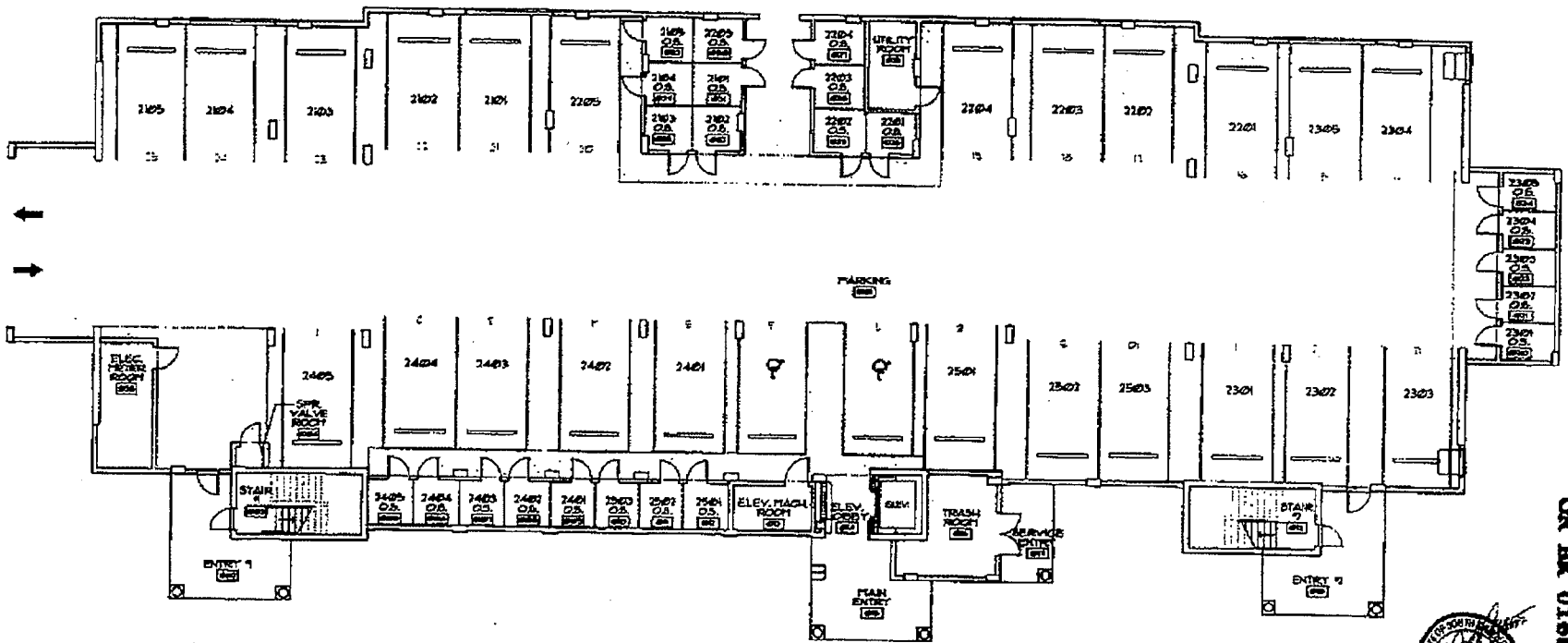
OR BK 01689 PAGE 0617

**EXHIBIT "C-1"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

ARCHITECTURAL DRAWINGS OF FLOOR PLANS

Attached hereto are the floor plans and elevations.




PARKING LEVEL FLOOR PLAN

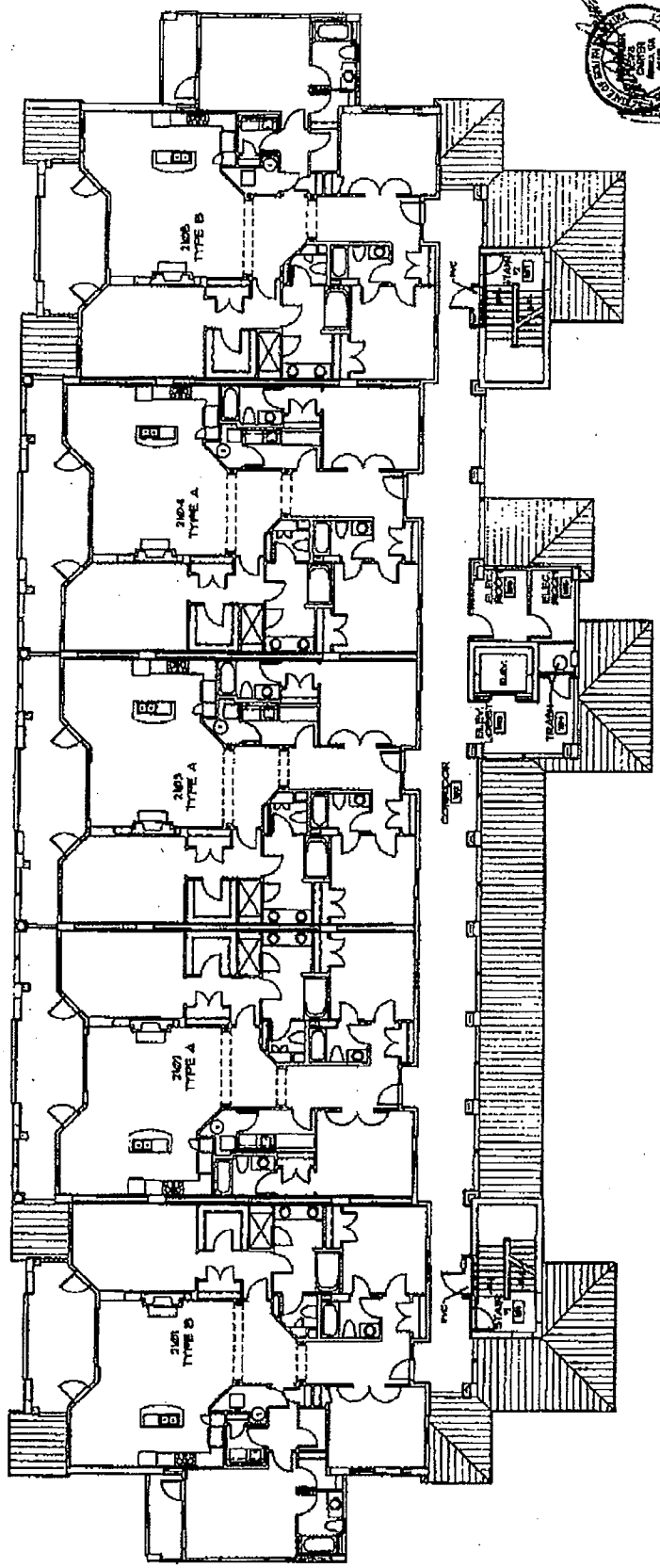
NOT TO SCALE

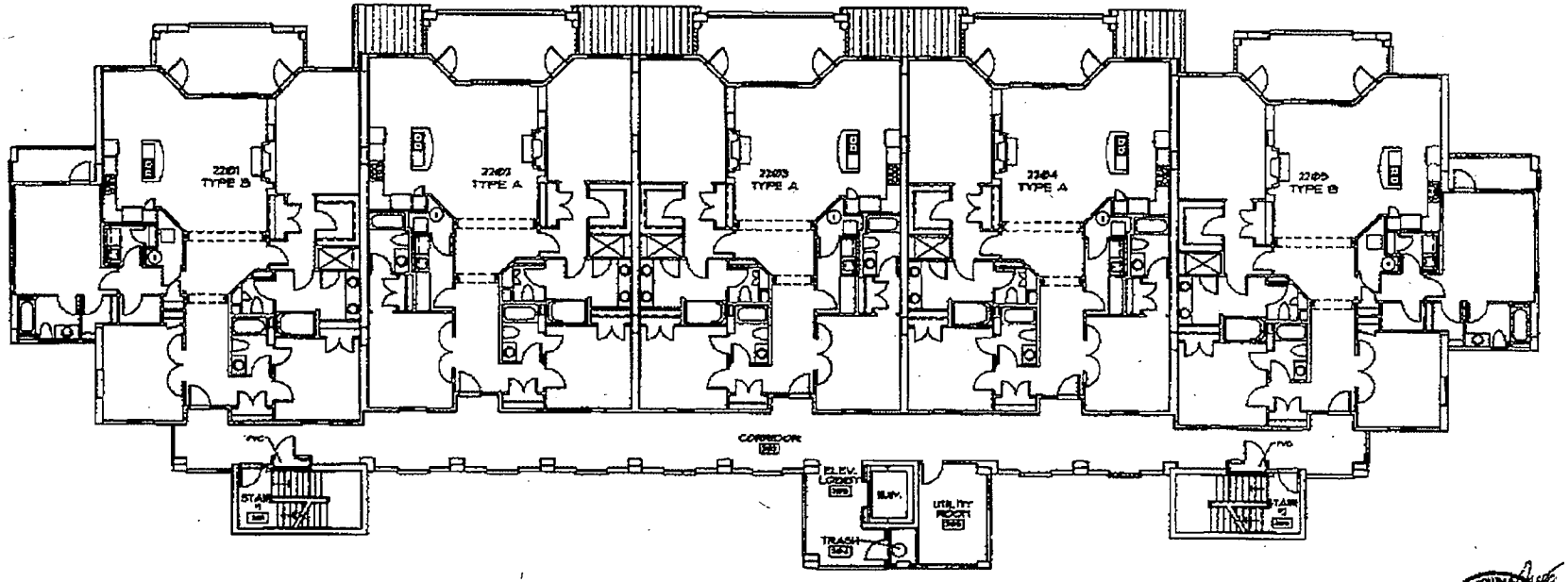
EDGEWATER - PHASE 1

DECEMBER 12, 2002

OR BK 01689 PAGE 0618

OR BK 01689 PAGE 0619





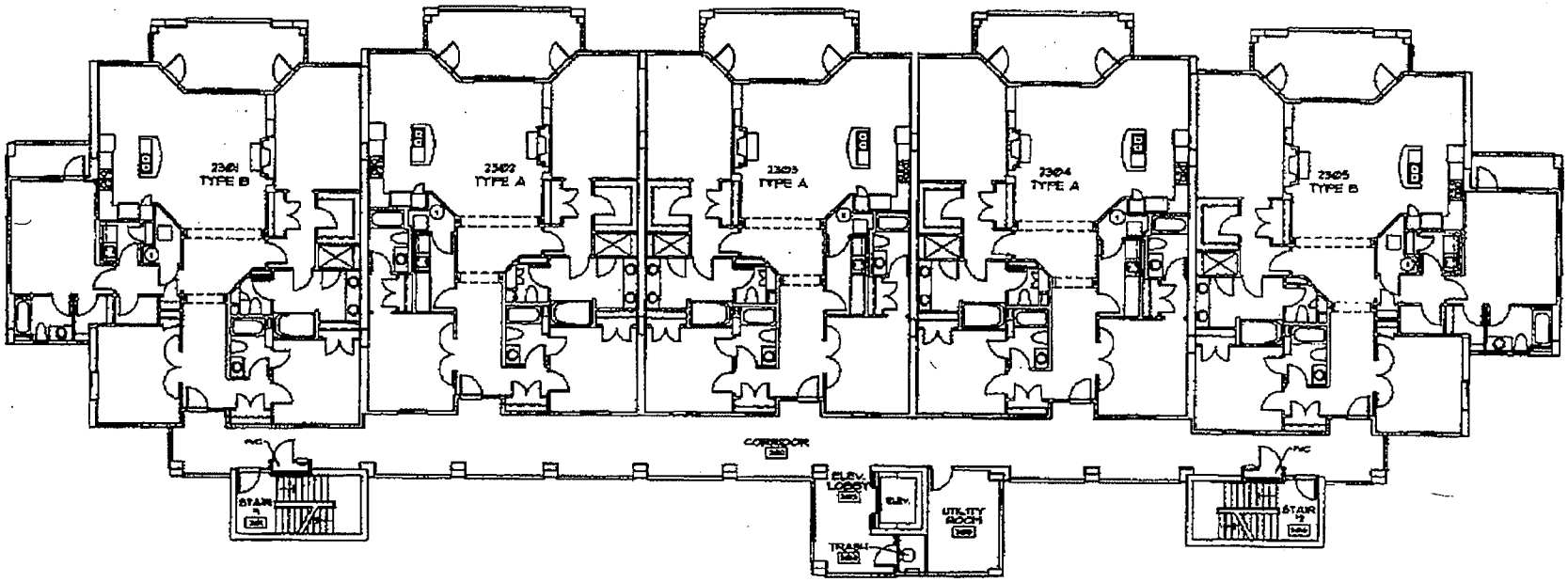

SECOND LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0620




THIRD LEVEL FLOOR PLAN

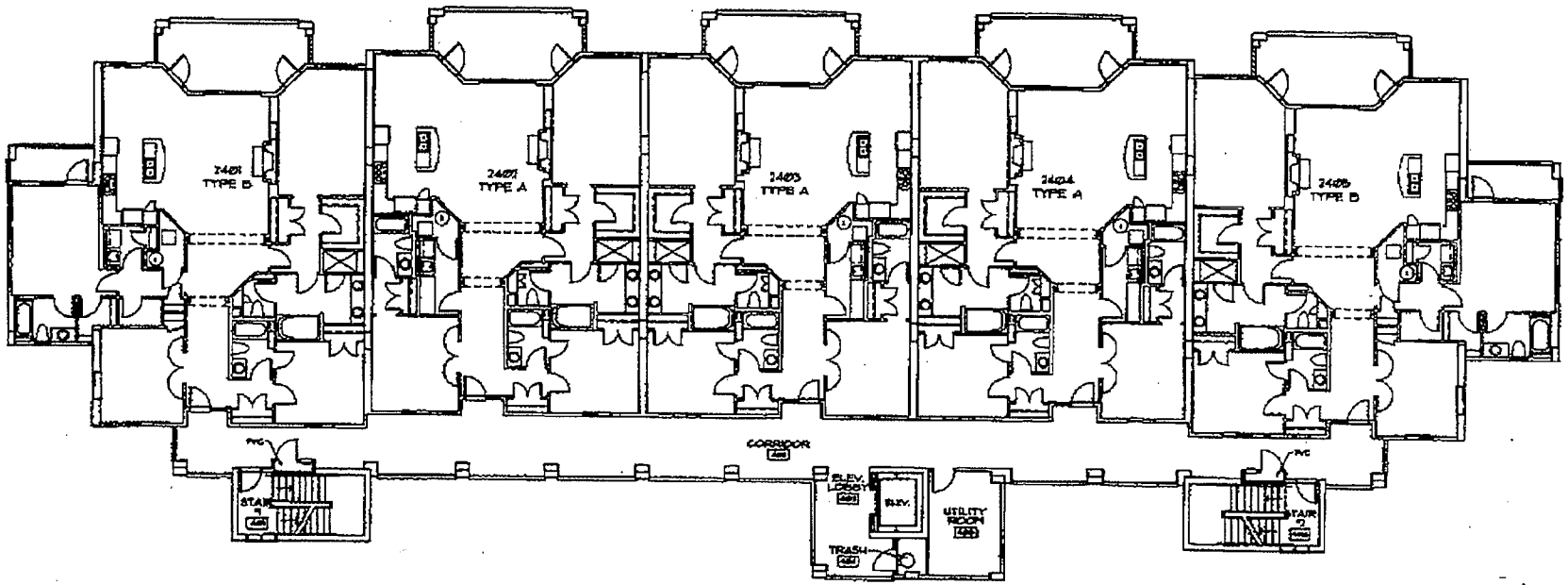
NOT TO SCALE

STATE OF SOUTH CAROLINA
WCB ARCHITECTS INCORPORATED
REGISTERED ARCHITECT

# EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0621



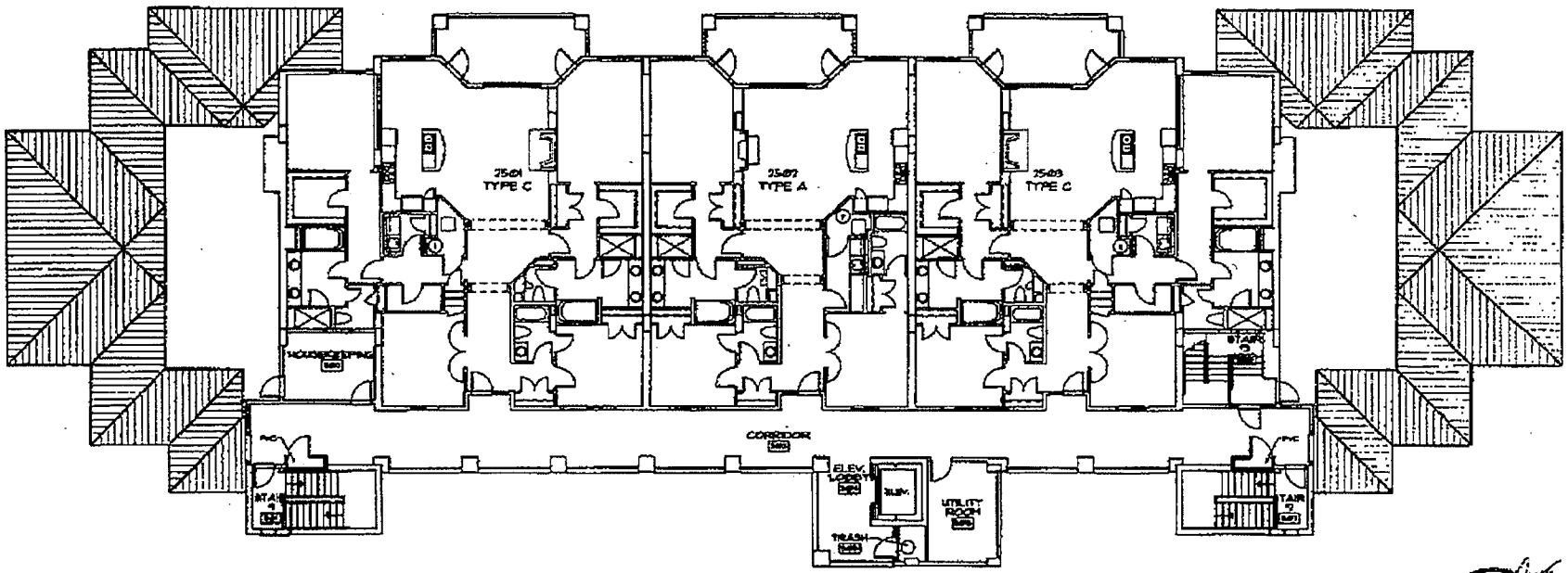

FOURTH LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0622



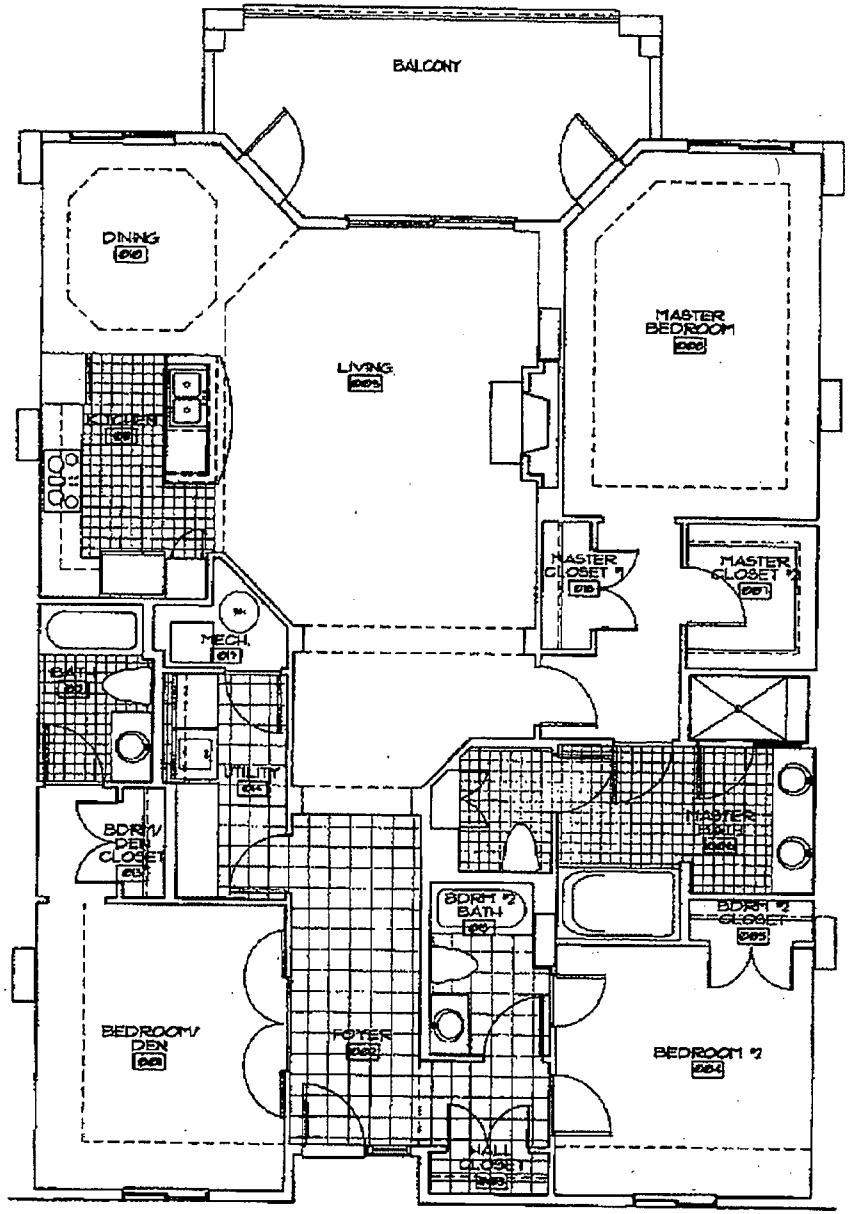

FIFTH LEVEL FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0623



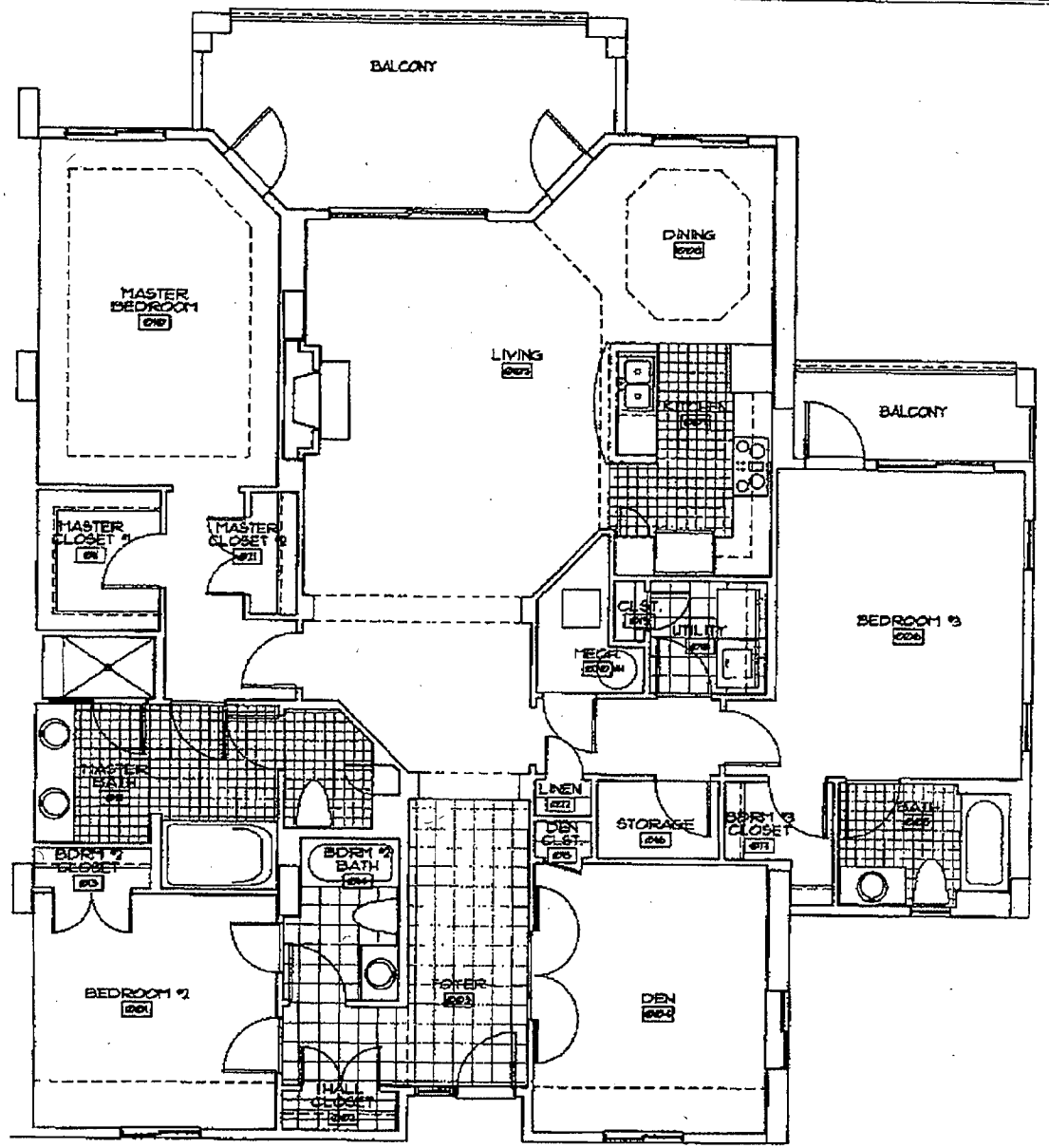

TYPE 'A'- FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01669 PAGE 0624




TYPE 'B'- FLOOR PLAN

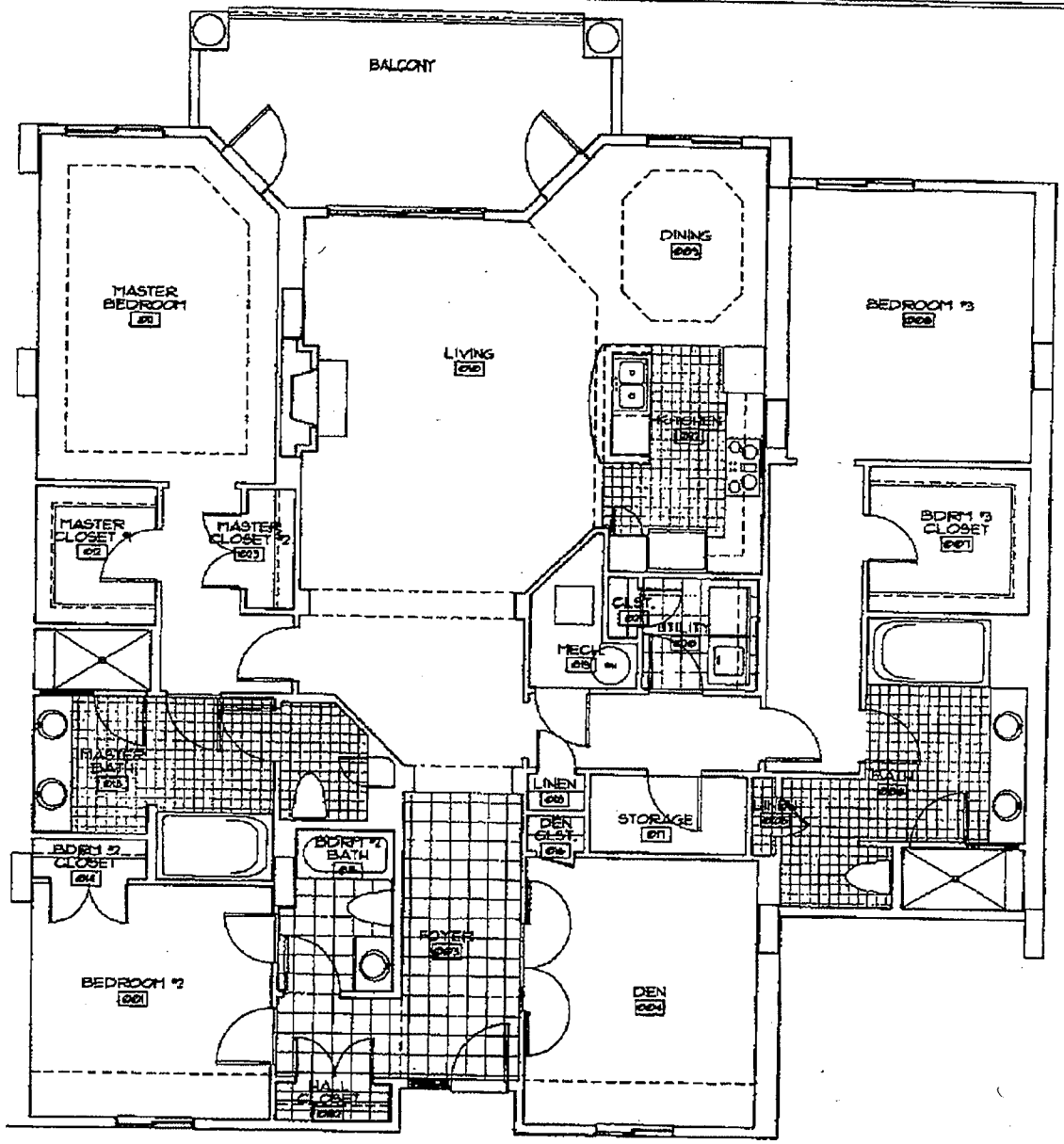
NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2001

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT
STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT

OR BK 01689 PAGE 0625



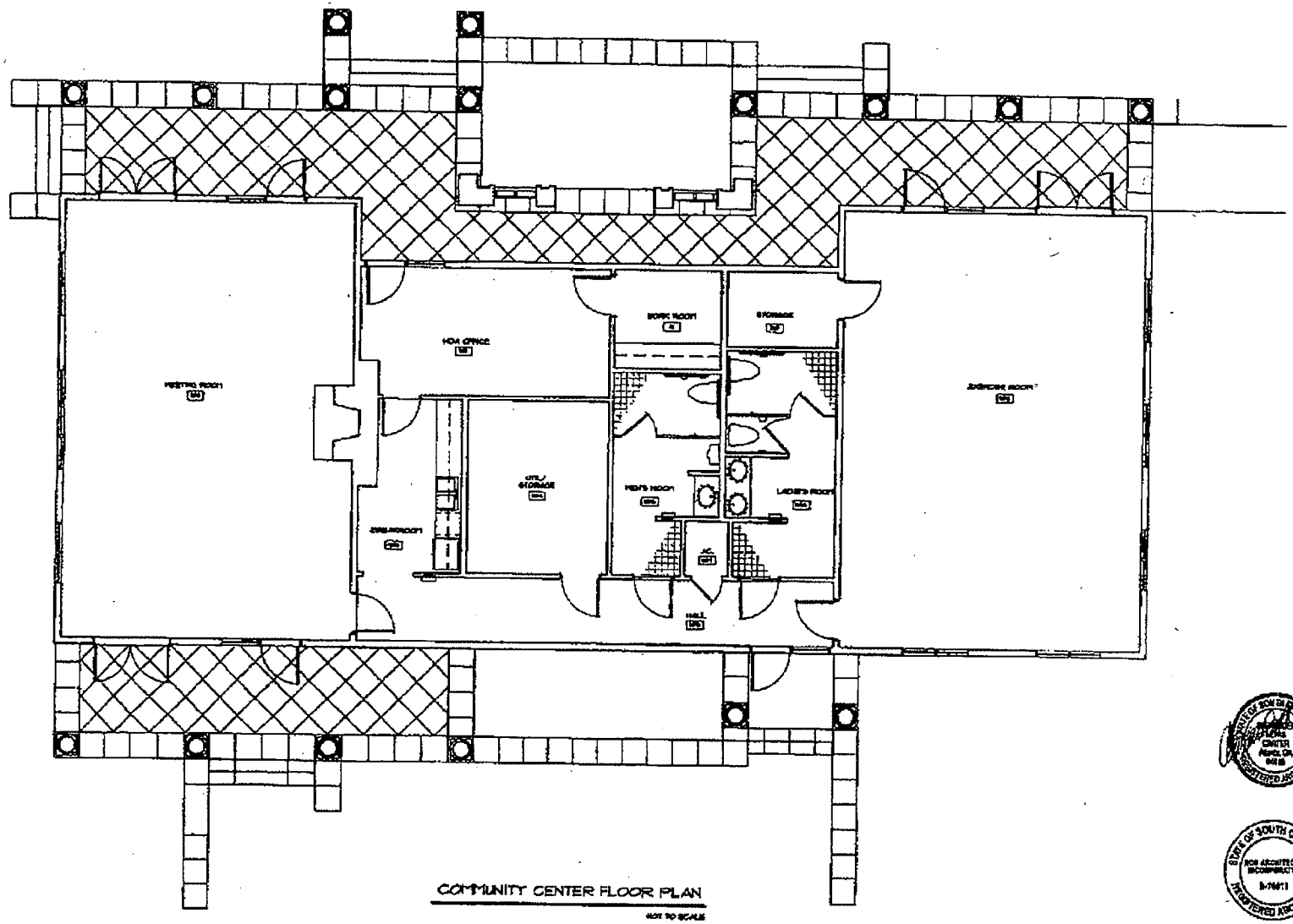

TYPE 'C' - FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE I

DECEMBER 12, 2002

OR BK 01689 PAGE 0626




COMMUNITY CENTER FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE 1

DECEMBER 12, 2002

OR BK 01689 PAGE 0627

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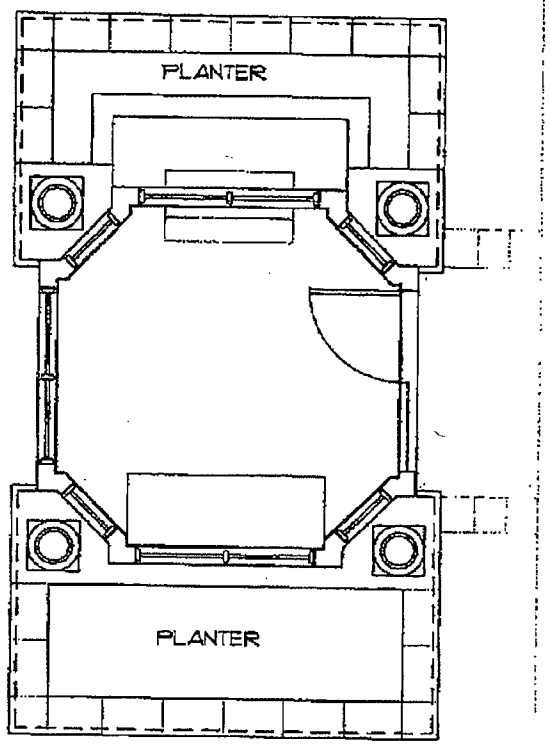



GATEHOUSE FLOOR PLAN

NOT TO SCALE

EDGEWATER - PHASE 1

DECEMBER 12, 2007

**EXHIBIT "C-2"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

ARCHITECT'S CERTIFICATE

This is to certify that, to the best of the undersigned's knowledge, The Edgewater on Broad Creek Horizontal Property Regime, Phase I consisting of the Twenty Three (23) Units numbered as follows: 2101, 2102, 2103, 2104, 2105, 2201, 2202, 2203, 2204, 2205, 2301, 2302, 2303, 2304, 2305, 2401, 2402, 2403, 2404, 2405, 2501, 2502, 2503 are built substantially in accordance with the floor plans attached to the Master Deed creating said Regime, as Exhibit "C-1" to be recorded in the ROD Office for Beaufort County, South Carolina, except for minor variations which are customary in projects of this nature.

_____ NCG, INC.

_____ By: _____

S.C. Registration # 4416

Certified to this 18th Day of December 2002

Henrietta Hastie (L.S.)

Notary Public for South Carolina

My Commission Expires: _____

HENRIETTA HASTIE
Notary Public, DeKalb County, Georgia
My Commission Expires Dec. 12, 2003

**EXHIBIT "D"**

**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

BY-LAWS OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME AND THE EDGEWATER ON BROAD CREEK OWNERS' ASSOCIATION, INC.

ARTICLE I

PLAN OF UNIT OWNERSHIP

The following By-Laws shall govern the operation of The Edgewater on Broad Creek Owners' Association Inc.

Section 1. HORIZONTAL PROPERTY REGIME. The term "Property" as used herein means and includes the land, the buildings, improvements and structures thereon) located on Hilton Head Island, in Beaufort County, South Carolina, known as THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME has been, by Master Deed, submitted to the provisions of the Horizontal Property Act of South Carolina, which said Property shall hence be known as THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (hereinafter referred to as "Regime").

Section 2. ASSOCIATION. In conjunction of the creation of above described Regime there also has been incorporated under the laws of the State of South Carolina as Association known as The Edgewater on Broad Creek Property Owners Association, Inc. (hereinafter referred to as "Association") which pursuant to the provisions of the aforementioned Master Deed, constitutes the incorporated The Edgewater on Broad Creek council of Co-Owners. The offices of the Association shall be at the offices of Broad Creek Edgewater, LP (hereinafter referred to as "Declarant"), at 52 New Orleans Road, Hilton Head Island, South Carolina 29928, or such other place as subsequently designated by the Board of Directors of the Association.

Section 3. BY-LAWS APPLICABILITY. The provisions of these By-Laws are applicable to the Property and the Regime. All terms used herein and not otherwise defined shall have the meaning ascribed to them in the

MASTER DEED, certain provisions of which Master Deed may be repeated in full or in part.

Section 4. PERSONAL APPLICATION. All present or future Co-Owners, tenants, future tenants, or their employees, or any other person who might use the facilities of the Property in any manner, are subject to the regulations set forth in these By-Laws and in the Master Deed establishing said Regime as they may be amended from time to time. The mere acquisition or rental of any of the Dwelling Units (hereinafter) usually referred to as "Unit") as defined in the Master Deed of the Property or the mere act of occupancy of any of said Units will signify that these By-Laws, the provisions of the Master Deed. The Covenants as defined in Section 14 of the Master Deed and any authorized, recorded Amendments to the foregoing Master Deed are accepted and ratified, and will be complied with.

## ARTICLE II

## VOTING, MAJORITY OF CO-OWNERS QUORUM, PROXIES

Section 1. ELIGIBILITY. Any person who acquires title to a Unit in the Regime is deemed to have consented to be a Member of the Association. There shall be one membership for each Unit owned. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit is vested in more than one person, then all of the persons so owning such Unit shall agree upon the designation of one of the Co-Owners of such Unit to act as a Member of the Association. If Unit ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation to act as a Member of the Association.

Section 2. VOTING. Voting shall be on a percentage basis and the percentage of the vote to which the Co-Owner is entitled is the statutory percentage assigned to the Unit or Units in the Master Deed.

Section 3. MAJORITY OF CO-OWNERS. As used in these By-Laws, the term "majority of Co-Owners" shall mean those Co-Owners holding fifty-one (51%) percent or more of the total statutory value of the Property, in accordance with the statutory percentages assigned in the Master Deed, and any authorized Amendments thereto.

Section 4. QUORUM. Except as otherwise provided in Article III, Section 7 and elsewhere in these By-Laws, the presence in person or by proxy of a majority of Co-Owners as defined in Section 3 of this Article shall constitute a quorum.

Section 5. PROXIES. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting.

Section 6. MAJORITY VOTE. The vote of a majority of the Unit Owners present at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where in the Master Deed or in these By-Laws or by law, a higher percentage is required.

## ARTICLE III

## THE EDGEWATER ON BROAD CREEK OWNERS' ASSOCIATION

Section 1. ASSOCIATION RESPONSIBILITIES. The Co-Owners of the Unit will constitute the Association which will have the responsibility of administrating the Property and electing the Board of Directors. Except as otherwise provided herein or in the Master Deed or By-Laws, decisions and resolutions of the Association shall require approval by a majority of Co-Owners.

Section 2. PLACE OF MEETINGS. All meetings, annual and special, of the Association shall be at the offices of the Association, or at such other place and at such time convenient to the Co-Owners, as shall be designated by the Board of Directors of the Association or the Management Agent and state in the Notice of Meeting.

Section 3. ANNUAL MEETINGS. The annual meetings of the Association shall be held at the call of the President once a year during the month of March or at such other time as a majority of the Co-Owners may agree upon. At such meetings there shall be elected by ballot of the Co-Owners a Board of Directors in accordance with the requirements of Section 5 of Article IV of these By-Laws and there shall be a report by the President or Secretary-Treasurer on the activities and financial condition of the Association. The Co-Owners may also transact such other business of the Association as may properly come before them.

Section 4. SPECIAL MEETINGS. It shall be the duty of the Secretary to call a special meeting of the Co-Owners as directed by: (i) resolution of the Board of Directors; (ii) at the request by a majority of the Directors; (iii) or upon a petition signed by Co-Owners holding at least twenty-five percent (25%) of the total voting power of the Association and having been presented to the Secretary. A notice of any special meeting shall state the time and place of such meeting and the purpose or purposes thereof. No business shall be transacted at a special meeting except as stated in the notice. If a Co-Owner intends to raise a matter at a special meeting, said Co-Owner shall submit such request in writing to the Secretary or President at least ten days before the date notice is to be mailed to the Co-Owners in order for such matter to be included in the Notice of Special meeting.

Section 5. FIRST MEETING. The first meeting of the Association shall be held within one hundred twenty (120) days from the date that a minimum of ninety (90%) percent of the Units in the Regime have been conveyed by the Declarant to individual Co-Owners.

Section 6. NOTICE OF MEETINGS. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, to each Co-Owner of record, at least fifteen (15), but not more than forty-five (45) days prior to such meeting. The mailing of a notice in the manner provided in this Section 6 shall be considered notice served. The notice of meeting shall include any matters the Co-Owners intend to raise at the meeting if a request is submitted to the Secretary or President in writing at least ten (10) days prior to notice being mailed, which requests sets forth the matters to be raised.

Section 7. ADJOURNED MEETING. If any meeting of the Association cannot be organized because a quorum has not attended, the Co-Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. The time, date, and place of the meeting shall be set and announced before adjournment of the first meeting. Upon the reconvening of said meeting a quorum shall be constituted is Co-Owners holding at least 33% of the total statutory value of the property in accordance with the percentages assigned in the Master Deed are present in person or by proxy at said reconvened meeting.

Section 8. ORDER OF BUSINESS. The order of business at all Annual Meetings of the Association shall be as follows:

(a) Roll Call.
(b) Proof of Notice of Meeting or Waiver of Notice.
(c) Reading of Minutes of Preceding Meeting.
(d) Reports of Officers.
(e) Reports of Committees.
(f) Election of Inspectors of Election.
(g) Election of Directors.
(h) Unfinished Business.
(i) New Business.

The order of business at a Special Meeting of the Association shall include items (a) through (d) above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

Section 9. RECORD DATE. The Board of Directors shall fix a record date for determining Co-Owners entitled to notice of and to vote at each annual or special meeting. Such record date shall be at least ten (10) but not more than forty (40) days before the meeting.

Section 10. WAIVER AND CONSENT. Whenever the vote of Co-Owners of a meeting is required or permitted by an provision of these By-Laws to be taken in connection with action of the Association, the meeting and vote of Co-Owners may be waived if a majority of Co-Owners who would have been entitled to vote on the action is such meeting were held, shall consent be given to all Co-Owners, unless all Co-Owners participated in the approval of such action.

Further, any Co-Owner may waive any notice of meeting required by these By-Laws if the waiver is submitted in writing, signed by the Co-Owner entitled to notice, and delivered to the Association prior to the date of the meeting. A Co-Owner's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the Co-Owner, at the beginning of the meeting, objects to holding the meeting or transacting business at a meeting. Further, a Co-Owner's attendance at a meeting waives objection to considerations of a particular matter at the meeting that is not within the purpose described in the notice for the meeting, unless the Co-Owner objects to the consideration of the matter at the time when it is presented at the meeting.

Section 11. MEMBERSHIP LIST. After a record date for a notice of meeting has been fixed by the Board of Directors, a complete list of Members

of the Association shall be prepared by the Secretary-Treasurer. This Membership list shall list the Members by classification of Membership and shall include the addresses and number of votes each Member is entitled to vote at the meeting. Such list shall be maintained in the office of the Association beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting.

Section 12. RULES OF ORDER. Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Master Deed or these By-Laws.

## ARTICLE IV

## BOARD OF DIRECTORS

Section 1. NUMBER AND QUALIFICATIONS. The affairs of the Association shall be governed by a Board of Directors (hereinafter referred to as the Board") comprised of not less than three (3) nor more than five (5) persons, provided, however, that the Board shall be comprised of three (3) persons selected by the Declarant until the first meeting of the Association. Until succeeded by the Board members elected by the Unit Owners, members of the Board of Directors need not be Unit Owners. So long as the Declarant (as defined in the Master Deed) owns one or more Units, the Declarant shall be entitled to elect at least one member of the Board of Directors, who need not be a Unit Owner. After the Declarant has conveyed all Units and is no longer entitled to elect one member of the Board of Directors, all Board members shall be Unit Owners.

Section 2. GENERAL POWERS AND DUTIES. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, or by these By-Laws, directed to be executed and done by the Association or individual Co-Owners.

Section 3. SPECIFIC POWERS AND DUTIES. In addition to the general powers and duties referenced above, duties imposed by these By-Laws, or by resolutions of the Association, the Board shall be responsible for the following:

(a) Compliance with all of the terms and conditions of the Master Deed and any Amendments thereto and enforcement of same.

(b) Care, upkeep and surveillance of the Property and the Common Elements.

(c) Collection from the Co-Owners (excluding the Declarant), at the time of the closing of the initial sale of each Unit, at least two (2) month's estimated Common Expense assessments for the purpose of establishing a working capital fund for the Association. These funds shall be maintained for the use and benefit of the Association. Co-Owners are not entitled to reimbursement of the working capital fund from the Association upon the sale of their Unit.

(d) Establishment of the annual budget. The budget shall be distributed by the Board to all Members of the Association at least thirty (30) days in advance of its effective date and at least thirty (30) days in advance of the Association's Annual Meeting. Notwithstanding the responsibilities and authority of the Board, the budget may be modified by the Association at the Annual Meeting or a Special Meeting of the Association by a two-thirds (2/3) vote of the Co-Owners present at such meeting, in person or by proxy.

(e) As a part of the annual budget described in (d) above, establishment and maintenance on behalf of the Association of an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Elements.

(f) Employment, dismissal and control of the Management Agent (defined in Section 4 of this Article IV) and any personnel necessary for the maintenance and operation of the Common Elements.

(g) Collection of all assessments and fees from the Co-Owners.

(h) Performing repairs caused by any natural disaster or manmade damage using funds from the reserve account and any special assessment, or causing the same to be done.

(i) Obtaining of insurance for the Property, pursuant to the provisions hereof and the provisions of the Master Deed, or

causing the same to be done as set forth in ARTICLE VIII hereof.

(j) Grant or relocate easements which are not inconsistent with the owners' full use and enjoyment of the common properties.

(k) Making of, or causing to be made, repairs, additions and improvement to or alterations of, the Property and repairs to and restoration of the Property in accordance with the other provisions of these By-Laws.

(l) To make available, for inspection, upon request during normal working hours or under other reasonable circumstances, to Unit Owners, the holders, insurers or guarantors of any first mortgage on any Unit, current copies of the Master Deed, By-Laws, other Rules or Regulations pertaining to the Association, and the books, records and financial statements of the Association.

(m) To adopt and implement a policy regarding resale of Units within the regime, the purpose of said policy to assist owners to provide timely information to prospective buyers while not burdening the Association financially.

Section 4. MANAGEMENT AGENT. The initial Management Agent shall be Allied Management Group, 1036 Coastal Building,, William Hilton Parkway, Hilton Head Island, South Carolina 29928, an independent professional management company selected by the Declarant but not affiliated with the Declarant, whose contract extends for a period of one (1) year from the establishment of the Regime. The Declarant at its option shall have the right to select the Management Agent until all Futures Phase have been submitted to the Regime. Thereafter, the Board may employ a Management Agent at the compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to the duties listed in Section 3 of this Article. Any such management contracts shall be for a reasonable term and shall contain reasonable provisions regarding the right of the Association to terminate said contracts. Since an independent professional management company is being employed from the outset, and if at any time during the management of the Property by this or some other professional Management entity, any holders, insurers or guarantors of mortgages on Units within the Regime shall require that professional management of Regime/Association matters be maintained, and the Association is so advised in writing, any decision

thereafter by the Association to establish self management by the Association shall require the prior consent of Unit Owners holding sixty-seven (67%) percent of the votes in the Association and the approval of holders holding mortgages on Units within the Regime which have at least fifty-one (51%) percent of the votes of all Units in the Regime subject to holder mortgages.

Section 5. BOARD OF DIRECTORS. The first Board of Directors consisting of three (3) members shall be designated by the Declarant at any time after creation of the Regime as determined by Declarant. These appointments will be temporary and will continue only until the first annual meeting of the Unit Owners held pursuant to the provisions of these By-Laws. At the first Annual Meeting of the Association, the Association shall expand the Board to five (5) members and the initial term of office for two (2) members of the Board shall be fixed at three (3) years. The term of office of two (2) members of the Board shall be fixed at two (2) years, and the term of office of one (1) member of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the Board, his successor shall be elected to serve a term of three (3) years. The members of the Board shall hold office until their successors have been elected and hold their first meeting. Any an all of said Board members shall be subject to replacement, in the event of resignation or death, in the manner set forth in Section 6 of this Article. During the period in which the Declarant's designees constitute a majority of the Board of Directors, the Board of Directors shall not enter into any contract having a term which extends beyond the term of the Management Agreement with the Management Agent described in Section 4 above.

Section 6. VACANCIES. After the first Annual Meeting, vacancies in the Board of Directors caused by reason other than the removal of a member of the Board by a vote of the Association shall be filled by vote of the majority of the remaining members, even though they constitute less than a quorum; and each person so elected shall be a member of the Board until a successor is elected at the next meeting of the Association.

Section 7. REMOVAL OF MEMBERS OF THE BOARD. After the firs Annual Meeting, at any annual or special meeting of the Association duly called, any one or more of the members of the Board may be removed with or without cause by a majority of Co-Owners and a successor may then and there by elected to fill the vacancy thus created. Any member of the Board whose removal has been proposed to the Association shall be given an opportunity to be heard at the meeting. No Board member shall continue to serve on the Board if during the term of office, he shall cease to be a Unit

Owners at such time, said Board member shall either resign or be removed by the Board (except as provided in Section 5 regarding Declarant's appointee). Notwithstanding any other provision contained herein, any member of the Board who was elected by the Co-Owners shall only be removed by the Co-Owners at a meeting where the purpose or one of the purposes, as stated in the Notice of Meeting, is the removal of said Board member.

Section 8. ORGANIZATIONAL MEETING. The first meeting of a newly elected Board shall be held within thirty (3) days of election at such place as shall be fixed by the Board at the meeting at which such Board members were elected by the Association, and no notice shall be necessary to the newly elected Board members in order to legally constitute such a meeting, providing a majority of the Board shall be present.

Section 9. REGULAR MEETINGS. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least one (1) such meeting shall be held each fiscal year. Notice of regular meeting of the Board shall be given by the Secretary-Treasurer or other designated person, to each Board member, personally or by mail, express delivery service such as Federal Express, telephone, telefax or telegraph, at least ten (10) days prior to the day named for such meeting. Telephonic meetings are expressly authorized based upon the likelihood that Board members will be from different geographical locations.

Section 10. SPECIAL MEETINGS. Special meetings of the Board may be called by the President on three (3) days notice to each Board member, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided), and the purpose or purposes of the meeting. Special meetings of the Board shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least two (2) Board members.

Section 11. WAIVER OF NOTICE. Before or at any meeting of the Board, any member of the Board may, in writing, signed by that Board member, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice and shall be filed with the minutes of the meeting in the corporate records. Attendance at or participation by a Board member at any meeting of the Board shall be a waiver of notice by him of the time, place an purpose thereof unless the Board member, upon arriving at the meeting or prior to a vote on a matter not noticed in conformity with these By-Laws, objects to lack of notice and does not thereafter vote for or assents to the objected action.

If all members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. ACTION WITHOUT A MEETING. Actions required or permitted by law, the Articles or these By-Laws may be taken without a meeting if the action is taken by all members of the Board and evidence by one or more consents describing the action taken, signed by each Director, and included in the Minutes filed in the Corporate records reflecting the action taken.

Section 13. BOARD QUORUM. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business, and acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. Any or all Board members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other simultaneously during the meeting, and directors so participating by this means shall be deemed to be present in person at the meeting. If, at any meeting of the Board, there is less than a quorum present, the majority of the Board members present may adjourn the meeting to another time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. Unless subsequently approved by Co-Owners by an Amendment to these By-Laws, proxies shall not be available for either a Board quorum or for voting purposes.

Section 14. FIDELITY BONDS. The Board may require that any and all officers and employees of the Regime handling or responsible for Regime funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Regime.

Section 15. COMPENSATION. No member of the Board of Directors shall receive any compensation from the Regime for acting as such. However, any Director may be reimbursed for his actual expenses incurred in the performances of his duties.

Section 16. LIABILITY OF THE BOARD OF DIRECTORS. Except as required under the laws of the State of South Carolina, the members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. To the extent permitted under the laws of the State of

South Carolina, the Unit Owners shall indemnify and hold harmless each of the Members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. It is understood an permissible for the original Board of Directors, who are members of or employed by Declarant to contract with Declarant and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors, shall be limited to such proportions of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements. Every agreement made by the Board of Directors or by the Managing Agent or by the Manager on behalf of the Association shall provide that the members of the Board of Directors, or the Managing Agent, or the Manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owners' liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

## ARTICLE V

## OFFICERS

Section 1. DESIGNATION. The principal officers of the Association shall be a President, a Vice President, and a Secretary-Treasurer all whom shall be elected by and from the Board. The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as, in their judgement may be necessary. One person may hold more than one of the aforementioned offices.

Section 2. ELECTION OF OFFICERS. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. REMOVAL OF OFFICERS. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. No officer shall

continue to serve as such if, during his term of office, he shall cease to be a Unit Owner.

Section 4. VACANCIES. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 5. PRESIDENT. The President shall be the Chief Executive Officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of a Regime or incorporated Association, including but not limited to the power to appoint committees from among the Co-Owners from time to time as he may, in his discretion, feel appropriate to assist in the conduct of the affairs of the Association. The President shall sign all leases, mortgages, deeds and other written contracts and instruments and shall co-sign all checks and promissory notes, and perform all of the duties which may be delegated to him from time to time by the Board of Directors.

Section 6. VICE PRESIDENT. The Vice President shall take the place of the President and perform his duties when the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

Section 7. SECRETARY-TREASURER. The Secretary-Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board may direct and shall authenticate the records of the Association; and he shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board. He shall, in general, perform all the duties incident to the office of the Secretary and Treasurer.

## ARTICLE VI

## NOTICES

Section 1. DEFINITION. Whenever under the provisions of the Master Deed or of these By-Laws notice is required to be given to the Board of Directors, the Management Agent or Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, by first class, certified or registered mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to the Board of Directors, such Manager or such Unit Owners at such address as appears on the books of the Association. Notice shall be deemed given as of the date of mailing.

Section 2. SERVICE OF NOTICE-WAIVER. Whenever any notice is required to be given under the provisions of the Master Deed, or law, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice and delivered to the President or Secretary-Treasurer of the Association, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE VII

## OBLIGATIONS OF THE CO-OWNERS

Section 1. ASSESSMENTS FOR COMMON EXPENSES. All Co-Owners shall be obligated to pay the periodic assessments imposed by the Association to meet all Association Common Expenses, which shall include, among other things, liability insurance policy premiums and an insurance policy premium to cover repair and reconstruction work in case of hurricane, fire, earthquake, and other hazards (hereinafter sometimes referred to as "Common Charges," "Common Expenses," and "assessments"). The Common Expenses may also include such amounts as the Board may deem proper for the operation and maintenance of the Property and any authorized additions thereto. Such may include without limitation, any amount for general working capital, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the Common Expenses for any prior year. No less than thirty (30) days prior to the Annual Meeting, the Board shall furnish all Unit Owners with a copy of the budget for the next fiscal year and shall likewise advise them of the amount of the Common Charges payable by each of them respectively, as determined by the Board as aforesaid. Declarant will be liable for the amount of any assessment against completed Units dedicated to the Regime which have

not been sold and Declarant shall have all voting rights attendant to the ownership of said Unit until said Units are sold. Until all Future Phases are dedicated to the Regime by Declarant, Declarant may elect to pay the Common Expense Assessments on the Units it owns or in the alternative, fund any deficit in the annual budget approved by the Board of Directors in an amount equal to the difference between the approved budget and the revenues collected from the Co-owners other than the Declarant. The Declarant shall not be obligated to fund capital reserve budget allocations for Units owned by the Declarant whichever option it selects. Payment of the periodic assessments shall be in equal monthly or quarterly (as determined by the Board) installments on or before the first day of each month or quarter, as appropriate, or in such other reasonable manner as the Board shall designate.

The transfer of ownership of an individual Unit within the Association shall carry with it the proportionate equity of that Unit's ownership in the Association operating escrow, working capital or reserve accounts set aside to provide a contingency fund for the maintenance and repair of the Association Property. Transfer of ownership and resignation or termination of a Co-Owner of the Association shall not relieve the Co-Owner from any obligations the Co-Owner may have to the Association as a result of obligations incurred or commitments made before resignation or termination.

Section 2. ASSESSMENTS TO REMAIN IN EFFECT UNTIL NEW ASSESSMENTS MADE. The omission by the Board of Directors before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of the Master Deed and By-Laws or a release of any Owner from the obligation to pay the assessments, or an installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed by the Board at a duly held Board meeting. Amendments to this paragraph shall be effective upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

Section 3. RECORDS. The Management Agent or Board of Directors shall keep detailed records of the receipts and expenditures affecting the General and Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owner during reasonable business hours.

Section 4. DEFAULT IN PAYMENT OF COMMON CHARGES. The Board shall take prompt action to collect any common charge due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default by any Unit Owner in paying to the Board the common charges as determined by the Board, such Unit Owner shall be obligated to pay a late charge of one and one-half (1½%) percent of the delinquent amount per month on such unpaid Common Charge from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid Common Charges. The Board shall have the right and duty to attempt to recover such Common Charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees in action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by Section 27-31-210, Code of Laws of South Carolina, 1976. With regard to the subordinate nature of such liens as it relates to mortgages recorded prior to the recording of any evidence of such lien, the provisions of Section 27-31-210, Code of Laws of South Carolina, 1976, as amended, shall be controlling. In addition to the foregoing, during the period a Unit Owner remains in default, the Board may suspend said Owner from use of amenities to include the tennis courts, clubhouse and swimming pool.

Section 5. STATEMENT OF COMMON CHARGES. The Board shall, for a reasonable fee, promptly provide any purchaser, Unit Owner, mortgagee or prospective mortgagee of a Unit so requesting the same in writing, with a written statement of all unpaid Common Charges due from the Owner of that Unit and the purchaser's liability therefor shall be limited to the amount as set forth in the statement. Any mortgagee holding a lien on a Unit may pay any unpaid Common Charges payable with respect to such Unit and upon such payment such mortgagee shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance. Any mortgagee holding mortgages on more than five (5) Units within the Association shall be entitled, upon request, to receive a statement of account on the Units securing all of said mortgages once each calendar year without any fee or charge.

Section 6. STATEMENT UPON RESALE. Any Unit may be conveyed by an Owner free of any restrictions except for those set forth herein, except that no Owner shall convey, sell, or lease his Unit unless and until all unpaid Association expenses assessed against the Unit shall have been paid as directed by the Board of Directors. Such unpaid Association expenses, however, may be paid out of the proceeds from the sale of a Unit or by the

grantee. Upon the written request of an Owner or Owner' s prospective buyer, the Board or the Management Agent shall furnish a written statement of the unpaid charges due form such Owner which shall be conclusive evidence of the payment of amount assessed prior to the date of the statement, but unlisted thereon. Further, the Association shall undertake to provide copies of these By-Laws or other materials described by the Association upon the written request of a Co-Owner in connection with the sale or lease of their Unit. A reasonable charge may be made by the Board for the issuance of statements and other materials.

The provisions of this Section shall not apply to the acquisition of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. In such event, the unpaid assessments against the Unit which were assessed and became due prior to the acquisition of title to such Unit by such mortgagee shall be deemed waived by the Association and shall be charge to all other Co-Owners of the Association as a Common Expense. Such a provision shall not however apply to any assessments which are assessed and become due after the acquisition of title to such Unit by the mortgagee and to any purchaser to such mortgagee.

Section 7. MAINTENANCE AND REPAIR

(a) Each Co-Owner must perform work within his own Unit, which, if omitted, would affect the Property in its entirety or in a part belonging to another Co-Owner, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(b) All the repairs of the Units and of those items described in Section 5.06 of the Master Deed, and of all other accessories and Limited Common Elements appertaining or belonging to the Unit shall be at the expense of the Co-Owner.

(c) All maintenance, repair and replacement to the Common Elements as defined in the Master Deed, unless otherwise provided in the Master Deed, shall be made by the Board or its agent and shall be charged to all the Unit Owners as a Common Expense, excepting to the extent that the same may be necessitated by the negligence, misuse or neglect of the Unit Owner, in which such case the expense shall be charged to such Unit Owner.

Section 8. UTILITIES.

(a) WATER CHARGES AND SEWER RENTS. Water shall be supplied and sewer services shall be supplied to all Units and the Common Elements through one or more meters by the Hilton Head Public Service District Number 1, or its successors, (the "District") and each Owner shall be required to pay for all charges for water consumed and sewer services in his Unit and to the Common Elements promptly after the bill for the same have been rendered. The Board and each Owner shall conform to the billing procedures established by the District, and shall pay the excess usage fees on an equal Unit by Unit basis if that is the billing methodology in effect for the District.

(b) ELECTRICITY. Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for electricity consumed or used in his Unit. The electricity serving the Common Elements shall be separately metered, and the Board shall pay all bills for electricity consumed in such portions of the Common Elements, as a Common Expense.

(c) CABLE TELEVISION/SATELLITE COMMUNICATIONS. Except with the prior written approval of the Board of Directors, its Management Agent, or a Board designated Committee, which approval shall not be unreasonably withheld, no outside television or radio aerial or antenna, satellite dish, or other device, for the reception or transmission of radio or television, or other electronic signals, shall be erected or maintained on any Unit or upon the exterior of any Unit, Common Element or the Limited Common Elements appurtenant to any Unit. The Board of Directors or its Management Agent or its designated Committee, may approve any applications for the installation if the installation is for the personal use of the Owner, and either (a) the device shall not be visible from neighboring Units, streets or common area; or (b) the Unit Owner, prior to installation, has received the written consent of all of the Owners of all Units who would have views of the installation from their Units; (c) and all other private and public approvals, as applicable, have been obtained. In approving such applications, the Board of Directors, its Management Agent, or its designated Committee shall have the power to require such specific forms of placement of the device as it deems appropriate in order to effectuate the intent of this Section 8(c) that such devices be as inoffensive as possible to other Owners and Residents. All installations must comply with local zoning requirements and building codes, of applicable. Any Owner requesting such a device may be required to pay a reasonable charge to the

Association for the reviewing of such Application by the board, its Management Agent, or its designated Committee. Further, the Owner shall be required to pay the installation costs for installing such device and to pay all bills associated with such Owner's use of the device.

The Board may approve the use of such devices to serve the Common Elements and the Board shall pay all costs of installation and bills for use of such devices in such portions of the Common Elements as a Common Expense.

Section 9. USE OF UNITS - INTERNAL OR EXTERNAL CHANGES

(a) A Co-Owner may make internal structural modifications or alterations in his Unit or installations located therein subject to Sections 5.10 and 5.11 of the Master Deed. As provided in Section 5.10 of the Master Deed, the Association shall have the obligation to answer within sixty (60) days from the actual receipt of such notice.

(b) A Co-Owner shall make no changes or additions whatsoever to the exterior of the Unit, any stairs or decks, appurtenant thereto, or to any of the Limited Common Elements without prior written approval of the Board. The Board may also approve minor additions to landscaping and other exterior minor changes or additions of this nature which in its sole discretion will not interfere or conflict with the overall scheme and appearance of the common areas. If any changes as described herein are approved by the Board, the Co-Owner requesting such change shall be totally financially responsible for the cost of such change and the incurred costs, if applicable, of the maintenance and repair of such change. The Board, through its agent, may include this additional maintenance cost in the periodic assessment for the Unit in question.

Section 10. USE OF COMMON ELEMENTS. Except as authorized by Section 9(b) a Co-Owner shall not place or cause to be placed in the passages, parking areas, roads, or other common areas any furniture, packages or obstructions of any kind. Such areas shall be held in common for the enjoyment of the Co-Owners and shall be used for no other purpose than for normal transit through or use of them and for normal vehicular parking.

Section 11. RIGHT OF ENTRY.

(a) A Co-Owner shall grant the right of entry to the Management Agent or to any person authorized by the Board in case of any emergency originating in or threatening his Unit, whether the Co-Owner is present at the time or not.

(b) A Co-Owner shall permit other Co-Owners, or their representatives, when so required, to enter his Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the Co-Owner. In case of emergency, the right of entry shall be immediate.

Section 12. RULES OF CONDUCT. In order to assure the peaceful and orderly use and enjoyment of the Units and Common Elements of the Association, the Co-Owners may from time to time adopt, modify, and revoke in whole or in part by a vote of the Members present in person or represented by proxy whose aggregate interest in the Common Elements constitutes two-thirds of the total interest, at any meeting duly called for the purpose, such reasonable rules and regulations, to be called Rules of Conduct, governing the conduct of persons on said property of the Association as it may deem necessary. Such Rules of Conduct, upon adoption, and every Amendment, modification, and revocation thereof, shall be delivered promptly to each Owner by posting same with postage prepaid addresses to the Owner at the last registered address of the Owner and shall be binding upon all Unit Owners and the occupants of Units in the Regime. The following shall constitute the initial Rules of Conduct for the Regime:

(a) Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, televisions and amplifiers that may disturb other residents.

(b) No Co-Owner shall:

(1) Post any advertisements or posters of any kind in or on the Property except as authorized by the Association;

(2) Hang garments, towels, rugs, or similar objects from the windows or balconies or from any of the facades of the Property;

(3) Clean dust mops, rugs or similar objects from the windows or balconies by beating on the exterior part of the Property;

(4) Throw trash or garbage outside the disposal installation provided for such purpose in the service areas;

(5) Act so as to interfere reasonably with the peace and enjoyment of the residents of the other Units in the Property;

(6) Maintain any pets which cause distress to Co-Owners through barking, biting, scratching or damaging of property or persons. No more than two (2) pets may be maintained in any Unit unless otherwise approved by the Board. Aggressive breeds as determined by the Board may be prohibited.

(7) Operate or utilize any charcoal or gas grills, either permanent or portable, on the decks or balconies or in the close proximity of the Units, it being understood that such use is a violation of local fire ordinances.

(8) Operate, park, or store on the Property any recreational vehicles, motor homes, motorcycles, mopeds, trucks, trailers, commercial vans or boats.

(9) Maintain on the property more than two (2) vehicles unless otherwise approved by the Board, all said vehicles being operational and properly registered under South Carolina law.

(c) No Co-Owner, resident, or lessee shall install wiring for electrical or telephone installations, televisions or radio antenna, air conditioning fixtures, or similar objects outside of his dwelling or which protrudes through the walls or the roof of his Unit except as authorized by the Board and where appropriate Subject to Section 8(c) of this Article VII.

(d) Until the Board is elected by the Co-Owners, the Declarant may amend, delete or add to the Rules of Conduct at its sole discretion. Thereafter

the Board shall have this right. Any amendment to the Rules of Conduct shall be effective upon distribution in writing to the Co-Owners.

Section 13. ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS. The violation of any rules or regulations adopted by the Board or the breach of any By-Laws contained herein, or the breach of any provisions of the Master Deed, shall give the Board the right, in addition to any other rights set forth in these By-Laws: (a) to enter the Unit in which or as to which such violations or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition, that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach and to recover the cost of such enforcement, including attorney's fees, and until such expense is recovered it shall be a lien upon said Unit which lien shall be inferior to the lien of all prior mortgages; or (c) to impose fines for violations thereof in amounts determined by the Board, said five to be added to the assessments payable hereunder by the defaulting Unit Owner.

Section 14. FISCAL YEAR. The fiscal year for the Association shall begin on the 1st day of April of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 15. LITIGATION. No judicial proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Owners and as long as Declarant owns not less than ten (10%) percent of the Units. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving taxation, including, e.g., challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. In the event any litigation is instituted, then the Association shall access all Owners for the costs of litigation, including, without limitation, attorney's fees incurred, and funds from regular assessments shall not be used for any such claim or litigation; provided, however, that this 75%

threshold requirements may be eliminated by the Board at any time after January 1, 2010.

ARTICLE VIII

INSURANCE

The Board of Directors shall be required to obtain and maintain, as set forth below, in forms and amounts as hereinafter prescribed and which are also satisfactory to any mortgagee holding mortgages on five or more Units, the following insurance, without prejudice of the right of the Co-Owner to obtain additional individual insurance at his own expense:

Section 1. HAZARD INSURANCE. The Board of Directors shall insure the Property, as it may be constituted from time to time, against loss or damage due to fire, windstorm, lightning, and flood, with extended coverage, in an amount not less than the maximum insurable replacement value of the Property as determined by the Board upon recommendation made by the Regime's insurer, it being understood that the Board, at its discretion may have an appraisal made of the Property for this purpose, or in the amount reasonably obtainable as it relates to the flood coverage. The Board of Directors shall have the Authority also to insure against other hazards and risks as it may deem desirable for protection of the Property. All hazard insurance shall cover the entire Property, exclusive only of the contents and furnishings of the individual Units.

(a) All hazard insurance policies obtained by the Board of Directors shall designate the Board of Directors as the named insured as Insurance Trustee for the benefit of all the Owners and their mortgagees collectively, as their respective interests may appear. In the event of loss or damage, all insurance proceeds shall be paid jointly to the Board of Directors as Insurance Trustee under the provisions of this Master Deed and to any mortgagee holding mortgages on five or more Units, it being understood and acknowledged that the distribution of such proceeds shall be controlled by the Horizontal Property Act and the provisions of this Master Deed.

(b) All hazard insurance policies obtained by the Board of Directors shall provide for the issuance of Certificates of Insurance to each Unit Owner. Each Certificate shall evidence the issuance of the Master Policy and shall indicate the amount of insurance covering the

building within which the respective Unit is located. If a Unit is mortgaged, a Certificate of Insurance shall be issued to the mortgagee bearing a standard mortgagee endorsement, if requested.

(c) If obtainable, all hazard insurance policies upon the Property shall include provisions waiving (i) any rights of the insurer to subrogation against the Association, its agents and employees, and against the individual Owners and their servants, agents, and guests; and (ii) any rights of the insurer to contribution from hazard insurance purchased by the Unit Owner upon the contents and furnishings of their Units.

(d) Each mortgagee of which the Board has notice as herein provided shall be entitled to receive upon request, a statement of the replacement value as determined herein this Section 1. If any such mortgagee disagrees with the values assigned to the Property by such determination and presents an appraisal prepared at such mortgagee's expense showing higher values which has been performed by a qualified appraiser, then the Board shall either adopt the higher value or shall cause a reappraisal to be made by a qualified appraiser approved by the Board and by the appraisers who conducted the prior appraisals and the findings of the third appraiser shall be conclusive to determining such value for insurance purposes.

(e) Each hazard insurance policy shall contain a loss payee provision designating the interest of the various mortgagees as to the various Units within the Regime which are covered by the Master Policy. Such policies shall also provide that they shall not be cancelled without giving thirty (30) days prior written notice to all such mortgagees about which the insurer has been given written notice.

Section 2. PUBLIC LIABILITY INSURANCE. The Board of Directors shall obtain comprehensive public liability insurance with limits and provisions as it deems desirable and as may be obtainable. All such policies shall contain severability of interest clauses or endorsements extending coverage to liabilities of the Association to an individual Unit Owner and to liabilities of one Unit Owner to another Unit Owner.

Section 3. WORKMEN'S COMPENSATION INSURANCE. The Board of Directors, as necessary, shall obtain Workmen's Compensation Insurance to meet the requirements of law.

Section 4. PREMIUMS. All premiums upon insurance policies purchased by the Board of Directors shall be assessed as Common Expenses to be paid by the Unit Owners through periodic assessment as herein provided.

Section 5. ADJUSTMENT. Each Unit Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association, subject to the rights of mortgagees of such Unit Owners.

Section 6. INSURANCE BY UNIT OWNERS. Each Unit Owner shall be responsible for obtaining, at his sole expense, insurance covering the personal property, wall coverings, decorations, and furnishings within his own Unit and the additions and improvements made by him to the Unit. Each Unit shall be responsible for obtaining, at his sole expense, insurance covering the personal property, wall coverings, decorations, and furnishings within his own Unit and the additions and improvements made by him to the Unit. Each Unit Owner shall also be responsible for obtaining at his own expense, insurance covering his liability for the safety of the premises within his Unit. All such insurance policies shall included, however, provisions waiving (i) any right of the insurer to subrogation claims against the Association and against individual Unit Owners, as well as their agents, servants, employees, and guests; and (ii) any right of the insurer to contribution or proration because of the master hazard policy.

As set forth in Section 5.06 of the Master Deed, the Co-Owner is responsible for any damage to his Unit or another Unit caused by his negligent action or inaction. If a claim is made against the Association's policy as a result of such negligence by a Co-Owner, then the Board may make a determination to assess any non-reimbursable expenses, such as the deductible, attorney's fees, and the like, against the negligent Co-Owner, and such assessment shall be collectible just as any other assessment described in Section 1 of Article VII.

Section 7. DISTINCTION ON OWNER'S COVERAGE AND REGIME COVERAGE. As reflected above, both the Association and the Co-Owner have certain insurers' responsibilities. The Board, acting through the Management Agent, shall have the discretion to balance competing interests of

said insurers, should such an occasion arise. Each Co-Owner shall, upon request, provide to the Management Agent, the name and address of his insurer.

Section 8. SUBSTITUTION OF INSURANCE TRUSTEE. The Board of Directors, in its discretion, may decline to serve as Insurance Trustee and may appoint in its place any financial institution which is qualified and willing to act as Trustee and which also has offices in Beaufort County, South Carolina. Any substitute Insurance Trustee appointed by the Board of Directors shall succeed to all of the powers and responsibilities vested in the Board as Insurance Trustee under the terms of this Master Deed.

## ARTICLE IX

## RECONSTRUCTION AND REPAIR

In the event of casualty loss or damage to the Property, the Board of Directors shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of this ARTICLE IX. Reconstruction or repair shall be mandatory unless otherwise provided in the Act, as amended from time to time, or unless seventy-five (75%) percent or more of the Unit Owners vote, at a duly authorized meeting, not to reconstruct. In situations where reconstruction or repair is not to be undertaken, the insurance indemnity received by the Board of Directors shall be distributed pro-rate to the Unit Owners and their mortgagees jointly in proportion to their respective statutory interests. The remaining portion of the Property shall be subject to an action for partition at the suit of any Unit Owner or lien or as if owned in common. In the event of suit for partition, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered one fund and distributed pro-rate among all Unit Owners and their mortgagees jointly in proportion to their respective statutory interests. In the situation where reconstruction or repair is undertaken, then such Property shall be repaired in the following manner:

(1) Any reconstruction or repair must follow substantially the original plans and specifications of the Property (attached as Exhibit "C-1" to the Master Deed) unless the Unit Owners holding seventy-five percent (75%) or more of the total interest in Common Elements and their mortgagees, if any, vote to adopt different plans and specifications and all Owners whose Units are being reconstructed or repaired unanimously consent to the adoption of such different plans and specifications. The approval of such plans by Declarant as provided

by the covenants set forth in Section 16 of the Master Deed shall likewise be required.

(2) The Board of Directors shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include such professional fees and premiums for bids as the Board of Directors deems necessary.

(3) If the insurance proceeds paid to the Board are insufficient to cover the cost of reconstruction , the Association may use funds out of its reserve or replacement accounts, and, if still not sufficient, the Association shall levy and collect an assessment against all Owners in an Amount which shall provide the funds required to pay for the repair, replacement or reconstruction.

(4) The insurance proceeds received by the Board of Directors and the mortgagees, and any special assessments collected to cover a deficiency in insurance shall constitute a construction fund from which the Board of Director and the mortgagees, shall disburse payment of the costs of reconstruction and repair. The first disbursements from the construction fund shall be insurance proceeds; and if there is a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to the Unit Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall be retained by the Association.

## ARTICLE X

## INSURANCE TRUST

In the event of casualty loss to the Property, all insurance proceeds indemnifying the loss or damage shall be paid jointly to the Board of Directors as Insurance Trustee and to any mortgagee holding mortgages on five or more Units. The Board of Directors, acting as Insurance Trustee, shall receive and hold all insurance proceeds in trust for the purposes stated in this ARTICLE X and the benefit of the Association, the Unit Owners, and their respective mortgagees in the following share:

(1) Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units.

(2) Insurance proceeds paid on account of loss or damage to less than all of the Units, when the damage is to be restored, shall be held for the benefit of Unit Owners of the damaged Units and their respective mortgagees in proportion to the costs of repairing each damaged Unit.

(3) Insurance proceeds paid when the Property is not to be restored shall be held for the benefit of all Owners, and their respective mortgagees the share of each being equal to the undivided share or interest in Common Elements appurtenant to the applicable Unit.

(4) In the event a Certificate of Insurance has been issued to a Unit Owner bearing a mortgagee endorsement, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgage shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except for insurance proceeds required by the loan documents to be paid jointly to the Unit Owners and their respective mortgagees pursuant to the provisions of the Master Deed.

## ARTICLE XI

## MORTGAGES

Section 1. NOTICE TO BOARD. A Co-Owner who mortgages his Unit shall notify the Board through the Management Agent, if any, or the President if there is no Management Agent, of the name and address of his Mortgagee; and the Association shall maintain such information in a book entitled "Mortgages on Units" or in the individual Unit file.

Section 2. NOTICE TO MORTGAGEE. The Board shall give reasonable advance written notice of the following events to all mortgagees from which it receives a written request (the term "mortgagee" to include the holder, insurer or guarantor with respect to any such mortgage). Such written request must identify the name and address of the holder, insurer or guarantor and the Unit number and address:

(a) Any change in the Condominium documents;

(b) Any unpaid assessments due the Association for over ninety (90) days from the Co-Owner(s) (mortgagor(s)) of the Unit;

(c) Any default by the Co-Owner (mortgagor) of a Unit in the performance of such Co-Owners' obligations under the Master Deed and associated Condominium documents when such default is not cured within sixty (60) days.

(d) Any notice of special or annual meetings of the Association.

(e) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(f) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(g) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in these By-Laws or in the Master Deed.

(h) Any proposed change from professional management of the Property to self management of the Property by the Association.

Section 3. STATEMENTS TO MORTGAGEE. Upon written request to the Association from any Mortgagee of which it has notice as herein provided, the Board, Manager or Management Agent shall supply such Mortgagee with a reasonably current financial statement of the Association within a reasonable time of such request. Moreover, if no audited current financial statements are available, the holders of fifty-one (51%) percent or more of first mortgages shall be entitled to have such an audited statement prepared at their expense.

## ARTICLE XII

## RESTRICTIONS UPON LEASES OF UNITS

Section 1. LEASES. No Unit Owner may lease his Unit or any interest therein except by complying with the provisions of Section 2 of this Article.

Section 2. PROVISIONS IN LEASE. Any lease of any Unit within the Association shall be for a use consistent with the use provisions of these By-Laws and shall provide that the terms and conditions of the Master Deed and all exhibits shall be complied with by the tenant and that the Association shall have the power to terminate such lease, and bring summary proceedings to evict the tenant in the name of the landlord thereunder in the event of default by the tenant in the performance of said lease, or failure by the tenant to perform an obligation in the Master Deed, By-Laws, or Rules and Regulations.

## ARTICLE XIII

## AMENDMENTS

Section 1. REQUIREMENTS FOR AMENDMENTS. Except as provided in the Master Deed for an Amendment or Amendments to admit further Phases to the Regime, if appropriate, and except where a greater percentage is expressly required, either herein, or by law, these By-Laws may be materially amended only with the consent of the Owners of Units to which at least sixty-seven (67%) percent of the votes in the Association are allocated and the approval of eligible mortgagees from which the Association has received written notice holding mortgages on Units which have at least fifty-one (51%) percent of the votes of Units subject to such mortgages, as it relates to modification of any material provisions of these By-Laws, the Articles of Incorporation or other governing document, which establish, provide for, govern or regulate any of the following:

a Voting;

b Assessments, assessment liens or subordination of such liens;

c Reserves for maintenance, repair and replacement of the Common Elements;

d Insurance or Fidelity Bonds;

e Rights to use of the Common Elements;

f Responsibility for maintenance and repair of the several portions of the Property;

g Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project except as expressly provided in the Master Deed;

h Boundaries of any Unit;

i The interests in the General or Limited Common Elements;

j Convertibility of Units into common areas or of common areas into Units;

k Leasing of Units;

l Imposition of any additional or further right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;

m Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Units.

Notwithstanding the foregoing, so long as the Declarant remains the Owner of more than one Unit in this Regime, these By-Laws shall not be amended so as to adversely affect the Declarant without the Declarant's consent.

Section 2. MATERIALITY OF AMENDMENTS; MORTGAGEE APPROVAL PROCEDURE.

An addition or Amendment to the By-Laws or Master Deed shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible mortgage holder who receives a written request to approve additions or Amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request and proof of mailing such request in affidavit form, together with an affidavit of non-receipt, shall be sufficient evidence of such approval.

## ARTICLE XIV

## MISCELLANEOUS MATTERS

Section 1. GENDER; NUMBER. The use of the masculine gender in these By-Laws includes the feminine gender, and when the context requires the use of the singular includes the plural.

Section 2. DEFINITIONS. The definitions contained in Section 4 and elsewhere in the Master Deed also apply to these By-Laws.

Section 3. EXECUTION OF DOCUMENTS. The President or Vice President and Secretary or Assistant Secretary are responsible for preparing, executing, filing and recording Amendments to the Master Deed and By-Laws, and shall be authorized to execute any other document which the Association may from time to time be required to execute.

Section 4. NOTICES. All notices required by these By-Laws shall be hand delivered or sent by mail to the Association at the address of the President; to Unit Owners at the address of the Unit or at such other address as may have been designated by such Unit Owner from time to time in writing to the Association. All notices from or to the Association shall be deemed to have been given when mailed or delivered, except notice of changes of address which shall be deemed to have been given when received.

Section 5. CAPTIONS. The captions contained in these By-Laws are inserted as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision of the By-Laws.

Section 6. INVALIDITY. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 7. CONFLICT. These By-laws are set forth to comply with the requirements of the Horizontal Property Act of South Carolina, as amended, and the South Carolina Non-Profit Corporation Act of 1994, and may be amended from time to time. In the event of any conflict between these By-Laws and the provisions of such statutes or the Master Deed, the provisions of such statutes or the Master Deed, as the case may be, shall control.

Section 8. WAIVER. No restriction, condition, obligation, or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.

**EXHIBIT "E-1" TO MASTER DEED**
**TO MASTER DEED OF THE EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME**

**STATE OF SOUTH CAROLINA )**
**) JOINDER OF MORTGAGEE**
**COUNTY OF BEAUFORT )**

**WHEREAS**, Regions Bank ("Lender"), is the owner and holder of a construction loan mortgages upon certain real property located on Hilton Head Island, South Carolina, described on **Exhibit "A"** to said Master Deed of The Edgewater on Broad Creek Horizontal Property Regime, said property being known and described therein as the Property; and

**WHEREAS**, said construction loan documentation is evidenced by a mortgage in the original principal sum of Twelve Million Nine Hundred Thousand and NO/100 ($12,900,000.00) DOLLARS, said mortgage dated October 19, 2001 and recorded in the ROD Office for Beaufort County, South Carolina, on October 26, 2001, in Book 1488 at Page 2003, et seq, and a mortgage in the original principal sum of Five Hundred Thousand and NO/100 ($500,000.00) DOLLARS, dated _____, 2002 and recorded on _____ in said ROD Office in Book _____ at Page _____.

**NOW, KNOW ALL MEN BY THESE PRESENTS,** that the Lender joins in the Master Deed of The Edgewater on Broad Creek Horizontal Property Regime and the provisions of the Horizontal Property Act of South Carolina for the sole purpose of consenting to the creation by the Declarant of The Edgewater on Broad Creek Horizontal Property Regime. The Lender makes no representations or warranties as to the validity of the documents creating the initial Phase to the Regime nor the development and physical construction of the Buildings and Units within the Regime.

This Joinder of Mortgagee shall in no way affect or diminish the lien of the existing mortgage on the remaining portions of the property described in the aforementioned mortgage described hereinabove.

**WITNESSES:**

**REGIONS BANK**
By: Richard Harmon
**RICHARD HARMON**
Its: Vice President

**STATE OF SOUTH CAROLINA** )
**COUNTY OF** Aiken )

**PROBATE**

**PERSONALLY** appeared before me Tamika Tyler who, on oath, says that s/he saw the within named **REGIONS BANK** by Richard Harmon, its Senior Vice-President sign the within Joinder of Mortgagee, and the said Corporation, by said officer, seal said instrument, and as its act and deed, deliver the same, and that s/he with Erica Davey witnesses the execution thereof.

(Non Notary Witness)

SWORN to before me this
27 day of December, 2002.

(L.S.)
Notary Public for South Carolina

My Commission Expires: My Commission Expires June 12, 2010

4/10 RB Mag'l 7000

BEAUFORT COUNTY SC- ROD
BK 02732 PGS 0742-0745
DATE: 06/11/2008 10:53:59 AM
INST # 2008036200 RCPT# 547870

Amendment to the By Laws for Edgewater on Broad Creek Horizontal Property Regime

Article XII, Restrictions on Leases

Whereas, the Master Deed and By Laws for the Edgewater on Broad Creek Horizontal Property Regime were recorded on December 31, 2002 in Deed Book 1689 at Page 574 in the Register of Deeds for Beaufort County; and

Whereas, the Property Owners' Association for Edgewater on Broad Creek was formed by the co-owners in October, 2006 and further recognized and confirmed by Order of the Honorable Curtis L. Coltrane, Master in Equity and Special Circuit Judge for Beaufort County dated and entered October 31, 2006, with consent of the former developer, Broad Creek Edgewater, L.P. as noted in said Order; and

Whereas, at a duly noticed annual meeting of the co-owners of the Edgewater on Broad Creek Horizontal Property Regime on March 8, 2008, the co-owners discussed in an open forum different proposals addressing a minimum lease term for the purpose of amending these By Laws to reflect same; and

Whereas, the owners present and by proxy did vote for the following amendment which passed, by more than sixty seven (67%%) of the co-owners as required by Article XIII of the By-Laws. The amendment below providing a minimum lease term of twelve (12) months passed by a vote of seventeen (17) for and six (6) against. The amendment below vesting discretion in the Board of Directors to approve a shorter lease term not less than six (6) months passed by a vote of nineteen (19) for and four (4) against; and

Whereas, prior to the recording of this Amendment, more than fifty-one (51%) of the mortgagees of record as of the date of the annual meeting will have received written notice of the amendment that the co-owners approved and as established by the attestation attached hereto, said mortgagees have not delivered a negative response relating to the approval of this proposed amendment; therefore,

NOW, BE IT RESOLVED, that Article XII of the By Laws, entitled Restrictions on Leases, is amended by adding a Section 3, Section 4, Section 5, and Section 6 which shall state as set forth below:

Section 3.
Except as provided in Section 4 herein, no Unit may be leased to a person or person(s), or to an entity, other than to a person whom is an immediate family member of the Unit Owner, for a period of less than twelve (12) calendar months.

Section 4.
Upon the application of an Owner, prior to the commencement of a lease term for any new tenant, and using the forms and procedures designated by the Board, the Board may, in its discretion, approve a lease term of less than twelve months, but not less than six months, for the

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 2732 Pg. # 742
On 6-11-08
This Document contains 4 pages.
Mary A. Lamin 6-12-15
Beaufort County, SC - Register of Deeds

specific tenant stated in the application at the specific Unit stated in the application, for the time period applied for. Said approval shall be manifest by an affirmative vote of not less than three Board members. Failure to obtain approval by at least three Board members prior to the commencement of the proposed shortened leasehold term set forth in the application shall be deemed a denial of the application. The Board's approval or denial of any particular application shall not be considered legally binding precedent on any future application; and further, said approval or denial shall only be applicable to the specific tenant and unit applied for in the application.

Section 5.
The limitations on lease terms established in Section 4 and Section 5 above shall not apply to the short term extension of the lease term of a tenant already residing in a Unit subject to a lease which is authorized by these By Laws.

Section 6.
In addition to the remedies established in these By Laws and the Master Deed, the Board may, upon receipt of information that an Owner or leasehold is non compliant with this Section, and after reasonable notice to the impacted Owner to abate the violation, said notice to be not less than fifteen (15) days, implement one or more of the following remedies:
a. commence and prosecute an eviction proceeding to remove the tenant subject to the non conforming leasehold, at the expense of the Owner of the Unit;
b. assess a fine against the Owner of the Unit based on the schedule of fines set forth in the Rules and Regulations for the Association which are then in force.

In Witness Whereof, we, being the Duly Authorized Officers and Directors of the Edgewater on Broad Creek Horizontal Property Regime and Owners' Association, have hereunto set our hands this 31 day of MARCH, 2008.

Witness:

By: Robert J. Dema
President
~~Print~~ Name:

Vice President
Print Name:

Attest:

I, the undersigned, do certify that:

I am the duly elected and acting Secretary of Edgewater on Broad Creek Horizontal Property Regime and Owners' Association and that the foregoing Amendment to our By Laws of the Association was duly adopted at a meeting of the owners held the 8th day of March, 2008

K _____
Secretary
Print Name: K David G Zik

**State of South Carolina** )
) **PROBATE**
**County of Beaufort** )

Personally appeared before me the undersigned witness, who being first duly sworn, deposed and made oath that (s)he saw the within-named officers of Edgewater on Broad Creek Horizontal Property Regime and Owners' Association, sign, seal and, and as their act and deed, deliver the within written instrument, and that (s)he with the other witness whose signature appears above as a witness, witnessed the execution thereof.

_____

**Sworn To** before me this
10 day of April, 2008.

_____(L.S.)
Notary Public for South Carolina
My commission expires:_____

My Commission Expires
October 29, 2014

**Attestation Relating to Notice to Mortgagees**

Personally appeared before me, the undersigned Notary Public in and for the State of South Carolina, and individual known to me to be AJ BUCKO, who being duly sworn, sayeth and giveth his/her Affidavit as follows:

I AJ BUCKO, a representative of IMC Resort Services, Inc., the managing agent for the Edgewater on Broad Creek Horizontal Property Regime, due hereby attest that on April 25, 2008 the within notice of Amendment to the By-Laws was mailed to all mortgagees known to this office and that as of this date, being more than (30) thirty days from the date said notice was mailed, none of these morgagees gave notice of any objection to the proposed Amendment. Therefore, proper notice to mortgagees being given, the Amendment may be recorded.

Dated: 6-2-08

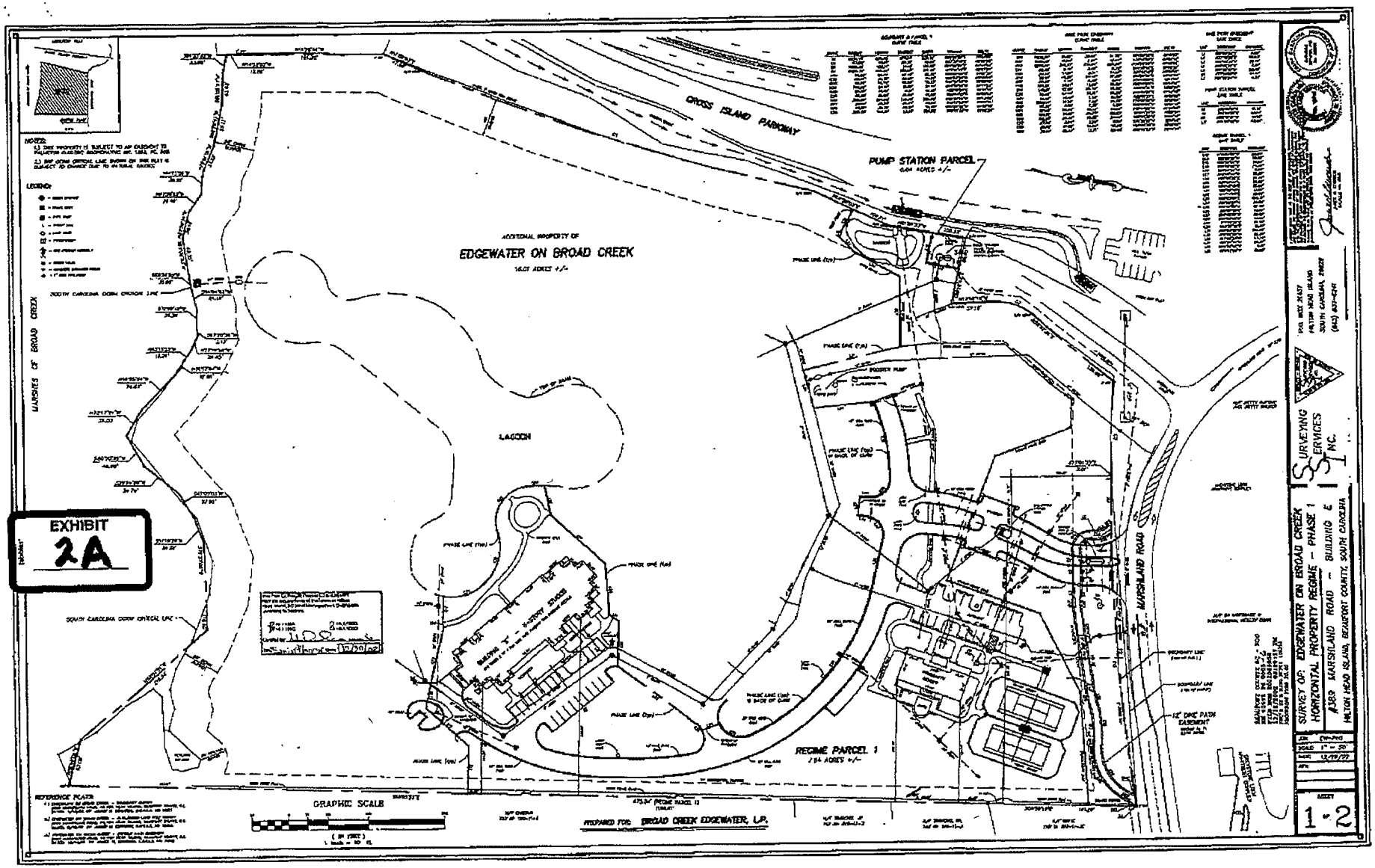
AJ Bucko
IMC Resort Services, Inc.
By: AJ Bucko

Sworn to and subscribed before me
This 2nd day of June, 2008

Melissa J. Fenstermaker
Notary Public for South Carolina
My Commission Expires

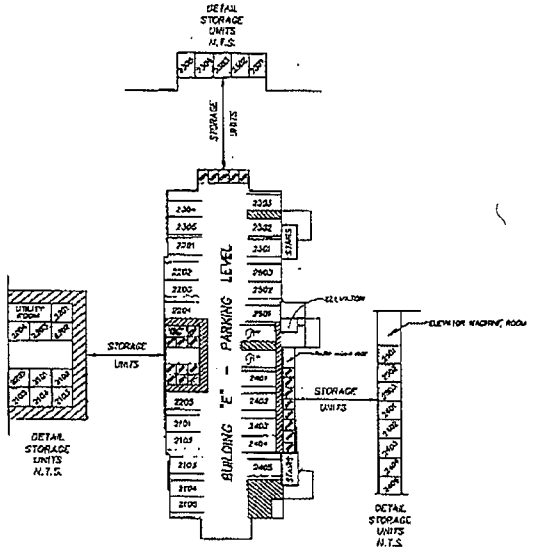
My Commission Expires
October 29, 2014

EXHIBIT 2A

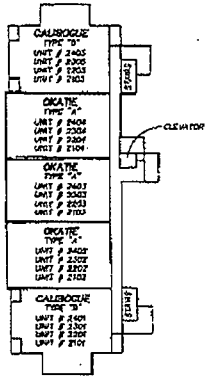

CROSS ISLAND PARKWAY
PUMP STATION PARCEL
0.04 ACRES +/-
ADDITIONAL PROPERTY OF
EDGEWATER ON BROAD CREEK
16.07 ACRES +/-
LAGOON
MARSHLAND ROAD
REGIME PARCEL 1
7.94 ACRES +/-
MARSHES OF BROAD CREEK
SOUTH CAROLINA DOHC CRITICAL LINE
GRAPHIC SCALE
PREPARED FOR: BROAD CREEK EDGEWATER, L.P.
SURVEYING SERVICES INC.
SURVEY OF: EDGEWATER ON BROAD CREEK
HORIZONTAL PROPERTY REGIME - PHASE 1
#389 MARSHLAND ROAD - BUILDING E
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
SCALE 1" = 30'
1 - 2

R. 305

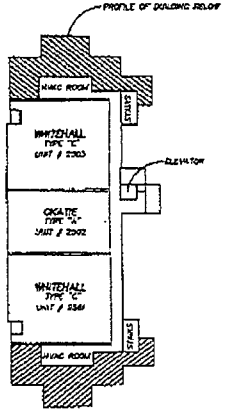
## DETAIL SHEET – PHASE 1




PHASE 1 – BUILDING "E"
PARKING LEVEL
SCALE: 1" = 30'




PHASE 1 – BUILDING "E"
FIRST THRU FOURTH FLOORS
SCALE: 1" = 30'




PHASE 1 – BUILDING "E"
FIFTH FLOOR
SCALE: 1" = 30'

SURVEY OF: EDGEWATER ON BROAD CREEK
HORIZONTAL PROPERTY REGIME – PHASE 1
#389 MARSHLAND ROAD – BUILDING E
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SURVEYING SERVICES INC.

P.O. BOX 21427
HILTON HEAD ISLAND
SOUTH CAROLINA 29928
(843) 837-2618

| | |
|---|---|
| NEW | CM-PMT |
| SCALE | 1" = 30' |
| DATE | 12/18/02 |
| REV. | |

2-2

R. 306

EXHIBIT 3a

3/10 N.S. 6B1 L4G

Q/4

NS&A/RMS/zmp/15759-30/Miller
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01699 PG 0758
FILE NUM 2003004934
01/21/2003 01:20:13 PM
REC'D BY R WEBB RCPT# 113586
RECORDING FEES 10.00
County Tax 419.10
State Tax 990.60
Transfer Tax 962.00

RECORDED
2003 Feb -12 04:15 PM
BEAUFORT COUNTY AUDITOR

ADD DMP Record 2/12/2003 02:43:36 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2204 | 00 |

STATE OF SOUTH CAROLINA )
) **LIMITED WARRANTY DEED**
COUNTY OF BEAUFORT )

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED AND 98/100 ($380,800.98) DOLLARS** to it in hand paid at and before the sealing of these presents by **GARY M. MILLER and NANCY A. MILLER** (hereinafter the "**Grantees**"), of **7011 THE GREENS, CHARLOTTE, NC 28277**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2204, Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5.**

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book #1699 Pg. #252
On 1-21-03
This Document contains 3 pages.
Mary J. Lemme 6-12-15
Beaufort County, SC - Register of Deeds

**Parent Parcel Tax Map Reference No.:** **R510.011.000.0004.0000.00**

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Grantees**, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 6th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

By: _____
Name: Wyllys Baird
Its: President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 6th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____
Notary Public for South Carolina
My Commission Expires: 5-16-05

EXHIBIT 3b

3/0 10 N23 2057

1/2

NS&A/RMS/zmp/15759-24/McCracken
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01700 PG 0732
FILE NUM 2003006576
01/22/2003 01:19:58 PM
REC'D BY C SEABROOK RCPT# 114039
RECORDING FEES 10.00
County Tax 358.50
State Tax 871.00
Transfer Tax 837.26

RECORDED
2003 Feb -07 01:45 PM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED THIRTY-FOUR THOUSAND NINE HUNDRED FIVE AND NO/100 ($334,905.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **LILLIE B. McCRACKEN** (hereinafter the **"Grantee"**), of **3460 KINGSBORO ROAD NE #419, ATLANTA, GA 30326**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantee**, her heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2104, Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5.**

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

CERTIFIED TRUE COPY of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book #1700 Pg. #732 On 1-22-03 This Document contains 3 pages. Mary A. Jamie 6-12-15 Beaufort County, SC - Register of Deeds

**Parent Parcel Tax Map Reference No.:** **R510.011.000.0004.0000.00**

ADD DMP Record 2/6/2003 05:54:16 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2104 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Grantee**, her heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Grantee**, her heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 10th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

By: _____
Name: Wyllys Baird
Its: President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 10th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____
Notary Public for South Carolina
My Commission Expires: 5-16-05

3 10 N&S #7 54

9/3

EXHIBIT 3c

NS&W/RMS/15759-29
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01714 PG 2471
FILE NUM 2003013640
02/19/2003 11:07:36 AM
REC'D BY C SEABROOK RCPT# 122237
RECORDING FEES 10.00
County Tax 435.06
State Tax 1,028.30
Transfer Tax 968.14

RECORDED
2003 Mar -03 04:23 PM
Shaw Q. Burris
BEAUFORT COUNTY AUDITOR

15759-29

STATE OF SOUTH CAROLINA )
) **LIMITED WARRANTY DEED**
COUNTY OF BEAUFORT )

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED NINETY TWO THOUSAND TWO HUNDRED FIFTY FIVE AND NO/100 ($395,255.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **MARJORIE A. McDOUGAL** (hereinafter the "Grantee"), of 22 Lenox Lane, Hilton Head Island, SC 29928, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, her assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as Unit No. 2304 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

Tax Map Reference No.: 510-011-000-~~0004~~ 0177-2304

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book # 1714 Pg. # 2471
On 2-19-03
This Document contains 3 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

ADD DMP Record 2/28/2003 12:38:09 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2304 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 16th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 16th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 5-16-05

3/0
10
NS
7491
7483

EXHIBIT
3d

①/3

NS&A/RMS/kar/Moore/15759-34
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01720 PG 0504
FILE NUM 2003016447
02/28/2003 10:52:24 AM
REC'D BY C SEABROOK RCPT# 125298
RECORDING FEES 10.00
County Tax 400.40
State Tax 948.40
Transfer Tax 909.39

RECORDED
2003 Mar -11 10:55 AM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

---

**STATE OF SOUTH CAROLINA )**
**)**
**COUNTY OF BEAUFORT )**

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED SIXTY-THREE THOUSAND SEVEN HUNDRED FIFTY-FIVE AND NO/100 ($363,755.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **RICHARD H. MOORE and SUZANNE R. MOORE** (hereinafter the **"Grantees"**), of **4679 Aberdeen Avenue, Dublin, Ohio 43016**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2202 Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5**.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

**Parent Parcel Tax Map Reference No.: R510.011.000.0004.0000.00**

CERTIFIED TO BE A TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book # 1720 Pg. # 504
On 2-28-03
This Document contains 3 pages.
Mary J. Lemmo 6-12-15
Beaufort County, SC - Register of Deeds

ADD DMP Record 3/7/2003 11:10:02 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0004 | 2202 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438, and in Record Book 1196 at Page 2441.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 17th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 17th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 5-16-05

R. 318

3/10 PB Novit 7638

EXHIBIT 3e

NS&A/RMS/kar/Brown/15759-31
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01724 PG 1878
FILE NUM 2003018630
03/07/2003 11:16:06 AM
REC'D BY P BAXLEY RCPT# 127370
RECORDING FEES 10.00
County Tax 494.45
State Tax 1,168.70
Transfer Tax 1,123.14

RECORDED
2003 Mar -17 03:09 PM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **FOUR HUNDRED FORTY-NINE THOUSAND TWO HUNDRED FIFTY-FIVE AND NO/100 ($449,255.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **PAUL G. BROWN** and **FRANCES S. BROWN** (hereinafter the "**Grantees**"), of **2421 SAPLING RIDGE LANE, BROOKEVILLE, MD 20833**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2301 Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5**.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in DR Book # 1724 Pg. # 1878
On 3-7-03
This Document contains 3 pages.
Mary G. Glennie 6-12-15
Beaufort County, SC - Register of Deeds

**Parent Parcel Tax Map Reference No.:** **R510.011.000.0004.0000.00**

ADD DMP Record 3/13/2003 05:40:39 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2301 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 31st day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By: _____
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 31st day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 6/18/11

3
10.00
Pg 459

1/3

RECORDED
2003 Mar -25 01:58 PM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 01731 PG 1028
FILE NUM 2003022101
03/20/2003 11:49:28 AM
REC'D BY Q WILSON RCPT# 131180
RECORDING FEES 10.00
County Tax 369.05
State Tax 872.30
Transfer Tax 839.14

ADD DMP Record 3/24/2003 01:23:08 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2102 | 00 |

NS&W/RMS/15759-26
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

EXHIBIT
3f

STATE OF SOUTH CAROLINA )
) LIMITED WARRANTY DEED
COUNTY OF BEAUFORT )

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED THIRTY FIVE THOUSAND TWO HUNDRED FIFTY FIVE AND NO/100 ($335,255.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **STEPHEN W. CORVINI AND DEBORAH A. CORVINI** (hereinafter the "Grantees"), of 102 Peter Road, Plymouth MA 02360, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as Unit No. 2102 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 85

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

Tax Map Reference No.: 510-011-000-0004-2102

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1731 Pg. # 1028
On 3-20-03
This Document contains 3 pages.
Mary J. Lannie 6-12-15
Beaufort County, SC - Register of Deeds

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 17th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 17th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 5-16-05

EXHIBIT 39

NS&A/RMS/zmp/15759-21/Zick
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01740 PG 0804
FILE NUM 2003026312
04/04/2003 11:11:45 AM
REC'D BY P GREENE RCPT# 135855
RECORDING FEES 10.00
County Tax 400.40
State Tax 948.40
Transfer Tax 909.39

RECORDED
2003 Apr -11 10:45 AM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED SIXTY-THREE THOUSAND SEVEN HUNDRED FIFTY-FIVE AND NO/100 ($363,755.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **DAVID G. ZICK and FRANCINE ZICK** (hereinafter the "**Grantees**"), of **851 ADAMS COURT, BLOOMFIELD HILLS, MI 48304**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2203, Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5.**

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County, SC in OR Book #1740 Pg. #804
On 4-11-03
This Document contains 3 pages.
Beaufort County, SC - Register of Deeds

**Parent Parcel Tax Map Reference No.:** ~~R510.011.000.0004.0000.00~~
510-011-000-0177-2203

ADD DMP Record 4/9/2003 03:33:44 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2203 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Grantees**, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 6th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

By: _____
Name: Wyllys Baird
Its: President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 6th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____
Notary Public for South Carolina
My Commission Expires: 5-16-05

3 OEW
VDS
8401

EXHIBIT 27
3h

1/3

NS&A/RMS/kar/Eisenman/15759-36
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01766 PG 1865
FILE NUM 2003039122
05/21/2003 10:58:13 AM
REC'D BY Q WILSON RCPT# 149496
RECORDING FEES 10.00
County Tax 494.45
State Tax 1,169.70
Transfer Tax 1,123.14

RECORDED
2003 May -28 01:45 PM
Shan Q. Burris
BEAUFORT COUNTY AUDITOR

---

**STATE OF SOUTH CAROLINA )**
**)** **LIMITED WARRANTY DEED**
**COUNTY OF BEAUFORT )**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **FOUR HUNDRED FORTY-NINE THOUSAND TWO HUNDRED FIFTY-FIVE AND NO/100 ($449,255.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **WILLIAM J. EISENMAN, TRUSTEE OF THE WILLIAM J. EISENMAN LIVING TRUST U/T/D APRIL 22, 2003** (hereinafter the **"Grantee"**), of **505 Hidden Hills Drive, Greenville, South Carolina 29605**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantee**, his successors in trust and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2305 Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574 and Plat Book 91 at Page 5**.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

ADD DMP Record 5/22/2003 04:16:29 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | Smap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2305 | 00 |

**Tax Map Reference No.: R510-011-000-0177-2305**

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1766 Pg. # 1865
On 5-21-03
This Document contains 3 pages.
Mary J. Barnwell 6-12-15
Beaufort County, SC - Register of Deeds

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his successors in trust and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, his successors in trust and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 8th day of May, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By: _____
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 8th day of May, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 6/18/11

3845
10
BSG
577

EXHIBIT
3i

BEAUFORT COUNTY SC - ROD
BK 01770 PG 1751
FILE NUM 2003041083
06/29/2003 11:23:16 AM
REC'D BY S FSMITH RCPT# 151586
RECORDING FEES 10.00
County Tax 588.50
State Tax 1,391.00
Transfer Tax 1,336.89

RECORDED
2003 Jun -03 12:57 PM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

N&S/RMS/kar/15759-28
Prepared by:
Regina M. Strickroth, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BTG/CVB

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **FIVE HUNDRED THIRTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-FIVE AND NO/100 ($534,755.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **F.W. KNECHT,III** (hereinafter the "Grantee"), of **850 Cove Place, Youngstown, Ohio 44511**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, his heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2501 Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5**.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County, SC in OR Book # 1770 Pg. # 1751
On 5-29-03 This Document contains 3 pages.
Mary J. Burke 6-12-15
Beaufort County, SC - Register of Deeds

Tax Map Reference No.: 510-011-000-0004-0000

ADD DMP Record 6/2/2003 04:48:44 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2501 | 00 |

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, his heirs and assigns, only against Grantor and Grantor's successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under it.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 28th day of October, 2002.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Karianne E. Curran
Notary Public

STATE OF VIRGINIA )
COUNTY OF Virginia Beach )

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 28th day of October, 2002, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Karianne E. Curran
Notary Public for Virginia
My Commission Expires: April 30, 2006

4/10 VG
17+8
Exchange

NS & A
1

EXHIBIT
3j

BEAUFORT COUNTY SC - ROD
BK 02025 PGS 1308-1311
FILE NUM 2004069605
09/27/2004 10:32:05 AM
REC'D BY V GARVIN RCPT# 276264
RECORDING FEES 10.00

RECORDED
2004 Oct -28 09:24 AM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

CHANGE DMP Record 10/20/2004 09:45:41 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2503 | 00 |

**WHEREAS**, the within Limited Warranty Deed is hereby submitted for re-recording to correct a scrivener's error in the Grantee's name. Correct reference is made to John A. Kruger and Nancy R. Kruger. In BK 1792 Pg. 592

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in O.R. Book # 2025 Pg. # 1308
On 9-27-04
This Document contains 7 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

3/10 Nov

②/4

NS&W/RMS/15759-33
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01792 PG 0592
FILE NUM 2003051332
07/03/2003 01:03:57 PM
REC'D BY S FSMITH RCPT# 162694
RECORDING FEES 10.00
County Tax 589.60
State Tax 1,393.60
Transfer Tax 1,339.39

CHANGE DMP Record 10/20/2004 09:45:41 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2503 | 00 |

**STATE OF SOUTH CAROLINA )**
**)** **LIMITED WARRANTY DEED**
**COUNTY OF BEAUFORT )**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **FIVE HUNDRED THIRTY FIVE THOUSAND SEVEN HUNDRED FIFTY FIVE AND NO/100 ($535,755.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **JOHN N. KRUGER AND NANCY R. KRUGER** (hereinafter the "Grantee"), of 1199 EAGLE ROAD, NEWTOWN, PA 18940, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as Unit No. 2503 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

Tax Map Reference No.: 510-011-000-0004-2503

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 18th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 18th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 5-16-05

EXHIBIT
3k

2/4

NS&W/RMS/15759-33
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01792 PG 0592
FILE NUM 2003051332
07/03/2003 01:03:57 PM
REC'D BY S FSMITH RCPT# 162894
RECORDING FEES 10.00
County Tax 589.60
State Tax 1,393.60
Transfer Tax 1,339.39

RECORDED
2003 Jul -22 03:50 PM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **FIVE HUNDRED THIRTY FIVE THOUSAND SEVEN HUNDRED FIFTY FIVE AND NO/100 ($535,755.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **JOHN N. KRUGER AND NANCY R. KRUGER** (hereinafter the "Grantee"), of 1199 EAGLE ROAD, NEWTOWN, PA 18940, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as Unit No. 2503 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 674, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

Tax Map Reference No.: 510-011-000-0004-2503

ADD DMP Record 7/17/2003 01:23:46 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2503 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1792 Pg. # 592
On 7-3-03
This Document contains 3 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 18th day of January, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Witness #1

By:
Name: Wyllys Baird
Its: President

Notary Public

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 18th day of January, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: 5-16-05

EXHIBIT

34

BEAUFORT COUNTY SC - ROD
BK 01872 PG 1121
FILE NUM 2003091074
11/17/2003 10:31:43 AM
REC'D BY S SMITH RCPT# 199630
RECORDING FEES 11.00
County Tax 385.00
State Tax 810.00
Transfer Tax 874.75

RECORDED
2003 Dec -05 02:14 PM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT IT, BROAD CREEK EDGEWATER, L.P., ("Grantor"), in the State aforesaid and in consideration of the sum of Three Hundred Forty Nine Thousand Nine Hundred and No/100 ($349,900.00) Dollars paid to it in hand at and before the sealing of these presents by John E. Spisak and Anita M. Spisak (the "Grantee"), having an address of 3160 Hembry Court, Marietta, GA 30062, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Grantee, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Scheider & Patterson, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. #R510 011 000 0177 0000**

ADD DMP Record 12/1/2003 03:55:02 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2103 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1872 Pg. # 1121
On 11-17-03
This Document contains 5 pages.
Mary J. Lamie 6-12-25
Beaufort County, SC - Register of Deeds

JPN/1406

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever.

AND the said GRANTOR does hereby bind itself and its successors and assigns to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as herein above provided against itself and its and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 10th day of November in the year of our Lord two thousand three.

**Broad Creek Edgewater, L.P., a South Carolina Limited Partnership**

SIGNED SEALED AND DELIVERED

IN THE PRESENCE OF

BY: Winnetka Associates Edgewater, LLC

Its: Sole General Partner

BY: Winnetka Associates I Limited Partnership

Its: Sole Member

BY: Baird Pacific West, Inc.

Its: Sole General Partner

BY:

Name: Wyllys Baird

Its: President

STATE OF ~~SOUTH CAROLINA~~ ILLINOIS )
)
COUNTY OF ~~BEAUFORT~~ COOK )

I, Deborah J. Robinson, Notary Public for the State of Illinois do hereby certify that the within GRANTOR, by _____, its authorized officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 10TH day of NOVEMBER, 2002.

Deborah J. Robinson
Notary Public for: Illinois
My Commission Expires: 7/6/04

OFFICIAL SEAL
DEBORAH J ROBINSON
Notary Public - State of Illinois
My Commission Expires Jul 6, 2004

**File No.: SPISAK, J 5886.001**

# Exhibit "A"

All that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as Unit 2103, Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater. L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574 and Plat Book 91 at Page 5.

ALSO, all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

This is the same property conveyed to the within Grantor by deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1196, Page 2294, Book 1196, Page 2438, and in Book 1196, Page 2441.

The within instrument was prepared in the Law Offices of Jones, Patterson, Simpson & Newton, PA, Post Office Drawer 7049, Hilton Head Island, South Carolina 29938.

4 to DB Jones 7362

EXHIBIT 3M

BEAUFORT COUNTY SC - ROD
BK 01996 PGS 1128-1130 A
FILE NUM 2004052459
08/02/2004 11:50:17 AM
REC'D BY P BAXLEY RCPT# 262390
RECORDING FEES 10.00
County Tax 457.60
State Tax 1,081.60
Transfer Tax 1,039.75

RECORDED
2004 Aug -26 08:56 AM
Shown G. Burris
BEAUFORT COUNTY AUDITOR

ADD DMP Record 8/19/2004 05:15:37 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2303 | 00 |

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FIFTEEN THOUSAND NINE HUNDRED** and 00/100 ($415,900.00) Dollars paid to it in hand at and before the sealing of these presents by **VICTOR B. DUGGAR and PATSY Y. DUGGAR** (the "Grantees"), having an address of **Post Office Box 1370, Pembroke, GA 31321**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2303**

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1996 Pg. # 1128
On 8-2-04
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

JPSN/B33

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this

30th day of June in the year of our Lord two thousand four.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

Joyce P. Kauffman

By: _____
Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 30th day of June, 2004.

Notary Public for: SC
My Commission Expires: Oct 10, 2013

**File No.: DUGGAR6136.001**

# Exhibit "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2303 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

This being a portion of the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

BEAUFORT COUNTY SC - ROD
BK 02079 PGS 2170-2173
FILE NUM 2005001759
01/07/2005 09:40:18 AM
REC'D BY A WILLIAMS RCPT# 299808
RECORDING FEES 10.00
County Tax 522.50
State Tax 1,235.00
Transfer Tax 1,187.50

RECORDED
2005 Feb -03 08:26 AM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

(04-782 Edwards)
Thomas L. Brooks, Attorney at Law
3800 Main Street, Suite 400
Hilton Head Island, SC 29926
843-689-2661
8974

EXHIBIT
3N

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED SEVENTY-FIVE THOUSAND** and 00/100 ($475,000.00) Dollars paid to it in hand at and before the sealing of these presents by **JOHN W. EDWARDS, JR., as Trustee of the John W. Edwards, Jr., Revocable Trust Dated June 18, 1980, Restated July 29, 1997, Amended January 13, 2004,** (the "Grantee"), having an address of **2403 Edgewater on Broad Creek, Hilton Head Island, SC 29926**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, his successors and/or assigns, forever, in fee simple, the following described real property, to-wit:

389 Marshland Road, # 2403

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2403**

ADD DMP Record 1/31/2005 11:12:29 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2403 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in DR Book #2079 Pg. #2170
On 1-7-05
This Document contains 4 pages.
Mary J. Lannie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his successors and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 22nd day of Dec in the year of our Lord two thousand four.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) Taylor Selim

By: 1)
Wyllys Baird, President

3) Amy C. Russell

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 22 day of Dec, 2004.

3) Amy C. Russell
Notary Public for: ~~SC~~ IL
My Commission Expires: 3/17/08

OFFICIAL SEAL
AMY C RUSSELL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/17/08

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2403 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

EXHIBIT
30

BEAUFORT COUNTY SC - ROD
BK 02084 PGS 1470-1473
FILE NUM 2005004252
01/18/2005 08:45:56 AM
REC'D BY V GARVIN RCPT# 301902
RECORDING FEES 10.00
County Tax 446.60
State Tax 1,055.60
Transfer Tax 1,014.75

RECORDED
2005 Feb -07 01:54 PM
BEAUFORT COUNTY AUDITOR

ADD DMP Record 2/2/2005 11:06:09 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2105 | 00 |

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FIVE THOUSAND NINE HUNDRED** and 00/100 ($405,900.00) Dollars paid to it in hand at and before the sealing of these presents by **THOMAS L. GENOVESE and LINDA L. GENOVESE,** (the "Grantees"), having an address of **18 Combahee Road, Hilton Head Island, SC 29928**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2105**

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County
SC in DR Book #2084 Pg. #1470
On 1-18-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 22nd day of December in the year of our Lord two thousand four.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) _____

By: 1) _____
Wyllys Baird, President

3) Amy C. Russell

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 22 day of Dec, 2004.

3) Amy C. Russell
Notary Public for: ~~SC~~ IL
My Commission Expires: 3/17/08

OFFICIAL SEAL
AMY C RUSSELL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/17/08

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2105 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

4 TO RB BOOK 5 9264

EXHIBIT 3P

BEAUFORT COUNTY SC - ROD
BK 02084 PGS 1509-1512
FILE NUM 2005004283
01 18/2005 09:03:03 AM
REC'D BY B BING RCPT# 301913
RECORDING FEES 10.00
County Tax 455.40
State Tax 1,370.40
Transfer Tax 1,034.75

RECORDED
2005 Feb -07 02:21 PM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

(04-817 Post)

Thomas L. Brooks, Attorney at Law
3600 Main Street, Suite 400
Hilton Head Island, SC 29928
843-689-2661

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED THIRTEEN THOUSAND NINE HUNDRED** and 00/100 ($413,900.00) Dollars paid to it in hand at and before the sealing of these presents by **GERALD ROGER POST and PATRICIA L. POST,** (the "Grantees"), having an address of **2195 Lane Woods Drive, Columbus, OH 43221**

in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2302**

ADD DMP Record 2/2/2005 11:13:33 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2302 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 2084 Pg. # 1509
On 1-18-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 22nd day of Dec in the year of our Lord two thousand four.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) [signature]

By: 1) [signature]
Wyllys Baird, President

3) Amy C. Russell

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 22 day of Dec, 2004.

3) Amy C. Russell
Notary Public for: ~~SC~~ IL
My Commission Expires: 3/17/08

OFFICIAL SEAL
AMY C RUSSELL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/17/08

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2302 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

R 361

EXHIBIT 39

BEAUFORT COUNTY SC - ROD
BK 02137 PGS 0149-0153
FILE NUM 2005031308
04/29/2005 11:20:03 AM
REC'D BY S FSMITH RCPT# 326002
RECORDING FEES 11.00

RECORDED
2005 Apr -29 12:35 PM
BEAUFORT COUNTY AUDITOR

BBP&T/BL-05-0019/Turnbull

**WHEREAS**, this Deed was originally recorded in the Beaufort County records on February 23, 2005, in Book 2102 at Page 1901; and

**WHEREAS**, by scrivener's error, the Grantee's names were incorrectly shown as **Bruce Turnbull and Martha Turnbull** and should have been shown as **Bruce William Turnbull and Martha Ann Turnbull**; and

**WHEREAS**, the Grantee's street address name was incorrectly shown as **East Lake** and should have been shown as **Eastlake**; and

**WHEREAS**, the errors have now been corrected; and

**WHEREAS**, it is the desire of the parties to re-record this Deed to correct of record the previously made error, NUNC PRO TUNC;

**NOW THEREFORE,**

ADD DMP Record 4/29/2005 10:52:49 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2201 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book # 2137 Pg. # 149
On 4-26-06
This Document contains 5 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

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10
Buist
2134

BEAUFORT COUNTY SC - ROD
BK 02102 PGS 1901-1904
FILE NUM 2006013859
02/23/2006 10:53:17 AM
REC'D BY S FSMITH RCPT# 310809
RECORDING FEES 10.00
County Tax 489.50
State Tax 1,157.00
Transfer Tax 1,112.25

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED** and 00/100 ($444,900.00) Dollars paid to it in hand at and before the sealing of these presents by **BRUCE** WILLIAM **TURNBULL and MARTHA** ANN **TURNBULL**, (the "Grantees"), having an address of 197 ~~East Lake~~ Eastlake **Road, Ithaca, NY 14850,** in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2201**

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 7 day of Feb in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) Taylor Schmin

By: 1) Wyllys Baird, President

3) Amy C Russell

STATE OF ILLINOIS )
) ACKNOWLEDGMENT
COUNTY OF Cook )

I, the undersigned Notary Public for the State of Illinois do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 7 day of Feb, 2005.

3) Amy C. Russell
Notary Public for: Illinois
My Commission Expires:

OFFICIAL SEAL
AMY C RUSSELL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2201 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

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4 sts/PBK/RL-05-029 Turnbull
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Bu:St
2134

EXHIBIT
3r

BEAUFORT COUNTY SC - ROD
BK 02102 PGS 1901-1904
FILE NUM 2005013859
02/23/2005 10:53:17 AM
REC'D BY S FSMITH RCPT# 310809
RECORDING FEES 10.00
County Tax 489.50
State Tax 1,157.00
Transfer Tax 1,112.25

ADD DMP Record 3/4/2005 07:05:01 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2201 | 00 |

RECORDED
2005 Mar -04 11:38 AM
Shown G. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED** and 00/100 ($444,900.00) Dollars paid to it in hand at and before the sealing of these presents by **BRUCE TURNBULL and MARTHA TURNBULL,** (the "Grantees"), having an address of **197 East Lake Road, Ithaca, NY 14850,** in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2201**

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book #2102 Pg. # 1901
On 2-23-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 7 day of Feb in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) Taylor Schmir

By: 1) Wyllys Baird, President

3) Amy C Russell

STATE OF ILLINOIS )
) ACKNOWLEDGMENT
COUNTY OF Cook )

I, the undersigned Notary Public for the State of Illinois do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 7 day of Feb, 2005.

3) Amy C. Russell
Notary Public for: Illinois
My Commission Expires:

OFFICIAL SEAL
AMY C RUSSELL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2201 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Home\Darcie\Deeds\BroadCreekEdgewater 2201.wpd

4/10 RB JPS 1059

EXHIBIT 3s

BEAUFORT COUNTY SC - ROD
BK 02126 PGS 0788-0791
FILE NUM 2005025740
04/07/2005 09:01:03 AM
REC'D BY B BING RCPT# 321176
RECORDING FEES 10.00
County Tax 489.50
State Tax 1,157.00
Transfer Tax 1,112.25
RECORDED
2005 Apr -08 10:01 AM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.,** ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED** and 00/100 ($444,900.00) Dollars paid to it in hand at and before the sealing of these presents by **GARY M. MILLER and NANCY A. MILLER,** (the "Grantees"), having an address of **7011 The Greens, Charlotte, NC 28277-4526,** in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2205**

ADD DMP Record 4/7/2005 04:36:22 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2205 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 2126 Pg. # 788
On 4-07-05
This Document contains 4 pages.
Beaufort County, SC - Register of Deeds

MILLER 6391.002 Mary J. Lamie 6-12-15

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 28th day of March in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

2) _____

By: 1) _____
Wyllys Baird, President

3) _____

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 28th day of March, 2005.

3) _____
Notary Public for: SC
My Commission Expires: 4/15/09

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2205 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Home\Darcie\Deeds\BroadCreekEdgewater - 2205.wpd

EXHIBIT
3t

BEAUFORT COUNTY SC - ROD
BK 02139 PGS 1425-1428
FILE NUM 2005032541
05/02/2005 08:40:24 AM
REC'D BY V GARVIN RCPT# 327189
RECORDING FEES 10.00
County Tax 454.30
State Tax 1,073.80
Transfer Tax 1,832.50

RECORDED
2005 May -04 03:24 PM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED THIRTEEN THOUSAND** and 00/100 ($413,000.00) Dollars paid to it in hand at and before the sealing of these presents by **WOLFGANG FRIEDRICH** and **JENNIFER FRIEDRICH**, (the "Grantees"), having an address of **Lienthal Strasse 41, 53125 Bohn, Germany**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2402**

ADD DMP Record 5/4/2005 10:35:00 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2402 | 00 |

Friedrich 6380.001

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book # 2139 Pg. # 1425
On 5-2-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this

15th day of April in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

By: _____
Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 15th day of April, 2005.

Notary Public for: SC
My Commission Expires: 06/10/2013

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2402 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Home\Darcie\Deeds\BroadCreekEdgewater - 2402wpd.wpd

4 PB
10
JPSN

BEAUFORT COUNTY SC - ROD
BK 02140 PGS 2516-2519
FILE NUM 2005033262
05/03/2005 11:19:19 AM
REC'D BY P BAXLEY RCPT# 327708
RECORDING FEES 10.00
County Tax 561.00
State Tax 1,326.00
Transfer Tax 1,274.75

RECORDED
2005 May -03 09:01 AM
BEAUFORT COUNTY AUDITOR

EXHIBIT
34

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FIVE HUNDRED NINE THOUSAND NINE HUNDRED** and 00/100 ($509,900.00) Dollars paid to it in hand at and before the sealing of these presents by **PAUL A. HUMMEL and PATRICIA A. HUMMEL**, (the "Grantees"), having an address of **287 Mull Avenue, Akron, Ohio 44313**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510-011-000-0177-2502**

184
Hummel 6396-001

ADD DMP Record 5/5/2005 02:44:02 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2502 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC In OR Book #2140 Pg. #2516
On 5-3-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 27 day of April in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

By: Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 27 day of April, 2005

Notary Public for: SC
My Commission Expires: Oct 10, 2013

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2502 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Forms\Darcie\Deeds\BroadCreekEdgewater - 2502.wpd

4 RB
10 JPS
1699

BEAUFORT COUNTY SC - ROD
BK 02148 PGS 0230-0233
FILE NUM 2005036670
05/13/2005 09:02:03 AM
REC'D BY B BING RCPT# 330427
RECORDING FEES 10.00
County Tax 500.50
State Tax 1,183.00
Transfer Tax 1,137.25

RECORDED
2005 May -20 09:29 AM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

EXHIBIT
3v

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FOUR HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED** and 00/100 ($454,900.00) Dollars paid to it in hand at and before the sealing of these presents by **DAVID ZICK and FRANCINE ZICK,** (the "Grantees"), having an address of **24175 Northwestern Hwy., Suite 200, Southfield, Michigan 48075**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2404**

ADD OMP Record 5/19/2006 11:46:12 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2404 | 00 |

330

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book #2148 Pg. #230
On 5-13-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 4th day of May in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

By: Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 4th day of May, 2005.

Notary Public for: SC
My Commission Expires: Oct 10, 2013

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2404 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Home\Daniel\Deeds\BroadCreekEdgewater 2404.wpd

4/10 RB JDS 1746 1753

EXHIBIT 3w

BEAUFORT COUNTY SC - ROD
BK 02150 PGS 0451-0454
FILE NUM 2005037781
05/17/2005 11:21:34 AM
REC'D BY B BING RCPT# 331220
RECORDING FEES 10.00
County Tax 605.00
State Tax 1,430.00
Transfer Tax 1,374.75

RECORDED
2005 May -26 09:46 AM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FIVE HUNDRED FORTY-NINE THOUSAND NINE HUNDRED** and 00/100 ($549,900.00) Dollars paid to it in hand at and before the sealing of these presents by **KENT M. GRATHWOHL and KYRA E. GRATHWOHL**, (the "Grantees"), having an address of **3423 Roxbury Court, Troy, Michigan 48084**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2401**

351
Grathwohl 6413.001

ADD DMP Record 5/26/2005 08:57:06 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2401 | 00 |

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in OR Book # 2150 Pg. # 451
On 5-17-05
This Document contains 4 pages.
Mary J. Lamie 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this

4th day of May in the year of our Lord two thousand fifty-five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

By: _____
Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 4th day of May, 2005.

Notary Public for: SC
My Commission Expires: Oct 18, 2013

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2401 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

P:\Home\Derek\Deeds\BroadCreekEdgewater 2401.wpd

ADD DMP Record 8/16/2005 09:32:16 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2405 | 00 |

BEAUFORT COUNTY SC - ROD
BK 02188 PGS 0328-0331
FILE NUM 2005056971
07/15/2005 11:42:34 AM
REC'D BY S SMITH RCPT# 345802
RECORDING FEES 10.00
County Tax 564.30
State Tax 1,333.80
Transfer Tax 1,282.25

RECORDED
2005 Aug -16 08:22 PM
BEAUFORT COUNTY AUDITOR

EXHIBIT
3X

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, **that BROAD CREEK EDGEWATER, L.P.**, ("Grantor"), in the State aforesaid and in consideration of the sum of **FIVE HUNDRED TWELVE THOUSAND NINE HUNDRED** and 00/100 ($512,900.00) Dollars paid to it in hand at and before the sealing of these presents by **ROBERT G. FITZGERALD and KAREN M. KRALL**, (the "Grantees"), having an address of **50 Verbena Lane, #2405, Hilton Head Island, SC 29926**, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever, in fee simple, the following described real property, to-wit:

SEE ATTACHED EXHIBIT "A" BEING INCORPORATED HEREIN BY REFERENCE.

The within Deed was prepared in the Law Office of Jones, Patterson, Simpson & Newton, P.A., P. O. Drawer 7049, Hilton Head Island, South Carolina 29938.

**Tax Map No. R510 011 000 0177 2405**

CERTIFIED TRUE COPY
of the document recorded in the Office of
the Register of Deeds for Beaufort County
SC in DR Book # 2188 Pg. # 328
On 7-15-05
This Document contains 4 pages.
Mary J. Lamia 6-12-15
Beaufort County, SC - Register of Deeds

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with rights of survivorship and not as tenants in common, their heirs and/or assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, as herein above provided, against the Grantor and the Grantor's heirs or successors, and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS whereof, the Grantor has caused these presents to be executed as of this 6th day of July in the year of our Lord two thousand five.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

BROAD CREEK EDGEWATER, L.P.
A South Carolina Limited Partnership

By: Winnetka Associates I Limited Partnership,
A California limited partnership
Its: General Partner

By: Baird Pacific West, Inc.,
A California corporation
Its: General Partner

By: _____
Wyllys Baird, President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 6th day of July, 2005.

Notary Public for: SC
My Commission Expires: Oct 10, 2013

EXHIBIT "A"

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known a Unit No. 2405 Edgewater on Broad Creek Horizontal Property Regime, Phase I, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P., establishing said Horizonrtal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574, and Plat Book 91 at Page 5.

ALSO all of the rights, privileges and common elements appertaining to the above-described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal property Regime, referred to the hereinabove.

This being a portion of the same property conveyed to the wtihin Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in OR Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in OR Book 1196 at Page 2438.

F:\Home\Darcie\Deeds\BroadCreekEdgewater 2401.wpd

3" 10RW N&S 9939

EXHIBIT 3Y

9/3

NS&A/RMS/zmp/15759-27/Bolger
Prepared by and return to:
Regina M. Strickroth, Esquire
Novit, Scarminach & Akins, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938

BEAUFORT COUNTY SC - ROD
BK 01841 PG 0729
FILE NUM 2003074299
09/18/2003 10:20:32 AM
REC'D BY R WEBB RCPT# 184511
RECORDING FEES 10.00
County Tax 435.05
State Tax 1,028.30
Transfer Tax 987.68

RECORDED
2003 Sep -26 11:07 AM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

**LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, THAT IT, **BROAD CREEK EDGEWATER, L.P.** (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED NINETY-FIVE THOUSAND SEVENTY AND NO/100 ($395,070.00) DOLLARS** to it in hand paid at and before the sealing of these presents by **ARTHUR F. BOLGER and ELIZABETH M. BOLGER** (hereinafter the "**Grantees**"), of **7500 PAWLING STREET, PHILADELPHIA, PA 19128**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property, to-wit:

ALL that certain Condominium Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina and being known as **Unit No. 2101, Edgewater on Broad Creek Horizontal Property Regime, Phase I**, and being more particularly shown and described by reference to the Master Deed of Broad Creek Edgewater, L.P. establishing said Horizontal Property Regime, said Master Deed being dated December 19, 2002 and recorded December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in **Record Book 1689 at Page 574** and **Plat Book 91 at Page 5**.

ALSO all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the Edgewater on Broad Creek Horizontal Property Regime, referred to hereinabove.

**Tax Map Reference No.: R510.011.000.0177.2101**

ADD DMP Record 9/23/2003 01:06:05 PM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 2101 | 00 |

CERTIFIED TRUE COPY of the document recorded in the Office of the Register of Deeds for Beaufort County SC in OR Book # 1841 Pg. # 729 On 9-18-03 This Document contains 3 pages. 6-17-15
Beaufort County, SC - Register of Deeds

This being a portion the same property conveyed to the within Grantor by Deed of Burbank Investment, LLC, dated July 15, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 19, 1999, in Record Book 1194 at Page 2294 and/or by Quit Claim Deed of Kimberly A. Walker, dated July 17, 1999 and recorded in the ROD Office for Beaufort County, South Carolina on July 23, 1999, in Record Book 1196 at Page 2438.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Grantees**, as joint tenants with the rights of survivorship, and not as tenants in common, their heirs and assigns forever.

AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Grantees**, their heirs and assigns, only against Grantor and Grantor's successors, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under us.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 6th day of ~~January~~ SEPTEMBER, 2003.

WITNESSES:

BROAD CREEK EDGEWATER, L.P.,
a South Carolina Limited Partnership

By: Winnetka Associates Edgewater, LLC
Its: Sole General Partner

By: Winnetka Associates I Limited Partnership
Its: Sole Member

By: Baird Pacific West, Inc.
Its: Sole General Partner

By: _____
Name: Wallys Baird
Its: President

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT )

I HEREBY CERTIFY, that on this 6th day of ~~January~~ SEPTEMBER, 2003, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared BROAD CREEK EDGEWATER, L.P., a South Carolina Limited Partnership, by its authorized signatory, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____
Notary Public for South Carolina
My Commission Expires: 5-16-05

30-Oct-2006 05:49pm From-Golan & Christie +312 263 0030 T-838 P.002/005 F-199

2006 OCT 31 AM 9:35
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT | ) | CIVIL ACTION NO. 06-CP-07-2556 |
| | ) | |
| PAUL A. HUMMEL, ROBERT J. DEMA, | ) | |
| JOHN EDWARDS, JR. JAQUELIN HEISS | ) | |
| KEN MEEKS, ROBERT FITZGERALD | ) | |
| AND JOHN DOE PLAINTIFFS 1-20 | ) | |
| INDIVIDUALLY AND AS CO-OWNERS | ) | CONSENT ORDER RESOLVING |
| IN EDGEWATER ON BROAD CREEK | ) | RULE TO SHOW CAUSE |
| HORIZONTAL PROPERTY REGIME | ) | AND EMPOWERING BOARD OF |
| | ) | DIRECTORS FOR EDGEWATER |
| PLAINTIFFS, | ) | ON BROAD CREEK OWNERS' |
| | ) | ASSOCIATION |
| vs. | ) | |
| BROAD CREEK EDGEWATER, LP, | ) | |
| THE EDGEWATER ON BROAD CREEK | ) | |
| HORIZONTAL PROPERTY REGIME | ) | |
| WYLLYS T. BAIRD, BANK OF | ) | |
| AMERICA, N.A. and ALLIED | ) | |
| MANAGEMENT COMPANY | ) | |
| | ) | |
| DEFENDANTS | ) | |
| | ) | |

EXHIBIT 4

This matter comes before me upon the Rule to Show Cause filed by Michael W. Mogil, Attorney for the Plaintiffs, and upon the pleadings and affidavits in this matter, and the findings of fact incorporated herein.

IT IS THEREFORE ORDERED that:

1. On October 30, 2006, at a properly noticed meeting of the Edgewater on Broad Creek Owners' Association (hereinafter the "Association"), twenty-two of the twenty-three Units within Phase I were present in person or by duly executed proxy, representing a meeting quorum under the Master Deed (hereinafter "Master Deed") for The Edgewater on Broad Creek Horizontal Property Regime and Edgewater on Broad Creek Owners' Association.



Mum
DB

Certified - A True Copy
Lynn Geren
Jerri Ann Rosenau - Clerk of Court
Beaufort County, SC - Lynn Geren

CLL#1 of 4

Phase I as described in the Master Deed and exhibits thereto, incorporates all of the real property presently conveyed and deeded into the within The Edgewater on Broad Creek Horizontal Property Regime.

2. At the meeting on October 30, 2006, the twenty two co-owners present in person or by proxy unanimously voted to establish a Board of Directors empowered to manage the Association pursuant to its By Laws and the aforementioned Master Deed. The co-owners further elected five co-owner members to serve as initial Directors of the Association. These Directors are noted in the minutes of the Association.

3. It is therefore agreed and Ordered, that the Association has been duly formed, and that its elected Directors and their appointed Officers have full authority to manage the affairs of the Association pursuant to its By-Laws and the Master Deed.

4. It is further Ordered that Bank of America shall authorize the persons appointed by the Board of Directors, as indicated by written resolution, with full and exclusive authority over the bank accounts and funds of the Association, and that the Association may establish separate, additional accounts in its discretion.

5. It is further Ordered, that the Association shall negotiate in good faith the terms of a binding Memorandum of Understanding to be entered into between the Association and the Distinct Development II, LLC, which is contemplated to be the new general partner of the Defendant Broad Creek Edgewater, LP. The Memorandum of Understanding shall set forth and establish the terms and conditions under which the Defendant Broad Creek Edgewater, LP., as managed by the new general partner, may incorporate one or more of the remaining Phases of development, as more fully described in "Exhibit A-1" to the Master Deed, into the



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Association, and assume representation on the Board and input as to its affairs. As between these parties, the Memorandum of Understanding shall supercede the terms of this Consent Order. As the specific terms of the contemplated Memorandum of Understanding are not yet finalized, the parties agree that this Court shall retain jurisdiction over the matter and shall be available to decide upon the terms of said Memorandum of Understanding in the event that the parties are not be able to reach final agreement on its terms. If Distinct Development II, LLC fails to tender a Memorandum of Understanding for review by the Association on or before the close of business on November 3, 2006, then the Association's obligation to enter into a Memorandum of Understanding is null and void, and the remaining terms of this Order shall be controlling upon the affairs of the Association.

WE SO CONSENT:

For Plaintiffs:

Michael W. Mogil
Law Office of Michael W. Mogil, P.A.
303 Professional Building
Hilton Head Island, SC 29928
(843) 785-8110
mmogil@mogillaw.com



cm #384

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For Defendants Broad Creek
Edgewater LLP and Wylyss Baird:

David Schmitt
Golan and Christie LLP
70 West Madison - Suite 1500
Chicago, Illinois 60602
(312) 696-2036
dkschmitt@golanchristie.com

IT IS SO ORDERED:

Curtis L. Coltrane, Master in Equity and
Special Circuit Judge

This 31st day of October, 2006.
Beaufort, South Carolina



CM#4004

**BB&T** Branch Banking and Trust Company

**Account Deposit**
☐ Checking ☐ Savings

Deposit To The Account Of (Please print full name): Todd Goodman
Address:
City, State, Zip Code:
Date: 3/28/05 Please Sign Here If Cash Received

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Please enter your account number below

* 5 2 9 0 9 7 8 9 2 2
→ USE FOR 10 DIGIT ACCOUNT NUMBER

F0008000260 (Rev. 09/15/03)

| | Dollars | Cents |
|---|---|---|
| Currency/Coins | | |
| Checks | 3382 | 38 |
| Total | | |
| Less: Cash Received | | |
| Total Deposit $ | 3382 | 38 |

CLIENT COPY

remainder Feb
all of March

0046503 05982 009 #00123 12:39 03/28/05
#0005290978922 DEPOSIT $3,382.38

**BB&T** Branch Banking and Trust Company

**Account Deposit**
☐ Checking ☑ Savings

Deposit To The Account Of (Please print full name): TODD GOODMAN
Address:
City, State, Zip Code:
Date: 4-6-05 Please Sign Here If Cash Received

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Please enter your account number below

* 5 2 9 0 9 7 8 9 2 2
→ USE FOR 10 DIGIT ACCOUNT NUMBER

F0008000260 (Rev. 09/15/03)

| | Dollars | Cents |
|---|---|---|
| Currency/Coins | | |
| Checks | 1450 | 00 |
| Total | | |
| Less: Cash Received | | |
| Total Deposit $ | 1450 | 00 |

CLIENT COPY

0046503 02390 005 #00091 13:22 04/06/05
#0005290978922 DEPOSIT $1,450.00

**BB&T** Branch Banking and Trust Company

**Account Deposit**
☐ Checking ☐ Savings

Deposit To The Account Of (Please print full name): TODD GOODMAN
Address:
City, State, Zip Code: N.J.
Date: 5/19/05 Please Sign Here If Cash Received

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Please enter your account number below

* 5 2 9 0 9 7 8 9 2 2
→ USE FOR 10 DIGIT ACCOUNT NUMBER

F0008000260 (Rev. 09/15/03)

| | Dollars | Cents |
|---|---|---|
| Currency/Coins | 1450 | 00 |
| Checks | | |
| Total | | |
| Less: Cash Received | | |
| Total Deposit $ | 1450 | 00 |

CLIENT COPY

0046503 02390 005 #00067 14:57 05/19/05
#0005290978922 DEPOSIT $1,450.00

CREDIT NEXT BUSINESS DAY

**U.S. BANKRUPTCY COURT**
**District of South Carolina**

Case Number: 07-02546-DD

**ORDER APPROVING SALE FREE AND CLEAR OF LIENS, JUDGMENTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(f)**

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT**
**05/27/2008**

Entered: 05/28/2008

US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---|---|---|
| IN RE: | ) | |
| | ) | B/K Case No. 07-02546-DD |
| BROAD CREEK EDGEWATER, LP | ) | Chapter 7 |
| | ) | |
| Debtor. | ) | **ORDER APPROVING SALE** |
| | ) | |

THIS MATTER comes before the Court upon the application of Kevin Campbell, the duly appointed and acting Chapter 7 Trustee for the above Debtor (hereinafter referred to as the "Trustee") for authority to sell the property of the estate identified on the attached Exhibit "A" (hereinafter referred to as the "Edgewater Property") free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f). There were no objections to the application.

The Trustee proposes to sell the Edgewater Property to Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the "Buyer"). The Buyer is a good faith purchaser for value under §363(m) and does not have any known adverse interest in this case or any parties involved in this case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not a creditor of the Debtor. The sales price is $9,000,000, with a closing to take place after Court approval at a date not more than thirty (30) days from the entry of a final Order approving the sale (including any appeals or other actions which would limit the finality of this Order), at place and time to be agreed upon by the parties.

**EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE AGREEMENT, THE TRUSTEE IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTY AS TO TITLE. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE TRUSTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.**

**THE TRUSTEE SHALL PROVIDE AT CLOSING "INSURABLE TITLE." INSURABLE TITLE IS DEFINED AS TITLE THAT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES BASED ON AN ORDER ENTERED BY THE BANKRUPTCY COURT ALLOWING THE TRUSTEE TO CONVEY THE PROPERTY FREE AND CLEAR OF ANY SUCH LIENS AND ENCUMBRANCES AND INSURABLE WITHOUT INDEMNITY BY THE TRUSTEE AT NORMAL RATES BY A REPUTABLE NATIONAL TITLE COMPANY (AS CHOSEN BY THE PURCHASER PURSUANT TO THE AGREEMENT BEING APPROVED BY THIS ORDER) AND THAT ALL LIENS AND ENCUMBRANCES ATTACH ONLY TO THE PROCEEDS OF THE SALE AND TITLE IS SUBJECT TO COVENANTS, CONDITIONS**

**AND RESTRICTIONS OF RECORD, INCLUDING, BUT NOT LIMITED TO, THE MASTER DEED AND THE GENERAL OR STANDARD CONDITIONS OF ANY TITLE INSURANCE COMPANY, BUT SPECIFICALLY EXCLUDING PARAGRAPH 5 OF THE OCTOBER 31, 2006 ORDER ISSUED BY THE COURT OF COMMON PLEAS FOR THE COUNTY OF BEAUFORT WHICH SUIT WAS BROUGHT BY PAIL L. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR., JAQUELINE HEISS, KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1 -20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (THE "PLAINTIFFS") AND PLAINTIFF'S COUNSEL STIPULATED AT THE HEARING ON THE APPLICATION FOR SALE OF PROPERTY THAT PARAGRAPH 5 WAS NO LONGER VALID AND WOULD NOT EFFECT THE PROPERTY AND RIGHTS BEING SOLD TO PURCHASER HEREIN.**

**THE BUYER HAS BEEN GIVEN AN OPPORTUNITY TO HAVE TITLE TO THE REAL PROPERTY RESEARCHED AND ACCEPTS THE STATUS OF THE REAL PROPERTY. THE TRUSTEE DOES NOT PROVIDE LIEN OPINIONS. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.**

**THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.**

At closing, with the exception of the real estate commission, the Trustee shall be authorized to pay normal seller's closing costs as set forth in the Purchase Agreement.

Alex Graham, Auctioneer (SC License #3997); Sperry Van Ness Commercial Properties, LLC, 1250 Fairmont Avenue, Mt. Pleasant, SC 29464, has been duly appointed as the Trustee's sale's agent. Except as provided for herein, a sales commission of Four (4%) percent of the contract sales price shall be paid, with the Trustee being responsible for the payment of the Trustee's agent two (2%) percent commission and one (1%) percent Buyer's agent commission. The Buyer shall be responsible for paying the remaining one (1%) percent Purchaser's agent commission. As provided for herein, the real estate commissions will not be paid at closing, but shall attach to the net sale proceeds pending agreement between the parties or further Order of this Court.

There is a disputed first mortgage lien held by Regions Bank, dated May 6, 2005, as assigned to Distinct Edgewater, LLC on January 3, 2007. There are related UCC-1's also of record held by Regions Bank and also assigned to Distinct Edgewater, LLC. The Trustee disputes the amount owed to this creditor. This creditor's lien shall attach to the net sale proceeds until an agreement is reached between the parties, or further order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by Strecansky & Co. (Case No. 06-CP-07-2497). The Trustee believes that this cause of action has been sold and/or assigned to CDCJ Holdings, LLC. The Trustee has filed an adversary proceeding

(Adv. Pro. No. 07-80149-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by KRA, Inc. (Case No. 08-CP-07-2325). The Trustee believes that this cause of action has been sold and/or assigned to Distinct SC Limited, LLC. The Trustee has filed an adversary proceeding (Adv. Pro. No. 07-80105-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

Pursuant to a Court approved lending order filed on August 23, 2007 and May 6, 2008, there is a mortgage from the Debtor to John W. Baird as Trustee for the John W. Baird Trust, dated August 23, 2007. This mortgage secures certain amounts that have already been paid or will be paid to the Estate for expenses, including, but not limited to, adequate protection payments, operating costs, and costs and fees of marketing, as well as potential future advances to the Estate. Pursuant to said Order, this lien is junior and subordinate to all presently existing liens, judgments or encumbrances on the subject property to the extent those liens, judgments or encumbrances are not otherwise voided or avoided by further Order of this Court.

The Trustee disputes a purported lien or security interest held by Landplan Partnership, Inc. as recorded in M/L Book 27 at Page 505. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes that certain Mechanic's Lien action filed by Pro Slab, Incorporated (Case No. 07-CP-07-92). An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported lien or security interest held by Calibogue Enterprises as recorded in M/L Book 28 at Page 1958. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported judgment lien or security interest held by Paul A. Hummel, et al. under Case No. 08-CP-07-3556 as recorded in Judgment Book 2006-2556. The Trustee believes that the lien constitutes an avoidable preference and/or fraudulent conveyance. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee is not aware of any other liens, judgments, encumbrances or other

interests. To the extent they may exist, they are disputed and they shall attach to the estate's interest in the net sale proceeds pursuant to 11 U.S.C. §363(f)(4). This sale is free and clear of all liens, judgments encumbrances and other interests pursuant to 11 U.S.C. §363(f).

Net sale proceeds is defined as those funds remaining after payment of normal seller's closing costs, as set forth in the Purchase Agreement or otherwise provided for in this Order.

In the event that after payment of all valid and perfected superior liens, county real property and other taxes and seller's closing costs and other expenses provided for herein, if there remains insufficient net sale proceeds to pay all Chapter 7 administrative claims, including the real estate/sales commissions, the Chapter 7 administrative claims, including real estate/sales commissions, shall be pro-rated.

In the event the net sale proceeds are sufficient and the administrative claims are paid in full, including the full commission to the Sales Agent/Auctioneer, then the Sales Agent/Auctioneer shall repay to the Estate the costs and expenses incurred in the marketing and sale and/or auction of the property, which could be in the approximate amount of $32,042, which sums have or will be advanced to the Estate by the John W. Baird Trust, pursuant to previous Court Order and secured by the mortgage referenced herein.

If for any reason this sale does not occur within the time set forth herein, the Trustee may instead sell this property to a back-up bid for the same or higher price, provided it closes within 60 days of the date of the final entry of this Order.

I find that this matter is properly before this Court and that there were no objections filed to this Notice of Sale.

I find that ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order. It is, therefore

ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.

IT IS FURTHER ORDERED that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order.

IT IS FURTHER ORDERED that the disputed liens set forth herein shall attach to the net sale proceeds as provided for herein until disbursed pursuant to further Order of this Court;

IT IS SO ORDERED!

**EXHIBIT "A"**

All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 16.01 acres and shown as "Additional Property of Edgewater on Broad Creek" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME - PHASE 1" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515 dated December 19, 2002, and recorded in Plat book 91 at page 5 in the ROD Office for Beaufort County South Carolina on 12/31/02, and all that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, together with:

a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and

d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller; and

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the

Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, as provided in this agreement, to pay the Town of Hilton Head Transfer Tax;

All of which is hereinafter referred to as the "Edgewater Property".

EXHIBIT 6

BEAUFORT COUNTY SC-ROD
BK 02742 PGS 2064-2073
DATE: 07/07/2008 02:53:34 PM
INST # 2008043042 RCPT# 55133

STATE OF SOUTH CAROLINA ) BILL OF SALE AND
) INSTRUMENT OF
COUNTY OF BEAUFORT ) ASSIGNMENT AND ASSUMPTION

This Bill of Sale and Instrument of Assignment and Assumption (this "Instrument") is entered into this 1 day of July, 2008, Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership (hereinafter also referred to as "Seller"), in bankruptcy and Ephesian Ventures, LLC, a Nevada limited liability company (hereinafter also referred to as "Purchaser").

RECITALS

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Orders Authorizing Sale, entered on May 26, 2008 and May 31, 2008 on direction of t the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina.

WHEREAS, Seller and Bear Properties, LLC, a Georgia Limited Liability Company entered into that certain Agreement for the Purchase and Sale of Real Property dated May 6, 2008 (hereinafter the "Agreement") and Bear Properties, LLC assigned all rights and interests in the Agreement to Appian Visions, LLC, a Georgia Limited Liability Company; and

Whereas Appian Visions, LLC, assigned all of its rights and interests in the Agreement to Ephesian Ventures, LLC, a Nevada Limited Liability Company.

WHEREAS, Pursuant to the Agreement Seller agreed to sell to Purchaser certain real and personal property including all Declarant's rights (as that term is defined in the Master Deed establishing the Edgewater on Broad Creek Horizontal Property Regime, dated 12/19/2002 and recorded 12/31/2002 with the Register of Deeds, for Beaufort County, South Carolina, in Deed Book 1689 at Page 574, as amended from

time to time), title to real estate, covenants, restrictions, improvements and any other rights, including all personal property, now held by Seller as owner or Declarant in that property containing 16.01 acres, more or less, located in Beaufort County, South Carolina and more particularly described as in Exhibit "A" attached hereto and incorporated herein by this reference and all of Seller's right, title and interest in and to that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed") which has not been conveyed by the Master Deed or otherwise, all (hereinafter also referred to as the "Property"), together with:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to the Master Deed; and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres) and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and
d. the right to use all documents called for in the Agreement dated May 6, 2008, which obligation shall survive the closing of the conveyance described in the aforesaid Agreement; and
e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

WHEREAS, pursuant to the Agreement, Purchaser has agreed to accept, and Seller has agreed to assign, the Declarant's Rights and Seller has further agreed to assign additional rights and obligations; and

WHEREAS, Seller, pursuant to the Agreement, has agreed to transfer additional personal property, control and contract rights to Purchaser;

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

I. DEVELOPER'S RIGHTS

In addition to the ownership of the real property portion of the Property, as defined in the Agreement and Exhibit A attached hereto, conveyed under the deed executed and delivered simultaneously herewith (collectively, the "Deed"), Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser all of the Declarant's Rights to the real property described in Exhibit A and as such are defined hereinabove.

Further, Seller assigns all rights it has in the development of any and all undeveloped Property transferred in the Deed or hereunder.

II. CONTRACTS AND PERMITS

Seller hereby sells, conveys, transfers, assigns and delivers all of its rights and benefits, if any, [but Purchaser assumes none of the obligations]under any and all contracts and permits to which Seller has any right, including but not limited to those set forth in Exhibit B.

III. PERSONAL PROPERTY

Seller hereby sells, conveys, transfers, assigns and delivers all its right, title and interest, if any, unto the Purchaser in and to all:

A. Accommodations, appurtenances, common elements, condominiums, limited common elements, units in connection with the Property to the extent that any such term is not considered real property and therefore not conveyed by the Deed.

B. Unless expressly excluded under the Agreement, all books, records, documents, and other assets of any and every type owned by or belonging to Seller along with any and all books and records, condominium documents, declarations and intellectual property and software which belongs to Seller in connection with the Property conveyed under the Deed or conveyed hereby.

C. Any and all furniture, fixtures and equipment or other personal property owned by Seller and located in, on or relating to the Property.

D. Any and all other Property as defined in the Agreement and not otherwise covered under the Deed or expressly covered elsewhere within this Instrument.

IV. MISCELLANEOUS

A, The validity, interpretation and effect of this Instrument shall be construed performed and enforced in accordance with, and governed by, the Law of the State of South Carolina (without giving effect to the principles of conflict of Laws thereof).

B. This Instrument shall bind and shall inure to the benefit of the respective parties hereto and to their respective successors and permitted assigns.

C. This Instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed by their authorized representatives as of the date first above written.

WITNESSES:

PURCHASER:

EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company

By: _____
W. Thomas Vernon
Agent appointed by Manager's Resolution

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF RICHLAND )

I, Charlotte Foster hereby certify that the above-named Purchaser, Ephesian Ventures, LLC, by W. Thomas Vernon, Agent appointed by Manager's Resolution, personally appeared before me this day and acknowledged the due execution of the foregoing instrument..

Witness my hand an official seal this the 7 of July, 2008.

Notary Public for the State of South Carolina
Charlotte Foster
Signature of Notary
My Commission Expires: 6/10/2012

WITNESSES:

SELLER:

BROAD CREEK EDGEWATER, LP

By: _____
Kevin Campbell, Esquire
Trustee for Broad Creek Edgewater, LP in bankruptcy

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON )

I, Michael Corrady Notary Public for the State of South Carolina, do hereby certify that the above-named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand an official seal this 7th day of July, 2008.

Notary Public for the State of South Carolina

Signature of Notary
My Commission Expires: 8/31/14

**Exhibit A**
**Property Description**

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02.

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe

the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and

d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.

**EXHIBIT B**

**All property not real property, including but not limited to:**

1. **Town of Hilton Head Building Permit B0592636;**
2. **DHEC and Town of Hilton Head Pool Permits, if any;**
3. **Any and all other various sundry permits issued to or assumed by Seller by state, county, town or other governmental or quasi-governmental entities;**

EXHIBIT
7

B PB
21 Fookie law
489

Document prepared by
W. Thomas Vernon
Attorney at Law, PA
2511 Wilmot Avenue
Columbia, SC 29205

If not filing, please return to above address

BEAUFORT COUNTY SC - ROD
BK 02742 PGS 2049-2063
FILE NUM 2008043041
07/07/2008 02:53:34 PM
REC'D BY P BAXLEY RCPT# 651338
RECORDING FEES 21.00
County Tax 9,600.00
State Tax 23,400.00
Transfer Tax 22,500.00

STATE OF SOUTH CAROLINA )
) QUIT CLAIM DEED
COUNTY OF BEAUFORT )

TO ALL WHOM THESE PRESENTS MAY COME

WHEREAS: KEVIN CAMPBELL, TRUSTEE IN BANKRUPTCY FOR BROAD CREEK EDGEWATER, LP, SENDS GREETING:

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Order Authorizing Sale, signed by the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina. (Attached hereto and incorporated by reference as **Exhibit B**)

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, the said Kevin Campbell, Trustee in Bankruptcy for **BROAD CREEK EDGEWATER, LP, a South Carolina Limited Partnership** (hereinafter the "Grantor") in consideration of the sum of Nine Million and no/100s Dollars ($9,000,000.00) to it in hand paid at and before the sealing and delivery of these presents by **EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company** (hereinafter the "Grantee"), in the State aforesaid the receipt of which is hereby acknowledged has granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property.

**See Exhibit A attached hereto and incorporated herein by reference.**

**Grantee's address:** **c/o W. Thomas Vernon**
**2511 Wilmot Avenue**
**Columbia, South Carolina 29205**

CERTIFIED TRUE COPY
of the document recorded in the Office of the Register of Deeds for Beaufort County
SC in Book # 2742 Pg. # 2049
On 7/7/2008
This Document contains 16 pages.

ADD DMP Record 7/15/2008 11:31:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0004 | 0000 | 00 |

ADD DMP Record 7/15/2008 11:31:24 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 0000 | 00 |



2015/06/17 12:05 BEAUFORT COUNTY ROD

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof.

**WITNESS the Grantor's Hand and Seal this 26 day of July in the year of our Lord Two Thousand Eight (2008).**

**Signed, Sealed and Delivered in the Presence of:**

**Broad Creek Edgewater, LP**

**By:**
**Kevin Campbell, Esquire**
**Trustee for Broad Creek Edgewater, LP in bankruptcy**

**STATE OF SOUTH CAROLINA )**
**CHARLESTON ~~Bky~~ )**
**COUNTY OF ~~BEAUFORT~~ )**

**PROBATE**

**PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee sign, seal and as the Grantor's act and deed deliver the within Limited Warranty Deed and that deponent with** Michael L. Conway **witnessed the execution thereof.**

(witness)

**SWORN to before me this**
26 **of** July **, 2008.**

(Seal)
**Notary Public for South Carolina**
**My Commission expires:** 8/30/14





2015/06/17 12:06 BEAUFORT COUNTY ROD

Exhibit A
Property Description

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. R510-011-000-0004-0000

Being also all rights retained by Grantor, if any, in that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and
d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by



2015/06/17 12:06 BEAUFORT COUNTY ROD

action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.



2015/06/17 12:07 BEAUFORT COUNTY ROD

EXHIBIT B

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-02546-DD

**ORDER APPROVING SALE FREE AND CLEAR OF LIENS, JUDGMENTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(f)**

The relief set forth on the following pages, for a total of 7 pages including this page is hereby **ORDERED**.

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FILED BY THE COURT
05/27/2008

US Bankruptcy Court Judge
District of South Carolina

Entered: 05/28/2008



2015/06/17 12:07 BEAUFORT COUNTY ROD

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---|---|---|
| IN RE. | ) | |
| | ) | B/K Case No. 07-02546-DD |
| BROAD CREEK EDGEWATER, LP | ) | Chapter 7 |
| | ) | |
| Debtor | ) | **ORDER APPROVING SALE** |

THIS MATTER comes before the Court upon the application of Kevin Campbell, the duly appointed and acting Chapter 7 Trustee for the above Debtor (hereinafter referred to as the "Trustee") for authority to sell the property of the estate identified on the attached Exhibit "A" (hereinafter referred to as the "Edgewater Property") free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f). There were no objections to the application.

The Trustee proposes to sell the Edgewater Property to Bear Properties, LLC, a Georgia Limited Liability Company or its assigns (the "Buyer"). The Buyer is a good faith purchaser for value under §363(m) and does not have any known adverse interest in this case or any parties involved in this case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not a creditor of the Debtor. The sales price is $9,000,000, with a closing to take place after Court approval at a date not more than thirty (30) days from the entry of a final Order approving the sale (including any appeals or other actions which would limit the finality of this Order), at place and time to be agreed upon by the parties.

**EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE AGREEMENT, THE TRUSTEE IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTY AS TO TITLE. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE TRUSTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.**

**THE TRUSTEE SHALL PROVIDE AT CLOSING "INSURABLE TITLE." INSURABLE TITLE IS DEFINED AS TITLE THAT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES BASED ON AN ORDER ENTERED BY THE BANKRUPTCY COURT ALLOWING THE TRUSTEE TO CONVEY THE PROPERTY FREE AND CLEAR OF ANY SUCH LIENS AND ENCUMBRANCES AND INSURABLE WITHOUT INDEMNITY BY THE TRUSTEE AT NORMAL RATES BY A REPUTABLE NATIONAL TITLE COMPANY (AS CHOSEN BY THE PURCHASER PURSUANT TO THE AGREEMENT BEING APPROVED BY THIS ORDER) AND THAT ALL LIENS AND ENCUMBRANCES ATTACH ONLY TO THE PROCEEDS OF THE SALE AND TITLE IS SUBJECT TO COVENANTS, CONDITIONS**

AND RESTRICTIONS OF RECORD, INCLUDING, BUT NOT LIMITED TO, THE MASTER DEED AND THE GENERAL OR STANDARD CONDITIONS OF ANY TITLE INSURANCE COMPANY, BUT SPECIFICALLY EXCLUDING PARAGRAPH 5 OF THE OCTOBER 31, 2006 ORDER ISSUED BY THE COURT OF COMMON PLEAS FOR THE COUNTY OF BEAUFORT WHICH SUIT WAS BROUGHT BY PAIL L. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR., JAQUELINE HEISS, KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1 -20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (THE "PLAINTIFFS") AND PLAINTIFF'S COUNSEL STIPULATED AT THE HEARING ON THE APPLICATION FOR SALE OF PROPERTY THAT PARAGRAPH 5 WAS NO LONGER VALID AND WOULD NOT EFFECT THE PROPERTY AND RIGHTS BEING SOLD TO PURCHASER HEREIN.

THE BUYER HAS BEEN GIVEN AN OPPORTUNITY TO HAVE TITLE TO THE REAL PROPERTY RESEARCHED AND ACCEPTS THE STATUS OF THE REAL PROPERTY. THE TRUSTEE DOES NOT PROVIDE LIEN OPINIONS. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.

THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.

At closing, with the exception of the real estate commission, the Trustee shall be authorized to pay normal seller's closing costs as set forth in the Purchase Agreement.

Alex Graham, Auctioneer (SC License #3997); Sperry Van Ness Commercial Properties, LLC, 1250 Fairmont Avenue, Mt. Pleasant, SC 29464, has been duly appointed as the Trustee's sale's agent. Except as provided for herein, a sales commission of Four (4%) percent of the contract sales price shall be paid, with the Trustee being responsible for the payment of the Trustee's agent two (2%) percent commission and one (1%) percent Buyer's agent commission. The Buyer shall be responsible for paying the remaining one (1%) percent Purchaser's agent commission. As provided for herein, the real estate commissions will not be paid at closing, but shall attach to the net sale proceeds pending agreement between the parties or further Order of this Court.

There is a disputed first mortgage lien held by Regions Bank, dated May 6, 2005, as assigned to Distinct Edgewater, LLC on January 3, 2007. There are related UCC-1's also of record held by Regions Bank and also assigned to Distinct Edgewater, LLC. The Trustee disputes the amount owed to this creditor. This creditor's lien shall attach to the net sale proceeds until an agreement is reached between the parties, or further order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by Strecansky & Co. (Case No. 06-CP-07-2497). The Trustee believes that this cause of action has been sold and/or assigned to CDCJ Holdings, LLC. The Trustee has filed an adversary proceeding

(Adv. Pro. No. 07-90149-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by KRA, Inc. (Case No. 06-CP-07-2325). The Trustee believes that this cause of action has been sold and/or assigned to Distinct SC Limited, LLC The Trustee has filed an adversary proceeding (Adv. Pro No. 07-80105-DD) to have this Court determine the validity and extent of this lien The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court

Pursuant to a Court approved lending order filed on August 23, 2007 and May 6, 2008, there is a mortgage from the Debtor to John W Baird as Trustee for the John W. Baird Trust, dated August 23, 2007 This mortgage secures certain amounts that have already been paid or will be paid to the Estate for expenses, including, but not limited to, adequate protection payments, operating costs, and costs and fees of marketing, as well as potential future advances to the Estate. Pursuant to said Order, this lien is junior and subordinate to all presently existing liens, judgments or encumbrances on the subject property to the extent those liens, judgments or encumbrances are not otherwise voided or avoided by further Order of this Court

The Trustee disputes a purported lien or security interest held by Landplan Partnership, Inc. as recorded in M/L Book 27 at Page 505. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes that certain Mechanic's Lien action filed by Pro Slab, Incorporated (Case No. 07-CP-07-92). An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported lien or security interest held by Calibogue Enterprises as recorded in M/L Book 28 at Page 1958. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported judgment lien or security interest held by Paul A. Hummel, et al. under Case No 06-CP-07-3556 as recorded in Judgment Book 2006-2556. The Trustee believes that the lien constitutes an avoidable preference and/or fraudulent conveyance. Further, the Trustee disputes the amount owed to this creditor This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee is not aware of any other liens, judgments, encumbrances or other





2015/06/17 12:08 BEAUFORT COUNTY ROD

interests. To the extent they may exist, they are disputed and they shall attach to the estate's interest in the net sale proceeds pursuant to 11 U.S.C. §363(f)(4). This sale is free and clear of all liens, judgments encumbrances and other interests pursuant to 11 U S.C. §363(f).

Net sale proceeds is defined as those funds remaining after payment of normal seller's closing costs, as set forth in the Purchase Agreement or otherwise provided for in this Order

In the event that after payment of all valid and perfected superior liens, county real property and other taxes and seller's closing costs and other expenses provided for herein, if there remains insufficient net sale proceeds to pay all Chapter 7 administrative claims, including the real estate/sales commissions, the Chapter 7 administrative claims, including real estate/sales commissions, shall be pro-rated.

In the event the net sale proceeds are sufficient and the administrative claims are paid in full, including the full commission to the Sales Agent/Auctioneer, then the Sales Agent/Auctioneer shall repay to the Estate the costs and expenses incurred in the marketing and sale and/or auction of the property, which could be in the approximate amount of $32,042, which sums have or will be advanced to the Estate by the John W. Baird Trust, pursuant to previous Court Order and secured by the mortgage referenced herein.

If for any reason this sale does not occur within the time set forth herein, the Trustee may instead sell this property to a back-up bid for the same or higher price, provided it closes within 60 days of the date of the final entry of this Order.

I find that this matter is properly before this Court and that there were no objections filed to this Notice of Sale

I find that ten (10) day stay pursuant to Fed.R Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order. It is, therefore

ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.

IT IS FURTHER ORDERED that the ten (10) day stay pursuant to Fed.R Bankr.P 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order.

IT IS FURTHER ORDERED that the disputed liens set forth herein shall attach to the net sale proceeds as provided for herein until disbursed pursuant to further Order of this Court;

IT IS SO ORDERED!

EXHIBIT "A"

All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 16.01 acres and shown as "Additional Property of Edgewater on Broad Creek" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME - PHASE 1" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515 dated December 19, 2002, and recorded in Plat book 91 at page 5 in the ROD Office for Beaufort County South Carolina on 12/31/02, and all that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, together with.

a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and

d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller, and

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the



2015/06/17 12:08 BEAUFORT COUNTY ROD

Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, as provided in this agreement, to pay the Town of Hilton Head Transfer Tax;

All of which is hereinafter referred to as the "Edgewater Property".



2015/06/17 12:09 BEAUFORT COUNTY ROD

BAE SYSTEMS

Bankruptcy Noticing Center
2555 Network Place 3rd Floor
Herndon, Virginia 20171-3514

# CERTIFICATE OF SERVICE

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 30, 2008

Signature: Joseph Speetjens



2015/06/17 12:09 BEAUFORT COUNTY ROD

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number. 07-02546

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

FILED
at ___ O'clock & ___ min ___ M

FILED BY THE COURT ON MAY 2 2 2008

United States Bankruptcy Court
Columbia, South Carolina

David R. Duncan
US Bankruptcy Court Judge
District of South Carolina

ENTERED. ENTERED
MAY 2 3 2008
R. S. S.



2015/06/17 12:09 BEAUFORT COUNTY ROD

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---|---|---|
| IN RE | ) | |
| | ) | Chapter 7 |
| Broad Creek Edgewater, LP. | ) | |
| | ) | Case No.: 07-02546-dd |
| Debtor | ) | |
| | ) | |

ORDER APPROVING BIDDING PROCEDURES

This proceeding comes before the Court on the notice and motion of the Chapter 7 trustee for approval of certain bidding proceeding to assist in selling the Debtor's assets.

The Court has been informed that all parties in interest have been notified of the proposed bidding procedures, and no objections to the proposed bidding procedures have been received. The Chapter 7 trustee has represented to the Court that such bidding procedures are in the best interest of the creditors of the estate. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the bidding procedures set forth in the Motion are approved and the Asset Purchase Agreement with Bear Properties LLC is approved, including the termination fee of $200,000, the initial overbid of $350,000 and subsequent bidding increments of $50,000.

The Applicant:

/s/ Kevin Campbell
Kevin Campbell, Chapter 7 Trustee



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BAE SYSTEMS

Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

# CERTIFICATE OF SERVICE

I, Joseph Spreitzer, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9). Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the judiciary's privacy policies.

Date: May 15, 2008

Signature: Joseph Spreitzer



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? PM
7:5 pr :kau

BEAUFORT COUNTY SC - ROD
BK 02742 PG3 2064-2072
DATE: 07/07/2008 02:53:34 PM
INST # 2008043042 RCPT# 55133

STATE OF SOUTH CAROLINA )
) BILL OF SALE AND INSTRUMENT OF
COUNTY OF BEAUFORT ) ASSIGNMENT AND ASSUMPTION

This Bill of Sale and Instrument of Assignment and Assumption (this "Instrument") is entered into this 1 day of July, 2008, Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership (hereinafter also referred to as "Seller"), in bankruptcy and Ephesian Ventures, LLC, a Nevada limited liability company (hereinafter also referred to as "Purchaser").

## RECITALS

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Orders Authorizing Sale, entered on May 26, 2008 and May 31, 2008 on direction of t the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina.

WHEREAS, Seller and Bear Properties, LLC, a Georgia Limited Liability Company entered into that certain Agreement for the Purchase and Sale of Real Property dated May 6, 2008 (hereinafter the "Agreement") and Bear Properties, LLC assigned all rights and interests in the Agreement to Appian Visions, LLC, a Georgia Limited Liability Company; and

Whereas Appian Visions, LLC, assigned all of its rights and interests in the Agreement to Ephesian Ventures, LLC, a Nevada Limited Liability Company.

WHEREAS, Pursuant to the Agreement Seller agreed to sell to Purchaser certain real and personal property including all Declarant's rights (as that term is defined in the Master Deed establishing the Edgewater on Broad Creek Horizontal Property Regime, dated 12/19/2002 and recorded 12/31/2002 with the Register of Deeds, for Beaufort County, South Carolina, in Deed Book 1689 at Page 574, as amended from





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time to time), title to real estate, covenants, restrictions, improvements and any other rights, including all personal property, now held by Seller as owner or Declarant in that property containing 16.01 acres, more or less, located in Beaufort County, South Carolina and more particularly described as in Exhibit "A" attached hereto and incorporated herein by this reference and all of Seller's right, title and interest in and to that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed") which has not been conveyed by the Master Deed or otherwise, all (hereinafter also referred to as the "Property"), together with:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to the Master Deed; and

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project (which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres) and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and

d. the right to use all documents called for in the Agreement dated May 6, 2008, which obligation shall survive the closing of the conveyance described in the aforesaid Agreement; and

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

WHEREAS, pursuant to the Agreement, Purchaser has agreed to accept, and Seller has agreed to assign, the Declarant's Rights and Seller has further agreed to assign additional rights and obligations; and



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WHEREAS, Seller, pursuant to the Agreement, has agreed to transfer additional personal property, control and contract rights to Purchaser;

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

I. DEVELOPER'S RIGHTS

In addition to the ownership of the real property portion of the Property, as defined in the Agreement and Exhibit A attached hereto, conveyed under the deed executed and delivered simultaneously herewith (collectively, the "Deed"), Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser all of the Declarant's Rights to the real property described in Exhibit A and as such are defined hereinabove.

Further, Seller assigns all rights it has in the development of any and all undeveloped Property transferred in the Deed or hereunder.

II. CONTRACTS AND PERMITS

Seller hereby sells, conveys, transfers, assigns and delivers all of its rights and benefits, if any, [but Purchaser assumes none of the obligations]under any and all contracts and permits to which Seller has any right, including but not limited to those set forth in Exhibit B.

III. PERSONAL PROPERTY

Seller hereby sells, conveys, transfers, assigns and delivers all its right, title and interest, if any, unto the Purchaser in and to all:

A. Accommodations, appurtenances, common elements, condominiums, limited common elements, units in connection with the Property to the extent that any such term is not considered real property and therefore not conveyed by the Deed.

B. Unless expressly excluded under the Agreement, all books, records, documents, and other assets of any and every type owned by or belonging to Seller along with any and all books and records, condominium documents, declarations and intellectual property and software which belongs to Seller in connection with the Property conveyed under the Deed or conveyed hereby.

C. Any and all furniture, fixtures and equipment or other personal property owned by Seller and located in, on or relating to the Property.



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D. Any and all other Property as defined in the Agreement and not otherwise covered under the Deed or expressly covered elsewhere within this Instrument.

IV. MISCELLANEOUS

A. The validity, interpretation and effect of this Instrument shall be construed performed and enforced in accordance with, and governed by, the Law of the State of South Carolina (without giving effect to the principles of conflict of Laws thereof).

B. This Instrument shall bind and shall inure to the benefit of the respective parties hereto and to their respective successors and permitted assigns.

C. This Instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed by their authorized representatives as of the date first above written.

WITNESSES:

PURCHASER:

EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company

By: _____
W. Thomas Vernon
Agent appointed by Manager's Resolution





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STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF RICHLAND )

I, Clarissa Foster hereby certify that the above-named Purchaser, Ephesian Ventures, LLC, by W. Thomas Vernon, Agent appointed by Manager's Resolution, personally appeared before me this day and acknowledged the due execution of the foregoing instrument..

Witness my hand an official seal this the 7 of July, 2008.

Notary Public for the State of South Carolina
Clarissa Foster
Signature of Notary
My Commission Expires: 4/20/2019





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WITNESSES:

SELLER:

BROAD CREEK EDGEWATER, LP

By: _____

Kevin Campbell, Esquire
Trustee for Broad Creek Edgewater, LP in bankruptcy

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON )

I, Michael Connely Notary Public for the State of South Carolina, do hereby certify that the above-named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand an official seal this 7th day of July, 2008.

Notary Public for the State of South Carolina

_____
Signature of Notary
My Commission Expires: 8/31/11



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**Exhibit A**
**Property Description**

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11629 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02.

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project (which shall herein be used to describe

the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and

d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.





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EXHIBIT B

All property not real property, including but not limited to:

1. Town of Hilton Head Building Permit B0502636;
2. DHEC and Town of Hilton Head Pool Permits, if any;
3. Any and all other various sundry permits issued to or assumed by Seller by state, county, town or other governmental or quasi-governmental entities;



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EXHIBIT
8

# Town of Hilton Head Island

## Design Review Board-Alterations/Additions

April 13, 2010

Project Narrative for Edgewater Swimming Pool Addition

The existing Edgewater community is located on Marshland Road and backs up onto Broad Creek. Edgewater is divided into two parcels, consisting of 7.6 acres (including the clubhouse & tennis facility) owned by the property owner's regime and approximately 16 acres (including the existing pool) that has recently been foreclosed by the bank. The property owners do not have access to the existing pool and are requesting approval to add a new swimming pool and deck behind their existing clubhouse and tennis facility.

The existing clubhouse and tennis facility is located near the Marshland Road entrance and is surrounded by wooded edges and a solid fenced perimeter. The proposed swimming pool location is adjacent to the existing clubhouse, well within the existing property boundary and will have the tennis courts to the north with existing parking to the south side, and a buffer at the rear that backs up to an existing solid wood fence. The proposed pool area is currently covered with lawn on half the site and small trees on the remaining portion (see photos and plans). An existing landscape planter surrounding a large existing pine tree will remain and become integral to the pool landscaping. There are no wetlands within the proposed pool area and existing utilities/storm drainage will service the new facility.

The proposed pool is approximately 1,151square feet, with 3,190 square feet of sunning deck. The pool will have a tiled perimeter edge with coping and concrete sunning deck with a stucco/synthetic cool surface finish treatment. The pool planter wall will match existing planter walls around the clubhouse and pavement grades will meet flush with the exiting clubhouse walkways. The perimeter of the pool will include native/naturalized landscaping and a 4' high black ornamental metal barrier fence (to match entrance gate and surround bollard lights). The pool will include underwater accent lighting and low level landscape lighting.

The property owner's regime will own and maintain the new swimming pool facility.

# TOWN OF HILTON HEAD ISLAND
## COMMUNITY DEVELOPMENT DEPARTMENT
# MASTER APPLICATION FORM

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS: Edgewater @ Broad Creek ~~POA~~ HOA

STREET ADDRESS: ~~389 Marshland Rd.~~ Hilton Head Island, SC 29926

ZONING DISTRICT: 39 Verbena Ln  OVERLAY DISTRICT:

TAX DISTRICT: R510  MAP: 11  PARCEL (S): 177

| LAND OWNER | APPLICANT | AGENT |
|---|---|---|
| Edgewater HOA | ← Same | Terry Simmons |
| NAME: Bob Demo President | | Year Round Pool Co. Inc. |
| COMPANY: 50 Verbena Lane 2204 | | 886 Beach Island Rd. |
| MAILING ADDRESS: Hilton Head SC 29926 | | Bluffton, SC 29910 |
| CITY STATE ZIP: 843-681-9555 | | (843)-837-7665 ext-101 |
| TELEPHONE / FAX | | 757-0400 |
| | Bus License #: (For DRB, DR & SUB Only) | Bus License#: 3676 (For DRB, DR & SUB Only) |
| bdemo@hargray.com | | Frank.Fotia@yearroundpool.com |
| EMAIL ADDRESS | EMAIL ADDRESS | EMAIL ADDRESS |

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW (DPR)*
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DPR*
- [ ] ZONING MAP AMENDMENT *
- [x] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION
- [ ] EXPEDITED DPR*

Frank Fotia

**Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?**
☐ YES ☒ NO
**If so, a copy of the private covenants and/or restrictions must be submitted with this application.**

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND ARE A RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

SIGNATURE: [signature]  DATE: 3-30-2010

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

SIGNATURE: [signature]  DATE: 3-30-2010

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 3/29/10
ACCEPTED BY: DH
MASTER TRACKING NUMBER: DR100017

COMMUNITY DEVELOPMENT DEPARTMENT

# DESIGN REVIEW BOARD

# SUPPLEMENTAL APPLICATION FORM

***THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.***

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT Edgewater @ Broad Creek POA

PROJECT CATEGORY:

- [ ] New Development – Conceptual
- [x] Alteration/Addition
- [ ] New Development – Final
- [ ] Minor External Change

Project # from Notice of Action DR

## I. APPLICATION REQUIREMENTS FOR ALL PROJECTS:

[ ] ARCHITECTURAL REVIEW BOARD NOTICE OF ACTION (If applicable): When a project is within the jurisdiction of an Architectural Review Board (ARB), the applicant shall submit such ARB's written notice of action LMO Section 16-3-1004. Submitting an application to the ARB to meet this requirement is the responsibility of the applicant.

[✓] **FILING FEE** (New Development **$175**, Alterations/Additions **$100**, Minor External **$50**)

## II. APPLICATION REQUIREMENTS FOR NEW DEVELOPMENT (CONCEPTUAL):

**Sec. 16-3-1003. Submission Requirements**

Applicants shall submit an application form as published by the Administrator and appropriate fee as required by Sec. 16-3-105 along with the following materials before an application shall be considered complete.

A. **Concept Approval – New Development. (11 copies)**

[ ] 1. A survey (1"=30' minimum scale) of property lines, existing topography and the location of trees meeting the tree protection regulations of Sec. 16-3-405, and if applicable, location of bordering streets, marshes and beaches.

[ ] 2. A site analysis study to include specimen trees, access, significant topography, wetlands, buffers, setbacks, views, orientation and other site features that may influence design.

[ ] 3. A draft written narrative describing the design intent of the project, its goals and objectives and how it reflects the site analysis results.

[ ] 4. Context photographs of neighboring uses and architectural styles.

5. Conceptual site plan (to scale) showing proposed location of new structures, parking areas and landscaping.

[ ] 6. Conceptual sketches of primary exterior elevations showing architectural character of the proposed development, materials, colors, shadow lines and landscaping.

# DESIGN REVIEW BOARD SUPPLEMENTAL APPLICATION FORM (continued)

## III. APPLICATION REQUIREMENTS FOR NEW DEVELOPMENT (FINAL)

**Sec. 16-3-1003. Submission Requirements**

Applicants shall submit an application form as published by the Administrator and appropriate fee as required by Sec. 16-3-105 along with the following materials before an application shall be considered complete.

B. **Final Approval -- New Development. (11 copies)**

- [ ] 1. A final written narrative describing how the project conforms with the conceptual approval and design review guidelines of Sec. 16-4-503.
- [ ] 2. Final site development plan meeting the requirements of Sec. 16-3-303.F.
- [ ] 3. Final site lighting and landscaping plans meeting the requirements of Sec. 16-3-304 and Sec. 16-3-305.
- [ ] 4. Final floor plans and elevation drawings (1/8"=1'-0" minimum scale) showing exterior building materials and colors with architectural sections and details to adequately describe the project.
- [ ] 5. A color board (11"x17" maximum) containing actual color samples of all exterior finishes, keyed to the elevations, and indicating the manufacturer's name and color designation.
- [ ] 6. Any additional information requested by the Design Review Board at the time of concept approval, such as scale model or color renderings, that the Board finds necessary in order to act on a final application.

## IV. APPLICATION REQUIREMENTS FOR ALTERATIONS/ADDITIONS AND MINOR EXTERNAL CHANGES (11 copies):

- [x] WRITTEN NARRATIVE describing how project conforms to design guidelines of Section 16-4-503
- [x] PHOTOGRAPHS AND/OR DRAWINGS OF EXISTING DEVELOPMENT
- [x] DRAWINGS OF PROPOSED DEVELOPMENT - 11"X 17"
- [x] MATERIAL/COLOR SAMPLES OF EXISTING AND PROPOSED CHANGES 8 1//2" X 14" *Maximum* STATING MANUFACTURER AND MATERIAL NAME

*NOTE: ALL APPLICATION ITEMS MUST BE SUBMITTED BY THE DEADLINE DATE IN ORDER TO BE REVIEWED BY THE DRB LMO SECTION 16-3-106.

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 3/29/10 TIME: _____

ACCEPTED BY: RN MASTER TRACKING NUMBER: DR100017

DRB PACKAGE CONTENTS:

1 – 24" X 36" SITE PLAN

1 – 11" X 17" SITE PLAN

1 – 24" X 36" POOL/DECK PLAN

1 – PLANTING PLAN (Wood + Partners)

3 PGS. SITE PHOTOS

1 – PROJECT NARRATIVE

1 - pc. 6" X 6" TI1610 "MEDITERRANEAN BLUE" WATERLINE TILE

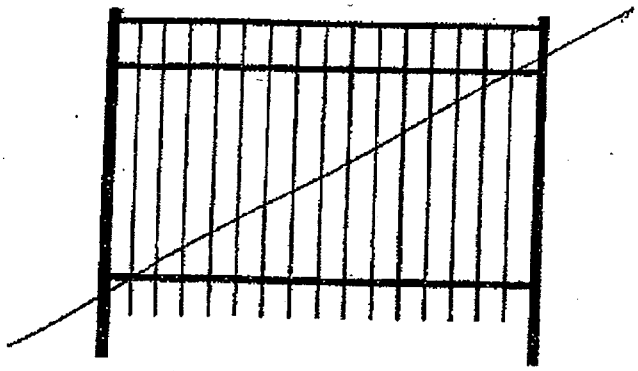
1 – pc. 2" X 2" "COBALT" STEP/BENCH TILE

1 – DECK AND RAISED-WALL COLOR CARD - "WHITE"

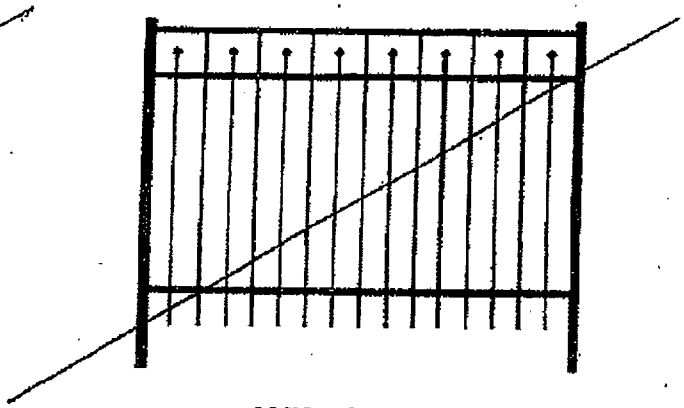
1- 2 pgs. FENCE STYLE SELECTION SHEET AND PHOTO OF "CHICAGO" FENCE STYLE

## Fence Styles: Classic, Wilmington, Blue Ridge, & Chicago

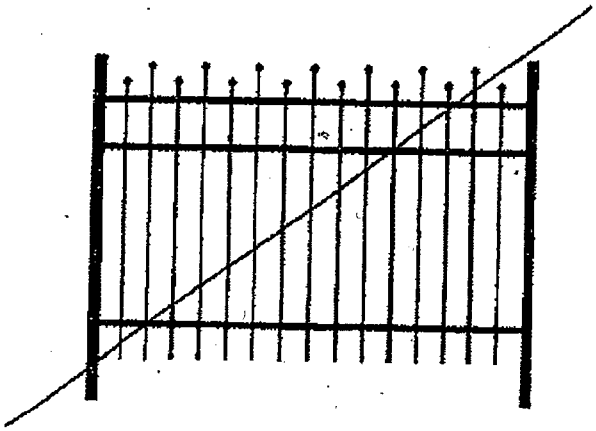
# RESIDENTIAL



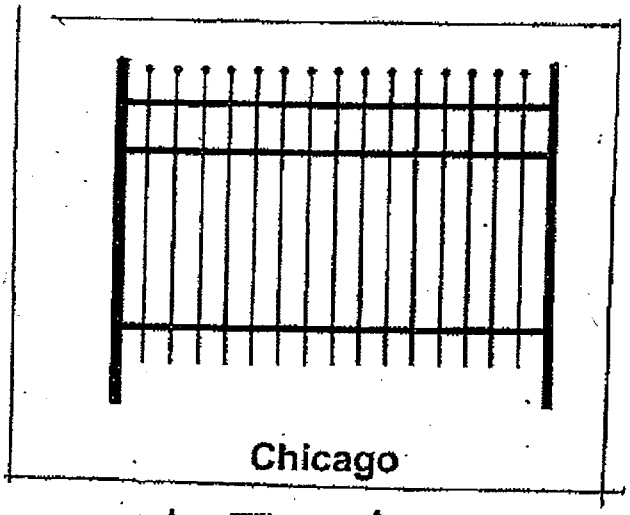
Classic



Wilmington



Blue Ridge



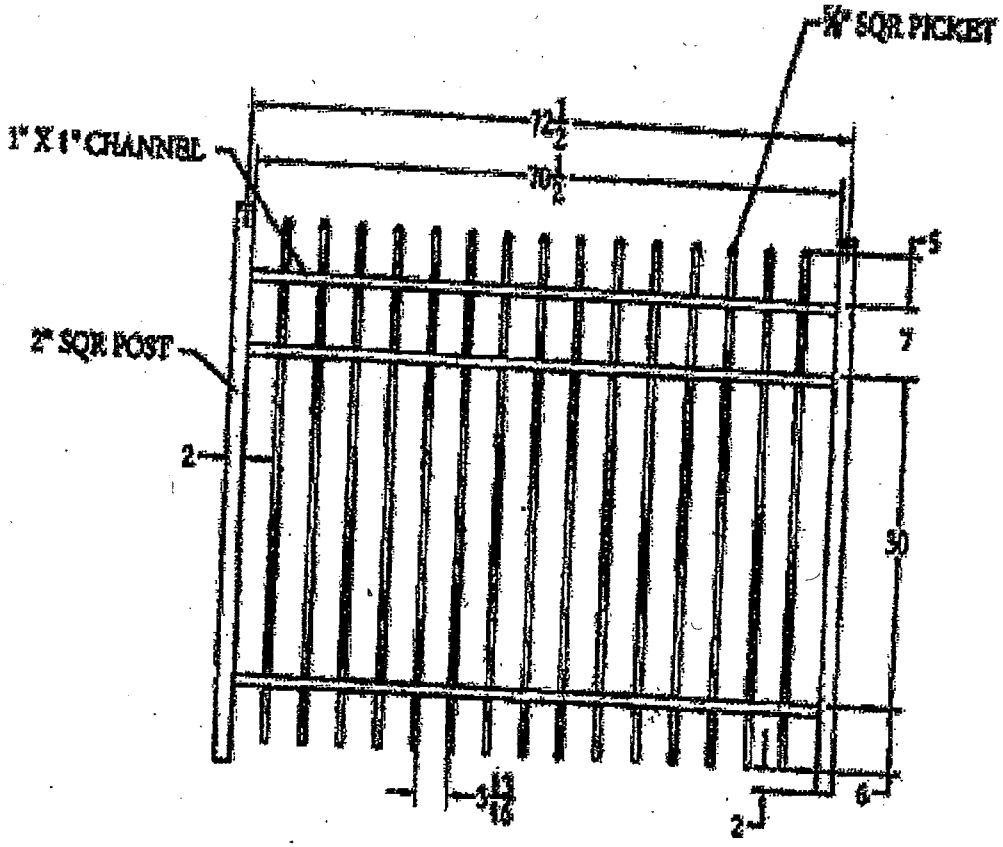
Chicago

★ Edgewater Fence Style

Rail = 1" x 1"

Picket = 5/8" x 5/8"

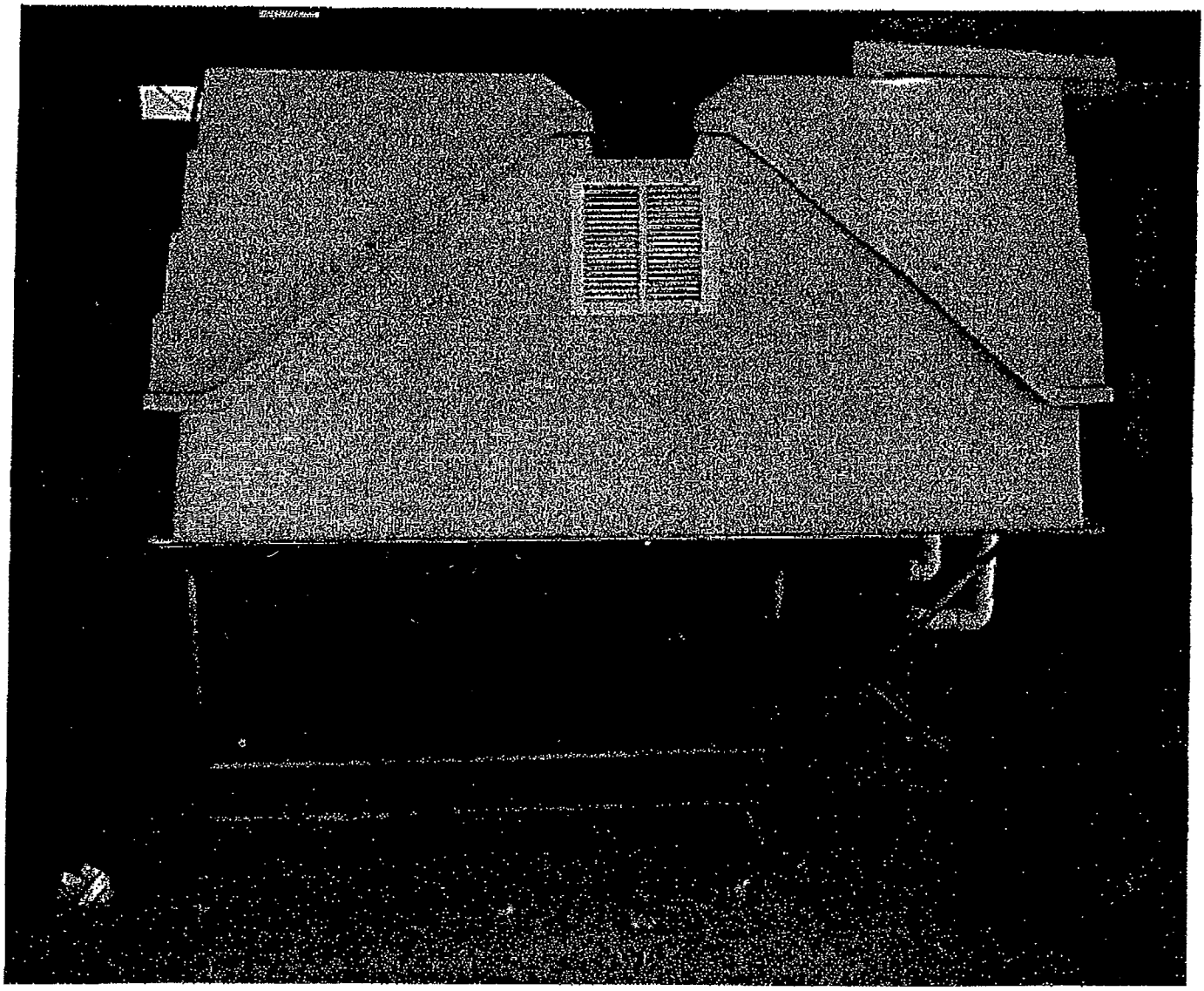
Edgewater Fence Detail

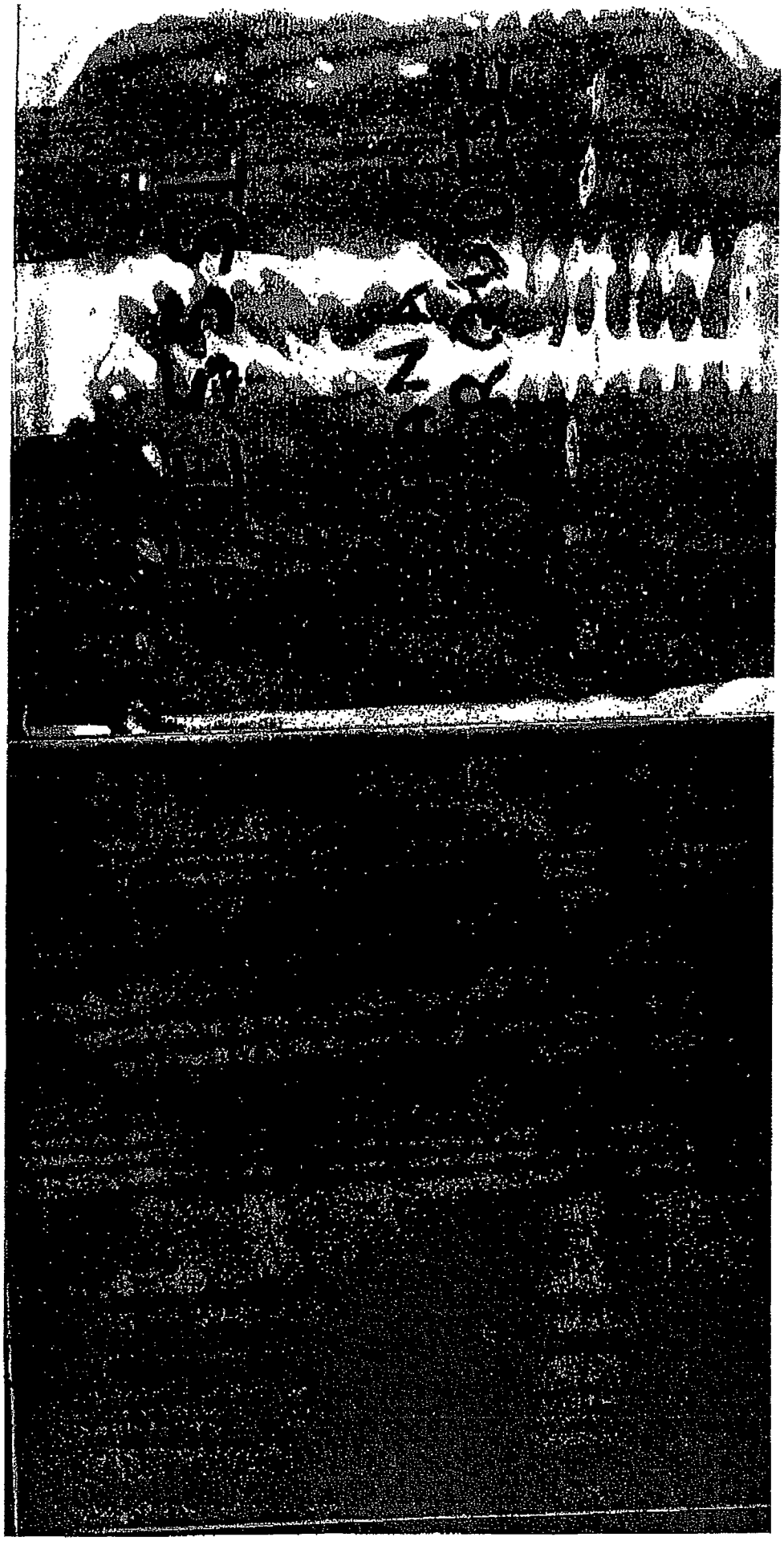



NOTES:

1. ALL DIMENSIONS IN INCHES.
2. INSTALL POSTS PER STANDARD CONSTRUCTION PRACTICES.

Edgewater Equipment Vault





# THE TOWN OF HILTON HEAD ISLAND
## DESIGN REVIEW BOARD – NOTICE OF ACTION

**PROJECT:** Edgewater – Pool Addition **PROJECT #:** DR100017

**LOCATED AT:** 39 Verbena Lane

**CATEGORY:** Alteration/Addition

**ACTION DATE:** April 27, 2010 **NOTICE DATE:** April 28, 2010

**OWNER:**

**APPLICANT:**
Mr. Terry Simmons
Year Round Pool Company
1484 Fording Island Road
Bluffton, SC 29910

**AGENT:**
Same

**ON THE ABOVE MEETING DATE YOUR APPLICATION RECEIVED THE FOLLOWING ACTION:**

- ☒ APPROVED FOR REVIEW AS SUBMITTED
- ☐ APPROVED WITH THE SPECIFIC CONDITIONS LISTED BELOW
- ☐ WAIVED REVIEW
- ☐ WITHDRAWN AT THE APPLICANTS REQUEST
- ☐ DISAPPROVED FOR THE REASONS LISTED BELOW

(1) The color and finish of the blue tile sample is approved as presented today.

(2) The toned-down white color of the pool deck is approved as presented today.

**PURSUANT TO LMO 16.3.116, THIS APPROVAL WILL EXPIRE TWO YEARS FROM THE DATE OF THIS NOTICE UNLESS A COMPLETED DEVELOPMENT PLAN REVIEW APPLICATION (SEE LMO 16.3.303) IS SUBMITTED OR, WHERE DEVELOPMENT PLAN REVIEW IS NOT REQUIRED, THE APPROVED ACTIVITY IS COMPLETED. YOU HAVE THE RIGHT TO APPEAL THIS DECISION TO CIRCUIT COURT IN ACCORDANCE WITH LMO 16.2.407.**

**NOTICE: APPROVAL BY THE DESIGN REVIEW BOARD MAY NOT CONSTITUTE AUTHORITY TO PROCEED. PLEASE CONTACT THE PLANNING DEPARTMENT AT 341-4681 TO FIND OUT IF OTHER APPROVALS OR PERMITS ARE REQUIRED FROM THE PLANNING, INSPECTIONS OR ENGINEERING DIVISIONS.**

BY: _____, URBAN DESIGN ADMINISTRATOR

cc: CD

THE TOWN OF HILTON HEAD ISLAND
DESIGN REVIEW BOARD – NOTICE OF ACTION

**COPY**

**PROJECT:** Edgewater – Pool Addition **PROJECT #:** DR100017

**LOCATED AT:** 39 Verbena Lane

**CATEGORY:** Alteration/Addition

**ACTION DATE:** April 13, 2010 **NOTICE DATE:** April 16, 2010

**OWNER:**

**APPLICANT:**
Mr. Terry Simmons
Year Round Pool Company
1484 Fording Island Road
Bluffton, SC 29910

**AGENT:**
Same

**ON THE ABOVE MEETING DATE YOUR APPLICATION RECEIVED THE FOLLOWING ACTION:**

- ☐ APPROVED FOR REVIEW AS SUBMITTED
- ☒ APPROVED WITH THE SPECIFIC CONDITIONS LISTED BELOW
- ☐ WAIVED REVIEW
- ☐ WITHDRAWN AT THE APPLICANTS REQUEST
- ☐ DISAPPROVED FOR THE REASONS LISTED BELOW

(1) The color of the blue tile shall be changed to be complementary to the existing teal color of the clubhouse roof. A sample of the tile shall be submitted to the Board for approval at a later date; (2) the applicant shall properly screen the vault with shrubbery as discussed today; (3) the color of the vault shall be changed to brown to match the surrounding pine straw; (3) the applicant shall make the pool deck less bright than the white color presented today as discussed; (4) the color of the raised planter wall shall be made to match the color of the existing planter wall.

**PURSUANT TO LMO 16.3.116, THIS APPROVAL WILL EXPIRE TWO YEARS FROM THE DATE OF THIS NOTICE UNLESS A COMPLETED DEVELOPMENT PLAN REVIEW APPLICATION (SEE LMO 16.3.303) IS SUBMITTED OR, WHERE DEVELOPMENT PLAN REVIEW IS NOT REQUIRED, THE APPROVED ACTIVITY IS COMPLETED. YOU HAVE THE RIGHT TO APPEAL THIS DECISION TO CIRCUIT COURT IN ACCORDANCE WITH LMO 16.2.407.**

**NOTICE: APPROVAL BY THE DESIGN REVIEW BOARD MAY NOT CONSTITUTE AUTHORITY TO PROCEED. PLEASE CONTACT THE PLANNING DEPARTMENT AT 341-4681 TO FIND OUT IF OTHER APPROVALS OR PERMITS ARE REQUIRED FROM THE PLANNING, INSPECTIONS OR ENGINEERING DIVISIONS.**

BY: _____, URBAN DESIGN ADMINISTRATOR

cc: CD

EXHIBIT 9

# TOWN OF HILTON HEAD ISLAND
## COMMUNITY DEVELOPMENT DEPARTMENT
# MASTER APPLICATION FORM

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS: EDGEWATER ON BROADCREEK, HPR

STREET ADDRESS: 50 VERBENA LANE HHI SC 29926

ZONING DISTRICT: _____ OVERLAY DISTRICT: _____

TAX DISTRICT: _____ MAP: _____ PARCEL (S): _____

| LAND OWNER | APPLICANT | AGENT |
|---|---|---|
| EDGEWATER ON BROADCREEK, HPR | EDGEWATER ON BROADCREEK, HPR | IMC RESORT SERVICES, INC. |
| NAME: N/A | ← SAME | SAME |
| COMPANY: | ← SAME | 2 CORPUS CHRISTIE PLACE, STE 302 |
| MAILING ADDRESS: 2 CORPUS CHRISTIE PLACE, STE 302 | ← SAME | HILTON HEAD, SC 29928 |
| CITY: HILTON HEAD STATE: SC ZIP: 29928 | ← SAME | 843-301-3857 / 843-785-3901 |
| TELEPHONE: 843-785-4775 x107 FAX: 843-785-3901 | Bus License # 11152 (For DRB, DR & SUB Only) | Bus License# 2605 (For DRB, DR & SUB Only) |
| EMAIL ADDRESS: | EMAIL ADDRESS: | EMAIL ADDRESS: ATB@IMCRESORTSERVICES.COM |

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW (DPR)*
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DPR*
- [ ] ZONING MAP AMENDMENT *
- [ ] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION
- [x] EXPEDITED DPR*

**Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?**
☐ YES ☒ NO
**If so, a copy of the private covenants and/or restrictions must be submitted with this application.**

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND ARE A RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

SIGNATURE: _____ DATE: 4-9-10

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

SIGNATURE: _____ DATE: 4-9-10

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 4/12/2010
ACCEPTED BY: KO
MASTER TRACKING NUMBER: _____

COMMUNITY DEVELOPMENT DEPARTMENT

# EXPEDITED DEVELOPMENT PLAN REVIEW SUPPLEMENTAL APPLICATION FORM

***THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.***

Please TYPE or PRINT legibly

PROJECT/DEVELOPMENT NAME: EDGEWATER ON BROADCREEK, HPR
OWNER/AGENT SUBMITTING APPLICATION: IMC RESORT SERVICES, INC - AGENT

NAME AJ Bucko

E-MAIL ADDRESS* AJB@IMCRESORTSERVICES.com

PHONE NUMBER 843-301-3857

FAX NUMBER 843-785-3901

**APPLICATION SUBMISSION REQUIREMENTS:**

APPLICANTS SHALL SUBMIT ALL THE FOLLOWING MATERIALS BEFORE AN APPLICATION SHALL BE CONSIDERED COMPLETE:

- [x] **NOTARIZED** WRITTEN CERTIFICATION, SIGNED BY THE OWNER(S) OF RECORD OF THE PROPERTY, THAT THE OWNER(S) CONSENT TO THE PROPOSED DEVELOPMENT. CERTIFICATION IS NOT NECESSARY IF THE OWNER IS THE APPLICANT.
- [x] WRITTEN NARRATIVE DESCRIBING THE SCOPE OF THE PROJECT.
- [x] FOUR (4) COPIES OF A SURVEY OF AREA OF THE PROPERTY BEING AFFECTED BY THIS APPLICATION SHOWING EXISTING TOPOGRAPHY, ALL TREES 6 INCHES IN DIAMETER AND LARGER, ALL IMPROVEMENTS, AND IF APPLICABLE, THE LOCATION OF BORDERING STREETS, MARSHES AND BEACHES.
- [N/A] A LANDSCAPE PLAN SHOWING ANY CHANGES BEING PROPOSED, IF APPLICABLE.
- [N/A] A COPY OF APPROVAL FROM ANY OUTSIDE AGENCIES, IF APPLICABLE.
- [N/A] A COPY OF APPROVAL FROM ANY PROPERTY OWNERS ASSOCIATION, IF APPLICABLE.
- [x] Application Fee ($100)

*IF YOU WOULD LIKE TO RECEIVE COMMENTS AND/OR APPROVALS VIA E-MAIL PLEASE INCLUDE YOUR E-MAIL ADDRESS.

ADDITIONALLY IF YOU WOULD LIKE TO RECEIVE THE COMMUNITY DEVELOPMENT DEPARTMENT QUARERLY NEWSLETTER VIA EMAIL PLEASE INDICATE BY SIGNING BELOW.

SIGNATURE _____ DATE _____

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 4/12/20
ACCEPTED BY: _____ 20
TIME: 1:45 pm
APPLICATION NUMBER: XDRR100013

April 9, 2010

Re: Expedited Development Plan Review Supplemental Application Form

This letter certifies that the current Board of Director's for Edgewater on Broadcreek, HPR has approved, on behalf of all 23 Owners, the proposed plan for a tabby walkway with (2) brick features (please refer to narrative describing scope of work).

Bobby Fitzgerald
Edgewater on Broadcreek, HPR
Acting Vice President
In Charge of Landscape Committee

4/9/2010
Date

# ORIGINAL RECEIPT

**TOWN OF HILTON HEAD ISLAND**
**ONE TOWN CENTER COURT**
**HILTON HEAD ISLAND, SC 29928**

Receipt Number: R10001023
Issuing Officer: LC
*(Receipt not valid without Issuing Officer's Initials.)*

OWNER: EDGEWATER ON BROADCREEK
BUSINESS NAME:
APD #: XDPR100013
SITE ADDRESS: 50 VERBENA LANE ****
ACCOUNT NUMBER: ??
NOTATION: IMC RESORT SVC, 2 CORPUS CHRISTI, #302, HHI SC 29928

TRANSACTION DATE: 04/12/2010

TOTAL PAYMENT: 100.00

TRANSACTION LIST:

| Type | Method | Description | Amount |
|---|---|---|---|
| Payment | Check | 6198 | 100.00 |

ACCOUNT ITEM LIST:

| Item# | Fee Description | Account Code | Total Fee | Total Paid | Current Pmt |
|---|---|---|---|---|---|
| 5405 | Expedited DPR | 11001-40401 | 100.00 | 100.00 | 100.00 |

ISSUED BY: LYNNC
DATE: April 12, 2010 01:50 PM

*Copy Reprinted on 04-12-2010 at 13:51:29*

County of
Talbot County
Department of Planning and Zoning

# NOTICE OF ACTION

# XDPR100013

APPLICATION

| Name of Development: EDGEWATER ON BROADCREEK | Location: STEVENSNECK LANE |
|---|---|
| **Development** | **Applicant** | **Agent** |
| EDGEWATER ON BROADCREEK | EDGEWATER ON BROADCREEK | |

**Location and Development Information**

**Description:** 145 ± TABBY WALKWAY, 2 BRICK CIRCLE SLING AREAS, 12 ± & 6 ±

**Zoning District:** WMU — Tax District/Map Parcel: R-100116000177000

**Overlay District(s):** 500 ± of OCRM Critical Line

**Approved Site Plan Information:**

Date of latest revision of approved site plan: — Based on Plans by: IMC Resort Services

Plans Titled: Edgewater on Broad Creek

**Any deviation from the approved plans will require additional review**

**Case Manager:** NICOLE DIXON — **Sign:** [illegible]

**Date Issued: 04/15/2010** — **Expiration Date: 04/15/2011**

Pursuant to TMC 16-3-910 or 16-3-608, this approval expires as indicated above unless a complete building permit application is submitted or where no building permit is required, a Certificate of Compliance is obtained. Pursuant to TMC 16-3-706, the Building Official can issue no final Certificate of Occupancy until the Planning Division issues a final Certificate of Compliance. (Approval information – see TMC 16-3-703 and 16-3-901 through 910, Development Standards.)

Print Name: [illegible] — Signature: [illegible] — Date: [illegible]

(Owner or Authorized Agent of Owner)

**Conditions of the Approval**

Town Staff conditions are included; additional pages may be attached.

[illegible]

[illegible]

TOWN OF HILTON HEAD ISLAND, SC
DEVELOPMENT PLAN APPROVAL

The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval.

Application #: XDPR100093

Certified By: Nicole Dixon

Title: Planner Approval Date: 4/15/2010

A vested right is established for two (2) years upon the final approval of a site specific development or phased development plan.

Disclaimer:
The Town of Hilton Head Island makes an expressed declaration of policy that the public regulation of land is entirely separate from civil litigation of private restrictions. This approval in no way implies that the proposed development is in conformance with any restrictive covenants, private easements or deed restrictions.

WALKWAY

= 4' WIDE WALKPATH TO POOL AREA W/ EXISTING BRICKS

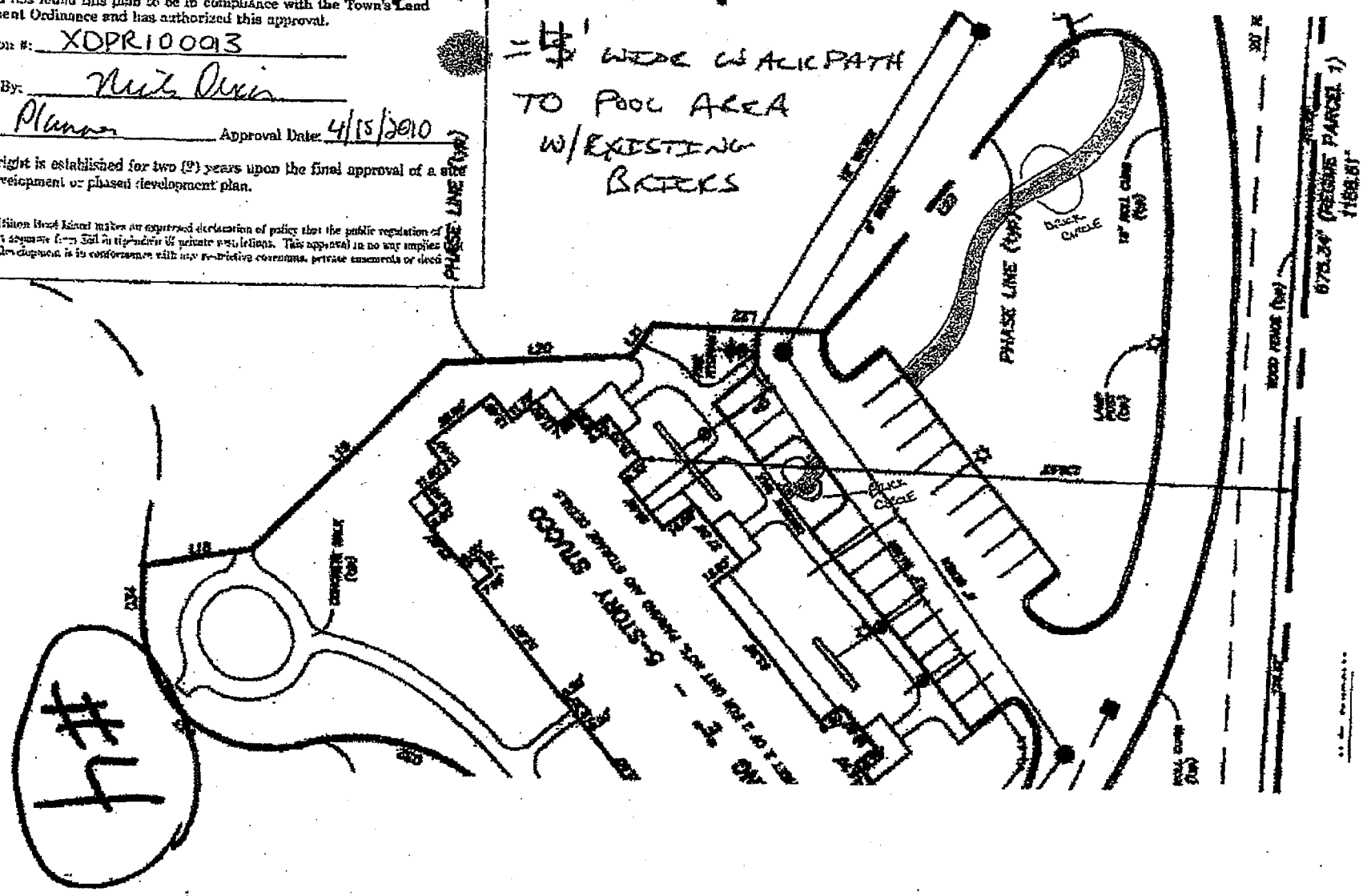


EXHIBIT
11

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasperini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 15, 2010

Ms. Nicole Dixon
Planner
Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek - Edgewater HOA Swimming Pool Applications – Our File Nos. 015005-001 and 01505-004

Dear Nicole:

Following-up regarding the above matter, we understand the Town's Design Review Board has approved the aesthetics of the proposed site plan for the swimming pool proposed by the Edgewater HOA.

As we understand our last discussion with you regarding the proposed HOA swimming pool on this past Tuesday morning, the Edgewater HOA will be required by the Town to obtain development plan review approval before they are able to apply for and obtain a building permit for their proposed pool. We are reviewing those issues on behalf of our client, Ephesian Ventures, LLC, the owner of the substantial portion of the Edgewater property that is the subject of permits issued by the Town.

You have advised us that you will provide us with a copy of any development plan review applications submitted by the Edgewater HOA for their proposed pool. We trust this will include any proposals to amend any existing permits, and we would also appreciate receiving copies of any other permit applications that the Edgewater HOA may submit in connection with its proposed pool.

In addition, we would appreciate receiving copies of any applications submitted by the Edgewater HOA with respect to the sidewalk or other pathway installation which is underway last week, which we understand has been stopped by the Town.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



Thanking you for your consideration regarding this matter, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

**From:** Dixon Nicole [mailto:nicoled@hiltonheadislandsc.gov]
**Sent:** Tuesday, April 20, 2010 9:04 AM
**To:** Firm@CCWLaw.net
**Subject:** Edgewater

Chet,
I also forgot to mention that the other applicant for Edgewater did come in and get an XDPR for the tabby sidewalk last week and it was approved and I believe they have completed that work. Let me know if you have any questions about that. When they come in for the DPR for the pool, I will let you know and you can stop by and take a look at their plans.

Nicole Dixon, Planner
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
843-341-4686
fax 843-842-8908

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.

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Any views expressed in this message are those of the individual sender.

This message has been scanned for viruses and spam by MX Logic.

EXHIBIT
13

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR (Inactive)
ALSO MEMBER OHIO BAR (Inactive)

April 28, 2010

Teri B. Lewis, AICP
LMO Official
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

**HAND DELIVERED**

RE: Edgewater on Broad Creek; Tabby Pathway; Expedited Development Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We represent Ephesian Ventures, LLC ("Ephesian"), which owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was established by the Master Deed (the "Master Deed") recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, SC in Record Book 1689 at Page 574. A copy of the Master Deed is enclosed herewith.

The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the "Act"). Ephesian is the owner of property at Edgewater on Broad Creek not submitted to the provisions of the Act by the Master Deed.

Ephesian is also the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the "Quitclaim Deed"). A copy of the Quitclaim Deed is enclosed herewith.

It has come to Ephesian's attention that Edgewater on Broad Creek Owners' Association, Inc. (the "Edgewater HOA") filed the above-referenced application for Expedited Development Plan Review (the "XDPR Application") on April 12, 2010 in connection with the construction of a tabby pathway and related recreational amenities on the Regime property. A Notice of Action on the XDPR Application was issued on April 15, 2010.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



By way of our letter of April 15, 2010 to Nicole Dixon, we had asked that Nicole advise of us the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants. A copy of our April 15, 2010 letter to Nicole is enclosed. However, despite our written request, we were not advised by Nicole of the filing of the XDPR Application until we received her email of April 20, 2010, in which Nicole also advised us of the issuance of the Notice of Action on the XDPR Application. We obtained a copy of the XDPR Application on April 26, 2010 when we reviewed the Town's file on the XDPR Application.

Among the rights reserved under the Master Deed to the Declarant, as defined in the Master Deed, and held by Ephesian pursuant to the Quitclaim Deed, are the right to improve the Regime by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, drainage facilities, lagoons, and the like. In addition, Ephesian holds rights of ingress and egress across the Regime property, the rights to install utility and drainage lines, equipment and facilities over the Regime property, and the right to grant easements over the Regime property. Further, Ephesian owns all water and sewer lines, pipes, pumps, pumping stations, and other equipment and facilities on the Regime property. We refer you to Exhibit A to the Master Deed.

Our review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued. The XDPR Application also represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As you can readily ascertain from this letter, Ephesian believes this representation is clearly false, as the Edgewater HOA's tabby pathway and related recreational amenities are in conflict with, and prohibited by, the provisions of the Master Deed.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended provides, in part,

> (B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
>
> (3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



Ephesian does not intend to relinquish any rights reserved to the Declarant under the Master Deed and the Quitclaim Deed, and is opposed to the project contemplated by the XDPR Application. Accordingly this letter provides the Town of Hilton Head Island with actual notice of a restrictive covenant on the Regime property that is contrary to, conflicts with, or prohibits the permitted activity.

We trust that the Town will take the appropriate action by rescinding the Notice of Action on the XDPR Application, and by not issuing any permit or other Notice of Action in connection with the XDPR Application until the XDPR Application is complete, and there is full compliance with the provisions of Section 1145(B)(3) of the South Carolina Code.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosures

EXHIBIT
14

**TOWN OF HILTON HEAD ISLAND**
**COMMUNITY DEVELOPMENT DEPARTMENT**
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
Http://www.hiltonheadislandsc.gov

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission.

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

TLewis

Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

EXHIBIT
tabbler 15

rec'd 4:00 pm

# Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: 5-19-10
Accepted by: PPlatas
App. #. APL 100004
Meeting Date: 7/7/10-PC

Applicant/Agent Name: Edgewater on Broad Creek Company: c/o Michael W. Mogel
Mailing Address: 2 Corps Christie Place City: HHI State: SC Zip: 29928
Telephone: 843-785-8110 Fax: 843-785-8676 E-mail: mwmogel@sol.com

## APPEAL (APL) SUBMITTAL REQUIREMENTS

***Digital Submissions may be accepted via e-mail by calling 843-341-4757.*** The following items must be attached in order for this application to be complete:

X A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; and a statement of the specific decision requested of the Board of Zoning Appeals.

X Any other documentation used to support the facts surrounding the decision.

X Filing Fee - $100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: [signature] Date: May 17, 2010

Appeal: XDPR10013 → Appeal to PC

Law Office of Michael W. Mogil, P.A.
2 Corpus Christie Place, Suite 303
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676
Email mmogil@mogillaw.com

May 17, 2010

Town of Hilton Head Island
Board of Zoning Appeals
One Town Center Court, Hilton Head Island, SC 29928

By Hand Delivery as Attachment to Appeal

Re: Edgewater on Broad Creek, tabby walk permit application
XDPR10013

Appeal Explanation

Appellant Edgewater on Broad Creek Owners Association disputes and appeals the decision of the Town of Hilton Head Island Community Development Department that cites the existence of restrictive covenant(s) which would prohibit the issuance of a permit and/or approval for the subject tabby walk construction and permit under South Carolina Code of Laws Section 6-29-1145(B)(3) for the reasons set forth in the attached explanation of history and circumstances.

Appellant respectfully requests that the Board of Zoning Appeals reverse the decision of the Community Development Department, and re-instate the approval of the tabby walk permit application.

Very Truly Yours,

Michael W. Mogil
Attorney for Edgewater on Broad Creek Property Owners Association

Law Office of Michael W. Mogil, P.A.
2 Corpus Christie Place, Suite 303
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676
Email mmogil@mogillaw.com

May 17, 2010

Town of Hilton Head Island
LMO Department
By Hand Delivery as Attachment to Appeal

Re: Edgewater on Broad Creek, tabby walkway
XDPR10013

This document is filed on behalf of Edgewater on Broad Creek Property Owners Association and Edgewater on Broad Creek Horizontal Property Regime ("Owners Association" or "Phase I"), and appends and attaches to the Appeal form filed on this date in the above matter. Phase I appeals the decisions set forth in the Town's letter of April 30 2010 which was sent to IMC Resort Services, Inc., the property manager for Phase I.

For the Board of Zoning Appeals' consideration, Phase I consists of twenty three apartment unit owners whom purchased their property subject to the Master Deed, attached hereto, which dedicated Phase I into a separate horizontal property regime on December 31, 2002. These owners purchased their property upon the representation that the pool and amenities on the remaining, "Declarant" parcel would be available for their use, and indeed, they were permitted to use the facilities uninterrupted until Ephesian acquired the Declarant interests and adjacent property in August, 2008. Currently, Ephesian has denied the Phase I owners access to its pool, dock or waterfront under any terms. "Ephesian" is upon and belief a Nevada corporation composed of one or more shareholders and principals, the identity of which has been expressly withheld from the Owners Association despite repeated requests.

1. The Owners' Association disputes the conclusion set forth in the Town's letter of April 30 that the Master Deed currently vests any unique rights in "Ephesian", as successor in interest to the Declarant, to approve or veto the Owners' Association's construction of a tabby walk on the Association's common property. Thus the Owners' Association appeals the Town's determination that written approval from Ephesian is a pre-requisite for construction of the permitted tabby walk. Even a reading of the attached Master Deed in a light most favorable to the objecting party, Ephesian Ventures, LLC, would not define the tabby walk path in question as an amenity over which Ephesian, as successor to the Declarant, has any standing to object to construction or placement of. Further, the Owners' Association disputes that the Master Deed creates a restrictive covenant in this respect.

2. Ephesian Ventures has abandoned its responsibilities under the subject Master Deed with respect to the Phase I property. It does not currently maintain any of the Phase I property, nor maintain the portion of its property that is adjacent to Phase I. To wit, Ephesian has not removed an abandoned building on its adjacent property despite instruction from the Town to do so. Ephesian Ventures does not presently contribute to the ongoing and substantial carrying costs associated with the shared security gate, ingress and egress, landscaping, water station, security fence and other shared amenities. Ephesian Ventures has wilfully cut off and denied the Phase I property owners all access to the remainder of the Edgewater on Broad Creek development and all amenities associated therewith, including the dock, pool, and waterfront. In sum, through its conduct, it has waived any remaining property rights vested within it with respect to Phase I.

3. Ephesian has not "phased in" its property into the Edgewater on Broad Creek Horizontal Property Regime as of April 30, 2010.

4. The tabby walk, which was constructed based on the Town's prior approval, provides a useful safety benefit, facilitating ingress and egress for Phase I owners and guests to their clubhouse and front property amenities without having to walk in a road way, and provides a firm surface for wheelchairs and handicapped persons. It does not impact or alter any proposed use by Ephesian Ventures, LLC on its property. Phase I's Board of Directors is fully vested to control the public safety aspects of its property, by virtue of the Master Deed and Court order.

Very Truly Yours,

Michael W. Mogil
Attorney for Edgewater on Broad Creek Property Owners Association

**TOWN OF HILTON HEAD ISLAND**
**COMMUNITY DEVELOPMENT DEPARTMENT**
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7229
Http://www.hiltonheadislandsc.gov

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the decisi of XDPR100013 you may appeal to the Town's Planning Commission

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

**TOWN OF HILTON HEAD ISLAND**
**COMMUNITY DEVELOPMENT DEPARTMENT**
**One Town Center Court, Hilton Head Island, S.C. 29928**
**(843) 341-4757 Fax (843) 842-7228**
**Http://www.hiltonheadislandsc.gov**

June 25, 2010
IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR100013

Dear Mr. Bucko:

This letter is in reference to the revocation of the Notice of Action issued for XDPR100013. On April 30, 2010, I sent you a letter stating that Town Staff was rescinding the Notice of Action issued for XDPR100013 due to discovery that misinformation was provided as part of the application. It is apparent that a neighboring property owner (Ephesian) claims certain covenant rights and controls which are disputed by Edgewater. It would appear that this is a civil dispute between two property owners which needs to be resolved by a court.

In addition, during a recent review of the Town's Land Management Ordinance (LMO) and discussions with legal staff, Town Staff realized that we revoked the Notice of Action without following the proper procedure listed in the LMO for revoking a permit. LMO Section 16-3-310.C states the following:

> A vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

Based on the above section Staff should not have revoked the Notice of Action for XDPR100013 without prior notice and a public hearing.

At this time staff is going to hold the revocation in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. As a result of this decision, APL100004 is moot and staff is in the process of refunding the $100 application fee. Additionally the approval issued for XDPR100013 will remain in place subject to the outcome of the pending covenant dispute.

Also, in accordance with LMO Section 16-3-309 the issuance of the NOA for XDPR100013 may be appealed for a period of 30 days; the appeal period was interrupted by our letter of April 30, 2010. This above mentioned interruption results in the appeal period being tolled for 15 days and therefore any interested parties still have an additional 15 days to appeal the NOA for XDPR100013.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

Teri Lewis, AICP
LMO Official

cc: Gregg Alford
Brian Hulbert
Michael Mogil
Chester C. Williams

EXHIBIT
16

**TOWN OF HILTON HEAD ISLAND**
**COMMUNITY DEVELOPMENT DEPARTMENT**
**One Town Center Court, Hilton Head Island, S.C. 29928**
**(843) 341-4757 Fax (843) 842-7228**
**Http://www.hiltonheadislandsc.gov**

June 25, 2010
IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR100013

Dear Mr. Bucko:

This letter is in reference to the revocation of the Notice of Action issued for XDPR100013. On April 30, 2010, I sent you a letter stating that Town Staff was rescinding the Notice of Action issued for XDPR100013 due to discovery that misinformation was provided as part of the application. It is apparent that a neighboring property owner (Ephesian) claims certain covenant rights and controls which are disputed by Edgewater. It would appear that this is a civil dispute between two property owners which needs to be resolved by a court.

In addition, during a recent review of the Town's Land Management Ordinance (LMO) and discussions with legal staff, Town Staff realized that we revoked the Notice of Action without following the proper procedure listed in the LMO for revoking a permit. LMO Section 16-3-310.C states the following:

> A vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

Based on the above section Staff should not have revoked the Notice of Action for XDPR100013 without prior notice and a public hearing.

At this time staff is going to hold the revocation in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. As a result of this decision, APL100004 is moot and staff is in the process of refunding the $100 application fee. Additionally the approval issued for XDPR100013 will remain in place subject to the outcome of the pending covenant dispute.

Also, in accordance with LMO Section 16-3-309 the issuance of the NOA for XDPR100013 may be appealed for a period of 30 days; the appeal period was interrupted by our letter of April 30, 2010. This above mentioned interruption results in the appeal period being tolled for 15 days and therefore any interested parties still have an additional 15 days to appeal the NOA for XDPR100013.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

Teri Lewis, AICP
LMO Official

cc: Gregg Alford
Brian Hulbert
Michael Mogil
Chester C. Williams

EXHIBIT
17

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR (Inactive)
ALSO MEMBER OHIO BAR (Inactive)

July 8, 2010

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

**HAND DELIVERED**

RE: Edgewater on Broad Creek; Expedited Development Plan Review Application No. XDPR100013 for Tabby Pathway – Our File No. 01505-005

Dear Teri:

On behalf of our client Ephesian Ventures, LLC ("Ephesian"), we request that you, as the LMO Official for the Town of Hilton Head Island (the "Town"), initiate proceedings under Section 16-3-310(C) of the Town's Land Management Ordinance (the "LMO") to revoke the approval of Expedited Development Plan Review Application No. XDPR100013 (the "XDPR Application") evidenced by the April 15, 2010 Notice of Action (the "Notice of Action") of the XDPR Application on the grounds that there was a material misrepresentation by the landowner or its agent in the XDPR Application.

Ephesian owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was established by the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574 (the "Master Deed"). We have previously provided you with a copy of the Master Deed, and we refer you to our letter to you of April 28, 2010.

Ephesian is the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the "Quitclaim Deed"). We have previously

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



provided you with a copy of the Quitclaim Deed, and we again refer you to our letter to you of April 28, 2010.

We also refer you to your letter dated April 30, 2010 to IMC Resort Services, Inc., the agent for the Edgewater Regime on the XDPR Application, by which you rescinded the Notice of Action, stating:

> The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1)." (Emphasis added.)

A copy of your April 30, 2010 letter is enclosed herewith. Clearly, that letter evidences a determination by you, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Thereafter, by way of your June 25, 2010 letter to IMC Resort Services, Inc., you advised the Edgewater Regime that your April 30, 2010 revocation of the Notice of Action did not follow the procedure set forth in LMO Section 16-3-310(C), and that revocation is now being held in abeyance.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by you, as the LMO Official, and the Town Attorney as set forth in your April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), you, as the LMO Official and the Administrator of the LMO, have responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), you have a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in your April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided by you as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon you to institute revocation proceedings regarding the XDPR Application and the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



a clear basis for revocation of a permit. We submit that you and your Staff cannot sit idly by and take no action in such circumstances, particularly when you and the Town Attorney have already made determinations which are conclusive to the issues.

On behalf of Ephesian, we formally request that you immediately take appropriate steps to initiate revocation proceedings under LMO Section 16-3-310(C) regarding the Notice of Action, and suspend the effectiveness of the Notice of Action pending those proceedings.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosure
cc: Stephen G. Riley, AICP
Charles F. Cousins, AICP
Gregory M. Alford, Esq.

EXHIBIT
18

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR (Inactive)
ALSO MEMBER OHIO BAR (Inactive)

August 9, 2010

**HAND DELIVERED**
**and**
**VIA EMAIL TO TeriL@HiltonHeadIslandSC.gov**

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

RE: Appeal of Administrative Determination Regarding Revocation of Notice of Action on Expedited Development Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals our appeal on behalf of our client, Ephesian Ventures, LLC, regarding the administrative determination made in your July 28, 2010 letter to us. Also enclosed is our check for $100.00 payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Roger A. DeCaigny, the Chairman of the Board of Zoning Appeals, of our filing of this appeal to the Board of Zoning Appeals on behalf of Ephesian Ventures, LLC.

Because Edgewater on Broad Creek Owners' Association, Inc. is the permittee under Expedited Development Plan Review Application No. XDPR100013, it may be a necessary party to this appeal. By way of his copy of this letter, we serve a copy of our appeal on Michael W. Mogil, Esq., the attorney for Broad Creek Owners' Association, Inc.

Please let us know if you, your staff, or the Board of Zoning Appeals require any further information from or on behalf of our client with respect to this appeal or the enclosed motion.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC



With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

Enclosures

cc: Mr. Roger A. DeCaigny
Michael W. Mogil, Esquire
Gregory M. Alford, Esquire

# Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

| FOR OFFICIAL USE ONLY |
|---|
| Date Received: 8/9/10 |
| Accepted by: [illegible] |
| App. #: APL 100007 |
| Meeting Date: 9/27/10 |

Applicant/Agent Name: Epehsian Ventures, LLC Company: Chester C. Williams, Attorney for the Applicant
Mailing Address: Post Office Box 6028 City: Hilton Head island State: SC Zip: 29938
Telephone: 843-842-5411 Fax: 843-842-5412 E-mail: Firm@CCWLaw.net

## APPEAL (APL) SUBMITTAL REQUIREMENTS

***Digital Submissions may be accepted via e-mail by calling 843-341-4757.*** The following items must be attached in order for this application to be complete:

- ✓ A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. See Attachment 1
- ✓ Any other documentation used to support the facts surrounding the decision. See Attachment 1
- ✓ Filing Fee - $100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: August 9, 2010
Chester C. Williams, Attorney for the Applicant

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **BEFORE THE BOARD OF ZONING APPEALS OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA** |
| **COUNTY OF BEAUFORT** | ) | **REQUEST FOR APPEAL NO. APL10000_____** |

# ATTACHMENT 1
# TO THE APPEAL APPLICATION OF
# EPHESIAN VENTURES, LLC

## NARRATIVE

## I. RESERVATION OF RIGHTS

Nothing in this Attachment 1 or the Request for Appeal to which it is attached should be construed or interpreted as an admission by Ephesian Ventures, LLC that jurisdiction lies with the Board of Zoning Appeals of the Town of Hilton Head Island for all of the issues presented herein. This appeal to the Board of Zoning Appeals is being filed with the LMO Official in case the LMO Official refuses to accept for filing an appeal by Ephesian Ventures, LLC to the Planning Commission that is substantially similar to this appeal. Ephesian Ventures, LLC believes that jurisdiction to hear some, if not all, of the issues raised in this appeal may lie with the Planning Commission, and not with the Board of Zoning Appeals.

## II. INTRODUCTION

This Attachment 1 is part of the Request for Appeal (this "Appeal") filed by Ephesian Ventures, LLC ("Ephesian") in connection with the letter from Teri

B. Lewis, AICP, the LMO Official for the Town of Hilton Head Island (the "Town"), to the undersigned Chester C. Williams dated July 26, 2010 (the "07/26/10 Letter")[1] by which Mrs. Lewis has declined to institute revocation proceedings for the Notice of Action dated April 15, 2010 (the "Notice of Action") on Expedited Development Plan Review Application No. XDPR100013 (the "XDPR Application")[2] filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR (the "Edgewater HOA"). The Notice of Action[3] purports to permit the construction of a tabby pathway on property which is subject to restrictive covenants and easements and other rights held by Ephesian. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town's Board of Zoning Appeals (the "BZA").

Ephesian owns a 16.01 acre tract adjacent to the property of Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was created by the recording of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) on December 31, 2002 in Beaufort County Record Book 1689 at Page 574 (the "Master Deed").[4] The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property (the "Regime Property") to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et seq.* of the Code of Laws of South Carolina (1976), as amended (the "SC Code"). Ephesian is the owner of property at Edgewater on Broad Creek (the "16.01 Acre Tract") <u>not</u> included in the Regime Property.

---

[1] A copy of the 07/26/10 Letter is attached to this Narrative as Exhibit A.

[2] A copy of the XDPR Application is attached to this Narrative as Exhibit B.

[3] A copy of the Notice of Action is attached to this Narrative as Exhibit C.

[4] The Master Deed as recorded, including all exhibits, is 91 pages. Ephesian has previously provided copies of the Master Deed to the Town Staff. Because of the size of the document, a copy of the Master Deed is not attached to this Narrative as an exhibit; however, Ephesian will have a copy of the Master Deed available at the hearing of this Appeal, and will readily provide a copy to any member of the BZA upon request.

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Ephesian acquired the 16.01 Acre Tract by way of that certain deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049.[5] Ephesian's deed also conveys to Ephesian the rights of the Declarant under the Master Deed and numerous reserved easements and other interests in the Regime Property, as more fully discussed below.

The Regime Property is designated as Beaufort County tax parcel R510-011-000-0177-0000, and the 16.01 Acre Tract is designated as Beaufort County tax parcel R510-011-000-0004-0000.

This Appeal seeks to reverse the decision of the LMO Official to refuse to institute revocation proceedings under Section 16-63-301(C) of the Town's Land Management Ordinance (the "LMO") regarding the Notice of Action. The 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA.

## III. BACKGROUND

On or about April 9, 2010, the Edgewater HOA started site work and construction of a tabby pathway on a portion of the Regime Property, without seeking the consent of Ephesian for such work. That same day, Nicole Dixon, Planner for the Town, on behalf of the Town, ordered that such site work and construction activities cease until the proposed work was properly permitted by the Town. Ephesian believes that, as a result of the Town's stop work order, the XDPR Application was filed with the Town on April 12, 2010.

By way of a letter to Ms. Dixon on April 15, 2010, the undersigned, on behalf of Ephesian, asked that Ms. Dixon provide Ephesian with notice of the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants.[6]

[5] A copy of Ephesian's deed is attached to this Narrative as Exhibit D.

[6] A copy of the April 15, 2010 letter to Ms. Dixon is attached to this Narrative as Exhibit E.

However, Ephesian was not advised by Ms. Dixon of the filing of the XDPR Application until the undersigned received an email from Ms. Dixon on April 20, 2010,[7] in which Ms. Dixon advised the undersigned of the issuance of the Notice of Action. The undersigned and Ephesian did not receive copies of the XDPR Application and the Notice of Action until they were obtained from a review of the Town's file on the XDPR Application on April 26, 2010.

By way of a letter to Teri B. Lewis, AICP, the Town's LMO Official, on April 28, 2010, Ephesian, through the undersigned, notified the Town that the XDPR Application contained factual inaccuracies and was improperly issued.[8] That letter identified Ephesian as the holder of the rights of the Declarant (the "Declarant Rights") under the Master Deed by way of the Ephesian Deed, advised Mrs. Lewis and the Town of certain rights reserved under the Master Deed to the Declarant and held by Ephesian, further advised Mrs. Lewis and the Town of restrictive covenants contained in the Master Deed that are applicable to the Regime Tract, and informed the Town that the restrictive covenants applicable to the Regime Tract are contrary to, conflict with, or prohibit the activity permitted by the XDPR Application and the Notice of Action.

On April 30, 2010, in her letter to IMC Resort Services, Inc., the Edgewater HOA's agent on the XDPR Application,[9] Mrs. Lewis, rescinded the Notice of Action, stating:

> The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed

[7] A copy of the April 20, 2010 email from Ms. Dixon is attached to this Narrative as Exhibit F.

[8] A copy of the April 28, 2010 letter to Ms. Lewis (without the two enclosures, which are the Master Deed and Ephesian's deed) is attached to this Narrative as Exhibit G..

[9] A copy of Mrs. Lewis' April 30, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit H.

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> Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your applications. (Emphasis added.)

On May 19, 2010, the Edgewater HOA filed an appeal of the rescission of the Notice of Action; however, on June 25, 2010 Mrs. Lewis advised the Edgewater HOA by her letter of that date that her rescission of the Notice of Action was improper under LMO Section 16-3-310(C), and that the rescission of the Notice of Action would be held in abeyance.[10] Based on Mrs. Lewis' withdrawal of her rescission of the Notice of Action, the Edgewater HOA's appeal was rendered moot, and the Notice of Action is still effective.

By way of a letter dated July 8, 2010, the undersigned, on behalf of Ephesian, requested that Mrs. Lewis, as the LMO Official, institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-301(C) on the basis that the XDPR Application contained a material misrepresentation by the landowner or its agent.[11] Thereafter, Mrs. Lewis declined to institute the requested revocation proceedings in the 07/26/10 letter.

Ephesian alleges that Mrs. Lewis, as the LMO Official, has a duty to enforce the provisions of the LMO, and that duty imposes on her an obligation to institute revocation proceedings regarding the Notice of Action if, in fact, she believes the XDPR Application contains misinformation that is a material misrepresentation by the landowner or its agent. To that end, Ephesian now

---

[10] A copy of Mrs. Lewis' June 25, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit I.

[11] A copy of the July 8, 2010 letter from the undersigned to Mrs. Lewis is attached to this Narrative as Exhibit J.

seeks an order of the BZA directing Mrs. Lewis to institute the requested revocation proceedings.

## IV. APPEALS OF ADMINISTRATIVE DECISIONS

Under applicable state law, Section 6-29-340(B) of the Code of Laws of South Carolina (1976), as amended (the "SC Code"), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "State Enabling Act"), charges the Planning Commission with the power and duty to, among other things, prepare and recommend for adoption to the Town Council regulations for the subdivision or development of land, and appropriate revisions thereof, and "to oversee the administration of the regulations that may be adopted [by the Town] as provided in [the State Enabling Act]". Section 6-29-800(A)(1) of the State Enabling Act grants the BZA the power "to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the [Town's] zoning ordinance"; and SC Code Section 6-29-800(B) provides that appeals to the BZA may be taken by any person aggrieved.

Notwithstanding the fact that the 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA, Ephesian believes that the Town's Planning Commission, and not the BZA, may have jurisdiction to hear some, if not all, of the issues raised in this Appeal.

## V. THE XDPR APPLICATION

A review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued.

More importantly, the XDPR Application represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As noted in the April 28, 2010 letter to

Mrs. Lewis, and as confirmed in Mrs. Lewis' April 30, 2010 letter, the representation made on behalf of the Association in the XDPR Application regarding recorded private covenants and/or restrictions is clearly factually inaccurate. Specifically, Mrs. Lewis said in her letter that "... misinformation was provided by you [the Edgewater HOA's agent] as part of the application."

## VI. THE NOTICE OF ACTION

As mentioned above, the XDPR Application was submitted in response to Ms. Dixon's order to cease work on the tabby walkway that was under construction by the Edgewater HOA.

Ephesian notes for the record that it has neither consented to nor approved of the filing of the XDPR Application as it relates to Ephesian's interests in the Regime Property. Ephesian also notes for the record that it categorically has not, and does not, consent to any work on the Regime Property that may have an adverse impact on its interests in the Regime Property, including the work purportedly permitted by the Notice of Action, absent specific written approval from Ephesian.

Ephesian asserts that Notice of Action was wrongfully and improperly issued by the Town to the Edgewater HOA because of, among other things, the misinformation contained in the XDPR Application.

Ephesian further asserts that if the misinformation contained in the XDPR Application is a material misrepresentation by the Edgewater HOA or its agent, then Mrs. Lewis has an obligation to seek to revoke the Notice of Action; however, Mrs. Lewis has declined to do so. Ephesian, whose rights have been violated by the work authorized by the Notice of Action, is clearly aggrieved by Mrs. Lewis' refusal to revoke the Notice of Action, and therefore has filed this Appeal to the BZA.

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## VII. STANDING

Ephesian has standing to file this Appeal to the BZA because the 07/26/10 Letter says it is appealable to the BZA. In addition, because Ephesian holds easements and other rights in and to the Regime Property, including the Declarant Rights, under applicable restrictive covenants contained in the Master Deed, Ephesian has standing to file this Appeal to the BZA under Section 6-29-760(C) of the State Enabling Act; and Ephesian also has standing to file this Appeal under LMO Section 16-3-2001.[12]

## VIII. NECESSARY PARTY

The Edgewater HOA, as the permittee under the Notice of Action, may be a necessary party to this Appeal. Accordingly, Ephesian asks that the Edgewater HOA receive notice of all matters and hearings associated with this Appeal.[13]

## IX. GROUNDS FOR APPEAL

Ephesian alleges that Mrs. Lewis, as the LMO Administrator, has a duty and obligation to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) if she believes the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent.

---

[12] LMO Section 16-3-2001 seems to indicate that an appeal of a decision, interpretation, or determination of the LMO Administrator lies to the Board of Zoning Appeals; however, because this Appeal is centered on the Notice of Action on the XDPR Application, which is clearly part of the land development regulations of the LMO, out of an abundance of caution, Ephesian has also filed a similar appeal to the Planning Commission.

[13] See *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 367 S.E.2d 160 (SC 1988), a copy of which is attached to this Narrative as Exhibit K.

# X. EPHESIAN'S ARGUMENTS FOR APPEAL

## A. MATERIAL MISREPRESENTATION IN THE XDPR APPLICATION

Ephesian owns property that is adjacent to the Regime Tract, and holds easements and other rights, including the Declarant Rights, over the Regime Tract pursuant to the recorded private covenants and restrictions contained in the Master Deed.

The XDPR Application represents that there are no "recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request". Based on the covenants and restrictions contained in the Master Deed and the easements and other rights in and to the Regime Property now held by Ephesian under the Master Deed, Ephesian submits that this representation is factually inaccurate.[14]

The Town, through Mrs. Lewis, as the LMO Official, and the Town Attorney, Gregory M. Alford, Esq., is already on the record as agreeing with Ephesian that the XDPR Application contained "misinformation" regarding applicable restrictive covenants, that the project proposed by the XDPR Application "is in violation of the Master Deed", and that "Ephesian retains all rights that went with the property transfer as part of the bankruptcy." Specifically, in her April 30, 2010 letter to IMC Resort Services, Inc., the agent for the Edgewater HOA on the XDPR Application, Mrs. Lewis stated:

> The Notice of Action has been rescinded and the project denied based on discovery that <u>misinformation was provided by you</u> as part of the application. After further review by the Town's attorney, the <u>proposed project is in violation of the Master Deed</u> Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1)." (Emphasis added.)

[14] Ephesian has no reason to believe that this factual inaccuracy in the XDPR Application was an intentional misrepresentation by or on behalf of the Edgewater HOA; instead, Ephesian assumes this factual inaccuracy was a mistake on the part of the Edgewater HOA.

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Clearly, that letter evidences a determination by Mrs. Lewis, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by Mrs. Lewis, as the LMO Official, and the Town Attorney as set forth in Mrs. Lewis' April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), Mrs. Lewis, as the LMO Official and the Administrator of the LMO, has responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), Mrs. Lewis has a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in her April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided to the Town as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon Mrs. Lewis to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is a clear basis for revocation of a permit.

Ephesian submits that Mrs. Lewis and her staff cannot sit idly by and take no action in such circumstances, particularly when she and the Town Attorney have already made determinations which are conclusive to the issues.

Because the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent, under LMO Sections 16-8-103(A) and 16-8-103(C)(2), Mrs. Lewis has a duty and obligation to enforce the provisions of, and to assure compliance with, the LMO, and should therefore proceed to institute revocation proceedings regarding the Notice of Action under LMO

Section 16-3-310(C), and the BZA, pursuant to its appeal jurisdiction, should order her to do so.

### B. CONSTITUTIONAL ISSUES

Ephesian further believes that Mrs. Lewis' refusal to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) is wrong because the work purportedly permitted by the Notice of Action has a material detrimental effect on protected property rights and interests of Ephesian in the Regime Property, without having afforded Ephesian the right to notice and an opportunity to be heard in the XDPR Application process, in violation of the equal protection and due process clauses of the United States Constitution and South Carolina Constitution. Mrs. Lewis' refusal to properly revoke the Notice of Action is arbitrary and capricious, in derogation of Ephesian's protected property interests, and without a reasonable basis or justification in law or fact, for the reasons specified above.

## XI. CONCLUSION

Because the Notice of Action is based on the incomplete and factually inaccurate XDPR Application, which contains a material misrepresentation by the Edgewater HOA or its agent, and because the Edgewater HOA did not obtain Ephesian's consent before the project permitted by the Notice of Action was undertaken, the Notice of Action should be revoked, and Mrs. Lewis should be directed to institute revocation proceedings under LMO Section 16-3-310(C). Accordingly, Ephesian asks that the BZA (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law, (b) find that the Notice of Action should be revoked under LMO Section 16-3-310(C), and (c) reverse the decision of the LMO Official to refuse to institute revocation proceedings regarding the Notice of Action.

Ephesian reserves the right to submit additional materials, documents, and information to the BZA in connection with this Appeal.

Respectfully submitted on behalf of Ephesian Ventures, LLC this 9th day of August, 2010.

Chester C. Williams, Esquire
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
843-842-5411
843-842-5412 (fax)
Firm@CCWLaw.net

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Exhibit A (1 Page)

**TOWN OF HILTON HEAD ISLAND**
**COMMUNITY DEVELOPMENT DEPARTMENT**
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
http://www.hiltonheadislandsc.gov

VIA E-MAIL

July 26, 2010

Mr. Chester C. Williams
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028

Dear Chet:

This letter is in reference to your correspondence dated July 8, 2010 regarding XDPR100013 [the tabby sidewalk at Edgewater on Broad Creek]. Your letter requests that I, acting in my capacity as the LMO [Land Management Ordinance] Official for the Town, revoke the Notice of Action issued for XDPR100013 on the grounds that misinformation was provided as part of the application. As I stated in my June 25, 2010 letter to Mr. Bucko [property manager for Edgewater at Broad Creek] at this time, staff is holding the revocation of the Notice of Action for XDPR100013 in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. You were copied on this letter. Staff has not changed their position on this issue and therefore at this time I do not intend to take steps to initiate revocation proceedings under LMO Section 16-3-310(C).

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-2001 should you disagree with this administrative determination you may appeal to the Town's Board of Zoning Appeals (BZA) within 14 calendar days of the receipt of the above decision.

Sincerely,

TBLewis

Teri B. Lewis
LMO Official

cc: Gregory M. Alford
Stephen G. Riley
Charles F. Cousins
Michael Mogil

# TOWN OF HILTON HEAD ISLAND
## COMMUNITY DEVELOPMENT DEPARTMENT
# MASTER APPLICATION FORM

Exhibit B (4 Pages)

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS EDGEWATER ON BROADCREEK, HPR

STREET ADDRESS 50 VERBENA LANE HHI SC 29926

ZONING DISTRICT _____ OVERLAY DISTRICT _____

TAX DISTRICT _____ MAP _____ PARCEL (S) _____

| LAND OWNER | APPLICANT | AGENT |
|---|---|---|
| EDGEWATER ON BROADCREEK, HPR | EDGEWATER ON BROADCREEK, HPR | IMC RESORT SERVICES, INC. |
| NAME N/A | ← SAME | SAME |
| COMPANY | | |
| 2 CORPUS CHRISTIE PLACE, STE 302 | ← SAME | 2 CORPUS CHRISTIE PLACE, STE 302 |
| MAILING ADDRESS | | |
| HILTON HEAD SC 29928 | ← SAME | HILTON HEAD, SC 29928 |
| CITY STATE ZIP | | |
| 843-785-4775 x107 843-785-3901 | ← SAME | 843-301-3857 / 843-785-3901 |
| TELEPHONE FAX | | |
| | Bus License # 11152 (For DRB, DR & SUB Only) | Bus License# 2605 (For DRB, DR & SUB Only) |
| EMAIL ADDRESS | EMAIL ADDRESS | AJB@IMCRESORTSERVICES.COM EMAIL ADDRESS |

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW (DPR)*
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DPR*
- [ ] ZONING MAP AMENDMENT *
- [ ] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION
- [x] EXPEDITED DPR*

**Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?**
☐ YES ☒ NO
**If so, a copy of the private covenants and/or restrictions must be submitted with this application.**

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND AREA RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

SIGNATURE _____ DATE 4-9-10

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

SIGNATURE _____ DATE 4-9-10

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 4/12/2010
ACCEPTED BY: MD
MASTER TRACKING NUMBER: _____

COMMUNITY DEVELOPMENT DEPARTMENT

# EXPEDITED DEVELOPMENT PLAN REVIEW SUPPLEMENTAL APPLICATION FORM

***THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.***

Please TYPE or PRINT legibly

PROJECT/DEVELOPMENT NAME: EDGEWATER ON BROADCREEK, HPR
OWNER/AGENT SUBMITTING APPLICATION: IMC RESORT SERVICES, INC - AGENT

NAME AJ BUCKO

E-MAIL ADDRESS* AJB@IMCRESORTSERVICES.COM

PHONE NUMBER 843-301-3857

FAX NUMBER 843-785-3901

**APPLICATION SUBMISSION REQUIREMENTS:**

APPLICANTS SHALL SUBMIT ALL THE FOLLOWING MATERIALS BEFORE AN APPLICATION SHALL BE CONSIDERED COMPLETE:

- ☒ **NOTARIZED** WRITTEN CERTIFICATION, SIGNED BY THE OWNER(S) OF RECORD OF THE PROPERTY, THAT THE OWNER(S) CONSENT TO THE PROPOSED DEVELOPMENT. CERTIFICATION IS NOT NECESSARY IF THE OWNER IS THE APPLICANT.
- ☒ WRITTEN NARRATIVE DESCRIBING THE SCOPE OF THE PROJECT.
- ☒ FOUR (4) COPIES OF A SURVEY OF AREA OF THE PROPERTY BEING AFFECTED BY THIS APPLICATION SHOWING EXISTING TOPOGRAPHY, ALL TREES 6 INCHES IN DIAMETER AND LARGER, ALL IMPROVEMENTS, AND IF APPLICABLE, THE LOCATION OF BORDERING STREETS, MARSHES AND BEACHES.
- N/A A LANDSCAPE PLAN SHOWING ANY CHANGES BEING PROPOSED, IF APPLICABLE.
- N/A A COPY OF APPROVAL FROM ANY OUTSIDE AGENCIES, IF APPLICABLE.
- N/A A COPY OF APPROVAL FROM ANY PROPERTY OWNERS ASSOCIATION, IF APPLICABLE.
- ☒ Application Fee ($100)

*IF YOU WOULD LIKE TO RECEIVE COMMENTS AND/OR APPROVALS VIA E-MAIL PLEASE INCLUDE YOUR E-MAIL ADDRESS.

ADDITIONALLY IF YOU WOULD LIKE TO RECEIVE THE COMMUNITY DEVELOPMENT DEPARTMENT QUARERLY NEWSLETTER VIA EMAIL PLEASE INDICATE BY SIGNING BELOW.

SIGNATURE _____ DATE _____

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 4/12/20 TIME: 1:45 pm
ACCEPTED BY: DD APPLICATION NUMBER: XDRR100013

April 9, 2010

Re: Expedited Development Plan Review Supplemental Application Form

This letter certifies that the current Board of Director's for Edgewater on Broadcreek, HPR has approved, on behalf of all 23 Owners, the proposed plan for a tabby walkway with (2) brick features (please refer to narrative describing scope of work).

Bobby Fitzgerald
Edgewater on Broadcreek, HPR
Acting Vice President
In Charge of Landscape Committee

4/9/2010
Date

# ORIGINAL RECEIPT

**TOWN OF HILTON HEAD ISLAND**
**ONE TOWN CENTER COURT**
**HILTON HEAD ISLAND, SC 29928**

Receipt Number: **R10001023**
Issuing Officer: LC
*(Receipt not valid without Issuing Officer's initials.)*

OWNER: EDGEWATER ON BROADCREEK
BUSINESS NAME:
APD #: XDPR100013
SITE ADDRESS: 50 VERBENA LANE ****
ACCOUNT NUMBER: ??
NOTATION: IMC RESORT SVC, 2 CORPUS CHRISTI, #302, HHI SC 29928

---

TRANSACTION DATE: 04/12/2010

TOTAL PAYMENT: 100.00

TRANSACTION LIST:

| Type | Method | Description | Amount |
|---|---|---|---|
| Payment | Check | 6198 | 100.00 |

ACCOUNT ITEM LIST:

| Item# | Fee Description | Account Code | Total Fee | Total Paid | Current Pmt |
|---|---|---|---|---|---|
| 5405 | Expedited DPR | 11001-40401 | 100.00 | 100.00 | 100.00 |

ISSUED BY: LYNNC
DATE: April 12, 2010 01:50 PM

*Copy Reprinted on 04-12-2010 at 13:51:29*

Exhibit C (2 Pages)

# NOTICE OF ACTION

APPLICATION # XDPR100013

| Name of Development: EDGEWATER ON BROAD CREEK | Contact: STARRETT LAND |
|---|---|
| Name of Project: EDGEWATER ON BROAD CREEK | Applicant: EDGEWATER ON BROAD CREEK |

**Location and Development Information:**

**Description:** 145FT BABBY WALKWAY, 2 BRICK CIRCLE SITING AREAS 19FT & 6FT

| Zoning District: | WMC | Tax District Map Parcel: | R510010000017.0000 |
|---|---|---|---|
| Overlay District(s): | 500 ft of OCRM Critical Line | | |

**Approved Site Plan Information:**

Date of latest revision of approved site plan: Based on Plans by IMC Resort Services.
Plans Titled: Edgewater on Broad Creek

**Any deviation from the approved plans will require additional review.**

**Case Manager:** NICOLE DIVIN Signature: [illegible]

**Date Issued:** 04/15/2010 **Expiration Date:** 04/15/2011

Pursuant to LMO 16-3-410 or 16-3-601, this approval expires as indicated above unless a complete building permit application is submitted or where no building permit is required a Certificate of Compliance is obtained. Pursuant to LMO 16-6-706 the Building Official can issue no final Certificate of Occupancy until the Planning Division issues a final Certificate of Compliance. For more information see LMO 16-3-204, LMO 16-3-501 through 507, (Development Standards).

Print Name: [illegible] Signature: [illegible] Date: [illegible]
Owner or Authorized Agent of Owner

**Conditions of the Approval:**

Town Staff conditions are so noted; additional pages may be attached.

[illegible]

TOWN OF HILTON HEAD ISLAND, SC
DEVELOPMENT PLAN APPROVAL

The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval.

Application #: XDPR100013

Certified By: Nick Quin

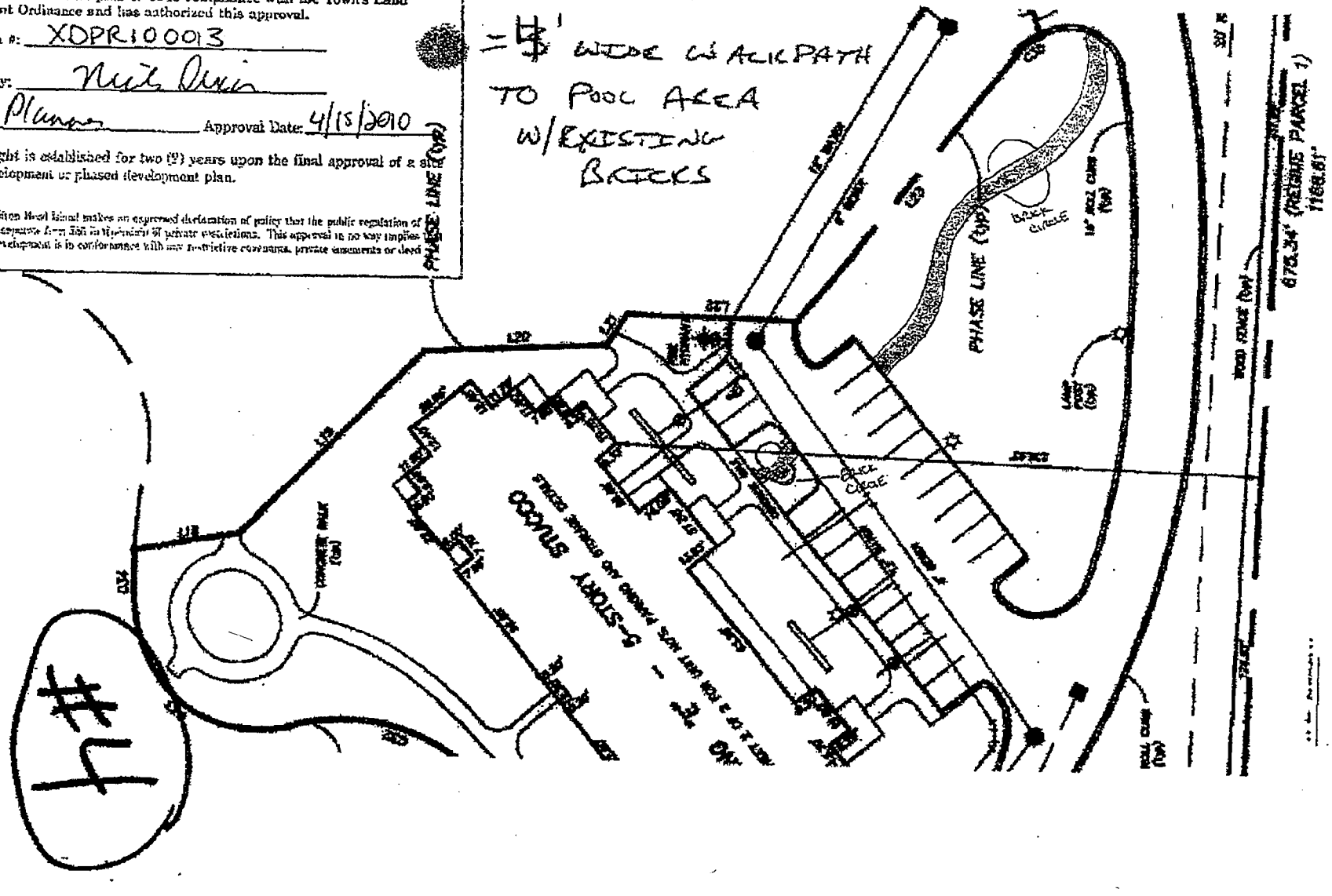
Title: Planner Approval Date: 4/15/2010

A vested right is established for two (2) years upon the final approval of a site specific development or phased development plan.

Disclaimer:
The Town of Hilton Head Island makes an expressed declaration of policy that the public regulation of land is entirely separate from and is independent of private restrictions. This approval in no way implies that the proposed development is in conformance with any restrictive covenants, private easements or deed restrictions.

WALKWAY

= 4' WIDE WALKPATH TO POOL AREA W/EXISTING BRICKS




#4

R. 499

15 PB 21 Footer law 1489

RECORDED
2008 Jul -18 12:59 PM
Sharon O. Burris
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 02742 PGS 2049-2063
FILE NUM 2008043041
07/07/2008 02:53:34 PM
REC'D BY P BAXLEY RCPT# 561338
RECORDING FEES 21.00
County Tax 9,900.00
State Tax 23,400.00
Transfer Tax 22,500.00

Exhibit D (15 Pages)

Document prepared by
W. Thomas Vernon
Attorney at Law, P.C.
2511 Wilmot Avenue
Columbia, SC 29205

Upon filing, please return to above address.

STATE OF SOUTH CAROLINA )
)
COUNTY OF BEAUFORT )

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: KEVIN CAMPBELL, TRUSTEE IN BANKRUPTCY FOR BROAD CREEK EDGEWATER, LP, SENDS GREETING:

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Order Authorizing Sale, signed by the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina. (Attached hereto and incorporated by reference as **Exhibit B**)

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, the said Kevin Campbell, Trustee in Bankruptcy for **BROAD CREEK EDGEWATER, LP, a South Carolina Limited Partnership** (hereinafter the "Grantor") in consideration of the sum of Nine Million and no/100s Dollars ($9,000,000.00) to it in hand paid at and before the sealing and delivery of these presents by **EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company** (hereinafter the "Grantee"), in the State aforesaid the receipt of which is hereby acknowledged has granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property:

**See Exhibit A attached hereto and incorporated herein by reference.**

**Grantee's address:** **c/o W. Thomas Vernon**
**2511 Wilmot Avenue**
**Columbia, South Carolina 29205**

ADD DMP Record 7/16/2008 11:31:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0004 | 0000 | 00 |

ADD DMP Record 7/16/2008 11:31:24 AM
BEAUFORT COUNTY TAX MAP REFERENCE

| Dist | Map | SMap | Parcel | Block | Week |
|---|---|---|---|---|---|
| R510 | 011 | 000 | 0177 | 0000 | 00 |