THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-000928
Common Pleas Case No. 2017-CP-07-00851

River City Developers, LLC, Appellant,

v.

The Marshes at Lady's Island Homeowners' Association, Bundy Appraisal & Management, First Green, LLC, Tige Howie & Stephen Scott, Respondents

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FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Whether the master-in-equity's ruling that Appellant's land is encumbered by the CCRs should be affirmed in light of the plain and obvious language subjecting all lands identified on Exhibit A to the CCRs, including future development parcels within which Appellant's lands are situated.

II. Whether the master-in-equity's ruling should be affirmed where Appellant conceded during argument that Appellant's property is within the boundary lines of the parcel described in Exhibit A, which identifies the parcels subjected to the CCRs?

III. Whether settled precedent bars Appellant, under the guidance of new counsel, from raising arguments on appeal that are admittedly contrary to the positions taken by Appellant's trial counsel, and which arguments were not raised to and ruled upon by the master-in-equity.

STATEMENT OF THE CASE

This case centers on the trial court's interpretation of the recorded Declaration of Covenants, Conditions, and Restrictions (the "CCRs") for The Marshes at Lady's Island residential development in Beaufort County, South Carolina and its determination that Appellant's present day lots are subject to and encumbered by the CCRs.

Appellant River City Developers, LLC commenced this action on May 2, 2017 in the Beaufort County Court of Common Pleas. Appellant's complaint against Respondents asserted causes of action for declaratory judgment, tortious interference with contractual relations, tortious interference with contractual relations, and breach of fiduciary duty. On July 10, 2017, Respondents answered and denied all adverse claims and asserted relevant affirmative defenses. Respondents also brought a counterclaim for declaratory judgment seeking a determination that Plaintiff's lots are subject to and encumbered by the CCRs. On July 25, 2017, Appellant replied to the counterclaim, generally denying Respondents' allegations and raising several affirmative defenses.

Both Appellant and Respondents brought cross-motions for summary judgment, the primary thrust of which focused on the issue of whether Appellant's present lots are subject to the CCRs presented in Respondents' declaratory judgment claim, agreeing that the issue was ripe for resolution by summary judgment. On October 16, 2018, the master-in-equity heard competing arguments on both Appellant's and Respondents' motions for summary judgment and took the matter under advisement. By written order dated January 3, 2019, the master answered Respondents' request for declaratory judgment in the affirmative by finding Appellant's present day lots are subject to and encumbered by the CCRs, granting Respondents' motion for summary judgment as to all adverse claims, denying Appellant's cross-motion for summary judgment,

entering a $5,851.15 monetary judgment in favor of the Association for assessments owed by Appellant under the CCRs, and finding that Respondents were entitled to an award of attorney's fees and costs in amount to be determined as provided in the CCRs.

Appellant moved for reconsideration on January 9, 2019, and on February 22, 2019, the master-in-equity heard arguments on Appellant's motion. On May 2, 2019, the master entered an Order that vacated the monetary award but denied Appellant's request to alter or amend the determination that the CCRs apply to Appellant's lot. The master held in abeyance a determination of the amount of attorney's fees to be awarded.

Appellant filed and served a Notice of Appeal with the Court of Appeals and the lower court on May 31, 2019.

STANDARD OF REVIEW

Declaratory Judgment

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 345–46, 594 S.E.2d 888, 891–92 (Ct.App.2004). To determine whether an action is legal or equitable, this [c]ourt must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought. *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct.App.2009).

Restrictive covenants are contractual in nature. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974); *Baumann v. Long Cove Club Owners Ass'n, Inc.*, 380 S.C. 131, 137, 668 S.E.2d 420, 423 (Ct. App. 2008) (stating "[r]estrictive covenants are construed like contracts and may give rise to actions for breach of contract."). An action to construe a contract is an action at law. *Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540

S.E.2d 843, 845 (2001); "Because the construction of a clear and unambiguous contract is a matter of law for the court, we review the trial court's findings of law de novo." *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014); Am. Jur. 2d *Covenants* § 282 (2015) (stating "[t]he construction, interpretation, and legal effectiveness of a restrictive covenant is a question of law for the court.").

Summary Judgment

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c), SCRCP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

STATEMENT OF THE FACTS

The Marshes at Lady's Island is residential development located in Beaufort County, South Carolina. It is undisputed in this case that the development is encumbered by the CCRs,

which were recorded by NP Blue Gray Development, LLC in Book 02301 Pages 0662-0742 on January 10, 2006 in the Beaufort County Register of Deeds. What Appellant disputes in this appeal is whether the particular lots owned by it within the Marshes at Lady's Island development are subject to the CCRs.

The land encumbered by the CCRS is defined in Exhibit A, which provides:

> **PARCEL 1:**
>
> All those certain lots, tracts, or parcels of land situate, lying and being in Beaufort County, South Carolina on Gibbes Island, and shown as the "**MARSHES AT LADY'S ISLAND, PHASE I**" on that plat entitled "Marshes at Lady's Island, Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. 10506, dated December 14, 2005, and recorded in Plat Book 111, page 17, Beaufort County, South Carolina, RMC Office.
>
> Said property includes, but is not limited to, the following lots, or applicable portions thereof, that have been previously subdivided:
>
> Lots 5, Lot VI A through Lot VI J, inclusive, Lot VII A through Lot VII J, inclusive, Phase I, Secession Golf Club Residential Tract as shown on that plat entitled "Plat Showing Phase I Secession Golf Club Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, and last revised October 10, 2000, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina, RMC Office.
>
> Lots C-1 through C-5, inclusive, Lots C-7 and C-8, Lot V3 A through L, inclusive, Phase I, Blue-Gray Estates Residential Tract, as shown on that plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office.
>
> Lots 1-6, inclusive, Phase III, Secession Golf Club Residential Tract, as shown on that plat entitled "Plat Showing Secession Golf Club Residential Tract, Phase III", prepared by David E. Gasque, R.L.S. No. 10506, dated August 4, 2004, and recorded in Plat Book 101, page 76, Beaufort County, South Carolina, RMC Office, said plats being incorporated herein and made a part hereof by this reference.

> Said property also includes all roads, common areas, future development tracts, marsh, wetlands, and any other undeveloped property included within the boundary lines of the parcel.
>
> **EXCEPTING, HOWEVER,** from the property conveyed herein, Lot C-6, Lot C-9 and C-10, Phase I, Blue-Gray Estates Residential Tract, as shown on that plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office, which Lots are not owned by Blue Gray, LLC, and the southerly portion of Lot C-8 as shown on said plat, which portion is not included in the description of the property being conveyed by the new plat of the Marshes at Lady's Island, Phase I as described above.
>
> This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Blue Gray, LLC, dated January 6, 2006, and recorded in Deed Book 111, page 17, Beaufort County, South Carolina records

(R. pp. 157-158).

As the first sentence of Exhibit A states, the land subjected to the CCRs broadly includes, "All those certain **lots, tracts or parcels of land . . . .**" The legal description further states: "Said [encumbered] property **also includes** all roads, common areas, **future development tracts**, marsh, wetlands, **and any other undeveloped property included within the boundary lines of the parcel.**" (R. p. 157; R. p. 223; R. p. 18) (all emphasis added).

Exhibit A references a critical plat recorded in Plat Book 111 at Page 17 ("2005 Plat"). The 2005 Plat depicts a series of platted lots, future development parcels, and other lands within the northern most boundary lines of the parcel known as Gibbes Island, all of which are subject to the CCRs. (R. p. 157; R. p. 191). Exhibit A-1 to the CCRs further identifies the lands initially encumbered by the CCRs by reference to their tax map numbers (described as "PID" numbers). (R. p. 159). One PID expressly identified on Exhibit A-1 is "**R200-018-000-076A (part),**" described as "17 acres, Gibbes Island," which is the very first Reference identified on the 2005

Plat. (R. p. 159; R. p. 191). Importantly, Appellant conceded at the summary judgment hearing that its present day lots are contained within the 17 acre Gibbes Island parcel identified on Exhibit A-1 and contained within the "future development" identified on the 2005 Plat. (R. p. 79, line 20 – p. 80, line 9).

Exhibit B to the CCRs is a one sentence description of land subject to annexation and references an 86.03 acre Boundary Survey of Secession Golf Club Residential Tract on Gibbes Island recorded in Plat Book 75 at Page 87 ("2000 Boundary Survey"). (R. p. 160). Any land not described in Exhibit A is considered part of Exhibit B. (R. p. 191; R. pp. 229-230).

Subsequent to the recording of the CCRs and the 2005 Plat subjecting all the lands described in Exhibit A and Exhibit A-1 (including future development tracts) to the CCRs, Appellant's specific lot lines were reflected within the "future development" parcel by a plat recorded in Plat Book 118 at Page 131 ("2007 Plat"). At the time the 2007 Plat was recorded, the lands within that future development parcel had already been subjected to the CCRs by the recording of the CCRs and the 2005 Plat. (R. pp. 108-188; R. p. 191; R. pp. 221-228; R. pp. 14-22).

Thereafter, the lots in question underwent a series of conveyances. Appellant took title to Lots 55, 56, 57, and 58 on July 16, 2014, and likewise took title to Lot 16 on July 24, 2014. (R. pp. 193-195; R. pp. 214-216). The deeds conveying these lands to Appellant identify the lots as part of **"The Marshes at Lady's Island, Phase I."** (R. pp. 193-195; R. pp. 214-216) (emphasis added). The deeds likewise make reference to the 2007 Plat, a plat which on its face has a handwritten note indicating the plat depicts a "portion of R200-018-000-076A" — the very same PID number identified on Exhibit A-1. (R. pp. 247-249).

Part of Plaintiff's Complaint seeks a determination that the subject lots[1] are not encumbered with the rights and obligations of the CCRs, absent the filing of a Supplemental Declaration, under a theory that the lots merely existed as "future development" (as opposed to finally platted lots) at the time the CCRs were originally recorded. (R. pp. 24-31). Appellant believes Section 9.4 of the CCRs applies, which would require a supplemental declaration to subject additional property to the CCRs. The CCRs provide in Section 9.1 that a supplemental declaration is required only in the case of adding property described in Exhibit B to the CCRs. (R. p. 91). As noted, Appellant admits its lots are contained within the lands described by Exhibit A. (R. p. 79, line 20 - p. 80, line 9).

Respondents maintain Appellant's lands have been encumbered by the CCRs since original CCR recording in 2006 and that no supplemental declaration is required. (R. pp. 32-38).

ARGUMENT

I. The master-in-equity properly determined the plain and obvious purpose of the CCRs was to encumber all of the lands identified on Exhibits A and A-1 to the CCRs, including future development parcels, and not just defined lots as Appellant contends.

Appellant's argument hinges entirely on its mistaken belief that only a defined lot depicted on a plat could be subjected to the CCRs. This argument ignores the plain, unambiguous language of Exhibit A to the CCRs, which subjects "**future development tracts**, . . . **and any other undeveloped property included within the boundary lines of the parcel[]**" to the CCRs. (R. p. 157; R. pp. 221-228; R. pp.14-22) (all emphasis added).

"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

[1] When this lawsuit was filed, Appellant owned only lots 16 and 56, having sold the remaining lots to others. (R. p. 68).

whole document. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Taylor v. Lindsey*, 332 S.C. 1, 5 498 S.E.2d 862, 864 (1998) (citation and quotation marks omitted). However, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001).

Contrary to Appellant's argument, this case does not present a novel question of law. As the master correctly noted, in *Cullen v. McNeal*, 390 S.C. 470, 485, 702 S.E.2d 378, 386 (Ct. App. 2010), this Court addressed whether undeveloped land identified as "future development" on a plat could be subject to a development's original governing documents. In *Cullen*, just as in this case, the Declarations define encumbered property as property described in Exhibit A. The *Cullen* court examined the Declarations in their entirety and concluded that (1) "property," as defined in the Declarations, includes all of the land described in Exhibit A; (2) that a plat referenced in Exhibit A includes "future development" and (3) that "all of the property in Exhibit A shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants." *Cullen*, 390 S.C. at 485, 702 S.E.2d at 386 (interior quotations omitted). This Court held the circuit court did not err in determining that encumbered property included "future development." *Id.* The same logic and reasoning applies in this case.

Appellant's attempts to distinguish *Cullen* by arguing the developer in *Cullen* made changes to the development by filing a supplemental declaration miss the mark. At no place in the "Section C. Undeveloped Land" portion of the *Cullen* opinion does this Court predicate its holding upon the existence of a supplemental declaration in that case. Instead, this Court's

holding rested on its interpretation of definitions and recorded plats, which established that "future development" was encumbered by the Declaration.

Just as in *Cullen*, the CCRs here define "Properties" or "The Marshes at Lady's Island" as "The real property described in Exhibit 'A.'" And, as referenced above, Exhibit A's legal description states in relevant part that: "Said property [subjected to the CCRs] also includes all roads, common areas, **future development tracts**, marsh, wetlands, and **any other undeveloped property included within the boundary lines of the parcel."** (R. p. 157; R. pp. 221-228; R. pp. 14-22). Just as in *Cullen*, the 2005 Plat here includes "future development" parcels. In similar fashion to *Cullen,* Article I, Section 1.2 of the CCRs, entitled "Binding Effect," reads as follows:

> **All property described in Exhibit "A,"** shall be owned, conveyed, and used **subject to all of the provisions of this Declaration, which shall run with the title to such property**. This declaration shall be binding upon all Person having any right, title or interest in any portion of The Marshes at Lady's Island, their heirs, successors, successor-in-title and assigns."

(R. p. 113; R. p. 222; R. p. 17) (emphasis added).

Contrary to Appellant's argument that a supplemental declaration is required, the CCRs plainly contemplate a procedure for creating lots from undeveloped land already subjected to the CCRs and identified in Exhibit A. The procedure is outlined in the "Unit" definition on page 6 of the CCRs. A "Unit" subjected to the CCRs is a:

> a portion of The Marshes at Lady's Island, **whether improved or unimproved,** which may be independently owned and **is intended** for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer **to the land, if any, which is part of the Unit** as well as any improvements thereon. In the case of a structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit. **A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel.**

> **Thereafter, the subdivided portion shall contain the number of Units shown on the plat.** Any portion not subdivided shall continue to be a single Unit.

(R. p. 118; R. p. 17). Simply, the CCRs expressly apply to parcels, whether they have been subdivided into individual lots or not. In other words, a parcel consists of a single Unit until it is subdivided into smaller Units. In either case, the lands forming the parcel are subject to the CCRs pursuant to Exhibit A and Exhibit A-1, regardless of whether they have been divided into lots. There is no logic to Appellant's contention that a supplemental declaration is required to add lands to the CCRs when those lands are already subjected to them.

The master correctly ruled that Appellant's property existed as part of a "Unit" of the Marshes at Lady's Island development prior to being platted and subdivided lots. In accord with the procedure outlined above, the "future development" (or Unit) was simply subdivided into multiple smaller Units by the 2007 Plat. Appellant relies on Article IX of the CCRs in support of its position that a supplemental declaration is required to encumber its lots. However, Article IX, Section 9.1 plainly states this mechanism applies only to land in Exhibit B—not land in Exhibit A that is already subject to the CCRs. (R. p. 141). Article IX is inapplicable to the question presented. Having conceded that its lots are contained within the future development parcel identified within Exhibit A, Appellant cannot rely on Article IX. This is fatal to its case.

The master-in-equity correctly interpreted and cited provisions in his order so as to give effect to the intent of the parties as determined from the whole document. (R. pp. 17-18). This Court should affirm the trial court's consideration of the relevant CCR definitions, the language of Exhibit A's legal description, Appellant's deeds which reference "The Marshes at Lady's Island, Phase I," and the plats of record.

II. The master-in-equity should be affirmed because Appellant conceded during argument that its land is contained within the "future development" parcel identified on the 2005 Plat and subjected to the CCRs by Exhibit A.

A concession allows this Court to end the matter. *See Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 159, 711 S.E.2d 895, 898 (2011); *see also Hall v. Benefit Ass'n of R. Emps., 164 S.C. 80, 161 S.E. 867 (1932)* (holding that clients are bound by their attorney's admissions in Court); *Bowaters Carolina Corp. v. Carolina Pipeline Co.*, 259 S.C. 500, 505, 193 S.E.2d 129, 132 (1972) (stating that "[i]n the light of such concession, the point, of course, need not be further pursued."); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 614, 632 S.E.2d 874, 879 (Ct. App. 2006) (noting that a party that stipulates to a matter may not complain about it on appeal); *Barrow v. Barrow*, 394 S.C. 603, 610 n. 3, 716 S.E.2d 302, 306 n. 3 (Ct.App.2011) (excluding matters conceded at oral argument from discussion of issue on appeal); *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 641, 720 S.E.2d 485, 489 (Ct. App. 2011) (stating "[a]n issue conceded in the trial court cannot be argued on appeal.").

During the hearing on the parties' cross motions for summary judgment/declaratory judgment, the master sought to clarify whether there was any factual dispute over whether Appellant's lots were contained within the parcels subjected to the CCRs by Exhibit A. Appellant's counsel offered the following admission of fact to the court:

> JUDGE DUKES: That is an **undisputed fact** that [Exhibit] A contains all of the properties; is that correct?
>
> MR. MORRISON: **Well, Exhibit A is undisputed.** I mean, it's somewhat confusingly worded, but it -- you know, it says what it says.
>
> JUDGE DUKES: Okay. **But I guess I'm making sure we don't have any scintillas out there for summary judgment purposes. So the land that your client owns is within this real estate described in Exhibit A; is that –**
>
> MR. MORRISON: **It's in the future development.**

> JUDGE DUKES: Okay. All right. So it -- okay. All right. Thank you. Go ahead.

(R. p. 79, line 20 – p. 80, line 9). In light of this admission, coupled with the aforementioned CCR provision stating its terms "run with the title to such property" in Exhibit A, this Court should affirm the master's ruling. Notably, Appellant fails to address or otherwise acknowledge Exhibit A, the admission referenced above, or any portion of either hearing transcript from the trial court in its initial brief. Instead, Appellant admittedly attempts to make new arguments on appeal in an effort to avoid its concessions before the master.

III. Appellant cannot take an opposite position on appeal and argue matters not raised at the summary judgment hearing and ruled on by the master-in-equity.

The general rule is that the theory pursued in the trial court with respect "to the relief sought and grounds therefor" must be adhered to in the appellate court. *Mellette v. Atl. Coast Line R. Co.*, 181 S.C. 62, 186 S.E. 545, 547 (1936). New arguments not previously raised are not permitted. Further, a party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), aff'd as modified, 405 S.C. 359, 747 S.E.2d 757 (2013); *Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (per curiam) ("An issue may not be raised for the first time in a motion to reconsider."); *see also Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (noting statements of fact appearing only in arguments of counsel will not be considered).

Here, Appellant concedes on page 13 of its brief that it is asking this Court to consider arguments that are "contrary" to the arguments its trial counsel raised to the master. The fact that Appellant's new counsel hired for this appeal might have raised different arguments than were presented to the master by Appellant's trial counsel is irrelevant under this Court's well-settled rules of issue preservation. *Accord I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526

S.E.2d 716 (2000); *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court). At no point did Appellant ever argue to the master that genuine issues of material fact precluded summary judgment—instead, the opposite is true. Appellate argued, "This has summary judgment written all over it." (R. p. 99, lines 7-17). This is bolstered by the fact that Appellant filed its own cross motion for summary judgment and conceded on the record that this case was ripe for a summary judgment ruling:

> MR. MORRISON: Well, I guess, if you need extra time to decide it and it gets up to the trial roster, maybe we'd work with you or Heather to get it continued until you're able to make a determination because I think we all -- **this is a summary judgment** –
>
> JUDGE DUKES: I'll let you know by next week.
>
> MR. MORRISON: **This has a summary judgment written all over it. (Inaudible) [i]nterpretation of Real estate documents.**

(R. p. 99, lines 7-17; R. p. 39-42) (emphasis added).

Moreover, the *Mellette* opinion compels appellate counsel to adhere to the relief sought and grounds therefor that were relied upon before the trial court. Having conceded before the master that the matter was appropriate to be decided by summary judgment, Appellant is precluded from taking a new and opposite position on appeal. *Bowaters Carolina Corp. v. Carolina Pipeline Co.*, 259 S.C. 500, 505, 193 S.E.2d 129, 132 (1972) (stating that "[i]n the light of such concession, the point, of course, need not be further pursued.").

This Court should also find that Appellant's "public policy" arguments raised for the first time in this appeal likewise are unpreserved. "[I]ssue preservation rules 'prevent[] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate

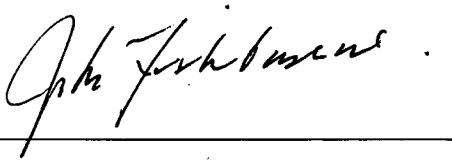
court will accept that ace card and, via a reversal, give him another opportunity to prove his case.'" *I'On*, 338 S.C. at 406, 526 S.E.2d at 724. "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is "axiomatic that an issue cannot be raised for the first time on appeal." *Id.* Imposing such a requirement on the appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On*, 338 S.C. at 422, 526 S.E.2d at 724.

At no point during the hearing on the parties' cross-motions for summary judgment did Appellant ever raise its public policy arguments to the master. Tellingly, Appellant's brief does not contain a single reference to the summary judgment hearing where these arguments would have been made before the master. *See Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 470 S.E.2d 373, 322 S.C. 127 (1995) (stating "appellant has the burden of providing this court with a sufficient record upon which to make a decision."). Having neither raised these issues at the summary judgment hearing nor obtained a ruling on them, they are not preserved for appellate review. *I'ON*, 338 S.C. 406, 526 S.E.2d 716 (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court).

CONCLUSION

For the foregoing reasons, Respondents respectfully request the court affirm the ruling of the master-in-equity.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-000928
Common Pleas Case No. 2017-CP-07-00851

River City Developers, LLC, Appellant,

v.

The Marshes at Lady's Island Homeowners' Association, Bundy Appraisal & Management, First Green, LLC, Tige Howie & Stephen Scott, Respondents

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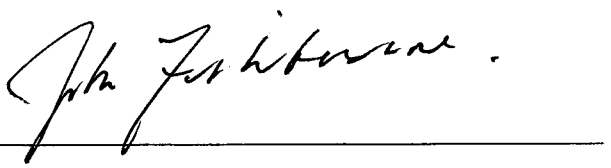
CERTIFICATE OF COUNSEL PURSUANT TO RULE 211(B)

The undersigned certifies that *Final Brief of Respondents* complies with Rule 211(b).

Attorney Signature Page to Follow

Respectfully submitted,



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