THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

Appellate Case No. 2020-001275

RECEIVED
Jun 09 2021
SC Court of Appeals

Westbury Park Residential Association, Inc…….Respondent,

v.

Estate at Westbury Owners Association, Inc……..Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., Plaintiff/ Counterclaim Defendant, v. ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant/ Counterclaim Plaintiff.	**CONSENT ORDER OF REFERENCE TO THE MASTER-IN-EQUITY**

IT APPEARING that this matter is before the Court by consent of all parties, pursuant to Rule 53(b), SCRCP, to refer this action to the Honorable Marvin H. Dukes III, Master in Equity for Beaufort County; and

IT ALSO APPEARING that the Plaintiff commenced this action pertaining to certain real property located in Beaufort County, South Carolina, and that the Defendant has answered and filed counterclaims pertaining to the property, that this is a proper matter to be referred to the Master in Equity pursuant to Rule 53, SCRCP.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action is referred by consent to the Honorable Marvin H. Dukes III, Master in Equity for Beaufort County, pursuant to Rule 53, SCRCP.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff is responsible for paying the Reference Fee set forth in South Carolina Code of Laws Section

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14-11-310; however, if the Plaintiff's case has ended, any remaining party seeking Affirmative Relief shall be responsible for paying the fee. If the case is a Partition Action or Lien Foreclosure the fee amount is $100.00; for all other types of cases the fee is $50.00. The Reference Fee shall be paid to the Office of the Master in Equity for Beaufort County within 30 of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further notice.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

We consent:

FORD WALLACE THOMSON LLC

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Attorneys for Plaintiff

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Beaufort Common Pleas

Case Caption: Westbury Park Residential Association, Inc. VS Estate At Westbury Owners Association, Inc.

Case Number: 2020CP0700158

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

ELECTRONICALLY FILED - 2020 Sep 21 2:37 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2020-CP-07-00158
Westbury Park Residential Association, Inc., **Plaintiff(s)**, vs. Estate at Westbury Owners Association, Inc., **Defendant(s).**	**ORDER DENYING INJUNCTION AND GRANTING IN PART AND DENYING IN PART MOTION FOR PARTIAL SUMMARY JUDGMENT**

This Plaintiff's motion for temporary injunction and Defendant's motion for partial summary judgment came before me in a live hearing on September 16, 2020.

Defendant Property Owner's Association (Estate) asserts that it holds an easement across the property of the Plaintiff Property Owner's Association (Park). Park seeks relief related to the conduct of certain individuals using that easement (believed to be residents of Estate)[i]. Park further challenges the nature of the easement and seeks to be paid certain use and maintenance assessments which are the subject of dispute. Estate seeks to confirm its easement as perpetual and appurtenant and to establish that the term of payment has expired.

I find that the Temporary Injunction should be denied, as it does not meet the requirement for irreparable harm and additionally that it seeks relief which compels non-parties to act or abstain from activities.

With regard to Estate's Motion for partial summary judgment:

I find that the easement is an express appurtenant Easement and that the renewal of the term was intended to be unilateral under 9.01. I find that the term was properly extended by the filing of the extension as contemplated under 9.01. I do not see a conflict between 9.01 and 9.02. 9.01 deals with term and 9.02 deals with "…this Declaration, or any provision hereof, or any covenant, condition or restriction contained herein…"

Further, the assessment provision (8.02) of the Declaration agreement (as further modified by paragraph 4 of the 2005 amendment), calls for a sum certain in payments. The obligation of the Estate is to pay the contracted sum and the obligation of Park is to maintain the easement. Had the proportional maintenance cost exceeded the actual revenue received under the assessment provision, Park would have suffered a loss. Estate has no right of accounting and there is no right by Estate to direct how the funds are used. So long as the easement is in good condition and available for the reasonable, contracted and anticipated use of Estate residents, Park has complied with its contractual obligations.

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I therefore:

1) Deny Defendant's summary judgment motion on Plaintiff's second cause of action (declaratory judgment).
2) Deny Defendant's summary judgment motion on Plaintiff's third cause of action (termination by breach)
3) Grant Defendant's summary judgment motion on Plaintiff's fourth cause of action regarding the type of easement.
4) Grant Defendant's summary judgment motion on Plaintiff's fifth cause of action (declaratory judgment on alternative access)
5) Deny Defendant's summary judgment motion on Plaintiff's sixth cause of action. (unjust enrichment)
6) Deny Defendant's summary judgment motion on Plaintiff's seventh cause of action (changed conditions).
7) Grant Defendant's summary judgment motion on Defendant's fourth counterclaim (type of easement)
8) Deny Defendant's summary judgment motion on Defendant's fifth counterclaim (easement by necessity).
9) Deny Defendant's summary judgment motion on Defendant's eighth counterclaim (accounting).

IT IS SO ORDERED:

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

September _____, 2020
Beaufort, South Carolina

[i] Park offered video showing motorists entering through the exit gate. While I am tempted to call this maneuver a "raspberry beret", Prince lyrical references have no place in the body of this Order.

ELECTRONICALLY FILED - 2020 Sep 21 2:37 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

Beaufort Common Pleas

Case Caption: Westbury Park Residential Association, Inc. VS Estate At Westbury Owners Association, Inc.

Case Number: 2020CP0700158

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

Circuit Court Case No. 2020-CP-07-00158

Westbury Park Residential Association, Inc…….Respondent,

v.

Estate at Westbury Owners Association, Inc…….Appellant.

NOTICE OF APPEAL

Estate at Westbury Owners Association, Inc., appeals the Order Denying Injunction and Granting in Part and Denying in Part Motion for Partial Summary Judgment, of the Honorable Marvin H. Dukes, III, dated September 21, 2020. Appellant received written notice of the entry of this order on September 21, 2020.

[signature appears on next page]

Respectfully submitted,

FORD WALLACE THOMSON LLC

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September 22, 2020

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ELECTRONICALLY FILED - 2020 Oct 07 8:44 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2020-CP-07-00158
Westbury Park Residential Association, Inc., **Plaintiff(s)**, vs. Estate at Westbury Owners Association, Inc., **Defendant(s).**	**ORDER DENYING INJUNCTION AND GRANTING IN PART AND DENYING IN PART MOTION FOR PARTIAL SUMMARY JUDGMENT**

This Plaintiff's motion for temporary injunction and Defendant's motion for partial summary judgment came before me in a live hearing on September 16, 2020.

Defendant Property Owner's Association (Estate) asserts that it holds an easement across the property of the Plaintiff Property Owner's Association (Park). Park seeks relief related to the conduct of certain individuals using that easement (believed to be residents of Estate)[i]. Park further challenges the nature of the easement and seeks to be paid certain use and maintenance assessments which are the subject of dispute. Estate seeks to confirm its easement as perpetual and appurtenant and to establish that the term of payment has expired.

I find that the Temporary Injunction should be denied, as it does not meet the requirement for irreparable harm and additionally that it seeks relief which compels non-parties to act or abstain from activities.

With regard to Estate's Motion for partial summary judgment:

I find that the easement is an express appurtenant Easement and that the renewal of the term was intended to be unilateral under 9.01. I find that the term was properly extended by the filing of the extension as contemplated under 9.01. I do not see a conflict between 9.01 and 9.02. 9.01 deals with term and 9.02 deals with "…this Declaration, or any provision hereof, or any covenant, condition or restriction contained herein…"

Further, the assessment provision (8.02) of the Declaration agreement (as further modified by paragraph 4 of the 2005 amendment), calls for a sum certain in payments. The obligation of the Estate is to pay the contracted sum and the obligation of Park is to maintain the easement. Had the proportional maintenance cost exceeded the actual revenue received under the assessment provision, Park would have suffered a loss. Estate has no right of accounting and there is no right by Estate to direct how the funds are used. So long as the easement is in good condition and available for the reasonable, contracted and anticipated use of Estate residents, Park has complied with its contractual obligations.

I therefore:

1) Deny Defendant's summary judgment motion on Plaintiff's second cause of action (declaratory judgment).
2) Deny Defendant's summary judgment motion on Plaintiff's third cause of action (termination by breach)
3) Grant Defendant's summary judgment motion on Plaintiff's fourth cause of action regarding the type of easement.
4) Grant Defendant's summary judgment motion on Plaintiff's fifth cause of action (declaratory judgment on alternative access)
5) Deny Defendant's summary judgment motion on Plaintiff's sixth cause of action. (unjust enrichment)
6) Deny Defendant's summary judgment motion on Plaintiff's seventh cause of action (changed conditions).
7) Grant Defendant's summary judgment motion on Defendant's fourth counterclaim (type of easement)
8) Deny Defendant's summary judgment motion on Defendant's fifth counterclaim (easement by necessity).
9) Deny Defendant's summary judgment motion on Defendant's eighth counterclaim (accounting).

IT IS SO ORDERED:

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

September _____, 2020
Beaufort, South Carolina

[i] Park offered video showing motorists entering through the exit gate. While I am tempted to call this maneuver a "raspberry beret", Prince lyrical references have no place in the body of this Order.

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Beaufort Common Pleas

Case Caption: Westbury Park Residential Association, Inc. VS Estate At Westbury Owners Association, Inc.

Case Number: 2020CP0700158

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Westbury Park Residential Association, Inc.,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
v.	)	(Non Jury)
	)	
Estate at Westbury Owners Association, Inc.,	)	
	)	
Defendant.	)	
	)	

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office located at 35 Hospital Center Common, Suite 200, Post Office Box 24005, Hilton Head Island, South Carolina 29925-4005, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in this Complaint.

s/ Benjamin T. Shelton
Benjamin T. Shelton
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Hilton Head Island, South Carolina

January 24, 2020

ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Westbury Park Residential Association, Inc., Plaintiff, v. Estate at Westbury Owners Association, Inc., Defendant.	)	COMPLAINT (Non Jury)

COMES NOW, the Plaintiff, complaining of the Defendant, would respectfully show unto this Honorable Court the following:

PREAMBLE/SUMMARY OF THE CASE

The Plaintiff, Westbury Park Residential Association, Inc. ("Westbury Park"), is an association of homeowners operating and managing the residential community known as Westbury Park located in Bluffton, South Carolina. Westbury Park consists of approximately 127 acres with 109 acres devoted to single family residential homes. Plantation Properties, LLC (the "Developer") undertook development of the community in 1998. Certain declarant rights were assigned to Westbury Park in 2015 by the Developer and the Association now enjoys full control of the community.

Plantation Properties, LLC undertook development of what is now known as the Estate at Westbury Owners Association, Inc. (the "Estate at Westbury" or the "Estates") as an apartment complex by executing a Declaration of Covenants, Conditions, Restrictions and Easement for Palmetto Lakes Apartments at Westbury Park on November 10, 1998 (recorded on November 12, 1998 in Book 1106 at Page 1225, Beaufort County Register of Deeds) (herein, the "Apartment Declaration"). The Estate at Westbury was converted to a horizontal

property regime on or about 2005 and now is a 20-acre condominium association of 320 units. The Estates are a separate legal entity from Westbury Park. When designing the communities, the Developer created access to the Estates only through Westbury Park's residential streets, over Kensington Boulevard and a section of Westbury Parkway.

Westbury Park is gated, with mechanical gates controlling access into and out of Westbury Park and therefore the Estate at Westbury. According to Section 8.01 of the Apartment Declaration, the Estates and its predecessors paid fees to the Developer for this access and for the maintenance and care of the streets, landscaping and lighting. While the Developer received payment from the Estates for years, Westbury Park was the party obligated to maintain, manage, and secure the access roads used by the Estate at Westbury. During this time, Westbury Park received only a fraction of the funds for the maintenance and use of the corridor while it was under developer control, despite shouldering the burden of the maintenance of the corridor, responsibility of securing the gates and corridor and diminution of property values created by the excessive traffic on those streets.

In 2015, the right to receive payment for the care, upkeep and securing of the "Required Streets" was assigned by the Developer to Westbury Park. From 2015 through most of 2018, the Estates made payments to Westbury Park pursuant to this assignment of Declarant rights. By August 2018, however, the Estates were in default on the full amounts owed to Westbury Park according to the Apartment Declaration.

In October 2018, Westbury Park, renewed the Apartment Declaration according to Section 8 of the Declaration. Estate at Westbury stopped payments to Westbury Park in October 2018 and, despite notices and demands made to the Estates, it has made no payment to Westbury Park for the maintenance and security of the streets and the gates since October 2018 when it already was in default. In addition, the Estates have refused to cooperate with Westbury Park in its efforts to keep unauthorized vehicles and individuals out of the communities, has refused to pay Westbury Park for damage to Westbury Park property

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caused by Estate residents (including damage to the gates, making them inoperable at times), and has ignored requests for information Westbury Park needs to properly secure the communities. This is important, as a history of crime and vandalism has occurred in the communities as a result of the gates being broken or other unauthorized access.

This litigation seeks to immediately enjoin the abuse of gate access and damage of property by Estate at Westbury residents and visitors and force the Estate at Westbury to cooperate with the administration of gated access, cure the default by Westbury Park, and permanently establish the rights of the Parties by establishing access to the Estate at Westbury other than through the streets and gates of Westbury Park.

THE PARTIES AND JURISDICTION

1. Plaintiff, Westbury Park Residential Association, Inc. (herein, "Westbury Park" or "Plaintiff"), is a not for profit corporation organized under the laws of the State of South Carolina with a principal place of business in Beaufort County, South Carolina. Westbury Park is the governing entity for that certain residential community in southern Beaufort County known as "Westbury Park" a planned residential community of single-family homes with gated access to Buck Island Rd. and Plantation Park Drive.

2. Defendant Estate at Westbury Owners Association, Inc. (herein, "Estate at Westbury" or "Defendant") is a not for profit organization organized under the laws of the State of South Carolina with a principal place of business in Beaufort County, South Carolina. Defendant is the governing entity for that certain residential community and horizontal property regime situate in southern Beaufort County known as the "Estate at Westbury."

3. The facts that give rise to this dispute arose in Beaufort County, South Carolina and properties involved in this dispute exists in Beaufort County, South Carolina.

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4. This court has jurisdiction over the matter and venue is proper.

RELATIONSHIP OF THE PARTIES

Overview of the History and Content of Conveyances

5. The paragraphs of the preamble are incorporated by reference herein.

6. The Estate at Westbury is a residential condominium association (a horizontal property regime) located to the east of and adjoining Westbury Park. The residents, tenants, guests, and contractors of the Estate at Westbury presently utilize certain streets within and the gate into Westbury Park to access the Estate at Westbury.

7. The Estate at Westbury relies upon the Declaration of Covenants, Conditions, Restrictions And Easements for Palmetto Lakes Apartments at Westbury Park, dated November 10, 1998, found at Book 1106, Page 1225, at the Beaufort County Register of Deeds (ROD) (herein, the "Apartment Declaration"), in asserting easement rights for ingress and egress through certain streets of Westbury Park.

8. The Apartment Declaration was not executed under seal.

9. The Apartment Declaration contains no Acknowledgment.

10. The Apartment Declaration contains no Probate.

11. The Apartment's Declaration fails to meet the statutory requirements of an instrument effecting property interests in South Carolina.

12. The Declarant of the Apartment Declaration was Plantation Properties, L.L.C. The Apartment Declaration referenced above in Paragraph 7 is incorporated herein as **Exhibit 1**, and is referenced herein as, the "Estate Property."

13. Among other things, Section 7.02 of the Apartment Declaration states that, "*Subject to the provisions hereof* and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns . . . shall have a right and easement of use of those certain easements as hereinafter more fully described."

(emphasis added). Section 7.02 of the Apartment Declaration further states that it granted the Owner of the Apartments a "Perpetual and non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard . . .", and, a "Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property."

14. Section 8 of the Apartment Declaration requires the Estate at Westbury to make monthly payments to Westbury Park as the assignee of certain Declarant rights, for the use and maintenance of the streets described in paragraph 13, above.

15. The Property was defined in a legal description contained in Exhibit "A" of the Apartment Declaration.

16. The Apartment Declaration defines "Owner" as the owner of a fee interest in the "Property."

17. On November 10, 1998, the same date that the Apartment Declaration was executed, the Estate Property was transferred by deed found at Book 1106 / Page 1245 of the Beaufort County Register of Deeds by Plantation Properties, LLC to Westbury Park Apartments, Ltd. (herein, the "Apartment's Deed"), incorporated herein as **Exhibit 2**. Upon information and belief, this deed was properly executed per South Carolina law with full force and effect.

Westbury Park Apartments, Ltd. Conveys Its Interest to Montecito Westbury/Conversion to HPR

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18. On October 28, 2005, Westbury Park Apartments, Ltd. conveyed its interests in the Estate Property to Montecito Westbury, LLC by deed found at Book 2261 / Page 1673 of the ROD and incorporated herein as **Exhibit 3** (herein, "Montecito Deed").

19. Any and all purported conveyance within the Montecito Deed to which Westbury Park Apartments, Ltd. did not have an ownership right are void.

20. On November 1, 2005, Plantation Properties, LLC (as Declarant) filed an Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (Book 2269/ Page 1997). This Amendment states that the Declarant, *inter alia*:

a. Allowed the Property to be converted to condominium units;

b. Reiterated the Estate Property's owners, residents and guests' did not have the right of use and easement access to Westbury Park's common areas and amenities, including parks, swimming pools and pool houses;

c. Revised the monthly amounts owed by the Owner of the Property (as defined in the Apartment Declaration) as an assessment for its use of and for the maintenance of the streets described in paragraph 13, above.

21. On January 1, 2006, Montecito Westbury, LLC recorded a Master Deed (herein, the "Estate Master Deed") stating that it submitted the Estate Property to the Horizontal Property Act of South Carolina ("the Act"). The Estate Master Deed is found at the ROD, Book 2310 / Page 2012.

22. Upon information and belief, the Defendant Estate at Westbury Owners Association, Inc. ("Estate at Westbury") was created on or about the same time of the filing of the Estate Master Deed referenced above.

<u>Assignment of Declarant Rights to Westbury Park and Estate of Westbury's Default on Payment Obligations to Westbury Park</u>

ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

23. As stated above, Westbury Park is the assignee of certain Declarant rights of Plantation Properties, LLC held under the Apartment Declaration, including the rights to receive payments from the Estate at Westbury for the maintenance and upkeep of the streets used by the Estate at Westbury for ingress and egress through Westbury Park to the Estate at Westbury.

24. The Estate at Westbury paid money to Westbury Park per the agreement contained in the Declaration as the assignee of Declarant rights before it defaulted on payments.

25. As of August 31, 2018, the Estate at Westbury was in default on payments owed to Westbury Park pursuant to the Apartment Declaration.

26. In October 2018, Westbury Park renewed the Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park by filing a notice of extension with the ROD per Section 9.01 of the Declaration, which is incorporated herein as **Exhibit 4**.

27. The Estate at Westbury holds a continuing contractual obligation to pay Westbury Park per the terms of the Apartment Declaration for its continued use, enjoyment and the benefit of the streets it uses through Westbury Park to access its property. The Estate at Westbury has failed to make any payment to Westbury Park for money owed pursuant to the Declaration since on or about October 17, 2018.

28. On October 31, 2018 Estate at Westbury owed approximately $22,753.01 to Westbury Park per the terms of the Apartment Declaration. It is in default and remains in default of the Apartment Declaration.

29. The Estate at Westbury has failed to remedy multiple notices to cure its default.

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30. Westbury Park continues to maintain and secure the roadways and corridors of the alleged right of way for the benefit and gain of the Estate at Westbury, at great expense to Westbury Park.

31. The amount due and owing by the Estate at Westbury to Westbury Park has reached over $100,000.00, plus attorney's fees and costs.

32. The Estate at Westbury has 320 residential units. Westbury Park has 350 residential units. As many if not more vehicles traveling to the Estate at Westbury use the roadways subject to the alleged right of way as do residents and/or guests of Westbury Park. The residents of Westbury Park who reside along the alleged right of ways suffer great burdens, risks and loss of property values due to the traffic upon the roadways. This traffic injures all property values of Westbury Park.

33. Alternative access to the Estate Property is possible, and was conditionally approved by Beaufort County in 2009 during the construction of the extension of Plantation Park Drive at minimal cost to the Estate at Westbury. However, upon information and belief, the Estate at Westbury refused to participate in any planning or expense of an additional access to the Estate Property at the time.

Exhibit 5

Continuing, Damage and Unauthorized Entry by Estate at Westbury to Gates Maintained, Supervised and Paid for by Westbury Park

34. Upon information and belief, since its inception, Westbury Park has held and maintained gates for the safety, security and benefit of its residents. Westbury

Park continues to maintain, operate and manage the gates and the streets used by the Estate at Westbury at great cost and burden to Westbury Park.

35. The Estate at Westbury, its owners, residents and guests gain substantial benefit from the gated access and roadway use, market their property as a gated community, and derive benefit from the common elements, spaces and amenities of Westbury Park that adjoin the roads used for ingress and egress by the Estate at Westbury.

36. Over the past year, Westbury Park has documented scores of occurrences where residents, guests and/or vendors of the Estate at Westbury forcefully open the mechanical gates without use of a password or "key fob," physically forcing the gates open. Each of these breaches constitute a security risk to the residents of Westbury Park and the Estate at Westbury, and damage or risk damage the mechanisms of the gates. At times, the gates are not functional due to damage caused by residents, guests or vendors of the Estate at Westbury.

37. On other occasions, residents or guests of the Estate at Westbury have recklessly and/or negligently damaged the gates to Westbury Park. The Estate at Westbury has refused to reimburse Westbury Park for these expenses after demand. On each occasion the damage caused the gates to be inoperable for weeks until they could be repaired. Westbury Park paid for these repairs and the Estate at Westbury refused to reimburse Westbury Park for the repairs and refused to hold its owners accountable for the damage.

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38. Westbury Park repeatedly has requested the Estate at Westbury to take reasonable action to prevent the gate breaches by its guests and residents and has repeatedly requested the Estate at Westbury to cooperate with it in the administration of the gate access. Estate at Westbury repeatedly refused to cooperate with the administration of the gates.

39. Residents and vendors of the Estate at Westbury, including security personnel for the Estate at Westbury, continued to forcibly breach the gates after Westbury Park sent notices to the Estate of Westbury of gate breaches and have at times allowed unknown individuals to "piggy back" into the gates after unauthorized access.

40. Estate at Westbury has acknowledged that it has not provided all of its owners, residents, guests and/or vendors with access cards or codes to the gates.

41. Historically, gate failures have caused increased crime and vandalism in both Westbury Park and the Estate at Westbury. This crime is documented in contemporary news stories.

42. The Estate at Westbury has failed to respond to reasonable requests from Westbury Park to prevent gate breaches and security risks and, instead, has facilitated the breaches through its security contractor, refusing to enforce and/or promulgate reasonable Rules and Regulations for its residents, guests and vendors, at the expense, risk and damage to Westbury Park and its residents.

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43. The actions described above create an imminent liability risk a constitute a threat to the safety of the owners, residents and guests of Westbury Park, causing substantial financial damage to Westbury Park and its individual owners.

44. While the Estate at Westbury substantially and materially benefits from its access over certain roadways of Westbury Park and the gates of Westbury Park, Westbury Park and its individual owners suffer substantial burden, financial damage, and security risk caused by the access and the abuse of that access.

FOR A FIRST CAUSE OF ACTION
(Injunction)

45. All allegations of the preceding paragraphs are reiterated fully as if stated verbatim herein.

46. As stated above, owners, residents, guests, and/or vendors of the Estate at Westbury repeatedly have forced open the gates to Westbury Park without authority and in reckless disregard of the property rights of Plaintiff, the functioning of the gate, and safety of residents and guests of Plaintiff.

47. Plaintiff has documented scores of these gate breaches, and made demand to Estate at Westbury to take corrective action to prevent further gate breaches and damage, including providing Westbury Park with a full list of its residents and vendors and vehicle registrations in effort to facilitate proper access to the communities.

48. After demand, Estate at Westbury continues to fail to monitor the conduct of its residents, guests, and vendors (or other unknown individuals), who

continue to physically force open the gates, risking and creating damage to the gates, entering the communities without authority.

49. These acts create a substantial risk to the safety of the residents and guests of Plaintiff, cause damage to the property, subjected residents to vandalism and theft, and, if left unabated, will continue to cause risk to the safety of residents and guests of Plaintiff and cause damage to the property of Plaintiff.

50. Estate at Westbury residents, guests and vendors continuing to enter into Westbury Park without authority and proper credentials and/or damaging property would result in irreparable harm to Plaintiff and its owners.

51. The Plaintiff has no other adequate means or remedy to prevent the activities of residents, guests and vendors of the Estate at Westbury.

52. The equities demand an injunction be granted for the benefit of Plaintiff enjoining residents, guests, and/or vendors of Estate at Westbury from:

a. entering the gates of Plaintiff's community without authority,

b. damaging the gates, and

c. requiring the Estate at Westbury take reasonable measures to prevent such actions by its residents, guests, and vendors.

53. Further, the Plaintiff is entitled to an injunction requiring Estate at Westbury to permanently provide Plaintiff with the identities of its Owners, Residents, a list of authorized vehicles and vehicle plates (the same material Westbury Park requests of its own residents) so that Westbury Park may reasonably

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monitor gate access into the communities, and any other specific orders the circumstances require.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)
(The Apartment Declaration is Renewed and in the Estate is in Default)

54. All preceding allegations are reiterated fully as if stated verbatim herein.

55. The Plaintiff is entitled to Judgment Declaring:

a. The Apartment Declaration was renewed by Westbury Park and remains in full force and effect by its terms, which speak for themselves;

b. ESTATE AT WESTBURY is in default of the terms of the Apartment Declaration;

c. ESTATE AT WESTBURY owes to WESTBURY PARK all outstanding payments due under the Apartment Declaration, plus all attorney's fees, interest and costs of collection, including the fees and costs associated with this action;

d. Any and all other relief just and reasonable, including authorization for Westbury Park to lien and foreclose upon the Common Elements of the Estates at Westbury.

FOR A THIRD CAUSE OF ACTION
(*Termination by Breach*)
(Terminating Easement on account of the breach by Estate at Westbury)

56. Paragraphs 1 through 55 are repeated as if fully restated verbatim herein.

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57. By failing to pay Westbury Park for its use of the roadways of Westbury Park and gate access, the Estate at Westbury breached its contract with Westbury Park.

58. The default, breach and reckless use of the alleged easement by the Estate at Westbury was substantial and material, in addition to failing to pay Westbury Park for the use of the roadways and gates, it has refused reasonable requests to prevent unauthorized entry of its residents and guests into the communities. The relationship between the Parties has been severely and permanently injured.

59. As stated above, Westbury Park is entitled to an order for all amounts due under the Declaration.

60. Additionally, because of Estate of Westbury's abuse of ingress and egress into Westbury Park, Westbury Park is entitled to an order terminating the use agreement and/or alleged easement enjoyed by the Estate at Westbury over and through the property of Westbury Park, and compelling the Estate at Westbury to plan and build alternative access to its property other than over and through the property of Westbury Park, within a reasonable time.

61. Westbury Park is entitled to an order declaring the respective rights of the Parties during the period in which the alternative access to Estate at Westbury is designed, planned and built.

FOR A FOURTH CAUSE OF ACTION
In the Alternative
(Declaratory Judgment)
(*Any easement conveyed was an easement in gross and now terminated*)

62. All preceding allegations contained in paragraphs 1 through 53 are reiterated as if fully stated verbatim herein.

63. In the alternative, if any easement exists, it was of residential character, and was an easement *in gross*.

64. Further, if any easement was conveyed, it was superseded by the execution and grant of Deed by the Apartment's Deed (**Exhibit 2**), which was properly executed and recorded, and did not convey the ingress and egress easement rights to the Estate Property.

65. Reasonable alternative means for ingress and egress exist to the Estate Property.

66. The alleged easement rights to the Estate Property through Westbury Park should therefore be declared null, or, in the alternative, any easement granted was in gross, and now extinguished.

67. Westbury Park Residential Association is entitled to an order declaring that:

a. A permanent easement over Westbury Park's streets benefiting the Estate at Westbury does not exist;

b. The Estate at Westbury Owners Association be required to plan and construct an alternative access to the Estate Property for regular ingress and egress to the Estate Property for its residents, guests, and vendors within a reasonable timeframe.

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c. Establishing the rights and responsibilities of the Plaintiff and Defendant in the period of construction of the new access to the Estate Property, including establishing the amount of payments owed to Westbury Park during the period of construction for the maintenance and use of the streets used as ingress and egress to the Estates;

d. Awarding attorney's fees and costs of this action to Plaintiff;

e. Any and all other just and reasonable relief.

FOR A FIFTH CAUSE OF ACTION
In the Alternative
(Declaratory Judgment)
(*No Easement Exists and Requiring Estate at Westbury to Construct Alternative Access to Property*)

68. All allegations of the preceding paragraphs 1 through 53 are repeated as if fully restated verbatim herein.

69. As stated above, the Apartment's Declaration which purportedly conveyed use rights to the Estate Property was created and filed in violation of SC Code Ann. § 30-5-30 (1976) (as amended).

70. In the alternative, while an agreement for use rights may have existed between the parties and their successors, no easement was granted.

71. Reasonable alternative means for ingress and egress exist to the Estate Property.

72. Westbury Park Residential Association, Inc. is entitled to an order declaring that:

a. No easement exists;

b. Reasonable alternative means to access the Estate property exists;

c. The Estate at Westbury Owners Association be required to plan and construct an alternative access to the Estate Property for regular ingress and egress to the Estate Property for its residents, guests, and vendors within a reasonable time;

d. Establishing the rights and responsibilities of the Plaintiff and Defendant in the period of planning and construction of the new access to the Estate Property;

e. Awarding outstanding amounts owed by Defendant under the use agreement to Plaintiff;

f. Awarding attorney's fees and costs of this action to Plaintiff;

g. Any and all other just and reasonable relief.

AS A SIXTH CAUSE OF ACTION
In the Alternative
(Unjust Enrichment)

77. Paragraphs 1 through 53 are repeated as if fully restated verbatim herein.

78. In the alternative, the Defendant enjoys a substantial benefit from the security of the gates and in the ingress to and egress from its property.

79. The Plaintiff suffers the significant burden of unilaterally maintaining and securing the gates, the streets, lighting, landscaping and areas which the Defendant enjoys, as further detailed above herein.

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80. The access increases Estate of Westbury property values while decreasing the quality of life and property values of Westbury Park and its owners and residents.

81. The scheme of creating a single access to the Estates through Westbury Park was created by a Developer for the benefit of the Developer and to the detriment of the communities and residents that will otherwise have to suffer the burden of the scheme after the develop derived inequitable benefits from the scheme.

82. If an easement to the benefit of the Estate Property exists, and, if the Court determines that the payment terms of the Apartment Declaration were not renewed, it is unjust to allow Defendant to continue to enjoy the ingress and egress over the streets, increased property values, and enjoy the security of the gate and patrols all borne by Plaintiff, while Plaintiff bears all expense to the maintenance and upkeep of the streets, the gate, the nuisance of the great volume of traffic, and damage to Plaintiff's property and property values, all caused by Defendant's use and abuse of the same.

83. As a direct result of the Defendant's unjust enrichment, the Plaintiff is damaged, and continues to be damaged, and is entitled to an award of damages in a reasonable amount and an Order setting forth Defendant's obligation to continue to pay a reasonable amount for ingress and egress over those certain streets, the gate, and other benefits associated with the same.

AS A SEVENTH CAUSE OF ACTION

In the Alternative

(Termination via Changed Conditions and/or Relative Hardship Doctrines)

84. The Plaintiff repeats paragraphs 1 through 53 and 82 through 87 as if fully restated verbatim herein.

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85. The Apartment Declaration was drafted by a Declarant for the benefit of the Developer/Declarant and not for the benefit of Westbury Park.

86. The design of the communities, with limited ingress and egress via a limited shared residential corridor, was not intended as a long-term solution and is not congruent with modern planning and land use requirements and practices, the developments have been completely built out with limited ingress and egress points.

87. The Estate at Westbury has abused its access through Westbury Park and its right to use the gate.

88. The Estate at Westbury has refused to reasonably contribute to the management and expense of the shared roadways and common gates to the association after repeated demands.

89. By converting the Estate Property to condominium units from apartment units, the Declarant substantially changed the character, use and nature of the Estate Property, converting the property from one owner to 320 owners, substantially injuring the residential community of Westbury Park without the input or authority of owners from Westbury Park, forever, through a developer-controlled board.

90. The developer designed the alleged easement, the Estate at Westbury payment obligations, and converted the Estate at Westbury to a condominium regime for its benefit and not for the benefit of Westbury Park, which now suffers the burden and expense of the alleged easement, factors outside of the control of the Parties to this action.

91. If the Court determines the easement exists and if the Estate at Westbury bears no payment obligations to Westbury Park, Westbury Park is left with the obligation, burden and expense of the maintenance of the roads subject to the easement, the thoroughfares subject to the easement, maintenance of the gates,

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administration of the security of the properties, and forced to suffer the traffic, lack of control and property devaluation caused by the easement.

92. The easement should be terminated given the changed conditions of the properties.

93. The easement should be terminated given the relative hardship the easement burdens Westbury Park and its residents.

94. The Plaintiff prays for an order terminating the alleged non-exclusive easement over Westbury Park property and ordering the Estate at Westbury to plan and design a separate entrance suitable for their owners, residents and vendors.

AS AN EIGHTH CAUSE OF ACTION
(*Reservation*)

95. The Plaintiff repeats all preceding paragraphs as if fully repeated verbatim herein.

96. The Plaintiff reserves leave to freely amend this complaint to add additional causes of action, conform the pleadings as facts and evidence are further determined, or otherwise modify the pleadings.

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WHEREFORE, the Plaintiff prays that the Court inquire into the matters herein and grant judgment against Defendant pursuant to the pleadings herein, grant Plaintiffs an award of pre-judgment interest, attorney's fees, costs, and for such other and further relief as the Court may deem just and proper.

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s/ Benjamin T. Shelton
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Hilton Head Island, South Carolina
January 24, 2020

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 10th day of November, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant") as follows:

ARTICLE I

RECITALS

1.01 Declarant is the owner of the approximately twenty (20) acre parcel of real property in Bluffton Township, Beaufort County, South Carolina; more fully described on attached Exhibit "A" (the "Property").

1.02 General Plan: To establish a general plan for the improvement and development of the Property, Declarant hereby subjects the Property to the conditions, covenants and restrictions set out below, upon and subject to which all of the Property shall be hereafter owned, leased, hypothecated and used.

ARTICLE III

GENERAL PROVISIONS

2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

2.02 Purpose of Restrictions: The purposes of these restrictions is to insure proper development and use of the Property to be in keeping with the community wide standards established for the Westbury Park Commercial Subdivision, and the Westbury Park Residential Subdivision, the latter of which is contiguous to the Property.

2.03 Definitions:

(a) Improvements: "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, fence, walls, landscaping, poles, signs and any structures of any type or kind.

(b) Owner: "Owner" shall mean the owner of the fee interest in the Property.

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(c) Plat: That certain Plat thereof prepared by Surveying Consultants entitled "ALTA/ACSM Land Survey of 20.00 Acre Parcel, a Section of Block X-1 a Portion of Rose Hill Plantation, Bluffton Township, Beaufort County, South Carolina, dated the 7th day of October, 19 98 and recorded in the records of the RMC Office for Beaufort County, South Carolina in Plat Book 67 Page 118."

(d) Required Streets: "Required Streets" shall mean Westbury Park Way and Kensington Boulevard as shown on the Plat.

(e) Westbury Park Commercial Area: "Westbury Park Commercial Area" shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 63 at Page 183.

(f) Westbury Park Residential Area: "Westbury Park Residential Area" shall mean all or any portion of that tract of land situate, lying and being in Rose Hill Planned United Development, Bluffton Township, Beaufort County, South Carolina, containing 128.973 acres, more or less, shown and described as "BLOCK X-1" on that certain plat entitled "A Plat of Block X-1, X-2, X-3, and X-4 being a portion of Block "X" prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SCRLS 11079, dated December 30, 1996 and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 58 at Page 198, less and except the Property.

2.04 Prior to Construction: "Prior to construction", the Owner shall maintain the Property in a neat and orderly condition free of weeds and other debris.

ARTICLE III

REGULATION OF IMPROVEMENTS

3.01 County Requirements:

(a) Nothing herein shall supersede the County of Beaufort's present or future requirements and ordinances. All of said requirements and ordinances, shall prevail, and it shall be the responsibility of Owner to conform to them.

(b) General: No structure, of any kind, and no part thereof, shall be placed on the Property closer to the property line than permitted by the County of Beaufort, giving consideration to any variance that may be obtained.

3.02 Completion of Construction: After commencement of construction of any structure, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in partly finished condition any longer than reasonably necessary for completion thereof.

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3.03 Excavation: No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded.

3.04 Landscaping: Landscaping shall be installed prior to occupancy or within sixty (60) days after the completion of the first building on the Property, whichever occurs first. All areas in the Property not used for structures, parking, storage, sidewalks, amenities, driveways and other improvements, shall be planted and maintained with grass and landscaping.

3.05 Signs: No billboard or advertising sign shall be permitted. No attached or detached signs or displays identifying Owner or the apartment complex on the Property shall be used unless their design has first been submitted to and approved by Declarant in writing, so as to assure a dignified and basically uniform appearance of all signs and displays within the Property.

3.06 Storage and Loading Areas - Outside Storage: After all construction of the Improvements is complete, no construction, landscape or maintenance material, supplies or products shall be stored or permitted to remain on the Property in unscreened areas. Screening of storage areas shall be accomplished by the use of landscaping, walls, buildings, fencing or any combination thereof, to a height sufficient to screen the stored items, except that such height shall not exceed eight feet.

3.07 Waste Disposal: No waste material or refuse shall be dumped, placed or (except during construction) allowed to remain on the Property outside a permanent structure unless it is in closed containers of a quality to control odors and behind a visual barrier screening such areas so that they are not visible from neighboring properties or public streets. All such waste and trash materials shall be regularly removed and shall not be allowed to accumulate.

3.08 Off-Street Parking:

(a) The arrangement, access and number of all parking spaces and lots shall conform to applicable County of Beaufort requirements and ordinances, giving consideration to any variances that may be obtained.

(b) Automobile parking areas shall be provided with entrances, exits and aisles adequate to provide safe movement of vehicles.

(c) Subject to the Development Regulations of Beaufort County, South Carolina, the front yard and exterior side yard setback areas may be used for parking and access ways. However, not less than 20 feet of the setback areas (exclusive of wetlands), as measured from the property line, shall be landscaped.

(d) Adequate off-street parking shall be provided to accommodate all parking needs of employees, tenants and visitors on the Property.

3.09 Trucking and Loading:

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(a) Adequate turn around room area shall be provided for safe operation of trucks in loading areas.

(b) Trucking areas shall be adequately designed and paved for the type of operation intended.

3.10 Building Regulations: Any building erected on the Property shall conform to the following construction practices:

(a) The exterior of all structures erected on the Property shall be constructed in accordance with the Approved Plans (as hereinafter defined).

(b) All buildings erected shall conform to the applicable building codes and ordinances of the County of Beaufort, giving consideration to any variance that may be obtained.

(c) Exterior walls shall be painted or suitably treated in accordance with the Approved Plans.

3.11 Care, Maintenance and Repairs: All structures, landscaping and improvements from time to time placed upon the Property in accordance with the terms hereof or the requirements and ordinances of the County of Beaufort shall be maintained in good clean condition and repair at all times, normal wear and tear excepted.

3.12 Drainage: All drainage of water from the Property and Improvements thereon shall drain or flow into easement areas provided for such purpose as shown on the Plat, and all slopes and terraces shall be maintained as to prevent any erosion thereof upon any streets or adjoining property and in accordance with the applicable ordinances of the County of Beaufort and the State of South Carolina.

ARTICLE IV

APPROVAL OF PLANS

4.01 Submission of Plans: No improvements shall be erected, placed, altered, maintained or permitted to remain on the Property until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural designs, signs, landscaping, and a tree survey indicating trees to be removed and replaced shall have been submitted to and approved in writing by Declarant (the "Approved Plans").

4.02 Standards for Approval: Approval by Declarant shall be based, among other things, on conformity and harmony of external design with neighboring sites; relation to topography, grade and finished ground elevation of the site being improved to that of neighboring sites; proper design of main exterior elevation with respect to nearby streets; and conformity of plans and specifications to the purpose and general plan and intent of these restrictions. All structures and walls shall be

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constructed of maintenance free durable material. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

4.03 Time for Approval: If Declarant fails to either approve or disapprove such plans and specifications within twenty (20) days after the same have been submitted to and received by Declarant it shall be conclusively presumed that Declarant has approved the plans and specifications.

Upon receipt of approval from Declarant pursuant to this section, the Owner to whom the same is given shall, within six (6) months of acquisition of title, satisfy all conditions thereof, subject to force majeure, and diligently proceed with the commencement and completion of all approved construction and alterations. In all cases, work shall be substantially completed within two (2) years from the date of commencement of construction. It there is a failure to comply with this paragraph, then the approval given pursuant to this section shall be deemed revoked unless Declarant, upon written request made to it prior to the expiration of said two (2) year period, grants a written extension of the time for completing work.

4.04 Release of Liability: Neither Declarant nor its successors or assigns shall be liable for damages to anyone submitting plans to them for approval or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant for approval agrees, by submission of such plans, and every Owner of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant to recover any such damages.

ARTICLE V

REGULATION OF OPERATIONS AND USES

5.01 Permitted Operations and Uses: The Property is subject to the restriction that it be used for the construction and operation of an apartment complex to contain not more than three hundred twenty (320) apartments, which shall be utilized for residential purposes only.

5.02 Other Operations and Uses: The Owner shall be subject to the following restrictions:

(a) Resubdivision of the Property: The property shall not be split, divided or subdivided for sale, resale, gift, transfer or otherwise, nor shall its boundary lines be altered, without the prior written approval of Declarant.

(b) Temporary Buildings: No temporary building, trailer, garage or building under construction shall be used temporarily or permanently as a residence on the Property except as temporary sleeping or living quarters required or desirable for security purposes. Owner or Owner's contractors may use temporary structures, such as construction trailers while developing the Property.

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(c) Fences: No fence or wall of any kind shall be erected, maintained or altered on the Property without the prior approval of Declarant.

(d) Antenna/Satellite Dish: Except with the prior written approval of Declarant, no outside television or radio aerial, satellite dish or antenna or other device for the reception and transmission of radio or television or other electronic signals, including telecommunications towers shall be erected or maintained on any portion of the Property or upon the exterior of any buildings erected on the Property. Declarant shall approve an application for the installation of one (1) satellite dish to provide television services to the apartments, so long as the satellite dish or other receiving device shall not be visible from the ground on any property contiguous to the Property.

(e) Clothes lines, Garbage Cans, Mailboxes: No clothes lines visible from any property contiguous with the Property shall be permitted. All equipment and garbage cans shall be kept in a garbage can screened by adequate planning or approved fencing so as to conceal them from view by neighboring residence and streets.

(f) Parking and Related Restrictions: (i) No vehicle belonging to Owner or any of Owner's tenants shall be permitted to park on any of the streets that provide access to the Property that are not contained within the Property or on any property contiguous to the Property; and (ii) no school bus, truck (other than pick-up trucks), commercial vehicle (over one (1) ton capacity), house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, or like equipment shall be permitted on the Property on a permanent basis unless stored within garages or carports.

(g) Lagoon Front and Wetlands: Owner and Owner's tenants shall conform to all restrictions placed by applicable laws, ordinances and covenants on lagoons or wetlands on the Property.

(h) Solid Waste: (i) Neither Owner nor any of Owner's tenants shall dump rubbish, garbage or any other form of solid waste on the Property; (ii) except during construction, neither Owner nor any other contractor shall burn rubbish, garbage or any other form of solid waste on the Property; (iii) except for building materials employed during the course of any construction on the Property, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on the Property unless screened or otherwise handled in a reasonable manner; and (iv) at all times, containers for the collection of rubbish, garbage or any other form of solid waste must be maintained in a screened or enclosed area.

(i) Nuisances: No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done on the Property by Owner or any of Owner's tenants which may be or may become a public or private nuisance to the Westbury Park community.

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ARTICLE VI

ENFORCEMENT

6.01 Equitable Servitudes: All of the provisions herein contained shall run with the land and shall be enforceable at law or in equity as equitable servitudes by Declarant.

6.02 Attorneys Fees: In any legal or equitable proceeding for the enforcement of this Declaration or to restrain any violation of this Declaration or any provision hereof, the prevailing party shall, in addition to all other costs, be entitled to recover from the non-prevailing party reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.03 Inspection: Declarant may from time to time at any reasonable hour or hours, and after reasonable notice to Owner, enter and inspect any property subject to these restrictions (other than the interior of any apartments) to ascertain compliance therewith. No such entry or inspection shall disrupt or disturb any of Owner's tenants or Owner's operations of the Property, unless Owner's tenants or Owner's operation of the Property are the cause for entry.

6.04 Failure to Enforce Not a Waiver of Rights: The failure of Declarant or any Owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

ARTICLE VII

EASEMENTS

7.01 Easements for Declarant: Declarant hereby reserves for itself its successors and assigns the "Relocatable 20' Sanitary Sewer Easement" and that certain "Relocatable 20' Storm Drain Easement" as more fully shown on that certain Plat entitled "ALTA/ACSM Land Title Survey of 20 Acre Parcel, Westbury Park, a section of BLOCK X-1 a portion of Rose Hill PUD, Bluffton Township, Beaufort County, South Carolina" prepared for Declarant by Surveying Consultants, dated October 7, 1998, a copy of which is recorded in the records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 67 at Page 118 ("Plat")." Owner shall have the right to relocate the easements described herein prior to its commencement of construction of improvements on the Property, provided such relocation does not make the easements unusable.

7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.

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(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.

(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

(c) Permanent, non-exclusive easement for Owner's directional signs, as approved by Declarant pursuant to the provisions herein, at the approximate locations shown as follows on the Plat:

1. At the intersection of the east right-of-way of Buck Island Road and Kensington Boulevard; the easement for this sign shall not be relocatable;

2. At the southwest corner of Kensington Boulevard and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278 and Buck Island Road; and

3. At the northwest corner of the intersection of Arley Way and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278.

(d) Permanent, Non-Exclusive Twenty-Five Foot (25') Storm Drain Easement as more fully shown on the Plat.

(e) A Five Foot (5') Utility Easement (measured from the center line of buried utility cables and lines) on each sides of said buried utility cables and lines within the rights-of-way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property.

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ARTICLE VIII

ASSESSMENTS

8.01 The Owner, its successors or assigns (but not tenants), by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on an annual basis the sum of $17,500.00 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This Assessment shall become due and payable on February 1 of each year and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall remain the responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

8.02 The Assessment as set forth hereinabove shall commence on January 1, 1999, be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers, All Items (Base Year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstances will the Annual Assessment fall below the minimum of $17,500.00 per year.

8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

ARTICLE IX

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

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be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

9.03 Assignments of Declarant's Rights and Duties: Any or all of the rights, powers and reservations of Declarant herein may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignments, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 Constructive Notice and Acceptance: Every person who now owns or acquires any fee simple title in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

10.03 Paragraph Headings: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

Westbury Record on Appeal 0044

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10.04 Effect of Invalidation: If any provision of this Declaration is held to be invalid by any final judgment in a contested judicial proceeding the invalidity of such provision shall not affect the validity of the remaining provisions hereof and the same shall remain in full force and effect.

WITNESSES:

Karen B Murphy

PLANTATION PROPERTIES, L.L.C.

By: James N. Richardson, Jr.
Its: Managing Member

Attest:

By: William W. Jones, Jr.
Its: Member

Buck Island, L.L.C. joins in this Declaration for the sole purpose of confirming the easements granted in Paragraphs 7.02(a) and 7.02(c)(3), and for no other purposes whatsoever.

WITNESSES:

Karen B. Murphy

BUCK ISLAND, L.L.C.

By:
Its: MANAGING PARTNER

Attest:

By: William W. Jones, Jr.
Its: Member

Westbury Record on Appeal 0045

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named BUCK ISLAND, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

ST. 2-A:DISK#5\PALMETTO.COV

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EXHIBIT "A"

Legal Description

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118 ("Plat") ("Property"). For a more detailed description, reference is made to said Plat of record.

2346 JSP

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 NOV 12 PM 12:20

BK 1106 PG 1225
FOLDER#

1238

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4/10/99

State of South Carolina,

1245

COUNTY OF Beaufort

JS&P/
File Number:
2726.003

57097

BEAUFORT COUNTY, S.C.
RECORDING FEES COLLECTED
TRANSFER FEES $_____
COUNTY $ _____ STATE $_____

KNOW ALL MEN BY THESE PRESENTS, THAT
Plantation Properties, L.L.C., a South Carolina limited liability company

in the State aforesaid for and---------- in consideration of the sum of Ten and no/100 ($10.00)---------- DOLLARS, and other valuable consideration to it in hand paid at and before the sealing of these presents by Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership
PO Box 235000, Montgomery, AL 36123-5000 in the State aforesaid for which the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership, its successors and assigns forever, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

*R600-31-266-0

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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 Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership, its successors and assigns forever.

AND It does hereby bind itself and its successors and Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership its successors and Assigns, against it and its successors and assigns, and all persons whomsoever may come lawfully claiming, or to claim the same or any part thereof.

WITNESS its Hand and Seal, this 10th day of November in the year of our Lord one thousand nine hundred and Ninety Eight and in the two hundred and twenty-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Karen B. Murphy
Witness

Notary Public

Plantation Properties, L.L.C., a South Carolina limited liability company

By: _____ (L.S.)
James N. Richardson, Jr., Managing Member

_____ (L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that Plantation Properties, L.L.C., a South Carolina limited liability company, by its duly authorized officer personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 10th day of November.

Notary Public for South Carolina
My Commission expires: Oct 19, 2003

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ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

EXHIBIT "A"

Legal Description

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118 ("Plat") ("Property"). For a more detailed description, reference is made to said Plat of record.

RESERVED EASEMENTS:

Grantor reserves a permanent twenty (20') foot storm drainage easement and a permanent twenty (20') foot sanitary sewer easement across the Property. Such easements shown on said Plat as "Relocatable 20' Storm Drainage Easement" and "Relocatable 20' Sanitary Sewer Easement", respectively.

DERIVATION:

The property conveyed herein being a portion of the property conveyed to Grantor by Deed of Rose Hill Plantation Development Company, LP dated December 31, 1996, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Records Book 961, page 1375.

TMS # A PORTION OF 600-0031-0004

a:\westbury\legal description-deed
stat5\2726.001

-The within Document prepared by
Mark S. Simpson of Jones Schneider
and Patterson, P.A. P.O. Dr. 7049
Hilton Head, S.C. 29938. 843-842-6111

2346 JSP

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 NOV 12 PM 12:21 JMSL
BK 1106 PG 1245
FOLDER#

1249

RECORDED THIS 15 DAY
OF Dec 1998
IN BOOK AE PAGE 2486
Sharon Q. Burris
AUDITOR, BEAUFORT COUNTY, S.C.

ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ADD DMP Record 12/2/2005 03:13:24 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	031	000	0266	0000	00

BEAUFORT COUNTY SC - ROD
BK 02261 PGS 1673-1683
FILE NUM 2005093676
11/02/2005 12:47:56 PM
REC'D BY M LAMIE RCPT# 373429
RECORDING FEES 17.00
County Tax 26,345.00
State Tax 62,270.00

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY
) DEED TO REAL ESTATE
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, That Westbury Park Apartments, Ltd., an Alabama limited partnership, hereinafter referred to as Grantor, in the State aforesaid, for and in consideration of the sum of Five Dollars ($5.00) and other valuable consideration paid to us paid by Montecito Westbury, LLC, hereinafter referred to as Grantee, in the State aforesaid (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, the following described property, to-wit:

See Exhibit A attached hereto and incorporated herein by reference (the " Property").

This conveyance is subject to those matters listed on Exhibit B attached hereto and incorporated by reference.

RECORDED
2005 Dec -05 08:12 AM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

Grantee's address: 7785 Baymeadows Way, Suite 200
Jacksonville, FL 32256

NOTICE: This Property is subject to that certain Declaration of Restrictive Covenants recorded in the Beaufort County Register of Deeds Office on February 18, 1999 in Book 1138 at Page 1333.

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 premises before mentioned unto the said Grantee, its Successors and Assigns forever.

1054023.3.DOC
10/25/05

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And the 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, its Successors and Assigns, against Grantor and Grantor's Successors lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's Hand and Seal this 28th day of October, in the year of our Lord Two Thousand Five (2005) and in the Two Hundred and Thirtieth (230) year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Sandra M. Whitehead
Witness No. 1

Constance Barker
Witness No.2

WESTBURY PARK APARTMENTS, LTD.,
an Alabama limited partnership

By: Westbury General, Inc.,
its General Partner

By: Jennifer P. Auctrey
Name: Jennifer P. Auctrey
Title: Secretary / Treasurer

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STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

ACKNOWLEDGMENT

I, Lisa Dark, Notary Public for the State of Alabama, do hereby certify that the above-named WESTBURY PARK APARTMENTS, LTD., by and through Westbury General, Inc., its general partner, by and through Jennifer P. Autrey, its duly authorized officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand an official seal this the 28th day of October, 2005.

Lisa Dark
Notary Public
My Commission Expires: 5-2-07

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EXHIBIT A

Legal Description

PARCEL I:

All that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23, ("Plat") ("Property"), which Property is more particularly described as follows:

Commencing at the intersection of the centerline of Buck Island Road right of way and the centerline of Kensington Boulevard right of way, said point having S.C. grid coordinates of N160,697.1278, E 2,038,367.5012; thence, along the centerline of Kensington Boulevard, S50°52'48"E a distance of 283.27' to a point; thence, S46°01'21"E, a distance of 1,737.73' to a point; said point having S.C. grid coordinates of N159,311.7609, E2,039,837.7662; said point also being the point of beginning; thence along the eastern boundary of Simmonsville Canal N08°09'05"E, a distance of 18.39'; thence N13°04'21"W, a distance of 27.74'; thence N13°04'21"W, a distance of 2.26'; thence N03°13'51"E, a distance of 31.38'; thence N73°53'24"E, a distance of 25.49'; thence N49°20'23"E, a distance of 34.93'; thence N40°36'28"E, a distance of 32.81'; thence N10°42'37"E, a distance of 18.09' to an iron rebar set; thence along the southern right of way of a 150' power line easement S46°06'08"E, a distance of 1,706.16' to a concrete monument found; thence along the western property line of N/F Bluffton House Apartments S43°53'52"W, a distance of 525.65' to an iron rebar set; thence N46°05'35"W, a distance of 1,643.33' to an iron rebar set; thence along the aforementioned canal, N59°24'50"E, a distance of 33.92'; thence N48°18'43"E, a distance of 47.52'; thence N39°50'27"E, a distance of 50.00'; thence N36°06'34"E, a distance of 46.10'; thence N42°56'05"E, a distance of 37.05'; thence N19°08'43"E, a distance of 48.10'; thence N51°49'01"E, a distance of 33.73'; thence N65°05'22"E, a distance of 49.10'; thence N65°05'22"E, a distance of 6.08'; thence N08°09'05"E, a distance of 30.00' to a point; said point being the true point of beginning.

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PARCEL II – Non-Exclusive Access and Utility Easement – Residential Area:

Permanent, non-exclusive right for (a) vehicular and pedestrian access over and across the roads shown on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23, as "Kensington Blvd.," and that portion of "Westbury Park Way" within Block X-1 by Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership ("Westbury"), its successors and assigns, and Westbury's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Westbury and all other persons who reasonably need, on Westbury's behalf, access to the Property, and (b) a five (5') foot Utility Easement measured from the centerline of buried utility cables and lines, on each side of said buried utility cables and lines within the right of way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property. All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

PARCEL III – Non-Exclusive Access Easement – Commercial Area:

Permanent, non-exclusive right for vehicular and pedestrian access over and across the portion of "Westbury Park Way" north of Block X-1, as shown on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23, by Westbury, its successors and assigns, and Westbury's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Westbury and all other persons who reasonably need, on Westbury's behalf, access to the Property. All the above as established in Reciprocal Easement Agreement dated December 31, 1996 and recorded January 2, 1997 in Deed Book 912, page 11, and in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

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PARCEL IV – Signage Easements:

Permanent, non-exclusive easement for Westbury's directional signs at the approximate locations shown as follows on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23:

1. At the intersection of the east right of way of Buck Island Road and Kensington Boulevard;
2. At the southwest corner of the intersection of Kensington Boulevard and Westbury Park Way; and
3. At the northwest corner of the intersection of Arley Way and Westbury Park Way.

All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

PARCEL V – Drainage Easement:

Permanent, non-exclusive Twenty-Five Foot (25') Storm Drainage Easement as more fully shown on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23. All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

Derivation for Parcel I: This being the identical property heretofore conveyed to Westbury Park Apartments, Ltd., an Alabama limited partnership, dated November 10, 1998, recorded November 12, 1998, in Deed Book 1106, page 1245.

TMS # R600 031 000 0266 0000

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EXHIBIT B

Title Exceptions

1. Laws, ordinances and governmental regulations (including but not limited to building, zoning, land use and any subdivision ordinances and regulations) affecting the occupancy, use or enjoyment of the Property none of which prevent its present use;

2. Rights of tenants, as tenants only, with no option to purchase under unrecorded leases, tenancy or occupancy agreements in and for all or any portion of the Property;

3. Rights of parties pursuant to the assignable service contracts or agreements pertaining to the use, operation or maintenance of the Property which Grantee has elected to assume, solely to the extent such rights are title encumbrances.

4. Real estate taxes and assessments for the current year and subsequent years;

5. Those matters disclosed by or depicted on the survey of the Property, drawn by R. Scott Barrett, PLS, S.C.R.L.S. #23203, dated July 27, 2005, as last revised October 26, 2005;

6. Reciprocal Easement Agreement between Hampton Land Company, LLC, Coligny Plaza Limited Partnership, and Plantation Properties, LLC recorded in the Beaufort County Register of Deeds Office on January 2, 1997 in Book 912 at Page 11;

7. Easement from Westbury Park Apartments, Ltd. to Palmetto Electric Cooperative, recorded in the Beaufort County Register of Deeds Office on June 16, 1999 at Book 1183 at Page 504;

8. Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park recorded in the Beaufort County Register of Deeds Office on November 12, 1998 in Book 1106 at Page 1225;

9. Declaration of Restrictive Covenants by Plantation Properties, LLC and Westbury Park Apartments, Ltd. recorded in the Beaufort County Register of Deeds Office on February 18, 1999 in Book 1138 at Page 1333;

10. Amendment of Declaration of Restrictive Covenants by Plantation Properties, LLC and Westbury Park Apartments, Ltd. recorded in the Beaufort County Register of Deeds Office on February 26, 1999 in Book 1141 at Page 1326;

11. County Building Setback, Wetlands Buffers, Sewer, Telephone, CATV, and other utility infrastructure, Relocatable Storm Drain Easement, Relocatable Sanitary Sewer Easement, Right of Way shown as "Kensing ton BAVD", and all other matters depicted on the plat entitled " ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell S.C.R.L.S.#11059 Surveying Consultants, dated

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October 7, 1998, and revised October 28, 1998 and recorded in the Beaufort County Register of Deeds Office on February 23, 1999 in Plat Book 69 at Page 23; said relocatable easements are reserved in the deed dated November 10, 1998, recorded November 12, 1998 in Deed Book 1106, at Page 1245.

12. Easement in favor of South Carolina Electric & Gas Company recorded in the Beaufort County Register of Deeds Office in 1976 in Book 235 at Page 42;

13. Easement in favor of Palmetto Electric Cooperative, Inc. recorded in the Beaufort County Register of Deeds Office on November 30, 1989 in Book 541 at Page 1427;

14. Easement in favor of Central Electric Power Cooperative, Inc. recorded in the Beaufort County Register of Deeds Office on August 18, 1969 in Book 166 at Page 183;

15. Right of Way Agreement in favor of Palmetto Electric Cooperative recorded in the Beaufort County Register of Deeds Office in Book 106 at Page 40;

16. Private Easement on Beaufort-Jasper Water and Sewer Authority as recorded in the Register of Deeds Office for Beaufort County, South Carolina in Deed Book 569 at Page 383;

17. Grant of Easement and Agreement as described in that certain instrument recorded in said Register of Deeds Office in Deed Book 484 at Page 1277;

18. Grant of Easement as described in that certain instrument recorded in said Register of Deeds Office in Deed Book 730 at Page 2102;

19. Reciprocal Easement Agreement recorded in said Register of Deeds Office in Deed Book 975 at Page 1229;

20. Easements and all other matters of survey as shown on those certain Plats recorded in said Register of Deeds Office in Plat Book 58 at Page 198, Plat Book 63 at Page 183, Plat Book 65 at Page 21, Plat Book 44 at Page 200, and in Plat Book 67 at Page 118;

21. Easement to Palmetto Electric Cooperative as shown in instrument recorded in said Register of Deeds Office in Deed Book 106 at Page 188; and

22. Declaration of Covenants, Conditions and Restrictions for Westbury Park Commercial Center recorded in said Register of Deeds Office in Deed Book 827 at Page 5249.

23. The terms and conditions of the instruments which create the easements in Parcels II-V.

Note: Nothing in this deed or in the foregoing list of title exceptions shall be applied or interpreted to create any new exceptions to title which do not already exist.

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STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 85 Kensington Blvd, Bluffton, SC 29910, bearing County Tax Map Number 600-031-000-~~0164 (portion)~~ 0000, was transferred to Westbury Park Apartments, Ltd., an Alabama limited partnership, dated November 10, 1998, recorded November 12, 1998, in Deed Book 1106, page 1245.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as transfer for consideration paid or to be paid in money or money's worth

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ___ exempt from the deed recording fee because (See Information):
(If exempt, skip items 4-7 and go to item 8.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth.

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ___ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

(a)	Place the amount listed in item 4 above here:	$23,950,000.00
(b)	Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	$0
(c)	Subtract Line 6(b) from Line 6(a):	$23,950,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $88,615.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the authorized officer of the general partner of Grantor.

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

Name: Jennifer P. Autrey

Title: Secretary / Treasurer

SWORN to before me this 28th day of October, 2005.

Notary Public for Alabama

My commission expires: 5-2-07

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, partnership, or a trust in order to become, or as, a stockholder, partner or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the

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partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A).

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

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BEAUFORT COUNTY SC - ROD
BK 3709 Pgs 3041-3047
FILE NUM 2018057667
10/23/2018 04:34:22 PM
RCPT# 909791
RECORDING FEES 13.00

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Prepared By and Without Benefit of Title Examination:
FINGER, MELNICK & BROOKS, P.A.
Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-7000

STATE OF SOUTH CAROLINA	)	NOTICE OF EXTENSION OF THE
	)	DECLARATION OF COVENANTS,
	)	CONDITIONS, RESTRICTIONS, AND
	)	EASEMENTS FOR PALMETTO LAKES
	)	APARTMENTS AT WESTBURY PARK
	)	(Record Book 1106 at Page 1225)
COUNTY OF BEAUFORT	)	(Record Book 2269 at Page 1997)

THIS NOTICE OF EXTENSION OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK (herein, the "***Notice***") is made this 23rd day of October, 2018, by WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation (herein, the "***Association***").

WITNESSETH

WHEREAS, on November 10, 1998, Plantation Properties, LLC (herein, the "***Declarant***") made and executed that *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, which was recorded on November 12, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1106 at Page 1225, as amended by that certain *Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments as Westbury Park*, dated November 1, 2005, which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2269 at Page 1997; (herein collectively, the "***Declaration***"); and,

WHEREAS, according to Section 8.01 of the Declaration, the fee owner of the Property identified in Exhibit A to the Declaration is obligated to pay the Declarant, or its successors and assigns, an annual assessment for "[the Owner's] share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area"; and,

WHEREAS, according to Section 9.01 of the Declaration, "[t]his Declaration, every provision hereof and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording, provided that the rights and easements which are stated herein to have a longer duration shall have such longer duration"; and,

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WHEREAS, Section 9.01 of the Declaration states that "[t]his Declaration may be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, prior to the expiration of any term"; and,

WHEREAS, by virtue of that certain *Estate Payment Division Agreement and Assignment* entered into between the Declarant, the Association and the Westbury Park Commercial Center Property Owners' Association, Inc., a true and correct copy of which is attached hereto as Exhibit "A" (the "***Estate's Declaration Assignment***"), the Declarant assigned its declarant rights under the Declaration to the Association in accordance with Section 9.03 of the Declaration; and,

WHEREAS, the Association, as successor-in-interest to the Declarant, desires to renew the term of the Declaration for another ten (10) years pursuant to Section 9.01 of the Declaration; and,

WHEREAS, this *Notice of Extension* is being executed and recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, by the Association to reflect the Association's decision to renew the Declaration for an additional ten (10) years.

NOW, THEREFORE, pursuant to Section 9.01 of that certain *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, as amended from time to time, Westbury Park Residential Association, Inc., as successor in interest to Plantation Properties, LLC, hereby gives notice that it is exercising its right to renew the term of the aforesaid Declaration, as amended, for an additional ten (10) year period and that upon the recording hereof, the term of the aforesaid Declaration, as amended, shall be renewed for an additional ten (10) year period.

{*Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.*}

SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____ (L.S.)
Name: Josh Hemmann
Title: Vice President

STATE OF PENNSYLVANIA)
)
COUNTY OF Lebanon)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 11th day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared JOSH HEMMANN as VICE PRESIDENT for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____(SEAL)
Second Witness/Notary Public for Pennsylvania
Notary Printed Name: Shelley L Derr
My Commission Expires: October 29, 2018

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SHELLEY L. DERR, Notary Public
North Cornwall Twp., Lebanon County
My Commission Expires October 29, 2018

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SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

Attest: _____ (L.S.)
Name: Stacey Sawyer
Title: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 22 day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared STACEY SAWYER as SECRETARY for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

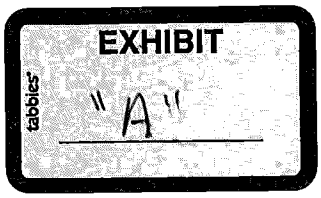
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

TASHA ARD
NOTARY PUBLIC
State of South Carolina
My Commission Expires May 22, 2023

_____ (SEAL)
Second Witness/Notary Public for South Carolina
Notary Printed Name: TASHA ARD
My Commission Expires: May 22, 2023

f:\client\v - z\westbury park res. association, inc\agreements\estates at westbury\notice of extension (erl.2).docx

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT

THIS ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT is made and entered into this ____ day of _____, 2015, among Plantation Properties, LLC (hereinafter "PPLLC"), Westbury Park Residential Association, Inc. (hereinafter "ROA") and Westbury Park Commercial Center Property Owners' Association, Inc. (hereinafter "COA").

AGREEMENT

WHEREAS, on November 1, 2005, PPLLC entered into an "Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park" with Montecito Westbury, LLC, pursuant to which certain assessment funds are paid to PPLLC on a monthly basis in connection with the Estate at Westbury Park condominiums (the "Estate Funds"), which is incorporated herein by reference and referred to as the "Estate Agreement;" and,

WHEREAS, PPLLC does agree that beginning on August 1, 2015 to relinquish any rights that it may have to the Estate Funds and assign such Estate Funds to the ROA and COA; and,

WHEREAS, the COA agrees not to pursue, by lawsuit or other means, PPLLC for any Estate Funds paid to PPLLC prior to August 1, 2015; and,

WHEREAS, the ROA and COA have entered into an agreement as to the division of the Estate Funds between them, whereby beginning on August 1, 2015 the Estate Funds are to be divided 80% to the ROA and 20% to the COA; and,

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

The ROA and the COA agree that the Estate Funds will be divided between them as follows: ROA: eighty percent (80%); COA: twenty percent (20%). The Estate Funds will be paid to the ROA which will remit the COA's portion of the funds within twenty (20) days of receipt of the same. The ROA shall not charge any administration fee for its collection and handling of the Estate Funds; provided, however, if legal action is necessary to collect the Estate Funds, the costs of collection shall be prorated and deducted from the Estate Funds. The ROA and COA agree to cooperate with each other in any required collection efforts regarding the Estate Funds.

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

WITNESSES:

WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

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IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

PLANTATION PROPERTIES, LLC

By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

Brooke Boeke

Stephanie Metts

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

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COUNTY COUNCIL OF BEAUFORT COUNTY
BEAUFORT COUNTY DIVISION DIRECTOR OF
ENGINEERING & INFRASTRUCTURE
Post Office Drawer 1228, Beaufort, SC 29901-1228
Building #3, 102 Industrial Village Road, Beaufort SC 29906
Telephone: 843 470-2821 Facsimile: 843 470-2823

December 21, 2009

Kevin Farruggio, VP
Westbury Park ROA
4454 Bluffton Park Crescent, Suite 107
Bluffton SC 29910

RE: **Plantation Business Park Frontage Road Project**
Sales Tax Project #2d

Dear Kevin:

In response to your 11/30/09 correspondence to Weston Newton, the County is prepared to design and construct the appropriate connection for Westbury Park as conceptually depicted on the attached plan provided by you. This is contingent upon the County receiving the easement required for this connection at no additional cost for the County.

If there are any questions, please let us know.

Sincerely,

Robert McFee, PE. Director
Engineering & Infrastructure

cc: Robert E. Klink, PE

Contracts/Sales Tax Projects/2d US 278 Frontage Roads/10-18 kevin farruggio

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Westbury Park

RECEIVED
12-1-09
EIDS

Chairman Weston J. Newton
Beaufort County Council
11 Arley Way, Suite 202
Bluffton, SC 29910

November 30, 2009

Re: Proposed Frontage Road Connection to the Estates at Westbury

Dear Chairman Newton,

It is with great pleasure and support that I write you today on behalf of the Westbury Park Residential Owner's Association. For over one year now The Westbury Park ROA Board of Directors have been researching the possibility of a second entrance to our community that would connect directly to the future Plantation Business Park Frontage Road. We feel this proposed project will provide Beaufort County with a unique opportunity. The sensitive nature and timing of this project is why we have chosen to bring this future frontage road to your attention now. It is our understanding that several of the proposed frontage road projects involved in the current One-Cent Sales Tax Program have been unable to move forward to construction due to unforeseen obstacles such as residential support and Right-of-Way acquisitioning.

As a result, a significant portion of sales tax dollars that has been collected from Beaufort County residents can and will be used on other projects involved in the program such as the Bluffton Parkway extension. It is also our understanding that several other frontage road projects have been reviewed in the past as possible future projects to be added to a similar sales tax program at a later date. I am writing you today with the full support of all Westbury Park residents to humbly request that our proposed frontage road be added to the current program or a future road improvement program similar in nature. To ensure you and all of Beaufort County officials success on this project and in the interest of expediting it we have executed the following:

1. Unveiled the proposed frontage road connector project to the residents at the Westbury Park annual meeting in September 2009 gaining full support for the proposed frontage road connection.
2. Identified exact location and boundaries of the proposed frontage road in relation to nearby wetlands.
3. Met with the Board of Directors for the Estates at Westbury and explained the proposed road project as well as the land that would be required to complete the frontage road.
4. We have contacted several engineering firms and received design estimates as well as preliminary construction estimates.

This road is of great interest to our community and will allow a easier and safer access to US 278, in addition to adding a much needed alternate evacuation route for our residents and the residents of the Estates at Westbury. With this we are willing to provide the following to ensure this project is completed:

1. We are willing to cover the cost of installing an additional security gate that will be required, signage, and landscaping.

We request from Beaufort County funding assistance to cover all professional engineering and construction cost. If I am correct no other project involved in the current sales tax program has provided this much support and commitment. If for some reason this proposed frontage road project is not eligible for funding assistance under the current Sales Tax Program what actions need to be taken on behalf of our residents to ensure it is added to future programs similar in nature. Given the level of support we have received in such a short period of time can the use of impact fees be used to complete preliminary stages of this project? Should you have any questions please do not hesitate to contact me at the below information. We look forward to your response and the opportunity to move forward with this project.

Sincerely,

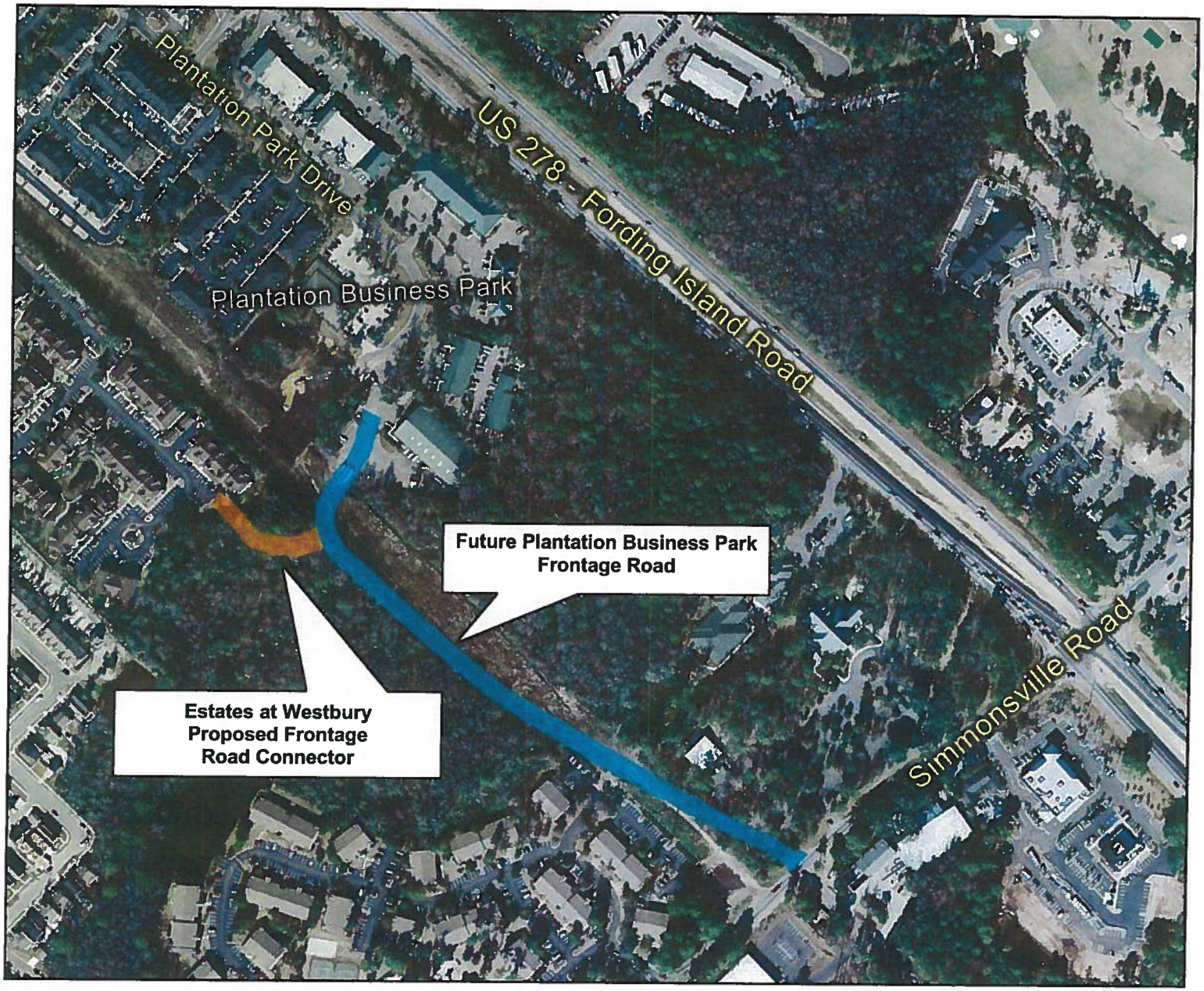
Kevin Farruggio
Vice President,
Westbury Park Residential Owner's Association

Cc: Mr. Gary Kubic
Mr. Rob McFee
Mr. Robert Klink

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Attachment "C"

PROJECT AERIAL



Westbury Record on Appeal 0075

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ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., Plaintiff/Counterclaim Defendant, v. ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant/Counterclaim Plaintiff.	**ANSWER AND COUNTERCLAIMS OF ESTATE AT WESTBURY OWNERS ASSOCIATION, INC.**

TO: BENJAMIN T. SHELTON, ESQUIRE, ATTORNEY FOR PLAINTIFF

Defendant Estate at Westbury Owners Association, Inc. (hereinafter "Defendant" or "Estate at Westbury"), by and through its undersigned counsel, hereby answers the Complaint of Westbury Park Residential Association, Inc. (hereinafter "Plaintiff" or "Westbury Park"). Estate at Westbury denies each and every allegation that is not specifically admitted herein.

ANSWERING PLAINTIFF'S PREAMBLE

Defendant Estate at Westbury denies all allegations within the Plaintiff's "Preamble/Summary of the Case" that are inconsistent with applicable instruments of record which pertain to the parties and the real property that is the subject of this litigation, or that differ in any way from Defendant's summary of the case, to wit:

In or about 1998, an entity called Plantation Properties, LLC (the "Developer" or the "Declarant"), which is not a party to this lawsuit, undertook to develop its large tract

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of property in Bluffton, South Carolina. Its scheme of development included commercial, single family residential, and multi-family residential units. By way of various recorded instruments, the Developer subjected the property to covenants, conditions, and easements that run with the land.

The particular subject of this lawsuit is the Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park, which became effective November 10, 1998. (Exhibit 1; hereinafter the "Apartment Declaration"). The Apartment Declaration sets forth the rights and responsibilities of the Developer/Declarant, as well as the rights and responsibilities of the Owner of the property that was to be developed into multi-family dwelling units (the "Defendant" or "Estates at Westbury" or "Estates"), *inter alia*.[1] Within the Apartment Declaration, the Developer granted a "[p]erpetual, non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard." (Ex. 1, p. 8, § 7.02(a), "Easements for Owner"). The Developer also granted a "[p]erpetual, non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the [Estates] Property." (Ex. 1, p. 8, § 7.02(b), "Easements for Owner").[2]

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[1] Over time, the property has been owned by several entities. In 2006 the Apartment Property was converted to a horizontal property regime. Thus, the "Owner," as defined in the Apartment Declaration, are now the title holders of the fee interests in the individual condominium units. The individual fee holders are members of Defendant, a nonprofit corporation. Certain obligations of the Owner were assigned to Defendant in 2005 (*see infra*).

[2] Within the Apartment Declaration, Kensington Boulevard and Westbury Parkway are referred to and defined as the "Required Streets."

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Thus, as Plaintiff accurately states in its preamble, "When designing the communities, the Developer created access to the Estates **only** through Westbury Park's residential streets, over Kensington Boulevard and a section of Westbury Parkway." (Complaint, p. 2) (emphasis added). The Estate has therefore always used those streets for its access, as was intended by the Developer. The Developer's easement grants are appurtenant and perpetual, by the express terms of the Apartment Declaration, and they are for ingress and egress for vehicles and pedestrians.

Nonetheless, for several years now, the Plaintiff has told the residents of the Defendant Estate that they cannot use the sidewalks, which it claims are Westbury Park amenities, and it has required that residents of Defendant walk in the street. Further, among other things, this lawsuit seeks to require the Estate to gain some other access to its property, despite Plaintiff's admission that the Developer only planned access as set forth above.

In the Apartment Declaration, the Developer/Declarant also delineated various obligations and covenants, separate and apart from the perpetual easement grants. The Developer's intent can be construed from the plain language of the Apartment Declaration, which clearly states that "[t]he reasonable care and replacement of the Required Streets and Landscaping within the Westbury Park Residential Area **shall remain the responsibility of the [Plaintiff]** . . . ." (Ex. 1, p. 9, § 8.01) (emphasis added). The Declaration contains a covenant by the Owner of the Property to pay **to the Declarant** an annual Assessment in the amount of $17,500. (*Id.*). On information and belief, there was an arrangement between the Developer/Declarant and the Plaintiff, wherein the

Developer remitted some amount of these assessments to the Plaintiff. The Declarant covenanted that the assessments were to be for the Owner's "share of the costs for maintenance of the Required Streets and landscaping along the Required Streets . . . ." (Ex. 1, p. 9, § 8.01). On information and belief, this money was not used—as required and promised—for the maintenance and landscaping of the streets that are the subject of this litigation.

By its express language, the Apartment Declaration—and the covenant to pay assessments that it contained—had a limited term:

> 9.01 Term: This Declaration, every provision hereof, and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration.

(Ex. 1). Thus, by the plain language of the Apartment Declaration, the covenant to pay an assessment had a finite term of 20 years, whereas the easements had a perpetual duration. The covenant to pay an assessment was intended to (and did) terminate on November 10, 2018.

Further, the Apartment Declaration specifically limited the method by which it could be modified or extended:

> 9.02 Termination and Modification: This Declaration, or any provision hereof, or any **covenant**, condition, or restriction contained herein, may only be terminated, **extended**, modified, or amended, as to the whole of said Property or any portion thereof **by the Declarant and Owner jointly**.

(Ex. 1) (emphasis added). Thus, by the plain language of the Apartment Declaration, the covenant to pay an assessment could only be modified or extended by agreement of the Declarant and the Owner jointly.

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On or about November 1, 2005 the Declarant and the Owner[3] jointly modified the Apartment Declaration, in accordance with the declaration's required method of modification. (Exhibit 2, Amendment to Declaration) (the "Amended Apartment Declaration"). The Amended Apartment Declaration, by joint agreement, increased the amount of the assessment to be paid by the Owner to the Declarant from $17,500/year to $7,200/month (to be adjusted and increased annually). (Ex. 2, ¶¶ 4-6). Further, the Owner's obligation to pay the assessment was assigned to the Defendant herein. (Ex. 2, ¶ 4). The Amended Apartment Declaration specifically **did not extend the term** of the Apartment Declaration, nor of the covenant to pay the assessment. (Ex. 2, "In all other respects, the [Apartment] Declaration is hereby ratified and confirmed."). Thus, under the terms of the Amended Apartment Declaration, the Defendant was obligated to (and did) pay the increased monthly assessment until the covenants within the Apartment Declaration expired, on November 10, 2018.

Plaintiff wrongly asserts that the Declarant assigned its declarant rights to the Plaintiff in 2015, and it wrongly asserts that "the [Plaintiff] Association now enjoys full control of the community." (Complaint, p. 1). In fact, on August 8, 2015, Plaintiff entered into an "Estate Payment Division Agreement and Assignment," by which the Declarant

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[3] The identity of the "Owner" (defined by the Apartment Declaration in §2.03 as "the owner of the fee interest in the Property") changed several times over the years, by conveyance deeds recorded in the Office of the Register of Deeds for Beaufort County:

1. By deed from Plantation Properties LLC to Westbury Park Apartments, Ltd. (Book AE at Page 2486);
2. By deed from Westbury Park Apartments, Ltd. to Montecito Westbury (Book 02261 at Page 1673);
3. By numerous individual conveyance deeds from Montecito Westbury to numerous condominium unit holders.

assigned to Plaintiff—and also to another entity not party to this lawsuit—the right to collect the assessment required under the Amended Apartment Declaration, as well as the duty to use the assessment for maintenance and landscaping of the Required Streets. (Exhibit 3, Estate Payment Division Agreement and Assignment) (the "Agreement"). This unrecorded agreement did not convey declarant rights to Plaintiff.

Plaintiff wrongly contends that it "renewed the Apartment Declaration" in October, 2018. (Exhibit 4, hereto; also Exhibit 4 to the Complaint). In fact, the purported Notice of Extension attached as Exhibit 4 to Plaintiff's Complaint is without any legal effect, for at least three reasons: (1) only the Declarant and the Owner—jointly—can extend or modify the Apartment Declaration, and the Plaintiff is not the Declarant; (2) only the Declarant and the Owner—jointly—can extend or modify the Apartment Declaration, and the Notice of Extension purports to do so unilaterally; (3) for the sake of argument, even if the Agreement did assign declarant rights (which is denied), those rights were assigned to both the Plaintiff and to another entity, which is not party to this lawsuit, and which did not sign the purported, invalid Notice of Extension.

Defendant properly continued to pay assessments until the Apartment Declaration terminated in November 2018. Over the contemplated 20-year term of the Apartment Declaration, Defendant payed over $1.3 million dollars in assessments for "its share of the costs for maintenance of the Required Streets and landscaping." Pursuant to the Apartment Declaration, the Declarant had a fiduciary duty to use the assessment funds for this sole, express purpose. Pursuant to the Agreement, the Plaintiff had a fiduciary duty to use the assessment funds for this sole, express purpose. On information

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and belief, Plaintiff put the funds into a general account and spent it on its own expenses.

The Community has a recorded policy to address the gate breaches and violations complained of within the Complaint. (Exhibit 5).

Defendant answers the numbered Paragraphs of the Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant admits the allegations of Paragraph 1, on information and belief.

2. Defendant admits the allegations of Paragraph 2, with the clarification that it is the association of co-owners charged with managing the affairs of the horizontal property regime known as the "Estate at Westbury."

3. Defendant admits the allegations of Paragraph 3 for jurisdictional purposes only.

4. Defendant admits that this Court has jurisdiction over this matter and that venue is proper.

AS TO THE RELATIONSHIP OF THE PARTIES

5. The above paragraphs are incorporated herein by reference.

6. Answering Paragraph 6, the Defendant admits that it is a condominium association charged with the management of a horizontal property regime created pursuant to the Horizontal Property Act of South Carolina. Defendant admits that, pursuant to the grant of an easement by the original Developer of the subject property, its members and occupants presently use Westbury Park Way and Kensington Boulevard to access the Estate at Westbury. The easement grants are set forth within the *Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lakes Apartments at*

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Westbury Park (the "Apartment Declaration"), which is attached hereto as Exhibit 1 and incorporated herein by reference.

7. Answering Paragraph 7, Defendant admits that the Apartment Declaration contains express grants of appurtenant easements for ingress-egress access, including: "(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard" and "(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property."

8. Answering the allegations of Paragraph 8, Defendant denies that the Apartment Declaration was not executed under seal. (*See* Ex. 1, p. 12, Probate, "Personally appeared before me the undersigned witness, who, on oath, says that s/he saw the within named [signatories], by its appropriate officers, **sign and seal** the within written instrument . . . ") (emphasis added).

9. Defendant denies the allegations of Paragraph 9. (Ex. 1, p. 12).

10. Defendant denies the allegations of Paragraph 10. (Ex. 1, p. 12).

11. Defendant denies the allegations of Paragraph 11.

12. Answering the allegations contained in Paragraph 12, Defendant admits that the Declarant of the Apartment Declaration was Plantation Properties, LLC and craves reference to Exhibit 1 for the complete terms of the Apartment Declaration.

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13. Defendant admits that Paragraph 13 contains a partial statement of certain terms of the Apartment Declaration, and Defendant craves reference to Exhibit 1 for the complete language.

14. Defendant denies the allegations of Paragraph 14, as stated, and it craves reference to the four corners of the Apartment Declaration for the force and effect of Section 8, which requires certain entities to pay an assessment to Declarant for a period of 20 years, which period expired on or about November 12, 2018. Defendant further answers that, pursuant to Section 8 of the Apartment Declaration, Plaintiff is responsible for the "reasonable care and replacement of the [subject] Streets and landscaping within the Residential Park Residential Area." (Ex. 1, § 8.01).

15. Defendant admits the allegations of Paragraph 15.

16. Defendant admits the allegations of Paragraph 16.

17. Answering the allegations contained in Paragraph 17, Defendant asserts that the "Apartment Deed" described in that Paragraph (and attached as Exhibit 2 to the Complaint) was recorded on December 15, 1998, whereas the Apartment Declaration was recorded on November 12, 1998. Defendant craves reference to those recorded instruments for the force and effect of their terms, and Defendant denies any allegations inconsistent therewith.

As to Westbury Park Apartments, Ltd.'s Conveyance to Montecito Westbury/Conversion to HPR

18. Answering Paragraph 18, Defendant craves reference to the instrument attached as Exhibit 3 to the Complaint, and it denies any allegations that are inconsistent therewith.

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19. Paragraph 19 contains vague and unspecified allegations, which Defendant denies. Defendant further denies any allegations that are inconsistent with duly recorded instruments affecting the real property that is the subject of this lawsuit.

20. Answering the allegations of Paragraph 20, including its subparts a, b, and c, Defendant craves reference to the Amendment to Declaration of Covenants Conditions Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park, attached hereto as Exhibit 2 and denies any allegations inconsistent therewith.

21. Answering the allegations of Paragraph 21, Defendant states that the referenced Estate Master Deed was in fact recorded on January 26, 2006. Defendant craves reference to the recorded instrument and denies any allegations inconsistent therewith.

22. Defendant admits the allegations of Paragraph 22, further stating that it was organized in or about October of 2005.

As to the Section of the Complaint regarding Purported Assignment of Declarant Rights to Westbury Park and Estate of Westbury's Alleged Default

23. Defendant denies the allegations of Paragraph 23 as stated.

24. Defendant denies the allegations of Paragraph 24 as stated.

25. Defendant denies the allegations of Paragraph 25.

26. Defendant denies the allegations of Paragraph 26 and further states that the purported instrument attached to the Complaint as Exhibit 4 is invalid and does not have any legal force or effect, including but not limited to that it did not extend the Apartment Declaration.

27. Defendant denies the allegations of Paragraph 27.

28. Defendant denies the allegations of Paragraph 28.

29. Defendant denies the allegations of Paragraph 29.

30. Defendant denies the allegations of Paragraph 30, as stated, and it further asserts that Defendant has the benefit of a perpetual easement for vehicular and pedestrian access over and across the subject property pursuant to Section 7.02 of the Apartment Declaration, and that Plaintiff has the sole obligation to maintain the subject easement, streets, and landscaping pursuant to Section 8.01 of the Apartment Declaration. (Exhibit 1).

31. Defendant denies the allegations of Paragraph 31.

32. Answering Paragraph 32, Defendant admits that it has 320 residential units and that Westbury Park has 350 residential units. Defendant denies the remaining allegations of Paragraph 32, as stated.

33. Defendant denies the allegations of Paragraph 33, as characterized.

As to Alleged Continuing Damage and Alleged Unauthorized Entry by Estate at Westbury to Gates Maintained, Supervised, and Paid for by Westbury Park

34. Defendant denies the allegations of Paragraph 34, as characterized. Defendant further states that this Paragraph and Paragraph 35 describe an appurtenant easement, which by its very nature burdens Plaintiff's property and benefits Defendant's property.

35. Defendant denies the allegations of Paragraph 35, as characterized.

36. Defendant denies the allegations of Paragraph 36, as characterized.

37. Defendant denies the allegations of Paragraph 37, as characterized.

38. Defendant denies the allegations of Paragraph 38, as characterized.

39. Defendant denies the allegations of Paragraph 39.

40. Defendant denies the allegations of Paragraph 40, as characterized.

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41. Defendant denies the allegations of Paragraph 41, as characterized.

42. Defendant denies the allegations of Paragraph 42.

43. Defendant denies the allegations of Paragraph 43.

44. Defendant denies the allegations of Paragraph 44, as characterized. Defendant further states that Paragraph 44 describes an easement, which by its very nature burdens Plaintiff's property and benefits that of Defendant.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Alleged Injunction)

45. The answers and denials of the above paragraphs are incorporated herein by reference.

46. Defendant denies the allegations of Paragraph 46.

47. Defendant denies the allegations of Paragraph 47, as characterized.

48. Defendant denies the allegations of Paragraph 48.

49. Defendant denies the allegations of Paragraph 49.

50. Defendant denies the allegations of Paragraph 50, as characterized.

51. Defendant denies the allegations of Paragraph 51.

52. Defendant denies the allegations of Paragraph 52, and further asserts that Defendant's residents, their "tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of [owners] and all other persons who reasonably need . . . access to the 'Property'" have a right of access and easement of use in Plaintiff's roads and sidewalks. (See Ex. 1, Article VII, § 7.02).

53. Defendant denies that Plaintiff is entitled as a matter of law to the specific relief that it seeks.

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AS TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Alleged Declaratory Judgment)

54. The answers and denials of the above paragraphs are incorporated herein by reference.

55. Defendant denies that Plaintiff is entitled to the relief it seeks in Paragraph 55:

a. Defendant denies that the Apartment Declaration was renewed by Plaintiff Westbury Park for numerous reasons, including without limitation because the purported amendment failed to comply with the requirements for an extension pursuant to the plain language of the Apartment Declaration;

b. Defendant denies that it is in default;

c. Defendant denies that it owes any payments to Plaintiff whatsoever;

d. Defendant denies that Plaintiff is entitled to the relief it seeks, and it particularly denies that Plaintiff has any legal right or standing to foreclose on any Common Elements or to place a lien on them.

AS TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Alleged Termination by Breach)

56. The answers and denials of the above paragraphs are incorporated herein by reference.

57. Defendant denies the allegations of Paragraph 57.

58. Defendant denies the allegations of Paragraph 58.

59. Defendant denies the allegations of Paragraph 59, and it further asserts that it has paid all amounts due to Plaintiff pursuant to the clear and unambiguous language of the Apartment Declaration.

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60. Defendant denies the allegations of Paragraph 60.

61. Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(In the Alternative for Declaratory Judgment, wrongly alleging easement in gross)

62. The answers and denials of the above paragraphs are incorporated herein by reference.

63. Defendant denies the allegations of Paragraph 63.

64. Defendant denies the allegations of Paragraph 64, and it further asserts that the plain language of the Apartment Declaration subjects the subject property to the equitable servitudes contained therein, which run with the land, including but not limited to the appurtenant perpetual easement grants for access, ingress, and egress over the streets that are the subject of this litigation. (*See* Ex. 1).

65. Defendant denies the allegations of Paragraph 65.

66. Defendant denies that Plaintiff is entitled to the relief that it seeks in Paragraph 66.

67. Defendant denies that Plaintiff is entitled to the relief that it seeks in Paragraph 67, including its subparts lettered a through e.

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AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(In the Alternative for Declaratory Judgment, wrongly alleging no easement exists)

68. The answers and denials of the above paragraphs are incorporated herein by reference.

69. Defendant denies the allegations of Paragraph 69.

70. Defendant denies the allegations of Paragraph 70.

71. Defendant denies the allegations of Paragraph 71.

72. Defendant denies that Plaintiff is entitled to the relief that it seeks in Paragraph 72, including its subparts lettered a-g.

AS TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Alleged Unjust Enrichment)

73. The Complaint does not contain a paragraph numbered 73.

74. The Complaint does not contain a paragraph numbered 74.

75. The Complaint does not contain a paragraph numbered 75.

76. The Complaint does not contain a paragraph numbered 76.

77. Answering Paragraph 77, Defendant incorporates herein by reference the answers and denials of the above paragraphs 1 through 76.

78. Answering Paragraph 78, Defendant admits that it has the benefit of its access easement for ingress and egress.

79. Answering Paragraph 79, Defendant asserts that pursuant to the Apartment Declaration, Plaintiff shares the burden of maintaining the easement with Westbury Park Commercial Center Property Owners Association, Inc.; Defendant denies any allegations inconsistent with the Apartment Declaration. (*See* Ex. 1).

80. Defendant denies the allegations of Paragraph 80, as characterized.

81. Defendant denies the allegations of Paragraph 81, as characterized.

82. Defendant denies the allegations of Paragraph 82, as characterized. Defendant further asserts in answer that the covenants, conditions, restrictions, and easements that run with the land that is the subject of this lawsuit are contained within recorded instruments within the chain of title of both parties.

83. Defendant denies the allegations of Paragraph 83, and it further denies that Plaintiff is entitled to the relief requested, or to any relief from the Defendant whatsoever.

AS TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Alleged Termination via Changed Conditions and/or Alleged Relative Hardship Doctrine)

84. Defendant incorporates herein by reference the answers and denials of the above paragraphs.

85. Defendant denies the allegations of Paragraph 85, as characterized, and Defendant further asserts by way of answer that the Developer is a necessary party to Plaintiff's allegations in this lawsuit which Plaintiff has failed to join.

86. Defendant denies the allegations of Paragraph 86, as characterized.

87. Defendant denies the allegations of Paragraph 87.

88. Defendant denies the allegations of Paragraph 88.

89. Defendant denies the allegations of Paragraph 89 and further asserts by way of answer that the Developer is a necessary party to Plaintiff's allegations in this lawsuit which Plaintiff has failed to join.

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90. Defendant denies the allegations of Paragraph 90 and further asserts by way of answer that the Developer is a necessary party to Plaintiff's allegations in this lawsuit which Plaintiff has failed to join.

91. Defendant denies the allegations of Paragraph 91 and further asserts by way of answer that the Developer is a necessary party to Plaintiff's allegations in this lawsuit which Plaintiff has failed to join.

92. Defendant denies the allegations of Paragraph 92.

93. Defendant denies the allegations of Paragraph 93.

94. Answering the allegations of Paragraph 94, Defendant denies that Plaintiff is entitled to the relief that it requests, or to any relief whatsoever from Defendant.

AS TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Alleged Reservation)

95. Defendant incorporates herein by reference the answers and denials of the above paragraphs.

96. The allegations of Paragraph 96 do not require an answer from Defendant; to the extent an answer is required, Defendant denies any allegation inconsistent with the substance of this Answer, the valid and applicable recorded instruments referenced herein, and the Rules of Civil Procedure.

97. Answering Plaintiff's WHEREFORE paragraph, Defendant denies that the Plaintiff is entitled to the relief that it requests, or for any relief from Defendant whatsoever.

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FOR A SECOND DEFENSE
(Failure to State A Claim)

The Complaint fails to state a claim against Defendant that is proper and cognizable under applicable law.

FOR A THIRD DEFENSE
(Statutes of Limitation and Repose)

Plaintiff's claims are barred by the applicable statute of limitations and statute of repose.

FOR A FOURTH DEFENSE
(Waiver and Laches)

Plaintiff's claims are barred by the doctrines of waiver and laches.

FOR A FIFTH DEFENSE
(Estoppel)

Plaintiff's claims are barred by the doctrine of estoppel.

FOR A SIXTH DEFENSE
(Unclean Hands)

Plaintiff's claims are barred by the doctrine of unclean hands.

FOR AN SEVENTH DEFENSE
(No Breach)

Defendant did not breach its contract with Plaintiff.

FOR AN EIGHTH DEFENSE
(Unconscionability)

In the alternative, the contract at issue is void as unconscionable and/or it is an invalid contract of adhesion.

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FOR A NINTH DEFENSE
(Perpetual Contracts Unenforceable)

In the alternative, the contract at issue is invalid because it is perpetual.

FOR A TENTH DEFENSE
(Mistake)

In the alternative, the contract at issue is unenforceable because of mutual mistake.

FOR AN ELEVENTH DEFENSE
(Contribution/Set-off)

Defendant is entitled to contribution or set-off for any relief granted.

FOR A TWELFTH DEFENSE
(Failure to Mitigate)

Plaintiff has failed to mitigate its damages, if any.

FOR A THIRTEENTH DEFENSE
(Proximate Cause)

Plaintiff's damages, which are denied, were not proximately caused by any acts or omissions of Defendant.

FOR A FOURTEENTH DEFENSE
(Rule 12 and Rule 19, SCRCP)

Plaintiff has failed to join indispensable parties for its claims, including Plantation Properties, LLC and Westbury Park Commercial Center Property Owners Association, Inc.

FOR AN FIFTEENTH DEFENSE
(Punitive Damages Unconstitutional)

To the extent punitive damages are claimed, Plaintiff's demand for punitive damages is unconstitutional under the United States Constitution, the South Carolina Constitution and under federal law.

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FOR A SIXTEENTH DEFENSE
(Statutory Cap on Damages)

Defendant pleads the statutory limit on punitive and other damages, including under S.C. Code § 15-32-510, *et seq*.

FOR A SEVENTEENTH DEFENSE
(Ongoing Investigation and Reservation of Rights)

Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any purported injury or damage to Plaintiff as alleged in the First Amended Complaint, and Defendant gives notice of its intent to assert any further affirmative defenses.

FIRST COUNTERCLAIM
(Breach of Contract)

1. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

2. By virtue of the Estate Payment Division Agreement and Assignment (Exhibit 3) (the "Agreement"), the Developer/Declarant assigned to the Plaintiff some of its rights, interests, and duties with respect to Defendant's assessment payments.

3. Pursuant to the terms of the Apartment Declaration (Ex. 1), the Amended Apartment Declaration (Ex. 2), and the Agreement (Ex. 3), the Plaintiff was required to use the assessment funds that it collected from Defendant for "[Defendant's] share of the costs for maintenance of [Kensington Boulevard and Westbury Park Way] and

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landscaping along [Kensington Boulevard and Westbury Park Way] and around and within parks within the Westbury Park Residential Area and Westbury Park Commercial Area." (Ex. 1, § 8.01).

4. On information and belief, Plaintiff has used and does use the assessment funds that it collects from Defendant for numerous other purposes, in breach of its contractual obligation.

5. As a direct result of Plaintiff's breach of contract, Defendant has suffered damages.

6. Defendant is entitled to actual damages, in an amount to be determined at trial.

SECOND COUNTERCLAIM
(Breach of Fiduciary Duty and Accounting)

7. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

8. Pursuant to, *inter alia*, the terms of the Apartment Declaration (Ex. 1), the Amended Apartment Declaration (Ex. 2), and the Agreement (Ex. 3), Defendant has paid to the Plaintiff approximately $100,000 **per year** in assessments, the express purpose of which is to account for Defendant's share of the costs of maintenance of certain, limited portions of Westbury Park Way and Kensington Boulevard, and the surrounding landscaping.

9. On information and belief, the actual cost of such maintenance and landscaping is an amount far less than $100,000 per year.

10. Pursuant to the terms of the Apartment Declaration, the Amended Apartment Declaration, and the Agreement, Plaintiff has a fiduciary duty to the Defendant to use

any assessment collected from the Defendant for the express purpose of maintaining and landscaping certain, limited portions of Westbury Park Way and Kensington Boulevard.

11. Plaintiff further has a fiduciary duty to the Defendant to manage and conserve any excess assessment funds for the purpose of creating a reserve for deferred maintenance costs.

12. Defendant has breached that duty by, *inter alia*, failing to use the assessment for street maintenance or landscaping, by adding the assessment funds that it collects into its general account to be spent on items other than road maintenance and landscaping, and by failing to use excess assessment funds to create a reserve to prepare for deferred maintenance costs.

13. As a direct and proximate result of Plaintiff's breaches of its fiduciary duty, Defendant has been injured and suffered damages.

14. Defendant is entitled to an accounting of Plaintiff's use of the assessment funds, to actual damages, and to punitive damages in an amount sufficient to deter such conduct in the future.

THIRD COUNTERCLAIM
(Nuisance)

15. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

16. Defendant and its members have a real property interest in an appurtenant easement for vehicle and pedestrian access over Westbury Park Way and Kensington Boulevard.

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17. Plaintiff has substantially and unreasonably interfered with Defendant's and its members' interest in the easement, including but not limited to by posting signs prohibiting the use of sidewalks by Defendant, and by enforcing those signs by requiring that residents of the Defendant Estate walk in the street. (Exhibit 6).

18. Plaintiff's unreasonable—and dangerous—interference with Defendant's use of its easement for pedestrian access works hurt, inconveniences, and damages Defendant.

19. Defendant is entitled to a permanent injunction prohibiting Plaintiff from interfering with its property interest in the easement.

FOURTH COUNTERCLAIM
(Declaratory Judgment for Express Appurtenant Easement)

20. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

21. The original developer for the property that is the subject of this litigation developed the land according to a plan set forth in numerous recorded instruments, including deeds, plats, and covenants.

22. When it developed the subject property, the developer recorded a Declaration of Covenants, Conditions, Restrictions and Easements, which is attached as Exhibit 1 and incorporated herein (the "Apartment Declaration").

23. The Apartment Declaration contains an express grant of a perpetual, appurtenant easement for access:

> 7.02 Easement for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such

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tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.

(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard.

(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersect with Buck Island Road to its intersection with the Property.

24. Defendant is entitled to a judgment from this Court holding that Defendant and its members hold an express, perpetual, appurtenant easement in the streets and sidewalks that are the subject of this litigation.

25. Defendant is entitled to an injunction enjoining Plaintiff from any further interference with the use of its easement by Defendant and its members.

FIFTH COUNTERCLAIM
(In the alternative, for Easement by Necessity)

26. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

27. Plantation Properties, LLC, as the Developer of the property that is the subject of this lawsuit, once owned the subject property as one large tract.

28. Plantation Properties, LLC subsequently severed title to the one large tract, by conveying portions of the parcel to the Plaintiff's and the Defendant's predecessors in title.

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29. Both Defendant and Plaintiff claim title from a common source, *i.e.*, Plantation Properties, LLC, to different parts of the integral tract.

30. If Plaintiff's allegation is correct, and the Developer did not grant to Defendant an express appurtenant easement for ingress and egress, then Defendant's property is enclosed on all sides by other lands.

31. If Defendant's property is enclosed on all sides, then the Plaintiff, as successor in title to the Developer, is obligated by law to allow Defendant and its members a right of way over the streets that are the subject of this litigation.

32. Defendant is entitled to a judgment from this Court so declaring.

SIXTH COUNTERCLAIM
(In the Alternative, for Easement by Prescription)

33. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim

34. In the alternative, Defendant and its predecessors in title have been using the streets that are the subject of this litigation openly, obviously, continuously, and adversely, for a period of twenty years, for the purpose of accessing the property.

35. Defendant is entitled to a judgment from this Court that it and its members hold a prescriptive appurtenant easement in the streets that are the subject of this litigation.

36. Defendant is further entitled to a judgment from this Court enjoining the Plaintiff from any further interference with its easement rights.

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SEVENTH COUNTERCLAIM
(Quantum Meruit)

37. Defendant repeats, reiterates, and re-alleges each and every preceding paragraph as if the same were set forth herein verbatim.

38. Defendant has conferred a benefit on the Plaintiff by paying to it, for many years, an assessment in an amount greater than necessary for the annual maintenance of the streets and landscaping that are the subject of this litigation.

39. Defendant reasonably expected that Plaintiff would place any excess funds into a reserve account in anticipation of deferred maintenance costs.

40. Plaintiff has failed to place the excess assessment funds into a reserve account in anticipation of deferred maintenance costs, and Plaintiff instead currently enjoys the use of those funds in breach of its contractual and fiduciary duties to Defendant.

41. Any retention by Plaintiff of the excess assessment funds would be inequitable.

42. Defendant is entitled to a judgment in the amount of any assessment funds that Plaintiff failed to use for maintenance or landscaping, in accordance with the Apartment Declaration.

EIGHTH COUNTERCLAIM
(Accounting)

43. Defendant incorporates the statements, denials, and allegations above as if set forth fully herein.

44. Defendant demands an accounting of the money it has paid to Plaintiff for maintenance and other costs related to the streets and landscaping, for a determination

of which funds were spent appropriately or inappropriately under the obligations referenced above.

WHEREFORE, having fully answered the Plaintiff's Complaint, and asserting the above affirmative defenses and counterclaims, Defendant prays that the Complaint would be dismissed with prejudice, for a full accounting of the assessment money paid by Defendant, for an Order enjoining Plaintiff from any further interference with Defendant's easement, for the specific relief requested above, for the reasonable costs and attorney's fees associated with this matter, and for all other such relief that this Court deems just and proper.

Respectfully Submitted,

FORD WALLACE THOMSON LLC

By: s/Ian S. Ford
Ian S. Ford (S.C. Bar No. 12463)
Ian.Ford@FordWallace.com
Ainsley F. Tillman (S.C. Bar No. 70551)
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and

Evan K. Bromley (S.C. Bar No. 76060)
Bromley Law Firm LLC
211 Goethe Road, Suite B
Bluffton, South Carolina 29910

Attorneys for Defendant and Counterclaim Plaintiff Estate at Westbury Owners Association, Inc.

March 18, 2020
Charleston, South Carolina

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 10th day of November, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant") as follows:

ARTICLE I

RECITALS

1.01 Declarant is the owner of the approximately twenty (20) acre parcel of real property in Bluffton Township, Beaufort County, South Carolina; more fully described on attached Exhibit "A" (the "Property").

1.02 General Plan: To establish a general plan for the improvement and development of the Property, Declarant hereby subjects the Property to the conditions, covenants and restrictions set out below, upon and subject to which all of the Property shall be hereafter owned, leased, hypothecated and used.

ARTICLE III

GENERAL PROVISIONS

2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

2.02 Purpose of Restrictions: The purposes of these restrictions is to insure proper development and use of the Property to be in keeping with the community wide standards established for the Westbury Park Commercial Subdivision, and the Westbury Park Residential Subdivision, the latter of which is contiguous to the Property.

2.03 Definitions:

(a) Improvements: "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, fence, walls, landscaping, poles, signs and any structures of any type or kind.

(b) Owner: "Owner" shall mean the owner of the fee interest in the Property.

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(c) Plat: That certain Plat thereof prepared by Surveying Consultants entitled "ALTA/ACSM Land Survey of 20.00 Acre Parcel, a Section of Block X-1 a Portion of Rose Hill Plantation, Bluffton Township, Beaufort County, South Carolina, dated the 7th day of October, 19 98 and recorded in the records of the RMC Office for Beaufort County, South Carolina in Plat Book 67 Page 118."

(d) Required Streets: "Required Streets" shall mean Westbury Park Way and Kensington Boulevard as shown on the Plat.

(e) Westbury Park Commercial Area: "Westbury Park Commercial Area" shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 63 at Page 183.

(f) Westbury Park Residential Area: "Westbury Park Residential Area" shall mean all or any portion of that tract of land situate, lying and being in Rose Hill Planned United Development, Bluffton Township, Beaufort County, South Carolina, containing 128.973 acres, more or less, shown and described as "BLOCK X-1" on that certain plat entitled "A Plat of Block X-1, X-2, X-3, and X-4 being a portion of Block "X" prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SCRLS 11079, dated December 30, 1996 and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 58 at Page 198, less and except the Property.

2.04 Prior to Construction: "Prior to construction", the Owner shall maintain the Property in a neat and orderly condition free of weeds and other debris.

ARTICLE III

REGULATION OF IMPROVEMENTS

3.01 County Requirements:

(a) Nothing herein shall supersede the County of Beaufort's present or future requirements and ordinances. All of said requirements and ordinances, shall prevail, and it shall be the responsibility of Owner to conform to them.

(b) General: No structure, of any kind, and no part thereof, shall be placed on the Property closer to the property line than permitted by the County of Beaufort, giving consideration to any variance that may be obtained.

3.02 Completion of Construction: After commencement of construction of any structure, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in partly finished condition any longer than reasonably necessary for completion thereof.

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3.03 Excavation: No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded.

3.04 Landscaping: Landscaping shall be installed prior to occupancy or within sixty (60) days after the completion of the first building on the Property, whichever occurs first. All areas in the Property not used for structures, parking, storage, sidewalks, amenities, driveways and other improvements, shall be planted and maintained with grass and landscaping.

3.05 Signs: No billboard or advertising sign shall be permitted. No attached or detached signs or displays identifying Owner or the apartment complex on the Property shall be used unless their design has first been submitted to and approved by Declarant in writing, so as to assure a dignified and basically uniform appearance of all signs and displays within the Property.

3.06 Storage and Loading Areas - Outside Storage: After all construction of the Improvements is complete, no construction, landscape or maintenance material, supplies or products shall be stored or permitted to remain on the Property in unscreened areas. Screening of storage areas shall be accomplished by the use of landscaping, walls, buildings, fencing or any combination thereof, to a height sufficient to screen the stored items, except that such height shall not exceed eight feet.

3.07 Waste Disposal: No waste material or refuse shall be dumped, placed or (except during construction) allowed to remain on the Property outside a permanent structure unless it is in closed containers of a quality to control odors and behind a visual barrier screening such areas so that they are not visible from neighboring properties or public streets. All such waste and trash materials shall be regularly removed and shall not be allowed to accumulate.

3.08 Off-Street Parking:

(a) The arrangement, access and number of all parking spaces and lots shall conform to applicable County of Beaufort requirements and ordinances, giving consideration to any variances that may be obtained.

(b) Automobile parking areas shall be provided with entrances, exits and aisles adequate to provide safe movement of vehicles.

(c) Subject to the Development Regulations of Beaufort County, South Carolina, the front yard and exterior side yard setback areas may be used for parking and access ways. However, not less than 20 feet of the setback areas (exclusive of wetlands), as measured from the property line, shall be landscaped.

(d) Adequate off-street parking shall be provided to accommodate all parking needs of employees, tenants and visitors on the Property.

3.09 Trucking and Loading:

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(a) Adequate turn around room area shall be provided for safe operation of trucks in loading areas.

(b) Trucking areas shall be adequately designed and paved for the type of operation intended.

3.10 Building Regulations: Any building erected on the Property shall conform to the following construction practices:

(a) The exterior of all structures erected on the Property shall be constructed in accordance with the Approved Plans (as hereinafter defined).

(b) All buildings erected shall conform to the applicable building codes and ordinances of the County of Beaufort, giving consideration to any variance that may be obtained.

(c) Exterior walls shall be painted or suitably treated in accordance with the Approved Plans.

3.11 Care, Maintenance and Repairs: All structures, landscaping and improvements from time to time placed upon the Property in accordance with the terms hereof or the requirements and ordinances of the County of Beaufort shall be maintained in good clean condition and repair at all times, normal wear and tear excepted.

3.12 Drainage: All drainage of water from the Property and Improvements thereon shall drain or flow into easement areas provided for such purpose as shown on the Plat, and all slopes and terraces shall be maintained as to prevent any erosion thereof upon any streets or adjoining property and in accordance with the applicable ordinances of the County of Beaufort and the State of South Carolina.

ARTICLE IV

APPROVAL OF PLANS

4.01 Submission of Plans: No improvements shall be erected, placed, altered, maintained or permitted to remain on the Property until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural designs, signs, landscaping, and a tree survey indicating trees to be removed and replaced shall have been submitted to and approved in writing by Declarant (the "Approved Plans").

4.02 Standards for Approval: Approval by Declarant shall be based, among other things, on conformity and harmony of external design with neighboring sites; relation to topography, grade and finished ground elevation of the site being improved to that of neighboring sites; proper design of main exterior elevation with respect to nearby streets; and conformity of plans and specifications to the purpose and general plan and intent of these restrictions. All structures and walls shall be

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constructed of maintenance free durable material. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

4.03 Time for Approval: If Declarant fails to either approve or disapprove such plans and specifications within twenty (20) days after the same have been submitted to and received by Declarant it shall be conclusively presumed that Declarant has approved the plans and specifications.

Upon receipt of approval from Declarant pursuant to this section, the Owner to whom the same is given shall, within six (6) months of acquisition of title, satisfy all conditions thereof, subject to force majeure, and diligently proceed with the commencement and completion of all approved construction and alterations. In all cases, work shall be substantially completed within two (2) years from the date of commencement of construction. It there is a failure to comply with this paragraph, then the approval given pursuant to this section shall be deemed revoked unless Declarant, upon written request made to it prior to the expiration of said two (2) year period, grants a written extension of the time for completing work.

4.04 Release of Liability: Neither Declarant nor its successors or assigns shall be liable for damages to anyone submitting plans to them for approval or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant for approval agrees, by submission of such plans, and every Owner of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant to recover any such damages.

ARTICLE V

REGULATION OF OPERATIONS AND USES

5.01 Permitted Operations and Uses: The Property is subject to the restriction that it be used for the construction and operation of an apartment complex to contain not more than three hundred twenty (320) apartments, which shall be utilized for residential purposes only.

5.02 Other Operations and Uses: The Owner shall be subject to the following restrictions:

(a) Resubdivision of the Property: The property shall not be split, divided or subdivided for sale, resale, gift, transfer or otherwise, nor shall its boundary lines be altered, without the prior written approval of Declarant.

(b) Temporary Buildings: No temporary building, trailer, garage or building under construction shall be used temporarily or permanently as a residence on the Property except as temporary sleeping or living quarters required or desirable for security purposes. Owner or Owner's contractors may use temporary structures, such as construction trailers while developing the Property.

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(c) Fences: No fence or wall of any kind shall be erected, maintained or altered on the Property without the prior approval of Declarant.

(d) Antenna/Satellite Dish: Except with the prior written approval of Declarant, no outside television or radio aerial, satellite dish or antenna or other device for the reception and transmission of radio or television or other electronic signals, including telecommunications towers shall be erected or maintained on any portion of the Property or upon the exterior of any buildings erected on the Property. Declarant shall approve an application for the installation of one (1) satellite dish to provide television services to the apartments, so long as the satellite dish or other receiving device shall not be visible from the ground on any property contiguous to the Property.

(e) Clothes lines, Garbage Cans, Mailboxes: No clothes lines visible from any property contiguous with the Property shall be permitted. All equipment and garbage cans shall be kept in a garbage can screened by adequate planning or approved fencing so as to conceal them from view by neighboring residence and streets.

(f) Parking and Related Restrictions: (i) No vehicle belonging to Owner or any of Owner's tenants shall be permitted to park on any of the streets that provide access to the Property that are not contained within the Property or on any property contiguous to the Property; and (ii) no school bus, truck (other than pick-up trucks), commercial vehicle (over one (1) ton capacity), house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, or like equipment shall be permitted on the Property on a permanent basis unless stored within garages or carports.

(g) Lagoon Front and Wetlands: Owner and Owner's tenants shall conform to all restrictions placed by applicable laws, ordinances and covenants on lagoons or wetlands on the Property.

(h) Solid Waste: (i) Neither Owner nor any of Owner's tenants shall dump rubbish, garbage or any other form of solid waste on the Property; (ii) except during construction, neither Owner nor any other contractor shall burn rubbish, garbage or any other form of solid waste on the Property; (iii) except for building materials employed during the course of any construction on the Property, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on the Property unless screened or otherwise handled in a reasonable manner; and (iv) at all times, containers for the collection of rubbish, garbage or any other form of solid waste must be maintained in a screened or enclosed area.

(i) Nuisances: No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done on the Property by Owner or any of Owner's tenants which may be or may become a public or private nuisance to the Westbury Park community.

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ARTICLE VI

ENFORCEMENT

6.01 Equitable Servitudes: All of the provisions herein contained shall run with the land and shall be enforceable at law or in equity as equitable servitudes by Declarant.

6.02 Attorneys Fees: In any legal or equitable proceeding for the enforcement of this Declaration or to restrain any violation of this Declaration or any provision hereof, the prevailing party shall, in addition to all other costs, be entitled to recover from the non-prevailing party reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.03 Inspection: Declarant may from time to time at any reasonable hour or hours, and after reasonable notice to Owner, enter and inspect any property subject to these restrictions (other than the interior of any apartments) to ascertain compliance therewith. No such entry or inspection shall disrupt or disturb any of Owner's tenants or Owner's operations of the Property, unless Owner's tenants or Owner's operation of the Property are the cause for entry.

6.04 Failure to Enforce Not a Waiver of Rights: The failure of Declarant or any Owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

ARTICLE VII

EASEMENTS

7.01 Easements for Declarant: Declarant hereby reserves for itself its successors and assigns the "Relocatable 20' Sanitary Sewer Easement" and that certain "Relocatable 20' Storm Drain Easement" as more fully shown on that certain Plat entitled "ALTA/ACSM Land Title Survey of 20 Acre Parcel, Westbury Park, a section of BLOCK X-1 a portion of Rose Hill PUD, Bluffton Township, Beaufort County, South Carolina" prepared for Declarant by Surveying Consultants, dated October 7, 1998, a copy of which is recorded in the records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 67 at Page 118 ("Plat")." Owner shall have the right to relocate the easements described herein prior to its commencement of construction of improvements on the Property, provided such relocation does not make the easements unusable.

7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.

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(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.

(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

(c) Permanent, non-exclusive easement for Owner's directional signs, as approved by Declarant pursuant to the provisions herein, at the approximate locations shown as follows on the Plat:

1. At the intersection of the east right-of-way of Buck Island Road and Kensington Boulevard; the easement for this sign shall not be relocatable;

2. At the southwest corner of Kensington Boulevard and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278 and Buck Island Road; and

3. At the northwest corner of the intersection of Arley Way and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278.

(d) Permanent, Non-Exclusive Twenty-Five Foot (25') Storm Drain Easement as more fully shown on the Plat.

(e) A Five Foot (5') Utility Easement (measured from the center line of buried utility cables and lines) on each sides of said buried utility cables and lines within the rights-of-way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property.

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ARTICLE VIII

ASSESSMENTS

8.01 The Owner, its successors or assigns (but not tenants), by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on an annual basis the sum of $17,500.00 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This Assessment shall become due and payable on February 1 of each year and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall remain the responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

8.02 The Assessment as set forth hereinabove shall commence on January 1, 1999, be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers, All Items (Base Year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstances will the Annual Assessment fall below the minimum of $17,500.00 per year.

8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

ARTICLE IX

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

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be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

9.03 Assignments of Declarant's Rights and Duties: Any or all of the rights, powers and reservations of Declarant herein may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignments, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 Constructive Notice and Acceptance: Every person who now owns or acquires any fee simple title in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

10.03 Paragraph Headings: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

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10.04 Effect of Invalidation: If any provision of this Declaration is held to be invalid by any final judgment in a contested judicial proceeding the invalidity of such provision shall not affect the validity of the remaining provisions hereof and the same shall remain in full force and effect.

WITNESSES:

Karen B Murphy

PLANTATION PROPERTIES, L.L.C.

By: James N. Richardson, Jr.
Its: Managing Member

Attest:

By: William W. Jones, Jr.
Its: Member

Buck Island, L.L.C. joins in this Declaration for the sole purpose of confirming the easements granted in Paragraphs 7.02(a) and 7.02(c)(3), and for no other purposes whatsoever.

WITNESSES:

Karen B. Murphy

BUCK ISLAND, L.L.C.

By:
Its: MANAGING PARTNER

Attest:

By: William W. Jones, Jr.
Its: Member

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named BUCK ISLAND, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

ST. 2-A:DISK#5\PALMETTO.COV

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

EXHIBIT "A"

Legal Description

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118 ("Plat") ("Property"). For a more detailed description, reference is made to said Plat of record.

2346 JSP

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 NOV 12 PM 12:20

BK 1106 PG 1225
FOLDER#

1238

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Amendment to Declaration of Covenants, Conditions, Restrictions and Easements is effective as of the 1st day of November 2005 (the "Effective Date") by and between Plantation Properties, L.L.C., a South Carolina limited liability company ("Declarant"), and Montecito Westbury, LLC ("Owner"), and amends that certain Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (the "Declaration") dated November 10, 1998 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Book 1106 at Page 1225, as follows:

1. The following sentence shall be inserted at the end of Section 5.01: "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership or use of the Property for condominiums."

2. The following sentence shall be inserted at the end of Section 5.02(a): "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership."

3. The following shall be inserted as new Section 7.02(f): "Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners shall not have use rights or easement access to the Westbury Park Residential Area amenities, including parks, swimming pools and pool houses.

4. The first two sentences of Section 8.01 shall be deleted and, the following sentences shall be inserted at the beginning of Section 8.01. "The Owner, its successors or assigns, by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on a monthly basis in the amount of $7,200 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This assessment shall become due and payable on the 15th day of each month, and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. In the event the Owner converts the Property to the condominium form of ownership, the resulting condominium association shall have the obligation to collect adequate funds from the individual unit owners and pay the Assessment directly to the Declarant."

5. Section 8.02 shall be deleted and the following sentence shall be inserted at the beginning of Section 8.02. "The Assessment as set forth hereinabove shall commence on January 1, 2006, and shall be adjusted annually to reflect changes in the Consumer Price Index for all urban Consumers, All Items (base year 1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstance will the Annual Assessment fall below the minimum of $86,400.00 per year."

BEAUFORT COUNTY SC- ROD
BK 02269 PGS 1997-1999
DATE: 11/16/2005 10:36:01 AM
INST # 2005097730 RCPT# 376572

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

6. The following is added as a new Section 8.04: "For the calendar year in which the Property is converted to the condominium form of ownership ("Conversion"), the Owner shall be responsible for the Assessment prorated to, but not including, the date of Conversion. In the calendar year in which the Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, such proration being in accordance with The Horizontal Property Act of South Carolina, applicable from and including the date of Conversion to the remainder of such calendar year. Subsequent to the calendar year in which Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, in accordance with The Horizontal Property Act of South Carolina. Otherwise, the provisions of Article VIII of the Declaration shall apply."

7. Declarant warrants and represents to Owner that Declarant has not assigned any of its rights of enforcement or modification under the Declaration.

8. All terms not defined herein shall have their assigned meaning in the Declaration.

In all other respects, the Declaration is hereby ratified and confirmed.

IN WITNESS WHEREOF, Declarant and Owner have caused this instrument to be executed as of the Effective Date.

WITNESS:

Nora Aguilar

WITNESS:

Name: JANET A. SMITH

DECLARANT:

PLANTATION PROPERTIES, L.L.C.

By:

Name: James N. Richardson, Jr.
Title: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate member, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

JANET A. SMITH

SWORN TO before me this 27 day of October, 2005

Notary Public for South Carolina
My Commission Expires: 8-8-2011

Westbury Record on Appeal 0118

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

OWNER:

WITNESS:

MONTECITO WESTBURY, LLC, a Delaware limited liability company

Julie L Douglass

Name: ~~Julie L. Douglass~~

Carolyn K. Cloud

Carolyn K. Cloud

By: James B Porter

Name: James B. Porter

Title: Vice President

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named MONTECITO WESTBURY, LLC by the appropriate officer of its appropriate partner, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Julie L Douglass

~~Julie L. Douglass~~

Carolyn K. Cloud

Carolyn K. Cloud

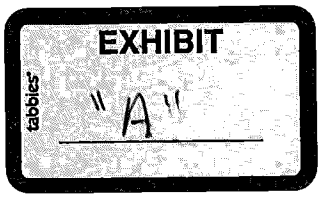
SWORN TO before me this 1st day of November, 2005

Julie L Douglass

Notary Public for Florida ~~Julie L. Douglass~~

My Commission Expires: _____

JULIE L. DOUGLASS
Notary Public - State of Florida
My Commission Expires Sep 4, 2006
Commission # DD 147746



ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT

THIS ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT is made and entered into this ____ day of _____, 2015, among Plantation Properties, LLC (hereinafter "PPLLC"), Westbury Park Residential Association, Inc. (hereinafter "ROA") and Westbury Park Commercial Center Property Owners' Association, Inc. (hereinafter "COA").

AGREEMENT

WHEREAS, on November 1, 2005, PPLLC entered into an "Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park" with Montecito Westbury, LLC, pursuant to which certain assessment funds are paid to PPLLC on a monthly basis in connection with the Estate at Westbury Park condominiums (the "Estate Funds"), which is incorporated herein by reference and referred to as the "Estate Agreement;" and,

WHEREAS, PPLLC does agree that beginning on August 1, 2015 to relinquish any rights that it may have to the Estate Funds and assign such Estate Funds to the ROA and COA; and,

WHEREAS, the COA agrees not to pursue, by lawsuit or other means, PPLLC for any Estate Funds paid to PPLLC prior to August 1, 2015; and,

WHEREAS, the ROA and COA have entered into an agreement as to the division of the Estate Funds between them, whereby beginning on August 1, 2015 the Estate Funds are to be divided 80% to the ROA and 20% to the COA; and,

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

The ROA and the COA agree that the Estate Funds will be divided between them as follows: ROA: eighty percent (80%); COA: twenty percent (20%). The Estate Funds will be paid to the ROA which will remit the COA's portion of the funds within twenty (20) days of receipt of the same. The ROA shall not charge any administration fee for its collection and handling of the Estate Funds; provided, however, if legal action is necessary to collect the Estate Funds, the costs of collection shall be prorated and deducted from the Estate Funds. The ROA and COA agree to cooperate with each other in any required collection efforts regarding the Estate Funds.

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

WITNESSES:

WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

PLANTATION PROPERTIES, LLC

By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

Brooke Boeke

Stephanie Metts

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BEAUFORT COUNTY SC - ROD
BK 3709 Pgs 3041-3047
FILE NUM 2018057667
10/23/2018 04:34:22 PM
RCPT# 909791
RECORDING FEES 13.00

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

Prepared By and Without Benefit of Title Examination:
FINGER, MELNICK & BROOKS, P.A.
Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-7000

STATE OF SOUTH CAROLINA	)	NOTICE OF EXTENSION OF THE
	)	DECLARATION OF COVENANTS,
	)	CONDITIONS, RESTRICTIONS, AND
	)	EASEMENTS FOR PALMETTO LAKES
	)	APARTMENTS AT WESTBURY PARK
	)	(Record Book 1106 at Page 1225)
COUNTY OF BEAUFORT	)	(Record Book 2269 at Page 1997)

THIS NOTICE OF EXTENSION OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK (herein, the "***Notice***") is made this 23rd day of October, 2018, by WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation (herein, the "***Association***").

WITNESSETH

WHEREAS, on November 10, 1998, Plantation Properties, LLC (herein, the "***Declarant***") made and executed that *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, which was recorded on November 12, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1106 at Page 1225, as amended by that certain *Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments as Westbury Park*, dated November 1, 2005, which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2269 at Page 1997; (herein collectively, the "***Declaration***"); and,

WHEREAS, according to Section 8.01 of the Declaration, the fee owner of the Property identified in Exhibit A to the Declaration is obligated to pay the Declarant, or its successors and assigns, an annual assessment for "[the Owner's] share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area"; and,

WHEREAS, according to Section 9.01 of the Declaration, "[t]his Declaration, every provision hereof and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording, provided that the rights and easements which are stated herein to have a longer duration shall have such longer duration"; and,

WHEREAS, Section 9.01 of the Declaration states that "[t]his Declaration may be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, prior to the expiration of any term"; and,

WHEREAS, by virtue of that certain *Estate Payment Division Agreement and Assignment* entered into between the Declarant, the Association and the Westbury Park Commercial Center Property Owners' Association, Inc., a true and correct copy of which is attached hereto as Exhibit "A" (the "***Estate's Declaration Assignment***"), the Declarant assigned its declarant rights under the Declaration to the Association in accordance with Section 9.03 of the Declaration; and,

WHEREAS, the Association, as successor-in-interest to the Declarant, desires to renew the term of the Declaration for another ten (10) years pursuant to Section 9.01 of the Declaration; and,

WHEREAS, this *Notice of Extension* is being executed and recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, by the Association to reflect the Association's decision to renew the Declaration for an additional ten (10) years.

NOW, THEREFORE, pursuant to Section 9.01 of that certain *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, as amended from time to time, Westbury Park Residential Association, Inc., as successor in interest to Plantation Properties, LLC, hereby gives notice that it is exercising its right to renew the term of the aforesaid Declaration, as amended, for an additional ten (10) year period and that upon the recording hereof, the term of the aforesaid Declaration, as amended, shall be renewed for an additional ten (10) year period.

{*Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.*}

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SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____ (L.S.)
Name: Josh Hemmann
Title: Vice President

STATE OF PENNSYLVANIA)
)
COUNTY OF Lebanon)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 11th day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared JOSH HEMMANN as VICE PRESIDENT for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____(SEAL)
Second Witness/Notary Public for Pennsylvania
Notary Printed Name: Shelley L Derr
My Commission Expires: October 29, 2018

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SHELLEY L. DERR, Notary Public
North Cornwall Twp., Lebanon County
My Commission Expires October 29, 2018

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

Attest: _____ (L.S.)
Name: Stacey Sawyer
Title: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 22 day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared STACEY SAWYER as SECRETARY for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

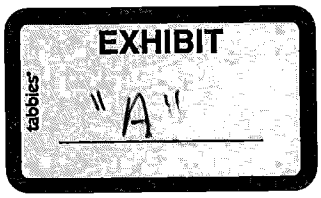
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

TASHA ARD
NOTARY PUBLIC
State of South Carolina
My Commission Expires May 22, 2023

_____(SEAL)
Second Witness/Notary Public for South Carolina
Notary Printed Name: TASHA ARD
My Commission Expires: May 22, 2023

f:\client\v - z\westbury park res. association, inc\agreements\estates at westbury\notice of extension (erl.2).docx

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT

THIS ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT is made and entered into this ____ day of _____, 2015, among Plantation Properties, LLC (hereinafter "PPLLC"), Westbury Park Residential Association, Inc. (hereinafter "ROA") and Westbury Park Commercial Center Property Owners' Association, Inc. (hereinafter "COA").

AGREEMENT

WHEREAS, on November 1, 2005, PPLLC entered into an "Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park" with Montecito Westbury, LLC, pursuant to which certain assessment funds are paid to PPLLC on a monthly basis in connection with the Estate at Westbury Park condominiums (the "Estate Funds"), which is incorporated herein by reference and referred to as the "Estate Agreement;" and,

WHEREAS, PPLLC does agree that beginning on August 1, 2015 to relinquish any rights that it may have to the Estate Funds and assign such Estate Funds to the ROA and COA; and,

WHEREAS, the COA agrees not to pursue, by lawsuit or other means, PPLLC for any Estate Funds paid to PPLLC prior to August 1, 2015; and,

WHEREAS, the ROA and COA have entered into an agreement as to the division of the Estate Funds between them, whereby beginning on August 1, 2015 the Estate Funds are to be divided 80% to the ROA and 20% to the COA; and,

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

The ROA and the COA agree that the Estate Funds will be divided between them as follows: ROA: eighty percent (80%); COA: twenty percent (20%). The Estate Funds will be paid to the ROA which will remit the COA's portion of the funds within twenty (20) days of receipt of the same. The ROA shall not charge any administration fee for its collection and handling of the Estate Funds; provided, however, if legal action is necessary to collect the Estate Funds, the costs of collection shall be prorated and deducted from the Estate Funds. The ROA and COA agree to cooperate with each other in any required collection efforts regarding the Estate Funds.

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

WITNESSES:

WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

PLANTATION PROPERTIES, LLC

By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

Brooke Boeke

Stephanie Metts

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BEAUFORT COUNTY SC - ROD
BK 3766 Pgs 2302-2303
FILE NUM 2019030015
06/07/2019 03:31:19 PM
RCPT# 934480
RECORDING FEES 10.00

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT TO RECORD

I, Terry A. Finger, Esquire do hereby state that:

1. I serve as general counsel for Westbury Park Residential Association, Inc.

2. This Affidavit is made to record the attached *Westbury Park Gate Breaches and Violations* in order to meet the requirements of South Carolina Code §27-30-110, et seq. known as The South Carolina Homeowners Association Act which amended Title 27 of the 1976 Code of Laws of South Carolina.

FURTHER AFFIANT SAYETH NOT.

Terry A. Finger, Esquire

SWORN to before me this

7th day of June, 2019.

Wendy Habersham
Notary Public for South Carolina
My Commission Expires: 5/1/24

WENDY HABERSHAM
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 5/1/2024

Follow Us

Westbury Park

Gate Breaches and Violations

The Board of Directors has voted there will be a system in place for those who breach and/or damage the gates at both Hwy 278 and Buck Island entrances and exits. This policy applies to Westbury Park Homeowners as well as the residents of The Estates at Westbury.

The following fines will be assessed:

- $250 for the first offense
- $500 for the second offense
- $1000 for the third and each additional offense

If the gate is damaged and results in repairs, the offender will bear the full cost of the repairs.

Tailgaters will be assessed a fine of $50.

The board has instituted an administrative fee of $100 per hour for the time Sentry Management spends reviewing video footage, tracking down the offender, issuing billing, and making sure payment is received.

The average total cost of a breached and damaged gate (first offense) is $2,000 or more.

The objective of the Board of Directors is to defer the cost of breaches and repairs onto the actual people who are damaging the gates, instead of the entire community bearing the monetary responsibility of these actions.

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Westbury Record on Appeal 0131



ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ELECTRONICALLY FILED - 2020 Apr 13 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No.: 2020CP0700158
	)	
Westbury Park Residential Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S REPLY TO COUNTERCLAIMS
	)	
Estate at Westbury Owners Association, Inc.,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the Plaintiff, Westbury Park Residential Association, Inc., in its Reply to Defendant's, Estate at Westbury Owners Association, Inc., Counterclaims, would respectfully show unto this Honorable Court the following:

General Reply

1. The Plaintiff/Counterclaim Defendant, Westbury Park Residential Association, Inc. (herein, "Plaintiff" or "WPRA") generally denies all allegations raised in the Defendant Estate at Westbury Owners Association, Inc. (herein, "Defendant")'s Answer and Counterclaims unless any such allegation is specifically admitted by the Plaintiff.
2. The Plaintiff craves reference to the entirety of all documents of record and Exhibits referenced or cited in Defendants Answer and Counterclaims (including but not limited to those allegations contained in the Defendant's "Preamble"), and denies all reference or inferences raised by the Defendant that do not reflect the strict language of the same.
3. The Plaintiff specifically denies all allegations that it held fiduciary duties to the Defendant or that any and all assessment payments by Defendant

ELECTRONICALLY FILED - 2020 Apr 13 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

were to be held for the sole purposes as expressed in Defendant's Answer and Counterclaim. Plaintiff craves reference to the actual documents referenced in Defendants Answer and Counterclaim.

4. Paragraphs 1 through 97 of the Defendant's Answer and Counterclaim require no response from the replying Plaintiff. To the degree any allegation in paragraphs 1 through 97 require a response, any and all allegations as to Plaintiff are denied.

Reply to Defendant's Counterclaims

5. Paragraphs 1, 7, 15, 20, 26, 33, 37, and 43 of the Defendant's Counterclaim repeat previous allegations and do not require a response. To the degree a response is required from the Plaintiff, all allegations as to Plaintiff contained in those paragraph are denied.
6. Paragraph 2 of the Defendant's Counterclaim is admitted with the qualification that the Plaintiff craves reference to Exhibit 3 of the Defendant's Answer and Counterclaims.
7. Plaintiff denies paragraph 3 of the Defendant's Counterclaims and craves reference to the language of the documents cited therein.
8. Plaintiff denies paragraphs 4, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, and 19 of the Defendant's Counterclaims.
9. Plaintiff admits paragraphs 21 and 22 of the Defendant's Counterclaims.
10. Plaintiff denies paragraphs 23, 24, and 25 of Defendant's Counterclaims.
11. Plaintiff admits paragraph 27 of the Defendant's Counterclaims.
12. Plaintiff admits paragraph 28 of the Defendant's Counterclaims; however, Plaintiff qualifies this admission to crave reference to the actual documents of conveyance, the timing of the same, and the differing nature of the two developments—one as a dense capacity apartment complex (the Defendant)

and the other as a separate and distinct planned unit development of standalone, single family houses.

13. Plaintiff admits paragraph 29 insomuch that Plantation Properties, LLC at one time owned both the Defendant's tract and the community now known as WPRA. Plaintiffs deny the characterization of the two properties as an integral tract.
14. Plaintiff denies paragraph 30 of the Defendant's Counterclaims; Defendants have direct access to Plantation Park Drive.
15. Plaintiff denies paragraphs 31 and 32 of the Defendant's Counterclaim.
16. Plaintiff denies paragraphs 34, 35, and 36 of the Defendant's Counterclaim.
17. Plaintiff denies paragraphs 38, 39, 40, 41, and 42 of the Defendant's Counterclaims.
18. Plaintiff denies paragraph 44 of the Defendant's counterclaim.
19. Plaintiff denies that Defendant is entitled to any relief, including all relief asserted in Defendant's wherefore clause.

FOR A SECOND DEFENSE
(WAIVER)

20. Defendant and Counterclaimant has waived all rights and claims asserted in its Counterclaims.

FOR A THIRD DEFENSE
(ESTOPPEL)

21. Defendant and Counterclaimant is estopped from asserting all rights and claims asserted its Counterclaims.

FOR A FOURTH DEFENSE
(UNCLEAN HANDS)

22. Defendant knowingly violates and allows its residents, guests and invitees to violate its own Covenants and Rules, and has breached the agreements

ELECTRONICALLY FILED - 2020 Apr 13 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

it attempts to enforce. All rights and claims asserted by the Defendant are barred by the doctrine of Unclean Hands.

FOR A FIFTH DEFENSE
(Laches)

23. Defendants claims are barred by the doctrine of laches.

FOR A SIXTH DEFENSE
(No Breach)

24. Plaintiffs have not breached any obligation owed to the Defendant.

FOR A SEVENTH DEFENSE
(Unconscionable Result)

25. In the alternative, if the Court were to find that an appurtenant easement exists and the Defendants are entitled to perpetual easement rights with no obligation to contribute to the maintenance, upkeep and security of the property subject to the easement, the result would be unconscionable.

FOR AN EIGHTH DEFENSE
(Rule 19, Rule 12 SCRCP, Failure to Join Proper Defendant)

26. Defendant complains of acts done by and money held by Plantation Properties, LLC, and not the Plaintiff, and fails to join Plantation Properties, LLC as a party.

FOR A NINTH DEFENSE

(Statutory Damage Limitations/Punitive Damages Constitutionality)

27. Plaintiff invokes all damage limitations, including punitive damage limitations, set forth in SC Code Ann. § 15-23-200, et seq. (1976) (as amended). Plaintiff explicitly reserves its right to argue that any punitive damage award against it is unconstitutional.

FOR A TENTH DEFENSE
(Negligence)

28. Defendant has negligently maintained records, negligently enforced its covenants and Rules and Regulations, and has negligently governed the use and conduct of residents, visitors and guests at its property, and should gain no advantage by its negligent acts.

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FOR AN ELEVENTH DEFENSE

(Reservation)

29. Plaintiff reserves the right to assert any and all further Defenses and Causes of Action.

s/ Benjamin T. Shelton
Benjamin T. Shelton
SC Bar No 77207
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Hilton Head Island, South Carolina
April 13, 2020

ELECTRONICALLY FILED - 2020 Apr 13 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ELECTRONICALLY FILED - 2020 Jan 24 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.:
Westbury Park Residential Association, Inc.,	)	
	)	
Plaintiff,	)	NOTICE AND MOTION FOR TEMPORARY INJUNCTION
	)	
v.	)	
	)	
Estate at Westbury Owners Association, Inc.,	)	
	)	
Defendant.	)	
	)	

TO: ESTATE AT WESTBURY OWNERS ASSOCIATION, INC.

YOU WILL PLEASE TAKE NOTICE that the undersigned, by and on behalf of Plaintiff, Westbury Park Residential Association, Inc., (hereinafter referred to as "Plaintiff"), will move before the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County of the Beaufort County Court of Common Pleas, on February 7, 2020, at 10:30 a.m., or as soon as practicable thereafter, pursuant to Rule 65(b) of the S.C.R.C.P., to enter a temporary injunction prohibiting the Defendant, Estate at Westbury Owners, Inc. (hereinafter referred to as "Defendant"), its owners, residents, security personnel, vendors, or guests, or any other person or entity acting in concert or participation with Defendant, from (1) entering the gates of Westbury Park Residential Association without credentials, passcodes, pass cards or other authority, (2) forcefully opening and tampering with the gates of Westbury Park Residential Association, Inc., (3) using the amenities of Westbury Park Residential Association, (4) mandating that Estate at Westbury Owners Association, Inc. supply Westbury

Park Owners Association, Inc. with a current list of Owners and Residents and authorized vehicle identification, (5) prohibiting unauthorized access upon the streets or common elements of Westbury Park Residential Association, Inc., and (5) otherwise restraining Defendant, its owners, residents, guests, visitors and vendors from abusing access to and damaging the property of Westbury Park Residential Association. In support of this Motion, Plaintiff will show the following to the Court:

1. Immediate and irreparable injury, loss and/or damages will result to Plaintiff unless Defendant is restrained from its present course of conduct.

2. Defendant has refused to restrain such activities upon repeated requests and has refused to cooperate with Westbury Park Residential Association in maintaining the security and safety of the community;

3. These unreasonable and willful actions have caused and continue to cause direct and irreparable injury and risk of injury for which no other legal relief can remedy,

4. Plaintiff believes its claims and causes of action contained within its Complaint, incorporated herein by reference and filed contemporaneously herewith, will be meritorious.

4. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests that the Court enter an Order for a temporary injunction prohibiting Defendant, or any person or entity acting in concert or participation with Plaintiff, including Owners, Residents, Visitors, Guests,

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Security Guards, and Vendors, from taking any action in violation of the above described restraints, specifically, to wit:

1. Entering the gates of Westbury Park Residential Association, Inc. without credentialed authorization;
2. Forcefully pushing open the gates of Westbury Park Residential Association, Inc.;
3. Tampering with the gates of Westbury Park Residential Association, Inc.;
4. Damaging the gates of Westbury Park Residential Association, Inc.;
5. Using Westbury Park Residential Association, Inc. common elements and amenities, including parks, green spaces, and playgrounds;
6. Requiring the Estate at Westbury take reasonable measures to prevent such actions by its residents, guests, and vendors;
7. Otherwise restraining Defendant, its owners, residents, guests, visitors and vendors from abusing access to and damaging the property of Westbury Park Residential Association.

   And,

8. Requiring Westbury Park Residential Association, Inc. to provide Plaintiff with the identities of its Owners, Residents, a list of authorized vehicles and vehicle plates (the same material Westbury Park requests of its own residents) so that Westbury Park may reasonably monitor gate access into the communities, and any other specific orders the circumstances require.

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FINGER, MELNICK & BROOKS, P.A.

s/*Benjamin T. Shelton*

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35 Hospital Center Common, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
Attorneys for Plaintiff

Hilton Head Island, South Carolina
January 24, 2020

AFFIRMATION

The undersigned attorney for Plaintiff, Westbury Park Residential Association, Inc., hereby certifies that consultation between the parties would serve no useful purpose.

FINGER, MELNICK & BROOKS, P.A.

s/ Benjamin T. Shelton

Benjamin T. Shelton
35 Hospital Center Common, Suite 200
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(843) 681-7000
Attorneys for Plaintiff

Hilton Head Island, South Carolina
January 24, 2020

ELECTRONICALLY FILED - 2020 May 21 8:20 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., Plaintiff/ Counterclaim Defendant, v. ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant/ Counterclaim Plaintiff.	**DEFENDANT ESTATE AT WESTBURY OWNERS ASSOCIATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: BENJAMIN T. SHELTON, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that the Defendant/Counterclaim Plaintiff Estate at Westbury Owners' Association, Inc. ("Defendant" or "Estate") will move, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court granting Summary Judgment in the Estate's favor as to the following causes of action brought by the Plaintiff:

- Plaintiff's Second Cause of Action (alleged declaratory judgment that the Apartment Declaration is renewed and the Estate is in default)
- Plaintiff's Third Cause of Action (alleged termination by breach)
- Plaintiff's Fourth Cause of Action (alleged declaratory judgment that any easement conveyed was an easement in gross)

- Plaintiff's Fifth Cause of Action (alleged alternative declaratory judgment that no easement exists and requiring Defendant to construct alternative access to the Property)
- Plaintiff's Sixth Cause of Action (alleged unjust enrichment)
- Plaintiff's Seventh Cause of Action (alleged termination via changed conditions)

Further, Defendant will move pursuant to Rule 56, SCRCP, for an Order granting Summary Judgment in Defendant's favor as to its following counterclaims against the Plaintiff:

- Defendant's Fourth Counterclaim (for declaratory judgment for express appurtenant easement)
- Defendant's Fifth Counterclaim (alternatively, for easement by necessity)
- Defendant's Eighth Counterclaim (for an accounting)

The grounds for this Motion are that no genuine question of material fact exists, and Defendant is entitled to judgment as a matter of law in its favor on each of the above-listed causes of action. This motion will be supported by the pleadings, affidavits, and other such materials as may be submitted to the Court prior to the hearing, including, but not limited to memoranda of law.

[signature appears on the next page]

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Respectfully submitted

FORD WALLACE THOMSON LLC

By: s/Ainsley F. Tillman
Ian S. Ford
Ian.Ford@FordWallace.com
Ainsley F. Tillman
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715 King Street
Charleston, South Carolina 29403
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Charleston, South Carolina
May 21, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that on May 21, 2020, this Motion was served by electronic mail and NEF on all attorneys of record.

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

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ELECTRONICALLY FILED - 2020 Jun 08 11:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC. Plaintiff, V	)	PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT ESTATE AT WESTBURY OWNERS ASSOCIATION, INC. MOTION FOR SUMMARY JUDGMENT
ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant.	)	

TO: Ian Ford, Esq., Ainsley Tillman, Esq., and Evan Bromley, Esq., Attorneys for Defendant:

THE PLAINTIFFS, by and through the undersigned, come now in this Memorandum in Opposition to the Defendant, Estate at Westbury Owners Association, Inc.. Motion for Summary Judgment, to respectfully show the Court:

I. THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED—THE MOTION WAS FILED BEFORE DISCOVERY IS COMPLETED AND THE PLAINTIFFS CAUSES OF ACTION ARE SUPPORTED BY THE PLEADINGS

A. IN THE ALTERNATIVE, THE DEFENDANT'S MOTION IS NOT RIPE: THE ISSUES BEFORE THE COURT ARE COMPLEX, AND DISCOVERY MUST BE HAD BEFORE A RULING ON SUMMARY JUDGMENT ON ANY ISSUE FOR EITHER PARTY WOULD BE PROPER

ELECTRONICALLY FILED - 2020 Jun 08 11:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BACKGROUND

This case involves complex and unique issues concerning two neighboring but separate property owners associations in southern Beaufort County—Westbury Park Residential Association ("Plaintiff" or "Westbury Park") and the Estate at Westbury Owners' Association ("Defendant" or "The Estate at Westbury"). The dispute arises from both the existence, effect, and interpretation of certain recorded instruments as well as the conduct of the Parties to the lawsuit and their members, historically and at present.

Further, the case is in its infancy. The Covid-19 crisis has delayed the Plaintiff's Motion for a Temporary Injunction (which requires in-person testimony from multiple witnesses) that would have been heard in March or April 2020, until late July 2020. The Parties only recently exchanged discovery requests. No depositions have been scheduled.

While the Defendants argue that certain rulings may be made upon the various recorded instruments at issue (including, historical plats, deeds, declarations of covenants, amendments thereto, and other instruments of record), a review of the Pleadings reveals that the Plaintiffs and Defendants argue that these same documents create two completely different results. Indeed, both Parties argue that the documents are clear and leave no room for ambiguity, yet interpret the documents manifestly differently.

For example, the Declaration of Covenants, Rules and Restrictions of Palmetto Lakes Apartments (the "Declaration") gives it, as assignee of certain Declarant rights,

Westbury Record on Appeal 0146

ELECTRONICALLY FILED - 2020 Jun 08 11:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

the right to ***renew*** the Declaration "by filing a notice of terms extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term." Section 9.01, Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (BK57094/PG1225), Beaufort County Register of Deeds (herein, the "Declaration").

However, the Defendant argues the opposite, stating that the following Section 9.02 of the Declaration requires that the Declaration may only be terminated, extended, modified or amended "jointly." The Plaintiff points to the fact that section 9.01 stands separate from 9.02 as a Term and *Renewal* provision, and that 9.02 stands separately as a Termination and Modification provision. Following Section 9.01, the Plaintiff filed a Notice of Extension which, per Section 9.01, renewed the Declaration the prior to the expiration of its initial 20 year term. (BK3709/Pgs 3041-3047 Beaufort County Register of Deeds). Thus, the Declaration was extended and the Plaintiff's claims will be successful. The Defendant argues that the renewal has no effect. Arguing, therefore, that the same language carries a wholly different meaning.

Further, the Plaintiff argues that any access Easement that was created by this document was an Easement in Gross and not an Easement Appurtenant. The Defendant argues the opposite. The Plaintiff disputes the legal effect of the purported easement created by this Declaration for various reasons, including the fact that it contains no Acknowledgment as required by the South Carolina Code of Laws. Again,

the Defendant disputes these positions. The Plaintiff's positions in the Pleadings are clear and have merit, carrying the scintilla of evidence standard here, at this juncture in the litigation.

Alternatively, without waiving the Plaintiff's position that the documents are clear as to its interpretation and position, at least some discovery and/or testimony will be necessary to further explore and delineate the issues in dispute before the Parties, including those argued by the Defendant in its Motion for Partial Summary Judgment.

LAW/ANALYSIS

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving parties are entitled to judgment as a matter of law. Rule 56(c) SCRCP." Singleton v. Sherer, 377 S.C. 185, 659 S.E. 2d 196, 197 (Ct. App. 2008). However, in determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Epstein v. Brown, 363 S.C. 372, 375, 610 S.E.2d 816, 817 (2005). In cases applying a preponderance of the evidence standard, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand

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a motion for summary judgment." Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).

Here, the parties have not had an opportunity to participate in discovery. No depositions, answers to interrogatories, and admissions, for example, exist to support either parties' positions. Thus, the court is entitled to rely on the Pleadings at this early stage in the litigation. Viewing the Pleadings and recorded documents in a light most favorable to the Plaintiff, the Plaintiff's present the scintilla of evidence required to survive Summary Judgment here and the Defendant fails to meet its burden pursuant to Rule 56, SCRCP.

The Plaintiffs respectfully submit that the Defendant's Motion for Partial Summary Judgment should be denied.

Respectfully submitted,

s/Benjamin T. Shelton

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Hilton Head Island, South Carolina
June 8, 2020

ELECTRONICALLY FILED - 2020 Jun 08 11:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ELECTRONICALLY FILED - 2020 Jun 08 4:50 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC. Plaintiff, V ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant.	)	PLAINTIFFS' AMENDED MEMORANDUM IN OPPOSITION TO DEFENDANT ESTATE AT WESTBURY OWNERS ASSOCIATION, INC. MOTION FOR SUMMARY JUDGMENT (Correcting typographical errors)

TO: Ian Ford, Esq., Ainsley Tillman, Esq., and Evan Bromley, Esq., Attorneys for Defendant:

THE PLAINTIFF, by and through the undersigned, comes now in this Memorandum in Opposition to the Defendant, Estate at Westbury Owners Association, Inc.'s, Motion for Partial Summary Judgment, to respectfully show the Court:

I. THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED—THE MOTION WAS FILED BEFORE DISCOVERY IS COMPLETED AND THE PLAINTIFFS CAUSES OF ACTION ARE SUPPORTED BY THE PLEADINGS

A. IN THE ALTERNATIVE, THE DEFENDANT'S MOTION IS NOT RIPE: THE ISSUES BEFORE THE COURT ARE COMPLEX, AND DISCOVERY MUST BE HAD BEFORE A RULING ON SUMMARY JUDGMENT ON ANY ISSUE FOR EITHER PARTY WOULD BE PROPER

ELECTRONICALLY FILED - 2020 Jun 08 4:50 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BACKGROUND

This case involves complex and unique issues concerning two neighboring but separate property owners associations in southern Beaufort County—Westbury Park Residential Association ("Plaintiff" or "Westbury Park") and the Estate at Westbury Owners' Association ("Defendant" or "The Estate at Westbury"). The dispute arises from both the existence, effect, and interpretation of certain recorded instruments as well as the conduct of the Parties to the lawsuit and their members, historically and at present.

Further, the case is in its infancy. The Covid-19 crisis has delayed the Plaintiff's Motion for a Temporary Injunction (which requires in-person testimony from multiple witnesses) that would have been heard in March or April 2020, until late July 2020. The Parties only recently exchanged discovery requests. No depositions have been scheduled.

While the Defendant argues that certain rulings may be made upon the various recorded instruments at issue (including, historical plats, deeds, declarations of covenants, amendments thereto, and other instruments of record), a review of the Pleadings reveals that the Plaintiff and Defendant argue that these same documents create two completely different results. Indeed, both Parties argue that the documents are clear and leave no room for ambiguity, yet interpret the documents manifestly differently.

For example, the Declaration of Covenants, Rules and Restrictions of Palmetto Lakes Apartments (the "Declaration") gives the Plaintiff, as assignee of certain

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Declarant rights, the right to ***renew*** the Declaration "by filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term." Section 9.01, Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (BK57094/PG1225), Beaufort County Register of Deeds (herein, the "Declaration").

However, the Defendant argues the opposite, stating that Section 9.02 of the Declaration requires that the Declaration may only be terminated, extended, modified or amended "jointly." The Plaintiff points to the fact that section 9.01 stands separate from 9.02 as a Term and *Renewal* provision, and that 9.02 stands separate as a Termination and Modification provision. Following Section 9.01, the Plaintiff filed a Notice of Extension which, per Section 9.01, renewed the Declaration prior to the expiration of its initial 20 year term. (BK3709/Pgs 3041-3047 Beaufort County Register of Deeds). Thus, the Declaration was extended and the Plaintiff's claims will be successful. The Defendant argues that the renewal has no effect. Arguing, therefore, that the same language carries a wholly different meaning.

Further, the Plaintiff argues that any access easement that was created by this document was an easement in gross and not an easement appurtenant. The Defendant argues the opposite. The Plaintiff disputes the legal effect of the purported easement created by this Declaration for various reasons, including the fact that it contains no Acknowledgment as required by the South Carolina Code of Laws. Again, the Defendant disputes these positions. The Plaintiff's positions in the Pleadings are

clear and have merit, carrying the scintilla of evidence standard here, at this juncture in the litigation.

Alternatively, without waiving the Plaintiff's position that the documents are clear as to its interpretation and position, at least some discovery and/or testimony will be necessary to further explore and delineate the issues in dispute between the Parties, including those argued by the Defendant in its Motion for Partial Summary Judgment.

LAW/ANALYSIS

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving parties are entitled to judgment as a matter of law. Rule 56(c) SCRCP." Singleton v. Sherer, 377 S.C. 185, 659 S.E. 2d 196, 197 (Ct. App. 2008). However, in determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Epstein v. Brown, 363 S.C. 372, 375, 610 S.E.2d 816, 817 (2005). In cases applying a preponderance of the evidence standard, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).

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Here, the parties have not had an opportunity to participate in discovery. No depositions, answers to interrogatories, and admissions, for example, exist to support either parties' positions. Thus, the court is entitled to rely on the Pleadings at this early stage in the litigation. Viewing the Pleadings and recorded documents in a light most favorable to the Plaintiff, the Plaintiff presents the scintilla of evidence required to survive Summary Judgment here and the Defendant fails to meet its burden pursuant to Rule 56, SCRCP.

The Plaintiff respectfully submits that the Defendant's Motion for Partial Summary Judgment should be denied.

Respectfully submitted,

s/Benjamin T. Shelton

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Hilton Head Island, South Carolina
June 8, 2020

ELECTRONICALLY FILED - 2020 Jun 08 4:50 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., Plaintiff/Counterclaim Defendant, v. ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant/Counterclaim Plaintiff.	**DEFENDANT/COUNTERCLAIM PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant/Counterclaim Plaintiff Estate at Westbury Owners Association, Inc. ("Defendant" or "Estate") hereby submits this Memorandum in Support of its Motion for Partial Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant Estate is seeking summary judgment in its favor as to several of the Plaintiff's causes of action, as well as on several of its counterclaims, as set forth in more detail below.

One basis for this Motion is that those particular causes of action on which summary judgment is sought **may be decided by this Court strictly on the recorded instruments that govern the relationship between the parties**. In other words, the plain language of the governing documents leaves no question of fact for a jury, and the Defendant is entitled to judgment as a matter of law on each of the following causes of action brought by the Plaintiff:

- Plaintiff's Second Cause of Action (alleged declaratory judgment that the Apartment Declaration is renewed and the Estate is in default)
- Plaintiff's Third Cause of Action (alleged termination by breach)
- Plaintiff's Fourth Cause of Action (alleged declaratory judgment that any easement conveyed was an easement in gross)
- Plaintiff's Fifth Cause of Action (alleged alternative declaratory judgment that no easement exists and requiring Defendant to construct alternative access to the Property)
- Plaintiff's Sixth Cause of Action (alleged unjust enrichment)
- Plaintiff's Seventh Cause of Action (alleged termination via changed conditions)

For the same reason, the Defendant is entitled to judgment as a matter of law as to each of the following counterclaims against the Plaintiff:

- Defendant's Fourth Counterclaim (for declaratory judgment for express appurtenant easement)
- Defendant's Fifth Counterclaim (alternatively, for easement by necessity)
- Defendant's Eighth Counterclaim (for an accounting)

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ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BACKGROUND

The background in this case is important, because it sets the stage for what has festered into a bitter grudge on the part of the Plaintiff Westbury Park, against the Defendant Estate at Westbury, which (as set forth below) is misplaced and entirely without legal basis. **At the outset, this Court should know that the Plaintiff has not brought any cause of action against the Developer, although Defendant contends that the Developer is a necessary party to this dispute (and the true party with whom Plaintiff's grievance lies).**

In or about 1998, an entity called Plantation Properties, LLC (the "Developer" or the "Declarant") undertook to develop its large tract of property in Bluffton, South Carolina. Its scheme of development included: (1) commercial, (2) single family residential units, and (3) multi-family residential units. By way of various recorded instruments, the Developer subjected the property to covenants, conditions, and easements that run with the land. The Developer set forth its scheme of development on numerous recorded plats, as well as in a "Master Plan." (See Exhibit 1, Master Plan).

As developers tend to do, the Developer in this instance drafted and recorded separate declarations of covenants, conditions, restrictions, and easements for each of the above-referenced types of units (i.e., commercial, single-family, and multi-family). It created and incorporated non-profit associations for each category (except, not immediately for the multi-family parcel), which entities were bound by the declarations and charged with their enforcement. The declarations governed the relationships between the Developer and each separate entity (and its members). In this instance, the

Developer intentionally distinguished each entity and its corresponding property, and it expressly excluded them from the confines of one another's declarations. Thus, in a nutshell, the Developer's scheme progressed in this way:

1. Developer bought a large tract of land and developed a Master Plan for its use;
2. Developer recorded a Declaration of Covenants, Conditions, and Restrictions for Westbury Park Commercial Center and subjected portions of its property to it; Developer thereby established the Westbury Park Commercial Center Property Owner's Association, Inc. (the "Commercial Association") (RMC Office for Beaufort County, in Book 1012, at Page 827). The Declaration references a Plat, which depicts the subject property and certain streets (including Westbury Park Way).
3. Next, the Developer recorded a Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lake Apartments at Westbury Park (the "Apartment Parcel"). **The Apartment Parcel, by way of recorded instruments, transformed over time into the condominium regime that is the Defendant in this lawsuit** (*see infra*). Initially, by way of the declaration, the Developer retained control over the Apartment Parcel and it did not create an association for its governance.
4. Finally, the Developer recorded a Declaration of Covenants, Conditions, and Restrictions for Westbury Park Residential Properties, and it subjected certain property to it. It thereby established the entity that is the Plaintiff in this lawsuit.

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Since the Commercial Association is not party to this lawsuit, we will leave out a lengthy description of its history.

However—alas, dear reader—a lengthy description ***is*** necessary to this Court's understanding of the complicated relationship of the Plaintiff and the Defendant and the instruments that govern that relationship. If this Court bears with the undisputed history set forth below, it will understand that no question of fact exists that, *inter alia*, Defendant has an express appurtenant easement over the streets and sidewalks belonging to the Plaintiff, for which Defendant expressly contracted and gave exorbitant consideration, which has been paid in full.

I. The Defendant's parcel is defined and bound.

First, the *Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park*, became effective November 10, 1998. (Exhibit 2; hereinafter the "Apartment Declaration"). The Apartment Declaration sets forth the rights and responsibilities of the Developer/Declarant, as well as the rights and responsibilities of the Owner of the property that was to be developed into multi-family dwelling units (the "Defendant" or "Estate at Westbury" or "Estate"), *inter alia*.[1] Within the Apartment Declaration, in a section titled "Easements," the Developer granted to the Owner (i.e. the predecessor-in-title of the individual unit holders within the Defendant Estates) a "[p]erpetual, non-exclusive right for vehicular and pedestrian access over and

[1] Over time, the property has been owned by several entities. In 2006 the Apartment Property was converted to a horizontal property regime. Thus, the "Owner," as defined in the Apartment Declaration, are now the title holders of the fee interests in the individual condominium units. The individual fee holders are members of Defendant, a nonprofit corporation. Certain obligations of the Owner were assigned to Defendant in 2005 (*see infra*).

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across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard." (Ex. 2, p. 8, § 7.02(a), "Easements for Owner"). The Developer also granted a "[p]erpetual, non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the [Estates] Property." (Ex. 2, p. 8, § 7.02(b), "Easements for Owner").[2] Importantly, at the time the Developer made these express grants, it still owned the tract that became the residential (i.e. Plaintiff's) subdivision.

In the Apartment Declaration, the Developer/Declarant also delineated various obligations and covenants, separate and apart from the perpetual easement grants. The Declaration contains a covenant by the Owner of the Property to pay **to the Declarant** an annual Assessment in the amount of $17,500. (*Id.*). **There is not—anywhere within the Declaration—an obligation to pay any assessment to the Plaintiff Residential Association**. In fact, the Plaintiff Residential Association was not a signatory to the Apartment Declaration, which exclusively governed the relationship between the Owner and the Developer. However, the Developer's plan of development and intent can be construed from the plain language of the Apartment Declaration, which clearly states that "[t]he reasonable care and replacement of the Required Streets and Landscaping within the Westbury Park Residential Area **shall remain the responsibility of the [Plaintiff] Westbury Park Residential Owners Association, Inc.** . . . ." (Ex. 2, p. 9, § 8.01) (emphasis added) (this intent is reiterated in other documents, as set forth herein).

By its express language, the Apartment Declaration—and the Owner's covenant

[2] Within the Apartment Declaration, Kensington Boulevard and Westbury Parkway are referred to and defined as the "Required Streets."

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to pay assessments to the Developer that it contained—had a limited term:

> 9.01 Term: This Declaration, every provision hereof, and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration.

(Ex. 2). **Thus, by the plain language of the Apartment Declaration, the covenant to pay an assessment had a finite term of 20 years, whereas the easements had a perpetual duration.** The covenant to pay an assessment was intended by the parties to terminate on November 10, 2018.

Importantly, the Apartment Declaration specifically limited the method by which it could be modified or extended:

> 9.02 Termination and Modification: This Declaration, or any provision hereof, or any **covenant**, condition, or restriction contained herein, may only be terminated, **extended**, modified, or amended, as to the whole of said Property or any portion thereof **by the Declarant and Owner jointly**.

(Ex. 2) (emphasis added). Thus, by the plain language of the Apartment Declaration, the Owner's covenant to pay an assessment could only be modified or extended by agreement of the Declarant and the Owner jointly.

On or about November 1, 2005 the Declarant and the Owner[3] jointly modified the

[3] The identity of the "Owner" (defined by the Apartment Declaration in §2.03 as "the owner of the fee interest in the Property") changed several times over the years, by conveyance deeds recorded in the Office of the Register of Deeds for Beaufort County:

1. By deed from Plantation Properties LLC to Westbury Park Apartments, Ltd. (Book AE at Page 2486);
2. By deed from Westbury Park Apartments, Ltd. to Montecito Westbury (Book 02261 at Page 1673);
3. By numerous individual conveyance deeds from Montecito Westbury to numerous condominium unit holders.

Apartment Declaration, in compliance with the Declaration's required method of modification in § 9.02. (Exhibit 3, Amendment to Declaration) (the "Amended Apartment Declaration"). The Amended Apartment Declaration, **by joint agreement**, increased the amount of the assessment to be paid by the Owner to the Declarant from $17,500/year to $7,200/month (to be adjusted and increased annually). (Ex. 3, ¶¶ 4-6). Further, the Owner's obligation to pay the assessment was assigned to the Defendant Estate herein, in contemplation of the Apartment Parcel becoming a condominium regime. (Ex. 3, ¶ 4). The Amended Apartment Declaration specifically and intentionally **did not extend the term** of the Apartment Declaration, nor of the covenant to pay the assessment.[4] (Ex. 3, "In all other respects, the [Apartment] Declaration is hereby ratified and confirmed.").[5] Thus, under the express terms of the Amended Apartment Declaration, the Defendant was obligated to (and did) pay the increased monthly assessment until the covenants within the Apartment Declaration expired—as mutually intended, agreed, and contracted for—on November 10, 2018.

II. The Plaintiff's property is defined and bound.

Let's go back in time, now, to shortly after the Developer recorded the Apartment Declaration and the express appurtenant easements that it contained, in November 1998.

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[4] This makes sense. The Apartment Declaration did not need to be extended in term, because the easements were perpetual, and the restrictions pertaining to use of the property (governing, i.e., clotheslines, parking, mailboxes, etc.) were about to be eclipsed by a condominium Master Deed.

[5] This Amendment also reveals the intent of the makers of the contract (in 2005, the two developers). They mutually agreed to increase the assessment payment for a limited duration, which was the contemplated and agreed upon consideration for the easements. Over time, the assessment payment amounted to well over a million dollars.

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Thereafter, on December 30, 1998, the Developer set apart the portion of its property that it planned for residential use by recording the *Declaration of Covenants, Conditions, and Restrictions for Westbury Park Residential Properties* in the RMC Office for Beaufort County, in Book 1122, at Page 285 (Exhibit 4) (the "Residential Declaration"). By the Residential Declaration, the Plaintiff was born, and its members (individual lot owners) took title to their lots subject to the encumbrances contained in the Residential Declaration.

In addition to a property description which referenced a plat, the Residential Declaration referenced, incorporated, and had attached to it as an exhibit, the Developer's Master Plan. (Ex. 1). The Master Plan clearly depicts the Apartment Parcel as an otherwise landlocked tract with access via streets within the Residential property. Furthermore, the Residential Declaration expressly defines the relationship between the Plaintiff Residential Association and the Defendant Westbury Estate (Apartment Parcel), as intended by the Developer. The following terms of the Residential Declaration are pertinent to the parties and claims in this lawsuit:

> 1.1. **Purpose and Intent**. Declarant, as the owner of the real property described on Exhibit "A", intends by the recording of this Declaration to create a general plan of development for the planned community known as Westbury Park. This Declaration provides a flexible and reasonable procedure for the future expansion of Westbury Park to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the real property now and hereafter comprising Westbury Park. An integral part of the development plan is the creation of Westbury Park Residential Owners Association, Inc., an association to be comprised of all owners of residential real property in Westbury Park, to operate and maintain various common areas and community improvements and to administer and enforce this Declaration and the other governing documents referred to in this Declaration. In addition, it establishes a mechanism by which to realize the goal of creating a community in which good citizenship and community service are encouraged from all residents.

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1.2. **Binding Effect.**

(a) All property described on Exhibit "A" and any additional property which is made a part of Westbury Park in the future by filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which such run with the title to such property. The provisions of this Declaration shall not apply to the Apartment Parcel. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, as well as the occupants of any Unit and their guests and invitees.

2.1. **"Apartment Parcel"**. That 20.00 acre parcel more fully shown and described on that certain Plat prepared by Surveying Consultants, Inc. entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina", prepared by Terry G. Hatchell, SCRLS #11059 of

2.17. **"Master Plan"**. The land use plan for the development of the Westbury Park community attached hereto as Exhibit "F" as may be amended, which plan includes the property described on Exhibit "A" and may include all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan, described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

2.26. **"Required Streets"**. Shall mean Westbury Parkway and Kensington Boulevard as shown on the Plat of the Apartment Parcel.

7.2. **Maintenance of Area of Common Responsibility**. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas) and shall keep it in good, clean, attractive and sanitary condition, order and repair, consistent with this Declaration and the Community-Wide Standard, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, lakes, signage, structures, improvements and bike and pedestrian pathways/trails situated upon the Common Area;

(b) all streets, specifically including the Required Streets within the Property and all street lights and signage within the right-of-way of said streets shall be the responsibility of the Association and shall be maintained in good condition, reasonable normal wear and tear excepted;

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> 11.7. **Easement for Use of Private Streets**. Declarant hereby creates a non-perpetual, non-exclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services the Apartment Parcel; and for vehicles, equipment and personnel providing garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities.

(Ex. 4).

Thus, under the clear language of the Residential Declaration that binds the Plaintiff, the Plaintiff is solely responsible for the cost and expense of the maintenance of the Required Streets, in which the Defendant (and every unit owner within the condominium regime) has an appurtenant easement, granted to them by the Developer. This was the Developer's plan and intent.

The Plaintiff and its members took title to their property, encumbered as it was by the Residential Declaration, and with—at a minimum—constructive knowledge of the fact that one of the obligations of property ownership within the development was the maintenance of streets in which others (including the Defendant and its residents, UPS drivers, flower delivery vans, school buses, etc.) had an express easement.

The Defendant Westbury Estate has always used those streets and sidewalks for its access, as was intended by the Developer. The Developer's easement grants are appurtenant and perpetual, by the express terms of the Apartment Declaration, and they are for access, ingress, and egress for vehicles and pedestrians.

Nonetheless, for several years now, the Plaintiff has told the residents of the Defendant that they cannot use the sidewalks, which it claims are Westbury Park amenities, and it has required that residents of Defendant walk in the street. Further,

among other things, this lawsuit seeks to require the Estate to gain some other access to its property, despite Plaintiff's admission that the Developer only planned access as set forth above.

III. The story continues.

After the initial flurry of recorded instruments in 1998, the Developer set about to conveying its property, subject to the above-referenced Declarations:

- It built the infrastructure.
- It began to convey residential lots, in phases.
- It amended the Apartment Declaration (as set forth above), jointly with the Owner at the time, so that it could be converted into condominiums.
- The Apartment Parcel was converted to a condominium regime ("The Estate at Westbury"), pursuant to South Carolina law and a recorded Master Deed.
- The Owner of the Apartment Parcel began to convey individual condominium units in fee simple. By virtue of the derivation clause in those deeds, among other things, the individual unit holders took title subject to the Apartment Declaration, including its perpetual easements over the Required Streets.
- The Master Deed created the Defendant Association; Defendant's members are the individual unit owners within the condominium regime.

Defendant properly continued to pay assessments until the Apartment Declaration terminated in November 2018. Over the contemplated and bargained-for 20-

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year term of the Apartment Declaration, Defendant payed over $1.3 million in assessments for "its share of the costs for maintenance of the Required Streets and landscaping." (Ex. 2 § 8.01; *see also* Ex. 3).

Pursuant to the unambiguous language of the Apartment Declaration, the Declarant had a fiduciary duty to use the assessment funds for this sole, express purpose (i.e., the maintenance of the Required Streets). As set forth below, Plaintiff was assigned that fiduciary duty by the Declarant.

IV. Developer never assigned all of its declarant rights to Plaintiff.

Plaintiff wrongly asserts that the Declarant assigned its declarant rights to the Plaintiff in 2015, and it wrongly asserts that "the [Plaintiff] Association now enjoys full control of the community." (Complaint, p. 1). **There is no question of fact that Plaintiff's assertions are impossible under the plain language of the controlling documents**. The Apartment Declaration permits the Developer to assign its rights, in Section 9.03, but it places limits on that assignment. The terms of the declaration specify that the declarant can convey "any or all" of its rights, and it limits the exercise of those rights to the "particular rights, powers, and reservations assigned." (Ex. 2, § 9.03) (emphasis added).

The documents reflect that on August 8, 2015, Plaintiff entered into an "Estate Payment Division Agreement and Assignment," by which the Declarant assigned to Plaintiff—and also to another entity that is not a party to this lawsuit—the **particular** right to collect the assessment required under the Amended Apartment Declaration, as well as the **particular** duty to use the assessment for maintenance and landscaping of the

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Required Streets. (Exhibit 5, Estate Payment Division Agreement and Assignment) (the "Payment Agreement"). This unrecorded[6] agreement, by its clear terms, **did not** convey "all" of the Declarant's rights to Plaintiff. Rather, it **merely assigned the particular right to collect the assessment funds**, which Plaintiff did, until the assessment term expired on November 10, 2018. This is clear from a reading of the Payment Agreement as a whole, which primarily concerns the division of funds, but also from the title of the Payment Agreement, as well as this language, which specifically references the Amended Apartment Declaration (which it refers to as the "Estate Agreement"):

> NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

As discussed in Section I, *supra*, the Amended Apartment Declaration: (1) increased the amount of assessment funds that the Estate was to pay to the Developer for the remainder of the 20-year term of the Declaration; and (2) did not extend the term of the Declaration. It is clear that the Payment Agreement did not convey Declarant rights beyond the ability to collect assessment funds.

Plaintiff wrongly contends that it renewed the Apartment Declaration in October 2018 by way of a "Notice of Extension of the Declaration of Covenants, Conditions, Restrictions, and Easements" for the Apartment Parcel. ("Notice of Extension") (Exhibit

[6] The fact that the Payment Agreement was not recorded further demonstrates that it was not a complete assignment of all declarant rights, which would bind the property itself.

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5).[7] In fact, the purported Notice of Extension is without any legal effect, for at least three reasons, none of which are questions of fact:

(1) only the Declarant and the Owner—jointly—can extend or modify the Apartment Declaration, and the Plaintiff is not the Declarant;

(2) only the Declarant and the Owner—jointly—can extend or modify the Apartment Declaration, and the Notice of Extension purports to do so unilaterally;

(3) for the sake of argument, even if the Agreement did assign declarant rights (which is denied), those rights were assigned to both the Plaintiff and to another entity, which is not party to this lawsuit, and which did not sign the purported, invalid Notice of Extension.

LEGAL STANDARD

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In its determination of whether summary judgment is proper, the court must view all evidence in the light most favorable to the non-moving party, in order to determine

[7] As set forth in Section I, *supra*, the Apartment Declaration expressly limits the manner in which it can be extended:

> 9.02 Termination and Modification: This Declaration, or any provision hereof, or any **covenant**, condition, or restriction contained herein, may only be terminated, **extended**, modified, or amended, as to the whole of said Property or any portion thereof **by the Declarant and Owner jointly**. (Ex. 2).

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whether any genuine issue of material fact exists that would necessitate the trial of the case by a jury. *Barr v. City of Rock Hill*, 330 S.C. 640, 642, 00 S.E. 2d 157, 158 (Ct. App. 1998). "However, when plain, palpable, indisputable facts exist on which reasonable minds cannot differ, Summary Judgment should be granted." *Hedgepath v. AT&T*, 348 S.C. 340 at 355, 559 S.E.2d 327 at 336 (Ct. App. 2001).

"Restrictive covenants are contractual in nature and bind the parties thereto in the same way as any other contract." *Seabrook Island Property v. Berger*, 616 S.E.2d 431, 365 S.C. 234 (2005) (internal citations omitted). The construction of a clear and unambiguous contract is a matter of law for the court. *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014). Similarly, the determination of the grantor's intent when reviewing a clear and unambiguous deed is a question of law for the court. *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012). "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required, and the contract's language determines the instrument's force and effect." *Id.* (internal citations omitted).

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ARGUMENT

The causes of action on which Defendant seeks summary judgment are entirely questions of law, which can be decided without discovery or testimony, based on the unambiguous recorded documents that bind the parties to this lawsuit. This Court should grant judgment in favor of Defendant on the following causes of action, which are unabashedly not set forth in their proper numerical order:

I. Defendant is entitled to a Declaratory Judgment that it and its members have express appurtenant easements in the Required Streets.

Defendant's Fourth Counterclaim is for judgment from this Court that Defendant Estate, and its members,[8] hold express, perpetual, appurtenant easements in the Required Streets. This is clear from the granting language of the Apartment Declaration, and it is equally clear from the plats and Master Plan.

A. The plain language of the Apartment Declaration conveys appurtenant easements.

The character of an express easement is determined by the nature of the right and the intention of the parties creating it. An appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012).

As set forth above, the Developer imposed restrictions on its property as a whole and conveyed easements pertaining to its property, which were intended to run with the

[8] Defendant's members are the individual condominium unit holders. Defendant (as fee owner of the common areas within the condominium regime) and its members are the successors-in-title to the Owner as defined in the Apartment Declaration.

land (i.e. that inhere in the land and concern the premises):

> 2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

(Ex. 2). The Developer made the following grants:

> **ARTICLE VII**
>
> **EASEMENTS**
>
> 7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.
>
> (a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.
>
> (b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

(Ex. 2).[9] The applicable plats and Master Plan—which are incorporated by reference into

[9] This Court should be aware that the burden of the easement described in subsection (a), over Westbury Park Way, is borne by the Westbury Park Commercial Owners Association, which is not a party to this lawsuit.

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both the Plaintiff's and the Defendant's declarations, and by which the entire property was developed and conveyed—leave no question that the easements are essentially necessary to the enjoyment of the Defendant's property, which is otherwise landlocked. (*See* Exhibit 1, Master Plan; *and* Exhibit 7).

The Declaration's language is clear that the Developer intended to and did grant express, perpetual, appurtenant easements to the Owner (i.e., the predecessor in title to the Defendant) for vehicular and pedestrian access over the streets that are the subject of this litigation. The Defendant respectfully requests a Declaratory Judgment from this Court so holding.

B. The recorded plats and Master Plan also entitle Defendant to appurtenant easements.

Additionally, or alternatively, the Defendant and its individual members are entitled to judgment that they hold appurtenant easements in the subject streets for the simple reason that they took title to their property with reference to plats and plans that depict the streets.

It is a long-standing rule of South Carolina law that an owner who takes title to property with reference to a plat acquires an interest in the easements that appear on that plat. *Ralph v. McLaughlin* at 352-353, 834 S.E.2d at 230-231, *citing, inter alia, Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965) ("[W]here a deed describes land as is shown on a certain plat, such plat becomes a part of the deed"), *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19-20 (1975) ("[T]he purchaser of lots with reference to the plat of the subdivision acquire[s] every easement, privilege, and advantage shown upon said plat . . . .") ("Such an easement is deemed a part of the

property to which the grantee is entitled and of which he cannot be divested except by due process of law;"); *see also See Newton v. Batson,* 223 S.C. 545, 77 S.E.2d 212 (1953) (owner of a lot in a subdivision adjoining a small triangular lot, which evidence showed had been intended by the developer as a part of a beautified area, had a special property interest in the latter entitling him to preserve its use for the intended purpose).

In this instance, plats depicting the subject streets, as well as the Developer's Master Plan, are within the chains of title of Defendant and each individual unit holder within the Defendant condominium regime. Because the subject streets are depicted on those plats, they are appurtenant to and inhere in the property that was conveyed by virtue of those plats.

For this additional reason, apart from the plain language of the Apartment Declaration, Defendant and its members are entitled to judgment as a matter of law that they hold an appurtenant easement in the Required Streets.

II. Defendant is alternatively entitled to a Declaratory Judgment that it and its members have an easement by necessity in the Required Streets.

Alternatively, this Court should grant summary judgment as to the Defendant's Fifth Counterclaim, for an easement by necessity.

The elements of a claim for easement by necessity are: (1) unity of title; (2) severance of title; and (3) necessity. *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528, 539 (Ct. App. 2012). "To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). "Severance of title means that title to a larger tract was 'severed' by conveyance

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of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title; 'they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance.'" *Id.* (*quoting Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375; *citing Turnbull v. Rivers*, 14 S.C.L. 131, 139 (Ct. App. 1825) ("The necessity by which a person derives a right of way, is when one person sells to another lands inclosed [sic] on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land.")).

First, as set forth in the Background section, above, both the Plaintiff's and the Defendant's land were once wholly owned by the Developer. There is no question that the first element (unity of title) is established.

Second, as set forth above, the Developer—the common source of the property—severed title by conveying the Defendant Estate Apartment Parcel and the Plaintiff Residential property separately, after subjecting the tracts to separate declarations of covenants and restrictions, as well as a Master Plan.

Third, the Master Plan and Plats attached hereto leave no question that Defendant's land would be enclosed on all sides and landlocked without access over the streets that are the subject of this litigation. (*See* Ex. 1, Master Plan; Ex. 7; Exhibit 8 "Phase 1, Westbury Park").

Because Defendant meets each element of an easement by necessity as a matter of law, it respectfully requests that this Court would (alternatively) so declare.

III. The Court's determination on the preceding two issues subsumes the Plaintiff's Fourth and Fifth Causes of Action.

Because Defendant is entitled as a matter of law to judgment that it holds express,

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perpetual, appurtenant easements in the streets that are the subject of this litigation, this Court should grant summary judgment in Defendant's favor as to Plaintiff's Fourth and Fifth causes of action.

A. The recorded instruments are clear that the Defendant holds appurtenant easements in the streets.

Plaintiff's fourth cause of action requests a declaratory judgment that any easement conveyed was an easement in gross. The primary basis for this argument by Plaintiff goes to the element of necessity and is that "reasonable alternative means for ingress and egress exist" to the Defendant's property. (Complaint, ¶ 65).[10] Plaintiff's argument that there is other access to Defendant's property is wrong for two reasons. First, the recorded instruments, including the Master Plan, make it clear that the easement is the intended access by the original developer to an otherwise landlocked parcel. Second, the purported other access is described in Paragraph 33 of the Plaintiff's Complaint as a potential extension that was first proposed (by Plaintiff) in 2009 and never came to fruition. As this Court knows, the language of the Declaration's easement

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[10] Plaintiff also argues, in Paragraph 63 of the Complaint, that any easement conveyed was "of residential character." Whether an easement is of residential character has no bearing on the question of whether an easement is in gross or appurtenant.

Another of Plaintiff's arguments, in Paragraph 64 of the Complaint, is based on the incorrect premise that the Apartment Declaration was statutorily insufficient. *See* Complaint ¶¶ 8-11. Apparently, Plaintiff was missing the last few pages of the Apartment Declaration, which indicate that it was executed under seal, duly acknowledged and probated. Thus, Plaintiff's argument in Paragraph 64 of the Complaint (that the easement grant was superseded by a deed attached as Exhibit 2 to the Complaint) is invalid. The deed in question is a deed found within Defendant's chain of title, and the grant is made "together with all and singular the Rights, Members, Hereditaments, and Appurtenances" to the property, which would include the previously recorded Apartment Declaration binding the property, within which the easements were granted (it also references the same plat as in the Apartment Declaration, which identifies the access as Kensington Boulevard, Arley Way, and Westbury Park Way) (See Plat, Exhibit 7).

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grant—at the time and place of its making (i.e., in 1998)—is what this Court is bound to construe in determining whether the easement in question is appurtenant or in gross. Hypothetical different access (over wetlands) proposed for the first time in 2009 and which was never finally approved nor constructed should not factor into this Court's analysis of whether the easement was necessary at the time of its conveyance (in 1998).

As set forth above, this Court should find that Defendant Estate and its members were granted and hold a perpetual appurtenant easement in the streets that are the subject of this litigation.

B. This Court should not hold that no easement exists.

Defendant is also entitled to judgment in its favor as to Plaintiff's Fifth Cause of Action, in which it requests judgment that no easement exists and requiring Defendant to construct alternative access. For the reasons set forth above, the Defendant has a perpetual appurtenant easement in the streets as a matter of law. To hold otherwise would divest 320 individual condominium unit holders (all whom took title to their property subject to the Apartment Declaration, the plats, and the Master Plan) of access that was clearly granted to them and in which they have an appurtenant property interest.

IV. The easements could not be terminated by any alleged breach.

Next, this Court should grant to the Defendant summary judgment as to the Plaintiff's Third Cause of Action and find that the easements could not have been terminated by any alleged breach of contract, as a matter of law. This is so for each of the following reasons:

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A. Pursuant to the Apartment Declaration, any purported failure to pay an assessment (which is denied) would not affect the property interest of the Defendant and its individual unit holders in the easements.

A plain reading of the Apartment Declaration—which was a negotiated agreement between the Developer and the original Owner to the apartment tract—leaves no question that the obligation to pay an assessment was: (1) for a limited duration (20 years); and (2) separate and distinct from the perpetual easements granted for access to the property; (3) enforceable only by lien.

First, as discussed above, the clear language of the easement grants within Section 7.02 indicates that they are perpetual. Further, the clear language of the assessment obligation in Section 8.01 requires payment to the Developer while at the same time unambiguously placing the financial burden for road maintenance squarely and solely upon the Plaintiff (and another entity not party to this suit). And, finally, the clear language of Sections 9.01 and 9.02 differentiates between the easements (which have a perpetual duration) versus the assessments (which have a finite 20-year term that can only be extended with the consent of the Owner). (*See* Exhibit 2).

Closing the deal on this issue is the language of the Apartment Declaration that unequivocally sets forth the mechanism for enforcing any alleged failure to pay an assessment, which is obviously not by asking a court to terminate perpetual easements:

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> 8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

(Ex. 2).

The plain language of the Apartment Declaration leaves no question that the remedy for any alleged failure to pay an assessment (which is denied) is under no circumstances the unilateral termination of perpetual access easements.

B. Any purported failure to pay an assessment (which is denied) could not affect the property interest in the easements of Defendant and its individual unit holders, as a matter of law.

As set forth in Section I, above, the 320 individual unit holders within Defendant condominium regime, each of which took title with reference to plats and plans depicting Kensington Boulevard, Arley Way, and Westbury Park Way as access to their otherwise landlocked property, cannot be divested of their ownership interest in those roads—and **particularly not by way of this lawsuit, which has not named them as parties**. *See, e.g.*, *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965) and *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975) (both cases which stand for the established law in South Carolina that a purchaser with reference to a plat acquires a special property interest in every easement and benefit depicted on the plat, of which he

cannot be divested except by due process of law).

V. This Court should not terminate the easements under the equitable doctrines of relative hardship or changed conditions.

The Plaintiff's Seventh Cause of Action asks this Court to terminate express, perpetual, appurtenant easements—which are the only access for 320 owners within Defendant regime—because of the purported burden that those easements place upon Plaintiff. To repeat: ***The Plaintiff complains that the easements are a benefit to the Defendant and a burden to the Plaintiff***.[11] If this Court reviews Paragraphs 84-94 of the Plaintiff's Complaint, it will be readily apparent to the Court that the Plaintiff's Seventh Cause of Action is on its face untenable, misdirected, unprecedented, and it should be summarily denied.

First, the allegations within this cause of action do not leave any question that the Plaintiff's ire in this regard would more properly be directed at the Developer, which was the architect of this community, and which is not a party to this lawsuit. It was the Developer, and not the Defendant, which: (1) developed its land in phases, (2) determined the character of the property, (3) imposed covenants, restrictions, and easements that run with the land, (4) designed the roads, and (5) allocated to the Plaintiff—and to another entity not a party to this lawsuit—the sole responsibility and burden of maintenance of the streets within the community.

Second, each and every one of Plaintiff's members took title to their residential property with **at least** constructive knowledge of the appurtenant obligations and

[11] This is the very nature of an easement.

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covenants, as well as the Developer's intended plan. See, for one example, the following excerpts from the covenants within Plaintiff's and its members' chains of title:

> 7.2. **Maintenance of Area of Common Responsibility**. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas) and shall keep it in good, clean, attractive and sanitary condition, order and repair, consistent with this Declaration and the Community-Wide Standard, which shall include, but need not be limited to:
>
> (a) all landscaping and other flora, parks, lakes, signage, structures, improvements and bike and pedestrian pathways/trails situated upon the Common Area;
>
> (b) all streets, specifically including the Required Streets within the Property and all street lights and signage within the right-of-way of said streets shall be the responsibility of the Association and shall be maintained in good condition, reasonable normal wear and tear excepted;

(Ex. 4, Residential Declaration). The terms of development and the design of the community was contracted for and agreed upon **by the Plaintiff and its members** when they took title to their property subject to the recorded instruments which clearly contain burdens that run with their land. **This Court should not find any hardship whatsoever in the necessity to perform a contracted-for maintenance obligation that is appurtenant to real property**.

Third, the Developer's scheme was the basis of the Defendant's and its members' understanding of the property in which they were investing:

> The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

(Ex. 2, Apartment Declaration, § 8.01). Defendant and its members took title subject to the express terms of the Apartment Declaration (as amended), including its definite

provisions for assessment payments lasting for a limited duration, as well as by plats and plans depicting their access. **This Court should not divest Defendant and its members of their contracted-for property rights, as a matter of law**.

Fourth, the Plaintiff cites no case law that holds that a vested property right can be unilaterally terminated for purported hardship, particularly within a lawsuit that does not name the 320 (or more) individual holders of the interest. For each of these reasons, this Court should grant summary judgment to the Defendant as to Plaintiff's Seventh Cause of Action.

[Suggested Intermission]

VI. The Apartment Declaration was not renewed, and the Defendant is not in default.

Under a plain reading of the applicable documents, Defendant is entitled to summary judgment as to the Plaintiff's Second Cause of Action. In its Complaint, Plaintiff wrongly claims that it unilaterally extended the Apartment Declaration, in 2018. As set forth in Background, Section IV, above, the purported extension was invalid as a matter of law for numerous reasons, including that the purported renewal was unilateral, in violation of: (1) the Apartment Declaration's express terms; (2) long-standing property law; and (3) contract law.

A. The contract at issue prevents unilateral renewal.

As further set forth above, the Apartment Declaration governs the relationship between the Developer and the Owner of the Apartment Parcel (which has changed over

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time). The Apartment Declaration had a finite term of 20 years, which could only be extended by mutual agreement between the parties (i.e. the Declarant and the Owner):

> 9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

(Ex. 2). Thus, the plain language of the contract at issue operates to thwart any purported unilateral extension or modification.

B. Property law prohibits Plaintiff's purported unilateral renewal.

"Restrictive covenants, sometimes referred to as 'real covenants,' are agreements 'to do, or refrain from doing, certain things with respect to real property.'" *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014) (*quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct.App.2006) (citation and quotation marks omitted)). "Restrictive covenants affecting real property cannot be properly and fully understood without resort to property law." *Id.* (emphasis added)

As further set forth above, the Developer recorded the Apartment Declaration, which initially governed the relationship between the Developer and the Defendant's and its members' predecessor in title. The recorded Apartment Declaration had a finite term of 20 years, which could only be extended by mutual agreement between the parties.

This limitation on extension and modification makes sense, and it is **required** by property law. The Declaration, once recorded, affects and creates vested property

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interests. South Carolina law is clear that vested property interests in the nature of servitudes cannot be unilaterally altered. *See Ralph v. McLaughlin,* at 353, 834 S.E.2d at 231 (discussing South Carolina law that prevents the unilateral alteration of property interests, particular by a developer); *see also Corbin v. Cherokee Realty*, 229 S.C. at 24, 91 S.E.2d 542, 546 ("The Florenza Company could not without the consent of [the owner] change the location or width of [the easement]."). Hence, any change to the property rights and obligations within the Apartment Declaration (including an extension of their term) can only be accomplished "by Declarant and Owner jointly" by way of a duly recorded written instrument.

In this manner, the Apartment Declaration was legitimately amended—pursuant to its express terms—one time, in 2005, by the Declarant and the Owner, jointly. (Ex. 3, Amended Declaration). Thereafter, the "Owner," defined by the Declaration in § 2.03 as the owner of the fee interest in the property, went from being a single entity to being the 320 fee holders of individual condominium units, as well as the Defendant (as to common areas). Once the Owner began to convey condominium units (as was specifically contemplated by the Amended Declaration), as a matter of law and under the plain language of the declaration, each unit holder's execution and acknowledgement would be necessary in order to extend or modify the declaration. **This has never occurred**.

Defendant is entitled to summary judgment in its favor as to Plaintiff's Second Cause of Action because the Plaintiff's purported renewal was invalid as a matter of law.

C. Contract law prohibits Plaintiff's unilateral renewal.

Plaintiff's purported renewal is invalid under contract law, as well. Defendant

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and its members undertook the express contractual obligation to pay assessments, totaling more than $1.3 million dollars, for an understood, mutually-agreed upon, finite term of 20 years. For the Plaintiff, even as an assignee of the Developer, to attempt to unilaterally amend and alter fundamental terms that were the basis of the bargain would be illegal and unenforceable. *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014) (noting that once a contractual bargain is formed, and the obligations are set, that the contract can only be altered by mutual agreement and for further consideration), *citing* 17A Am.Jur.2d Contracts § 507 ("[O]ne party to a contract may not unilaterally alter its terms.").

In sum, **the Plaintiff was powerless to alone effect any extension of the Apartment Declaration's obligation to pay an assessment**. This Court should so hold, and it should grant summary judgment in favor of the Defendant as to Plaintiff's Second Cause of Action.

VII. Plaintiff's cause of action for unjust enrichment fails as a matter of law.

Defendant is entitled to summary judgment on Plaintiff's Sixth Cause of Action, for unjust enrichment. Unjust enrichment is an equitable remedy that is available in the absence of an express contract. *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8, 532 S.E.2d 868, (2000) (noting that equitable remedies are available where there is no remedy at law and stating that "[i]n a law action, the measure of damages is determined by the parties' agreement, while in equity, 'the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.'") (citations

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omitted). In this instance, an express contract (and remedy at law) exists, and so Plaintiff's action must fail.

In support of its cause of action for unjust enrichment, Plaintiff argues that "[t]he scheme of creating a single access to the [Defendant] Estates through Westbury Park was created by a Developer for the benefit of the Developer and to the detriment of the communities and residents that will otherwise suffer the burden of the scheme after the Developer derived inequitable benefits from the scheme." (Complaint ¶ 81). This argument suggests that Plaintiff's real complaint lies with the Developer, rather than with the Defendant. The Developer is not a party to this lawsuit.

Plaintiff's Complaint further ignores that the relationship of the parties is governed by several express contracts, as further discussed above, including but not limited to:[12]

- The Apartment Declaration (in which Developer granted the easements at issue, and in which Owner covenanted to pay an assessment for "its share of the cost of the maintenance of the Required Streets") (Ex. 2);
- The Amended Apartment Declaration (in which Defendant and Developer jointly agreed to a significantly increased assessment payment for the remainder of the term) (Ex. 3);
- The Residential Declaration, in which Plaintiff covenanted and agreed to maintain the streets that are the subject of this lawsuit (Ex. 4);

[12] Other express contracts include the deeds and plats within both parties' chains of title, as further discussed, *supra*.

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- The Payment Agreement (in which Developer assigned to Plaintiff the right to collect the assessment from the Defendant) (Ex. 5).

As a matter of law, Plaintiff cannot invoke an equitable remedy where the expectations and rights of the parties are bound by the above express contracts. *Id*. The parties contracted for and agreed to perpetual easements; they mutually agreed upon an assessment obligation totaling $1.3 million dollars. Plaintiff contracted for and agreed to take title to property burdened by those easements. Plaintiff was assigned the right to collect the assessment from the Defendant, for the remainder of the term of the Apartment Declaration.

In sum, Defendant has not received any benefit for which it has not paid valuable consideration, which consideration was contemplated by express contract. Therefore, this Court should grant summary judgment in Defendant's favor as to Plaintiff's Sixth Cause of Action.

VIII. Defendant is entitled to an accounting as a matter of law.

Within the Apartment Declaration, as amended, the Developer covenanted that the Defendant's assessments were for the Defendant's "share of the costs for maintenance of the Required Streets and landscaping along the Required Streets . . . ." (Ex. 2, § 8.01) (Ex. 3). This promise created a fiduciary duty on the part of the Developer to use the assessment for that express purpose. The Developer subsequently assigned to the Plaintiff the right to collect the assessment, pursuant to the terms of the Apartment Declaration. (Ex. 5). The Plaintiff therefore inherited the Developer's duty to use the assessment for the Defendant's share of the maintenance of the streets that are the subject

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of this litigation. Under the clear language of the contract at issue, Defendant is entitled to an accounting of the Plaintiff's use of the assessment funds that it collected.

CONCLUSION

For the reasons set forth above, this Court should grant summary judgment in favor of Defendant as to each of the causes of action identified herein. Plaintiff's lawsuit is based on a fundamental misunderstanding of the declarations and covenants of the community. The terms of those documents are not in dispute, and those terms require a legal ruling in Defendant's favor. If Plaintiff has any claim, it is against the Developer, not against Defendant.

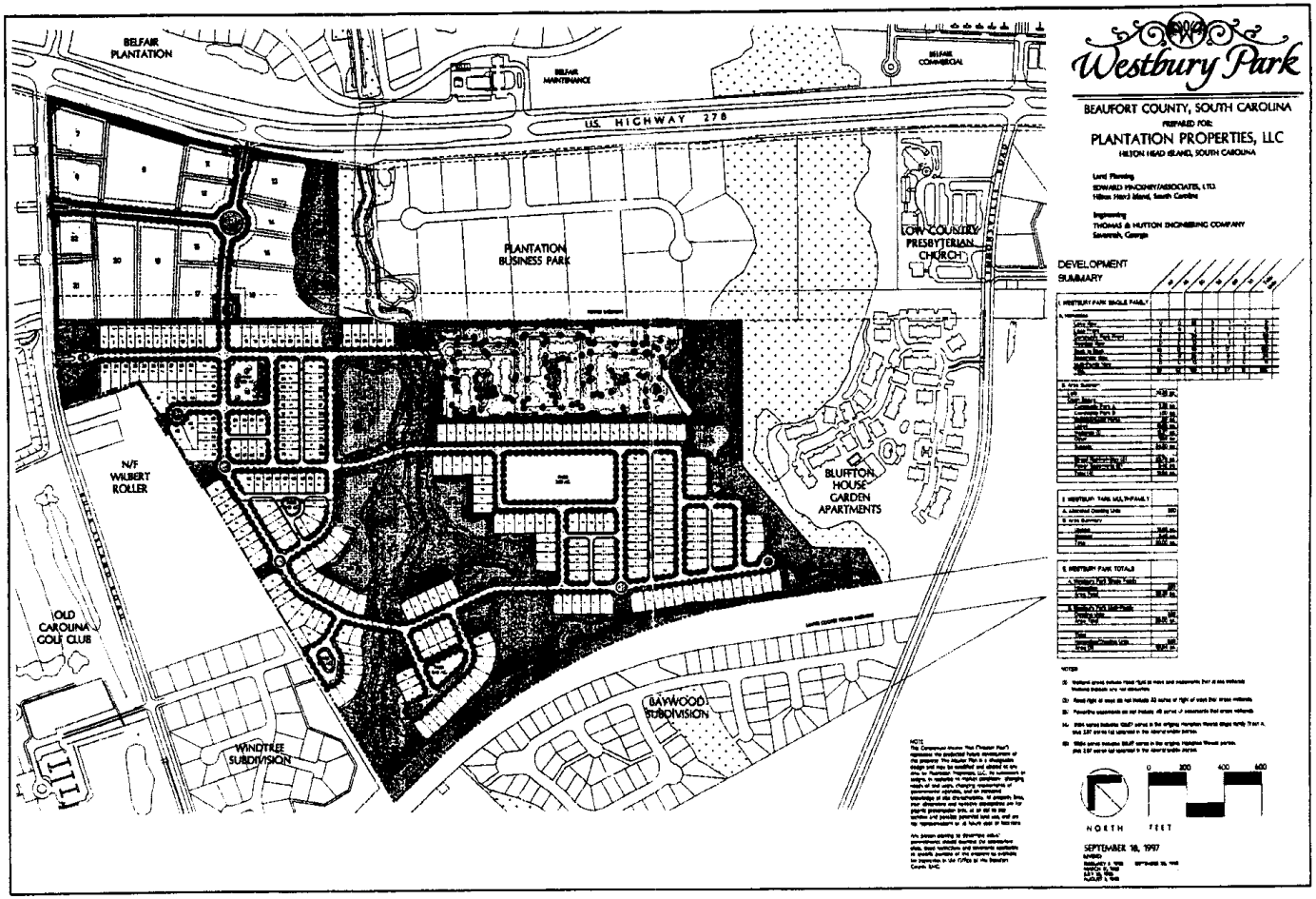
Respectfully submitted

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 10th day of November, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant") as follows:

ARTICLE I

RECITALS

1.01 Declarant is the owner of the approximately twenty (20) acre parcel of real property in Bluffton Township, Beaufort County, South Carolina; more fully described on attached Exhibit "A" (the "Property").

1.02 General Plan: To establish a general plan for the improvement and development of the Property, Declarant hereby subjects the Property to the conditions, covenants and restrictions set out below, upon and subject to which all of the Property shall be hereafter owned, leased, hypothecated and used.

ARTICLE III

GENERAL PROVISIONS

2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

2.02 Purpose of Restrictions: The purposes of these restrictions is to insure proper development and use of the Property to be in keeping with the community wide standards established for the Westbury Park Commercial Subdivision, and the Westbury Park Residential Subdivision, the latter of which is contiguous to the Property.

2.03 Definitions:

(a) Improvements: "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, fence, walls, landscaping, poles, signs and any structures of any type or kind.

(b) Owner: "Owner" shall mean the owner of the fee interest in the Property.

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(c) Plat: That certain Plat thereof prepared by Surveying Consultants entitled "ALTA/ACSM Land Survey of 20.00 Acre Parcel, a Section of Block X-1 a Portion of Rose Hill Plantation, Bluffton Township, Beaufort County, South Carolina, dated the 7th day of October, 19 98 and recorded in the records of the RMC Office for Beaufort County, South Carolina in Plat Book 67 Page 118."

(d) Required Streets: "Required Streets" shall mean Westbury Park Way and Kensington Boulevard as shown on the Plat.

(e) Westbury Park Commercial Area: "Westbury Park Commercial Area" shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 63 at Page 183.

(f) Westbury Park Residential Area: "Westbury Park Residential Area" shall mean all or any portion of that tract of land situate, lying and being in Rose Hill Planned United Development, Bluffton Township, Beaufort County, South Carolina, containing 128.973 acres, more or less, shown and described as "BLOCK X-1" on that certain plat entitled "A Plat of Block X-1, X-2, X-3, and X-4 being a portion of Block "X" prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SCRLS 11079, dated December 30, 1996 and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 58 at Page 198, less and except the Property.

2.04 Prior to Construction: "Prior to construction", the Owner shall maintain the Property in a neat and orderly condition free of weeds and other debris.

ARTICLE III

REGULATION OF IMPROVEMENTS

3.01 County Requirements:

(a) Nothing herein shall supersede the County of Beaufort's present or future requirements and ordinances. All of said requirements and ordinances, shall prevail, and it shall be the responsibility of Owner to conform to them.

(b) General: No structure, of any kind, and no part thereof, shall be placed on the Property closer to the property line than permitted by the County of Beaufort, giving consideration to any variance that may be obtained.

3.02 Completion of Construction: After commencement of construction of any structure, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in partly finished condition any longer than reasonably necessary for completion thereof.

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3.03 Excavation: No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded.

3.04 Landscaping: Landscaping shall be installed prior to occupancy or within sixty (60) days after the completion of the first building on the Property, whichever occurs first. All areas in the Property not used for structures, parking, storage, sidewalks, amenities, driveways and other improvements, shall be planted and maintained with grass and landscaping.

3.05 Signs: No billboard or advertising sign shall be permitted. No attached or detached signs or displays identifying Owner or the apartment complex on the Property shall be used unless their design has first been submitted to and approved by Declarant in writing, so as to assure a dignified and basically uniform appearance of all signs and displays within the Property.

3.06 Storage and Loading Areas - Outside Storage: After all construction of the Improvements is complete, no construction, landscape or maintenance material, supplies or products shall be stored or permitted to remain on the Property in unscreened areas. Screening of storage areas shall be accomplished by the use of landscaping, walls, buildings, fencing or any combination thereof, to a height sufficient to screen the stored items, except that such height shall not exceed eight feet.

3.07 Waste Disposal: No waste material or refuse shall be dumped, placed or (except during construction) allowed to remain on the Property outside a permanent structure unless it is in closed containers of a quality to control odors and behind a visual barrier screening such areas so that they are not visible from neighboring properties or public streets. All such waste and trash materials shall be regularly removed and shall not be allowed to accumulate.

3.08 Off-Street Parking:

(a) The arrangement, access and number of all parking spaces and lots shall conform to applicable County of Beaufort requirements and ordinances, giving consideration to any variances that may be obtained.

(b) Automobile parking areas shall be provided with entrances, exits and aisles adequate to provide safe movement of vehicles.

(c) Subject to the Development Regulations of Beaufort County, South Carolina, the front yard and exterior side yard setback areas may be used for parking and access ways. However, not less than 20 feet of the setback areas (exclusive of wetlands), as measured from the property line, shall be landscaped.

(d) Adequate off-street parking shall be provided to accommodate all parking needs of employees, tenants and visitors on the Property.

3.09 Trucking and Loading:

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(a) Adequate turn around room area shall be provided for safe operation of trucks in loading areas.

(b) Trucking areas shall be adequately designed and paved for the type of operation intended.

3.10 Building Regulations: Any building erected on the Property shall conform to the following construction practices:

(a) The exterior of all structures erected on the Property shall be constructed in accordance with the Approved Plans (as hereinafter defined).

(b) All buildings erected shall conform to the applicable building codes and ordinances of the County of Beaufort, giving consideration to any variance that may be obtained.

(c) Exterior walls shall be painted or suitably treated in accordance with the Approved Plans.

3.11 Care, Maintenance and Repairs: All structures, landscaping and improvements from time to time placed upon the Property in accordance with the terms hereof or the requirements and ordinances of the County of Beaufort shall be maintained in good clean condition and repair at all times, normal wear and tear excepted.

3.12 Drainage: All drainage of water from the Property and Improvements thereon shall drain or flow into easement areas provided for such purpose as shown on the Plat, and all slopes and terraces shall be maintained as to prevent any erosion thereof upon any streets or adjoining property and in accordance with the applicable ordinances of the County of Beaufort and the State of South Carolina.

ARTICLE IV

APPROVAL OF PLANS

4.01 Submission of Plans: No improvements shall be erected, placed, altered, maintained or permitted to remain on the Property until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural designs, signs, landscaping, and a tree survey indicating trees to be removed and replaced shall have been submitted to and approved in writing by Declarant (the "Approved Plans").

4.02 Standards for Approval: Approval by Declarant shall be based, among other things, on conformity and harmony of external design with neighboring sites; relation to topography, grade and finished ground elevation of the site being improved to that of neighboring sites; proper design of main exterior elevation with respect to nearby streets; and conformity of plans and specifications to the purpose and general plan and intent of these restrictions. All structures and walls shall be

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constructed of maintenance free durable material. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

4.03 Time for Approval: If Declarant fails to either approve or disapprove such plans and specifications within twenty (20) days after the same have been submitted to and received by Declarant it shall be conclusively presumed that Declarant has approved the plans and specifications.

Upon receipt of approval from Declarant pursuant to this section, the Owner to whom the same is given shall, within six (6) months of acquisition of title, satisfy all conditions thereof, subject to force majeure, and diligently proceed with the commencement and completion of all approved construction and alterations. In all cases, work shall be substantially completed within two (2) years from the date of commencement of construction. It there is a failure to comply with this paragraph, then the approval given pursuant to this section shall be deemed revoked unless Declarant, upon written request made to it prior to the expiration of said two (2) year period, grants a written extension of the time for completing work.

4.04 Release of Liability: Neither Declarant nor its successors or assigns shall be liable for damages to anyone submitting plans to them for approval or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant for approval agrees, by submission of such plans, and every Owner of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant to recover any such damages.

ARTICLE V

REGULATION OF OPERATIONS AND USES

5.01 Permitted Operations and Uses: The Property is subject to the restriction that it be used for the construction and operation of an apartment complex to contain not more than three hundred twenty (320) apartments, which shall be utilized for residential purposes only.

5.02 Other Operations and Uses: The Owner shall be subject to the following restrictions:

(a) Resubdivision of the Property: The property shall not be split, divided or subdivided for sale, resale, gift, transfer or otherwise, nor shall its boundary lines be altered, without the prior written approval of Declarant.

(b) Temporary Buildings: No temporary building, trailer, garage or building under construction shall be used temporarily or permanently as a residence on the Property except as temporary sleeping or living quarters required or desirable for security purposes. Owner or Owner's contractors may use temporary structures, such as construction trailers while developing the Property.

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(c) Fences: No fence or wall of any kind shall be erected, maintained or altered on the Property without the prior approval of Declarant.

(d) Antenna/Satellite Dish: Except with the prior written approval of Declarant, no outside television or radio aerial, satellite dish or antenna or other device for the reception and transmission of radio or television or other electronic signals, including telecommunications towers shall be erected or maintained on any portion of the Property or upon the exterior of any buildings erected on the Property. Declarant shall approve an application for the installation of one (1) satellite dish to provide television services to the apartments, so long as the satellite dish or other receiving device shall not be visible from the ground on any property contiguous to the Property.

(e) Clothes lines, Garbage Cans, Mailboxes: No clothes lines visible from any property contiguous with the Property shall be permitted. All equipment and garbage cans shall be kept in a garbage can screened by adequate planning or approved fencing so as to conceal them from view by neighboring residence and streets.

(f) Parking and Related Restrictions: (i) No vehicle belonging to Owner or any of Owner's tenants shall be permitted to park on any of the streets that provide access to the Property that are not contained within the Property or on any property contiguous to the Property; and (ii) no school bus, truck (other than pick-up trucks), commercial vehicle (over one (1) ton capacity), house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, or like equipment shall be permitted on the Property on a permanent basis unless stored within garages or carports.

(g) Lagoon Front and Wetlands: Owner and Owner's tenants shall conform to all restrictions placed by applicable laws, ordinances and covenants on lagoons or wetlands on the Property.

(h) Solid Waste: (i) Neither Owner nor any of Owner's tenants shall dump rubbish, garbage or any other form of solid waste on the Property; (ii) except during construction, neither Owner nor any other contractor shall burn rubbish, garbage or any other form of solid waste on the Property; (iii) except for building materials employed during the course of any construction on the Property, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on the Property unless screened or otherwise handled in a reasonable manner; and (iv) at all times, containers for the collection of rubbish, garbage or any other form of solid waste must be maintained in a screened or enclosed area.

(i) Nuisances: No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done on the Property by Owner or any of Owner's tenants which may be or may become a public or private nuisance to the Westbury Park community.

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ARTICLE VI

ENFORCEMENT

6.01 Equitable Servitudes: All of the provisions herein contained shall run with the land and shall be enforceable at law or in equity as equitable servitudes by Declarant.

6.02 Attorneys Fees: In any legal or equitable proceeding for the enforcement of this Declaration or to restrain any violation of this Declaration or any provision hereof, the prevailing party shall, in addition to all other costs, be entitled to recover from the non-prevailing party reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.03 Inspection: Declarant may from time to time at any reasonable hour or hours, and after reasonable notice to Owner, enter and inspect any property subject to these restrictions (other than the interior of any apartments) to ascertain compliance therewith. No such entry or inspection shall disrupt or disturb any of Owner's tenants or Owner's operations of the Property, unless Owner's tenants or Owner's operation of the Property are the cause for entry.

6.04 Failure to Enforce Not a Waiver of Rights: The failure of Declarant or any Owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

ARTICLE VII

EASEMENTS

7.01 Easements for Declarant: Declarant hereby reserves for itself its successors and assigns the "Relocatable 20' Sanitary Sewer Easement" and that certain "Relocatable 20' Storm Drain Easement" as more fully shown on that certain Plat entitled "ALTA/ACSM Land Title Survey of 20 Acre Parcel, Westbury Park, a section of BLOCK X-1 a portion of Rose Hill PUD, Bluffton Township, Beaufort County, South Carolina" prepared for Declarant by Surveying Consultants, dated October 7, 1998, a copy of which is recorded in the records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 67 at Page 118 ("Plat")." Owner shall have the right to relocate the easements described herein prior to its commencement of construction of improvements on the Property, provided such relocation does not make the easements unusable.

7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.

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(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.

(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

(c) Permanent, non-exclusive easement for Owner's directional signs, as approved by Declarant pursuant to the provisions herein, at the approximate locations shown as follows on the Plat:

1. At the intersection of the east right-of-way of Buck Island Road and Kensington Boulevard; the easement for this sign shall not be relocatable;

2. At the southwest corner of Kensington Boulevard and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278 and Buck Island Road; and

3. At the northwest corner of the intersection of Arley Way and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278.

(d) Permanent, Non-Exclusive Twenty-Five Foot (25') Storm Drain Easement as more fully shown on the Plat.

(e) A Five Foot (5') Utility Easement (measured from the center line of buried utility cables and lines) on each sides of said buried utility cables and lines within the rights-of-way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property.

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ARTICLE VIII

ASSESSMENTS

8.01 The Owner, its successors or assigns (but not tenants), by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on an annual basis the sum of $17,500.00 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This Assessment shall become due and payable on February 1 of each year and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall remain the responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

8.02 The Assessment as set forth hereinabove shall commence on January 1, 1999, be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers, All Items (Base Year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstances will the Annual Assessment fall below the minimum of $17,500.00 per year.

8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

ARTICLE IX

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

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be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

9.03 Assignments of Declarant's Rights and Duties: Any or all of the rights, powers and reservations of Declarant herein may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignments, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 Constructive Notice and Acceptance: Every person who now owns or acquires any fee simple title in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

10.03 Paragraph Headings: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

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10.04 Effect of Invalidation: If any provision of this Declaration is held to be invalid by any final judgment in a contested judicial proceeding the invalidity of such provision shall not affect the validity of the remaining provisions hereof and the same shall remain in full force and effect.

WITNESSES:

Karen B Murphy

PLANTATION PROPERTIES, L.L.C.

By: James N. Richardson, Jr.
Its: Managing Member

Attest:

By: William W. Jones, Jr.
Its: Member

Buck Island, L.L.C. joins in this Declaration for the sole purpose of confirming the easements granted in Paragraphs 7.02(a) and 7.02(c)(3), and for no other purposes whatsoever.

WITNESSES:

Karen B. Murphy

BUCK ISLAND, L.L.C.

By:
Its: MANAGING PARTNER

Attest:

By: William W. Jones, Jr.
Its: Member

Westbury Record on Appeal 0200

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named BUCK ISLAND, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

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EXHIBIT "A"

Legal Description

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118 ("Plat") ("Property"). For a more detailed description, reference is made to said Plat of record.

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BEAUFORT COUNTY, S.C.
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EXHIBIT 3

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Amendment to Declaration of Covenants, Conditions, Restrictions and Easements is effective as of the 1st day of November 2005 (the "Effective Date") by and between Plantation Properties, L.L.C., a South Carolina limited liability company ("Declarant"), and Montecito Westbury, LLC ("Owner"), and amends that certain Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (the "Declaration") dated November 10, 1998 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Book 1106 at Page 1225, as follows:

1. The following sentence shall be inserted at the end of Section 5.01: "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership or use of the Property for condominiums."

2. The following sentence shall be inserted at the end of Section 5.02(a): "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership."

3. The following shall be inserted as new Section 7.02(f): "Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners shall not have use rights or easement access to the Westbury Park Residential Area amenities, including parks, swimming pools and pool houses.

4. The first two sentences of Section 8.01 shall be deleted and, the following sentences shall be inserted at the beginning of Section 8.01. "The Owner, its successors or assigns, by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on a monthly basis in the amount of $7,200 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This assessment shall become due and payable on the 15th day of each month, and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. In the event the Owner converts the Property to the condominium form of ownership, the resulting condominium association shall have the obligation to collect adequate funds from the individual unit owners and pay the Assessment directly to the Declarant."

5. Section 8.02 shall be deleted and the following sentence shall be inserted at the beginning of Section 8.02. "The Assessment as set forth hereinabove shall commence on January 1, 2006, and shall be adjusted annually to reflect changes in the Consumer Price Index for all urban Consumers, All Items (base year 1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstance will the Annual Assessment fall below the minimum of $86,400.00 per year."

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6. The following is added as a new Section 8.04: "For the calendar year in which the Property is converted to the condominium form of ownership ("Conversion"), the Owner shall be responsible for the Assessment prorated to, but not including, the date of Conversion. In the calendar year in which the Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, such proration being in accordance with The Horizontal Property Act of South Carolina, applicable from and including the date of Conversion to the remainder of such calendar year. Subsequent to the calendar year in which Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, in accordance with The Horizontal Property Act of South Carolina. Otherwise, the provisions of Article VIII of the Declaration shall apply."

7. Declarant warrants and represents to Owner that Declarant has not assigned any of its rights of enforcement or modification under the Declaration.

8. All terms not defined herein shall have their assigned meaning in the Declaration.

In all other respects, the Declaration is hereby ratified and confirmed.

IN WITNESS WHEREOF, Declarant and Owner have caused this instrument to be executed as of the Effective Date.

WITNESS:

Nora Aguilar

WITNESS:

Name: JANET A. SMITH

DECLARANT:

PLANTATION PROPERTIES, L.L.C.

By:

Name: James N. Richardson, Jr.
Title: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate member, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

JANET A. SMITH

SWORN TO before me this 27 day of October, 2005

Notary Public for South Carolina
My Commission Expires: 8-8-2011

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OWNER:

WITNESS:

MONTECITO WESTBURY, LLC, a Delaware limited liability company

Name: Julie L. Douglass

By: James B. Porter

Name: James B. Porter

Title: Vice President

Carolyn K. Cloud

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named MONTECITO WESTBURY, LLC by the appropriate officer of its appropriate partner, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Julie L. Douglass

Carolyn K. Cloud

SWORN TO before me this 1st day of November, 2005

Julie L. Douglass

Notary Public for Florida

My Commission Expires: _____

JULIE L. DOUGLASS
Notary Public - State of Florida
My Commission Expires Sep 4, 2006
Commission # DD 147746

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Exhibit 4

65219

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285

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WESTBURY PARK RESIDENTIAL PROPERTIES

PREPARED BY:

JONES, SCHEIDER & PATTERSON, P.A.

Post Office Drawer 7049
Hilton Head Island, South Carolina 29938-7049

(843) 842-6111

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Plantation Properties, L.L.C., as the developer of Westbury Park, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration and preservation of Westbury Park as a master planned community.

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The success of the community is dependent upon the support and participation of every owner in its governance and administration. The Declaration establishes Westbury Park Residential Owners Association, Inc. as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the Owners of Property in the community.

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The growth and success of Westbury Park as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within and outside the community and with our neighbors, and protection of the rights of others who have an interest in the community.

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Communities such as Westbury Park are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Westbury Park and its governing documents must be able to adapt to these changes while protecting the things that make Westbury Park special.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WESTBURY PARK RESIDENTIAL PROPERTIES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 29th day of December, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Declarant, as the developer of Westbury Park, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of Westbury Park as a master planned community.

ARTICLE I
CREATION OF THE COMMUNITY

1.1. **Purpose and Intent**. Declarant, as the owner of the real property described on Exhibit "A", intends by the recording of this Declaration to create a general plan of development for the planned community known as Westbury Park. This Declaration provides a flexible and reasonable procedure for the future expansion of Westbury Park to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the real property now and hereafter comprising Westbury Park. An integral part of the development plan is the creation of Westbury Park Residential Owners Association, Inc., an association to be comprised of all owners of residential real property in Westbury Park, to operate and maintain various common areas and community improvements and to administer and enforce this Declaration and the other governing documents referred to in this Declaration. In addition, it establishes a mechanism by which to realize the goal of creating a community in which good citizenship and community service are encouraged from all residents.

1.2. **Binding Effect.**

(a) All property described on Exhibit "A" and any additional property which is made a part of Westbury Park in the future by filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which such run with the title to such property. The provisions of this Declaration shall not apply to the Apartment Parcel. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, as well as the occupants of any Unit and their guests and invitees.

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(b) This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective successors and assigns, and unless terminated as provided in Section 1.2(c), shall have perpetual duration. If South Carolina law hereinafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (2)0 years each, unless terminated as provided below. Notwithstanding the above, so long as South Carolina law recognizes the rule against perpetuities, if any of the provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, former President of the United States.

(c) Unless otherwise required by South Carolina law, this Declaration may not be terminated except by an instrument signed by Owners of at least seventy-five percent (75%) of the total number of Units within the Properties and by Declarant, if Declarant owns any portion of the Properties. Any such instrument shall set forth the intent to terminate this Declaration and shall be recorded in the Official Records of Beaufort County, South Carolina. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

(d) If any court finally determines that a provision of this Declaration is invalid, in whole or as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

1.3. **Governing Documents**. This Declaration, each Supplemental Declaration, the Articles of Incorporation, Bylaws and the Use Restrictions and Rules of Westbury Park Residential Owners Association, Inc. and the other documents referenced in this Declaration ("Governing Documents") create a general plan of development for Westbury Park which may be supplemented by additional covenants, restrictions and easements applicable to particular areas within Westbury Park. In the event of a conflict between or among the Governing Documents and any such additional covenants or easements, or the provisions of any other articles of incorporation, bylaws, rules or policies governing any area within Westbury Park, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing more restrictive provisions than this Declaration. The Association may, but shall not be required to, enforce any such additional covenants.

ARTICLE II
CONCEPTS AND DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definition except as otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. **"Apartment Parcel"**. That 20.00 acre parcel more fully shown and described on that certain Plat prepared by Surveying Consultants, Inc. entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina", prepared by Terry G. Hatchell, SCRLS #11059 of

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Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118.

2.2. **"Area of Common Responsibility"**. The Common Area, together with those areas, if any, which by the terms of this Declaration, or any other applicable covenants, or by contract become the responsibility of the Association (without regard to legal ownership), including but not being limited to POA Landscape and Signage Easements.

2.3. **"Articles of Incorporation or "Articles"**. The Articles of Incorporation of Westbury Park Residential Owners Association, Inc., as filed with the Secretary of State of South Carolina.

2.4. **"Association"**. Westbury Park Residential Owners Association, Inc., a South Carolina not-for-profit corporation, its successors and assigns.

2.5. **"Base Assessment"**. Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

2.6. **"Board of Directors" or "Board"**. The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under South Carolina law.

2.7. **"Builder"**. Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

2.8. **"Bylaws"**. The Bylaws of Westbury Park Residential Owners Association, Inc., a copy of which is attached as Exhibit "E", as they may be amended.

2.9. **"Class "B" Control Period"**. The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors.

2.10. **"Common Area"**. All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners (without regard to legal ownership).

2.11. **"Common Expenses"**. The expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and the Articles of Incorporation.

2.12. **"Community-Wide Standard"**. The standard of conduct, maintenance or other activity generally prevailing throughout the Properties, which shall not be lower than the standards established by the Board for all properties within Westbury Park. Such standard is expected to

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evolve over time as development progresses and may be more specifically determined by the Board of Directors, Declarant and the Architectural Review Committee established pursuant to Article IV.

2.13. **"Design Guidelines"**. The architectural guidelines and procedures, if any, adopted pursuant to Article IV.

2.14. **"Developable Land"**. All of the real property described on Exhibits "A" and "B" of this Declaration, as it may be amended, whether or not the same has been subjected to this Declaration in accordance with Article IX, exclusive of any wetlands, bodies of water and property subject to conservation easements or similar easements requiring that it be maintained in its natural state.

2.15. **"Governing Documents"**. This Declaration, any applicable Supplemental Declaration, the Design Guidelines, the Bylaws, the Articles of Incorporation and Use Restrictions and Rules, as they may be amended.

2.16. **"Lot Landscape Area"**. Shall mean that area of each lot (that is not a corner lot) between the house and the sidewalk (front yard) and, with respect to corner lots, the front yard and the area between the side of any house and the sidewalk (side yard).

2.17. **"Master Plan"**. The land use plan for the development of the Westbury Park community attached hereto as Exhibit "F" as may be amended, which plan includes the property described on Exhibit "A" and may include all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan, described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

2.18. **"Member"**. A Person entitled to membership in the Association as provided in Section 6.2.

2.19. **"Mortgage"**. A mortgage, deed of trust, deed to secure debt or any other form of security instrument affecting title to a Unit.

2.20. **"Mortgagee"**. An institutional or governmental holder of a Mortgage which makes, holds, insures or guarantees Mortgage loans in the ordinary course of its business.

2.21. **"Owner"**. One or more persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

2.22. **"Person"**. A natural person, corporation, partnership, trustee or any other legal entity.

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2.23. **"Plantation Properties, L.L.C."**. Plantation Properties, L.L.C., a South Carolina Limited Liability Company, or any successor, successor-in-title or assign who is assigned any of the rights, duties, responsibilities and obligations of Plantation Properties, L.L.C., as Declarant of this Declaration, pursuant to a recorded instrument executed by the immediately preceding successor, successor-in-title or assign to those rights, duties, responsibilities and obligations, but only to the extent of such assignment.

2.24. **"POA Landscape and Signage Easements"**. Those easements that are located within Westbury Park Commercial Area that also benefit the Property.

2.25. **"Properties" and "Residential Properties"**. The real property described in Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.26. **"Required Streets"**. Shall mean Westbury Parkway and Kensington Boulevard as shown on the Plat of the Apartment Parcel.

2.27. **"Special Assessment"**. Assessments levied in accordance with Section 8.3.

2.28. **"Specific Assessment"**. Assessments levied in accordance with Section 8.4.

2.29. **"Supplemental Declaration"**. An amendment or supplement to this Declaration filed in the Official Records of Beaufort County, South Carolina, for such purposes as this Declaration may provide.

2.30. **"Unit"**. A portion of the Properties, 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; provided, a garage apartment or similar accessory structure on a lot containing living quarters in addition to the primary dwelling on such lot (and under common ownership) shall not be deemed a separate Unit. The term shall refer to the land, if any, which is part of the Unit and any improvements thereon.

2.31. **"Use Restrictions and Rules"**. The initial use restrictions and rules of the Association set forth on Exhibit "C", as they may be supplemented, modified and repealed pursuant to Article III.

2.32. **"Westbury Park"**. All property which is now or hereafter made subject to this Declaration.

2.33. **"Westbury Park Commercial Area"**. Shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 63, page 183.

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2.34. **"Westbury Park Commercial Property Owners Association, Inc."**. The Commercial Center Property Owners Association established for the purpose of exercising the power of maintaining and administering Common Areas and providing common services to the Westbury Park Commercial Area.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance and architecture within Westbury Park are what give the community its identity and make it a place that people want to call "home". This Declaration establishes procedures for rulemaking as a dynamic process which allows the community stands to evolve as the community changes and grows and as technology and public perception change.

ARTICLE III
USE AND CONDUCT

[TURN TO EXHIBIT "C" FOR THE INITIAL USE RESTRICTIONS AND RULES AFFECTING THE PROPERTIES]

3.1. **Framework for Regulation**. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties and the vitality of and sense of community within the Properties, all subject to the Boards and the Members ability to respond to changes in circumstances, conditions, needs, and desires within the community. The Properties are subject to the land development, architectural and design provisions described in Article IV, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties and the guidelines, rules, restrictions promulgated pursuant to this Article, all of which establish affirmative and negative covenants, easements and restrictions on the Properties.

All provisions of the Governing Documents, including the Use Restrictions and Rules, shall apply to all Owners, tenants, occupants, guests and invitees of any Unit. Each Owner shall be responsible for inserting a provision in any lease of its Unit informing the lessee and all occupants of the Unit of the Governing Documents and all Use Restrictions and Rules affecting the Unit, the Common Area or Exclusive Common Area; however, failure to include such a provision in the lease shall not relieve any Person of responsibility for complying with the Governing Documents.

3.2. **Rulemaking Authority**. Initial Use Restrictions and Rules applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the terms of this Article III and in accordance with its duty to exercise business judgement on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to or expand the Use Restrictions and Rules. The Board shall publish notice of the proposed action in a community newsletter, electronic bulletin

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board or by other means which the Board determines will be reasonably effective in disseminating such notice on a community-wide basis, at least thirty (30) days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any rules adopted by the Board shall become effective thirty (30) days thereafter unless within such thirty (30) day period it is disapproved at a meeting by Owners or Voting Members representing a majority of the total Class "A' votes and by the Class "B" Member, if any. At such meeting of the Owners, Owners may vote by proxy, and proxies may be filed by facsimile or other electronic means so long as they meet the requirements of South Carolina law. The Board shall have no obligation to call a meeting to consider disapproval except upon petition of the Owners or Voting Members as required for special meetings in Bylaws.

(b) The Members, at a meeting duly called for such purpose as provided in the Bylaws, Section 2.4, may adopt rules which modify, cancel, limit, create exception to or expand the Use Restrictions and Rules applicable to all of the Properties by a vote of a majority of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Developable Land.

(d) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send notice of the action to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member of Mortgagee.

(e) Except as set forth in Section 3.4 and Exhibit "C", nothing in this Article shall authorize the Board or the Members to adopt rules conflicting with the Design Guidelines or addressing matters of architectural control, which shall be governed by the Design Guidelines and controls described in Article IV.

3.3. **Owner's Acknowledgment and Notice to Purchasers**. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be changed in accordance with this Declaration. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and Rules may change from time to time.

3.4. **Protection of Owners and Others**. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C", neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Signs and Displays. The rights of Owners to display religious and holiday signs, symbols and decorations on their Units of the kinds normally displayed in or outside of

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residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants.

(b) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single family housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(c) Activities Within Unit. No rule shall interfere with the activities carried on within the confines of structures on Units, except that the Association may prohibit activities not normally associated with property restricted to residential or home office use and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners that create a danger to the health and safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units or that create an unreasonable source of annoyance.

(d) Pets. The Association may adopt rules designed to minimize damage and disturbance to other Owners and occupants, including reasonable rules requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate the Governing Documents or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, and in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(g) Reasonable Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop the Properties.

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ARTICLE IV
ARCHITECTURE AND LANDSCAPING

4.1. **Applicability**. If Declarant has reserved rights of architectural review and control over any portion of the Properties pursuant to any contract, deed, covenant or other recorded instrument outside of this Declaration, then the provisions of such instrument shall control as to any matter within the scope of this Article and approval by Declarant pursuant to such instrument of any matter within the scope of this Article shall be deemed full compliance with this Article unless, and except to the extent that:

(a) Declarant has assigned in writing any or all of its reserved rights under such instrument to the Architectural Review Committee established pursuant to this Article; or

(b) Declarant has recorded an instrument in the Official Records of Beaufort County, South Carolina, declaring its intent that this Declaration thereafter control as to any matter within the scope of this Article.

Except as otherwise provided above, no structure shall be placed, erected or installed upon any portion of the Properties and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements and plantings or removal of landscaping materials) (such activities being referred to in this Article as "Work") shall take place within the Properties except in compliance with this Article and the Design Guidelines, if any, promulgated pursuant to Section 4.3.

This Article shall not apply to the activities of Declarant nor shall it apply to the activities of the Association during the Class "B" Control Period.

This Article may not be amended without the written consent of Declarant so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

4.2. **Architectural Review**.

(a) Declarant Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as a developer of the Properties and as an Owner of significant portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and no not impair Declarant's ability to market, sell or lease its property. Therefore, each Owner agrees that no Work shall be commence on such Owner's Unit unless and until Declarant has given its prior written approval for such Work, which approval may be granted or withheld in Declarant's sole discretion. In reviewing and acting upon any request for approval, Declarant shall be acting in its own interest and shall owe no duty to any other Person.

The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier

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terminated in a written instrument executed by Declarant and recorded in the Official Records of Beaufort County, South Carolina.

(b) Architectural Review Committee. Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article or other recorded instruments to an architectural review committee appointed by the Association's Board of Directors ("ARC"), subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (ii) the right of Declarant to veto any decision of the ARC which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the ARC shall be limited to such matters as are specifically delegated to it by Declarant. Unless and until such time as Declarant delegates all or a portion of its reserved rights, the Association shall have no jurisdiction over architectural matters; upon any such delegation, the ARC shall accept and exercise the jurisdiction so delegated in accordance with this Article.

Upon expiration or termination of Declarant's rights under this Article, the Association shall assume jurisdiction over architectural matters hereunder and the Association, acting through the ARC, shall be entitled to exercise all powers previously reserved to Declarant under this Article; provided, however, in exercising the discretion previously reserved to Declarant, the Association and the ARC shall act in the interest of the Association membership.

The ARC, if and when appointed, shall consist of at least three (3), but not more than five (5), persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. In addition, the ARC may, with the prior approval of the Board, retain architects, engineers or other professionals to assist in the review of any application and the Association may charge any fees incurred for such assistance to the applicant.

4.3. **Guidelines and Procedures**.

(a) Design Guidelines. Declarant, or to the extent that the ARC has jurisdiction hereunder, the ARC (the entity having jurisdiction at any particular time is referred to in this Article as the "reviewing entity") may, but shall not be required to, establish design and construction guidelines and review procedures ("Design Guidelines") to provide guidance to Owners and Builders regarding matters of particular concern to Declarant in considering applications for architectural approval. The Design Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of an application. Any such Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, type of construction or use, and unique characteristics of the property.

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Any Design Guidelines adopted pursuant to this Section shall be subject to amendment from time to time in the sole discretion of the entity adopting them. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modifications has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; amendments may remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part.

The reviewing entity shall make copies of the Design Guidelines, if any, available to Owners, Builders and developers who seek to engage in development or construction within the Properties, and may charge a reasonable fee to cover its printing costs.

(b) Procedures. Prior to commencing any Work for which review and approval is required under this Article, an application for approval of such Work shall be submitted to the reviewing entity in such form as may be required by the reviewing entity or the Design Guidelines. The application shall include Plans showing the site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and other features of the proposed construction, as required by the Design Guidelines and as applicable. The reviewing entity may require the submission of such additional information as it deems necessary to consider any application.

The reviewing entity may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the Design Guidelines, if any, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The reviewing entity shall, within thirty (30) days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the reviewing entity fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the reviewing entity written notice of such failure to respond, stating that unless the reviewing entity responds within ten (10) days of receipt of such notice, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given, subject to the right of Declarant to veto approvals by the ARC as set forth in this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines, if any, unless a variance has been granted in writing pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

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Within three (3)business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by Declarant, the ARC shall given written notice to Declarant of such action, together with such other information as Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on any Work for which approval has been granted within twelve (12) months of such approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to resubmit the Plans for reconsideration in accordance with such Design Guidelines as are then in effect prior to commencing such Work. All Work shall be completed within two years of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in sole discretion of the reviewing entity.

4.4. **No Waiver of Future Approvals**. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Design Guidelines, if any, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewing entity may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

4.5. **Variances**. The reviewing entity may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as it may determine in its sole discretion. Such variances shall be granted only when, in the sole judgement of the reviewing entity, unique circumstances exist and no Owner shall have any right to demand or obtain a variance. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the reviewing entity from denying a variance in other circumstances.

4.6. **Limitation of Liability**. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties, but shall not create any duty to any Person. Neither Declarant nor the ARC shall bear any responsibility for ensuring structural integrity or soundness, or compliance with building codes and other governmental requirements or ensuring that structures on Units are located so as to avoid impairing views from or other negative impact on neighboring Units. No representation is made that all structures and improvements constructed within the Properties are or will be comparable quality, value, size or design. Neither Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any plans or specifications submitted, nor for any structural or other defects

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in work done according to approved plans, nor for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modification to any Unit.

4.7. **Enforcement**. Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from Declarant, the Association, the Board or the ARC, Owners shall, at their own cost and expense, remove any non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should an Owner fail to remove and restore as required Declarant, the Board or their designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefitted Unit as a Specific Assessment.

Declarant and the Association, acting separately or jointly, may preclude any contractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines from continuing or performing any further activities in the Properties, subject to the notice and hearing procedures contained in the Bylaws. Neither Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing entities under this Article.

In the event that the Association fails to take enforcement action within thirty (30) days after receipt of a written demand from Declarant identifying the violator and specifying the nature of the violation, then the Association shall reimburse Declarant for all costs reasonably incurred by Declarant in taking enforcement action with respect to such violation, if Declarant prevails in such action.

ARTICLE V
MAINTENANCE AND REPAIR

5.1. **Maintenance of Units**. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Declarant and the Association reserves the right to maintain the Lot Landscape Area and to charge the cost thereof to Owner(s) if Declarant and/or the Association determines in its/their sole discretion that such action is necessary in order to maintain the Community-Wide Standard. Any such charge can be added to the respective Owners' Assessments and collected as a base, specific or special Assessment, as appropriate.

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In addition to any other enforcement rights if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.4. The Association shall afford the Owner notice and a reasonable opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.2. **Responsibility for Repair and Replacement**. Each Owner shall be responsible for obtaining and maintaining property insurance on all insurable improvements on his or her Unit.

Each Owner further covenants and agrees that in the event of damage or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Each Owner shall also maintain liability insurance to fund its obligation to indemnify the Association pursuant to Section 7.6.

5.3. **Standard of Performance**. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance and irrigation shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependant upon the support and participation of every owner in its governance and administration. The Declaration establishes Westbury Park Residential Owners Association, Inc., as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the owners of property in the community.

ARTICLE VI
THE ASSOCIATION AND ITS MEMBERS

6.1. **Function of Association**. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area within the Residential Properties. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Residential Properties as the Board may adopt. Upon delegation by Declarant or termination of Declarant's authority over architectural matters, pursuant to the provisions of Article IV, the Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and

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in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and South Carolina law.

6.2. **Membership**. Every Owner shall be a member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

6.3. **Voting**. The Association shall have two classes of membership. Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners. Each Class "A" Member shall have one vote for each Unit which they own; provided, there shall be only one vote per Unit and no votes shall be exercised for any unimproved property owned by the Class "B"Member as long as the Class "B" membership exists, and no votes shall be exercised on account of any property which is exempt from assessments under Section 8.8.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member under this Declaration and the Bylaws are specified elsewhere in the Declaration and the Bylaws.

The Class "B" membership shall terminate two (2) years after termination of the Class "B" Control Period or when, in its discretion, the Class "B" Member so determines and declares in a recorded instrument. The Class "B" Control Period is that period until the first of the following to occur:

(i) when one hundred percent (100%) of the total number of Units proposed within the Property have been conveyed to Persons other than Declarant;

(ii) forty (40) years after the date of which the Declaration is recorded in the Official Records of Beaufort County, South Carolina; or

(iii) when, in its discretion, the Class "B" Member so determines.

After termination of the Class "B" Control Period, the Class "B" Member shall continue to have a right to disapprove actions of the Association, the Board and any committee as provided in Section 3.18 of the Bylaws.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Member.

In any situation in which a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised

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as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE VII
ASSOCIATION AND POWERS AND RESPONSIBILITIES

7.1. **Acceptance and Control of Association Property**. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved and unimproved real estate located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interests; provided, Declarant shall not convey any real estate to the Association as Common Area which it knows to contain hazardous substances which would require remediation or create liability for the property owner under state or federal law. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

7.2. **Maintenance of Area of Common Responsibility**. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas) and shall keep it in good, clean, attractive and sanitary condition, order and repair, consistent with this Declaration and the Community-Wide Standard, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, lakes, signage, structures, improvements and bike and pedestrian pathways/trails situated upon the Common Area;

(b) all streets, specifically including the Required Streets within the Property and all street lights and signage within the right-of-way of said streets shall be the responsibility of the Association and shall be maintained in good condition, reasonable normal wear and tear excepted;

(c) the landscaping lying within the rights-of-way of adjacent streets and alleys between the Unit boundaries and the curb of such street or alley, and between the Unit boundary and any adjacent easements for pedestrian paths or walkways;

(d) such portions of any additional property as may be included within the Area of Common Responsibility pursuant to this Declaration, any Supplemental Declaration or any agreement for maintenance entered into by the Association;

(e) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein and any fountains, lighting, pumps, conduits and similar equipment installed therein or used in connection therewith;

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(f) any property including streets and other facilities owned by Declarant and made available on a temporary or permanent basis for the primary use and enjoyment of the Association and all of its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association, or conveys such Property to the Association.

(g) Certain landscaped areas, easements and roads exist within the Westbury Park Commercial Area that benefit the Property by providing landscaped roads, screening buffers and entrance ways to the Property. These easements are more fully described as POA Landscape and Signage Easements and are referred to in Article VI, Section 2 of that certain Declaration of Covenants, Conditions and Restrictions for Westbury Park Commercial Center, which said Declarations are recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Deed Book 743, page 827. As a result of the benefit of these POA Landscape and Signage Easements and access roads to the Property, they are deemed to be within the Area of Common Responsibility. The Association shall, on an annual basis, pay to the Westbury Park Commercial Center Property Owners Association, Inc. an amount of money as mutually agreed between the Association and the Westbury Park Commercial Center Property Owners Association, Inc. for the purpose of defraying a portion of the cost of the maintenance and upkeep of the POA Landscape and Signage Easements, and for the maintenance and upkeep of Arley Way right-of-way and the Westbury Park right-of-way. In the event that the Association and the Westbury Park Commercial Center Property Owners Association, Inc. are unable to agree on the amount of such payment, each Association will appoint a representative who will attempt to negotiate and agree on a fair and equitable sum, and in the event the two (2) appointed representatives are unable to agree, a third arbiter will be mutually agreed upon by the two (2) representatives and the decision of a majority of the three (3) representatives shall be binding in determining a fair and equitable amount. The factors to be considered by the arbitrators shall include ,but not necessarily be limited to, the proportion of use of the streets within the Westbury Park Commercial Area between the Owners within the Westbury Park Commercial Area and the Owners of Units within the Property. The first payment hereunder will be due on January 1, 2000.

There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill its responsibilities under this Section. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs. The Association, acting through the Board, may temporarily or permanently close portions of any such streets or roadways to control traffic flow or to enhance privacy, or for similar purposes, without approval of the membership; provided, however, that in such event Owner, guests and lessees of the Apartment Parcel shall be given the equivalent alternative access to the Apartment Parcel. However, in such event, Owner, guests and lessees of the Apartment Parcel shall be given adequate and proper alternative access to the Apartment Parcel that is adequate and proper.

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The Association may maintain other property which it does not own, including, without limitation, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.

In the event that the Association fails to properly perform its maintenance responsibilities hereunder, Declarant may, upon not less than ten (10) days notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

7.3. **Insurance**.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following the following types of insurance, if reasonably available or, if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Association is obligated to maintain. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement at cost of the insured improvements.

(ii) Commercial general liability insurance on the Area of Common Responsibility insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability (including both primary and any umbrella policies) shall have a limit of at least Five Million and no/100 Dollars ($5,000,000.00) per occurrence with respect to bodily injury, personal injury and property damage; provided, should additional coverage and higher limits be available at reasonable cost which the Board, in the exercise of its business judgment, deems advisable, the Association shall obtain such additional coverages or limits:

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(iii) Workers compensation insurance and employers liability coverage insurance;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment. Fidelity insurance policies shall include coverage for officers, directors and other persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort County, South Carolina area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon reasonable request, to the Owner of any insured Unit.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.23 of the Bylaws, that loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.5.

All insurance coverage obtained by the Board shall:

(i) be written with a company whose primary business is providing insurance coverage and which is authorized to conduct business in the State of South Carolina and which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members.

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(iii) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and

(iv) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which name the Owners and their Mortgagees (as a class) as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees and manager, the Owners and their tenants, servants, agents and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file all insurance claims and obtain reliable and detailed estimates of the cost of repair and construction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the

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determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds received, after application of any applicable deductible, are insufficient to cover the costs of repair and reconstruction, the Board of Directors may, without a vote of the Voting Member, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. **Compliance and Enforcement**. Every Owner and occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XIII, failure to comply shall be grounds for an action by the Association, Declarant or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due for damages or injunctive relief or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association pursuant to this Section and in the Bylaws.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and paralegals' fees and court costs reasonably incurred in such action.

The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

7.5. **Implied Rights; Board Authority**. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws and any right or privilege which could reasonably be implied from or which is reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

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7.6. **Indemnification of Officers, Directors and Others**. The Association shall indemnify every officer, director and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited to those actions as to which liability is limited under this Section and South Carolina law.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association) and the Association shall indemnify and forever hold each such officer and director harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled. This Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Each Owner shall indemnify and hold harmless the Association from any loss, damages and expenses, including counsel fees, which they may incur as a result of the failure of such Owner, any occupant of such Owner's Unit, or any contractor, employee or agent of such Owner acting within the scope of his contract, agency or employment to comply with this Declaration, any Supplemental Declaration or other covenants applicable to such Owner's Unit, the Design Guidelines, Bylaws and rules of the Association.

7.7. Enhancement of Safety. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED, TO MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTIES DESIGNED TO ENHANCE THE SAFETY OF THE PROPERTIES. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR OF DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPRISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR OF DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS,

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TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

7.8. **Governmental, Educational and Religious Interests**. So long as Declarant owns any property described in Exhibits "A" or "B", it may designate sites within the Properties for government, education or religious activities and interests, including, but not being limited to, fire, police, utility facilities, schools or education facilities, houses or worship, parks, recreation and other public facilities. The sites may include Common Areas and in such case, the Association shall dedicate and convey such sites as directed by Declarant and no membership approval shall be required. Declarant and/or the Association shall have the express right and authority to dedicate streets within the Property to Beaufort County, South Carolina.

ARTICLE VIII
ASSOCIATION FINANCES

8.1. **Budgeting and Allocating Common Expenses**. At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.6 to fund the Common Expenses. The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association. The Board shall take into account the number of Units subject to assessment under Section 8.6 on the first day of the fiscal year for which the budget is prepared and may consider the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as Declarant has the right unilaterally to annex additional property pursuant to Section 9.1, Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6) which may be either a contribution, an advance against future assessments due from the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty (60) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and seventy-five percent (75%) of the total number of Voting Members and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the

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purpose of considering the budget except on petition of the Voting Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

At least thirty (30) days prior to the beginning of each fiscal year, the Board shall provide a copy of the budget and notice of the assessments to Owners. The Board shall include such assessment in its annual billing of Owners and shall be responsible for collecting all assessments on behalf of the Association and disbursing the collected funds, less costs of collection, to the Association.

8.2. **Budgeting for Reserves**. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets maintained as a Common Expense, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budgets, with respect both to amount and timing by annual Base Assessments over the budget period.

8.3. **Special Assessments**. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses.

Except as otherwise specifically provided in this Declaration, any Special Assessment which would exceed twenty percent (20%) of the annual budget for the year immediately preceding that in which the Special Assessment is approved shall require the affirmative vote or written consent of Voting Members representing at least fifty-one percent (51%) of the total votes allocated to Units which will be subject to such Special Assessment and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. **Specific Assessments**. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties, as follows:

(a) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws before levying in Specific Assessment under this subsection.

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8.5. **Authority to Assess Owners; Time of Payment**. The Board is hereby authorized to levy assessments against each Unit as provided for in this Article and elsewhere in the Declaration and Bylaws. The obligation to pay assessments shall commence as to each Unit on the first day of the month following (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

All assessments on behalf of the Association shall be levied and collected by the Board. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.6. **Personal Obligation**.

(a) Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay all assessments authorized in this Declaration. All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not less than ten percent (10%) per annum, subject to the limitations of South Carolina law) reasonable late charges in such amount as is established by resolution of the Board, costs and reasonable attorneys' and paralegals' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs and reasonable attorneys' and paralegals' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Person who obtains title to a Unit following foreclosure of a first priority Mortgage given in good faith and for value shall be liable for unpaid assessments which accrued prior to such foreclosure.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was levied, if any, until a new assessment is made, at which time the Association may retroactively assess any difference.

No Owner may exempt himself for liability for assessments by non-use of Common Area, abandonment of his Unit or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take

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some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements or from any other action it takes.

The Board shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Board or its designated agent setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Board may require the advance payment of a processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, the Declarant may annually elect either to pay regular assessments on its unsold Units, or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year.

Regardless of such election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

The Association is specifically authorized to enter into subsidy contracts and contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities.

8.7. **Lien for Assessments**. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina law) and costs of collection (including attorneys' and paralegals' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under South Carolina law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. While a Unit is owned by the Association following foreclosure (a) no right to vote shall be exercised on its behalf, and (b) no assessment shall be levied on it. The Board may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first priority Mortgage given in good faith and for value shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title following foreclosure of such a Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

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8.8. **Exempt Property**. The following property shall be exempt from payment of Base Assessments, Service Area Assessments and Special Assessments:

(a) all Common Area and any property owned by Declarant which is included in the Area of Common Responsibility pursuant to Section 7.2;

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of Westbury Park and to accommodate changes in the master plan which inevitably occur as a community the size of Westbury Park grows and matures.

ARTICLE IX
EXPANSION OF THE COMMUNITY

9.1. **Expansion by Declarant**. Until all property described on Exhibit "B" has been subjected to this Declaration or forty (40) years after the recording of this Declaration, whichever is earlier. Declarant may annex (i.e. unilaterally subject to the provisions of this Declaration) all or portions of the real property described in Exhibit "B". Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Official Records of Beaufort County, South Carolina, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2. **Additional Covenants and Easements**. Declarant may subject any portion of the property submitted to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such Supplemental Declaration may supplement or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

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ARTICLE X
ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. **Withdrawal of Property**. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 9.1 for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. **Right to Transfer or Assign Declarant Rights**. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that of Declarant under this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Official Records of Beaufort County, South Carolina. The foregoing shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.3. **Right to Use Common Area**. Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units and sales offices. Declarant and its designees shall have easements for access to and use of such facilities. Declarant and its designees, during the course of construction on the Properties adjacent to any Common Area, may use such Common Area for temporary storage and for facilitating construction on adjacent property. Upon cessation of such use, the user of such Common Area shall restore it to its condition prior to such use. Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Areas pursuant to this Section.

Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

10.4. **Right to Approve Additional Covenants**. No Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

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10.5. **Right to Approve Changes in Community Standards**. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any Developable Land.

10.6. **Exclusive Right to Use the Name of the Development**. No Person shall use the word "Westbury Park" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the term "Westbury Park" in printed or promotional matter solely to specify that particular property is located within Westbury Park and the Association shall be entitled to use the word "Westbury Park" in its name.

10.7. **Amendment and Termination of Rights**. This Article may not be amended without the written consent of Declarant so long as Declarant has any rights hereunder. The rights contained in this Article shall terminate upon the earlier of (a) seventy-five (75) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XI
EASEMENTS

11.1. **Easements in Common Area**. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

(a) this Declaration, the Bylaws and any other applicable covenants and easements, including any declaration of easements and covenant to share costs or similar instruments relating to such Common Area which grant non-Members rights to use and enjoy portions of the Common Area upon payment of fees or a portion of the costs relating to such Common Area;

(b) any restrictions or limitations contained in any deed conveying such property to the association or any other document which grants use rights to Owners or to the Association;

(c) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests (and such others as may be granted use rights pursuant to subsection (g) and instruments described in Section 11.1(a)) and rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing pursuant to Section 3.23 of the Bylaws;

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(e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration;

(f) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable regulation as provided for in this Section 11.1 and Article III. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

11.2. **Easements of Encroachment**. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment between each Unit and any adjacent common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered on a Unit or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant or the Association.

11.3. **Easements for Utilities, Etc.**. There are hereby reserved unto Declarant, so long as Declarant owns any property described on Exhibit "A" or "B" of this Declaration and hereby granted to the Association, its designees (which may include, without limitation, Beaufort County, South Carolina, and any utility) access and maintenance easements upon, across, over and under all of the Properties to the extent necessary for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing dwelling on a Unit and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties except as approved by Board or Declarant.

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11.4. **Easements for Lake and Pond Maintenance and Flood Water**. Declarant reserves for itself and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation to enter upon the lakes, ponds, streams and wetlands located within the Property to (a) install, keep, maintain and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility, (b) construct, maintain and repair any bulkhead, wall, dam or other structure retaining water, and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration.

Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams or wetlands to the extent necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, and its designees, and granted to the Association, for itself and its designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of lake beds, ponds and streams within the Properties, in order: (a) to temporarily flood and back water upon and maintain water over such portions of the Properties, (b) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Area of Common Responsibility, (c) to maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands, and (d) to enter upon and across such portions of the Properties to the extent reasonably necessary for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall or other natural disasters.

11.5. **Easements to Serve Additional Property**. Declarant hereby reserves for itself and its duly authorized agents, representatives, successors, successors-in-title, assigns, licensees and mortgagees, a perpetual nonexclusive easement over the Common Area for the purposes of enjoyment, use, access and development of the property described in Exhibits "A" and "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it or its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any private roadway serving such property.

11.6. **Easement for Maintenance, Emergency and Enforcement**. Declarant, the Association and their respective designees shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons to perform maintenance pursuant to Article V

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and/or Article VII hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.7. **Easement for Use of Private Streets**. Declarant hereby creates a non-perpetual, non-exclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services the Apartment Parcel; and for vehicles, equipment and personnel providing garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities.

11.8. **Easements for Stormwater Drainage and Retention**. Each portion of the Properties is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Properties for the purpose of stormwater drainage and runoff in accordance with the master drainage plan established by Declarant for the Properties, which easement shall include, but shall not be limited to, the right to tie in to existing stormwater drainage facilities and to divert stormwater runoff from each Unit into such stormwater drainage facilities at such points and in such manner as approved by Declarant and for the flow of stormwater runoff over the Properties to such points and from such points through the stormwater drainage facilities into wetlands, ponds or other retention facilities within or outside the Properties. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge which Declarant may hereafter impose or which may be imposed on the Properties, Declarant or any Owner by any governmental entity having jurisdiction.

PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Westbury Park as a community in which people enjoy living, working and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within and outside the community and with our neighbors and protection of the rights of others who have an interest in the community.

ARTICLE XII
DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

12.1. **Consensus for Association Litigation**. Except as provided in this section, the Association shall not commence a judicial or administrative proceedings without the prior approval

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of at least seventy-five percent (75%) of the Voting Members. A Voting Member representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding seventy-five percent (75%) of the total votes attributable to Units in the Neighborhood represented by the Voting Member. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article VIII, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes and pursuant to the same procedures necessary to institute proceedings as provided above.

12.2. **Alternative Method for Resolving Disputes**. Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances or disputes described in Section 12.3 ("Claims") using the procedures set forth in Section 12.4 before of filing suit in any court.

12.3. **Claims**. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 12.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be claims and shall not be subject to the provisions of Section 12.4:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Association Finances);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III (Use and Conduct) and Article IV (Architecture and Landscaping);

(c) any suit between Owners which does not include Declarant or the Association as a party, if such suit assets a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit which otherwise would be barred by any applicable statute of limitations.

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With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.4.

12.4. **Mandatory Procedures**.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing ("Notice") stating plainly and concisely:

1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

2. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

3. Claimant's proposed remedy; and

4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if the Association is not a Party and the Board, in its discretion, believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation pursuant to mediation provisions recommended or adopted by the Supreme Court of South Carolina from time to time.

2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations or does not appear for the mediation, Claimant shall be deemed to have waived the claim and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

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3. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth herein.

(d) Arbitration.

1. If the Parties do not resolve the Claim through mediation, the Claimant shall have 30 days following termination (as determined by the mediator) of the mediation proceedings ("Termination of Mediation") to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. Unless the Parties agree in writing to be bound by the arbitrator's decision ("Award") prior to the commencement of arbitration proceedings under the foregoing paragraph, any Party shall be free to reject the Award and sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

12.5. **Allocation of Costs of Resolving Claims**.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 12.4(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 12.4(c).

(b) Each Party shall bear all of its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 12.4(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs") except as otherwise provided in this subsection.

If any of the Parties rejects the Award and pursues a judicial resolution under Section 12.4(d)(2) and the final judgment is either the same as the Award or more advantageous to any non-rejecting Party, each such non-rejecting Party shall be entitled to recover its Post Mediation Costs from the rejecting Party. If there is more than one rejecting Party, such non-rejecting Party's Post Mediation Costs shall be allocated pro rata among all rejecting Parties.

12.6. **Enforcement of Resolution**. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 12.4 and any Party thereafter fails to abide by

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the terms of such Agreement or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' and paralegals' fees and court costs.

PART SIX: CHANGES IN THE COMMUNITY

Communities such as Westbury Park are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Westbury Park and its governing documents must be able to adapt to these changes while protecting the things that make Westbury Park special.

ARTICLE XIII
CHANGES IN OWNERSHIP OF UNITS/RIGHT OF FIRST REFUSAL

13.1. When any Unit within the Property is offered for sale by successors in title to Declarant, Declarant shall have the exclusive option to purchase such Unit at the price and on the terms of any bonafide offer for such Unit made in writing to the Unit Owner at such time and submitted to Declarant for review and verification. Each Owner shall notify Declarant of its intent to sell his Unit with such notice setting forth in full the certified terms and conditions of the sale, including the full name and primary address of the prospective true buyer (as distinguished from agents or intermediaries). Declarant shall have thirty (30) days after the presentation of such notice of said bonafide contract to Declarant to exercise the within purchase option. If Declarant does not exercise its option to purchase the Unit during this period, the record owner may freely convey the Unit to the subject offeror. Should, however, such sale to a third party not be consummated within four (4) months of the date the offer is transmitted to Declarant at the price and on the terms certified, the terms and limitations of this section shall again be imposed upon any sale by Owner. If Declarant shall elect to purchase such property, the transaction shall be consummated on the terms offered; provided, however, Declarant shall have a minimum of thirty (30) days from the delivery of notice to consummate the transaction.

ARTICLE XIV
AMENDMENT OF DECLARATION

14.1. **Declarant**. Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no materially adverse effect upon any material rights of any affected Owner. Thereafter, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination which is in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties, or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including,

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for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units, or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as Declarant still owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

14.2. **By Members**. Except as otherwise set forth elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing fifty-one percent (51%) of the total Class "A" votes in the Association, including fifty-one percent (51%) of the Class "A" votes held by Members other than Declarant, and the consent of Declarant, so long as Declarant has an option to subject additional property to this Declaration pursuant to Section 9.1. In addition, the approval requirements set forth in Article XVI hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

14.3. **Validity and Effective Date of Amendments**. Amendments to this Declaration shall become effective upon recordation in the Official Records of Beaufort County, South Carolina, unless a later effective date is specified herein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may, directly or indirectly, remove, revoke or modify the status of, or any right or privilege of, the Declarant or the Class "B" Member without the written consent of the Declarant. Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

14.4. **Exhibits**. Exhibits "A", "B", "C", "D", "E" and "F" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article, except as otherwise specifically provided in this Declaration. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

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IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

PLANTATION PROPERTIES, L.L.C., a South Carolina Limited Liability Company

By: _____
James N. Richardson, Jr.
Its: Managing Member

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STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

The undersigned notary public does hereby certify that James N. Richardson, Jr., as Managing Member of Plantation Properties, L.L.C., a South Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29th day of December, 1998.

Notary Public for South Carolina
My commission expires: Oct 19, 2003

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EXHIBIT "A"

Land Initially Submitted

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, containing approximately 30.838 acres and shown as "Phase I" on a plat entitled "A Plat of Phase I, Westbury Park, Beaufort County, South Carolina" prepared for Plantation Properties, L.L.C. dated December 9, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 68, page 33. For a more detailed description of said property, reference may be had to said plat of record.

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EXHIBIT "B"

Land Subject to Annexation

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, shown as 128.973 acres on a plat entitled "A Plat of Block X-1, X-2, X-3 and X-4 Being a Portion of Block 'X'" and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 58, page 198.

SAVING AND EXCEPTING THEREFROM THE FOLLOWING:

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, containing approximately 30.838 acres and shown as "Phase I" on a plat entitled "A Plat of Phase I, Westbury Park, Beaufort County, South Carolina" prepared for Plantation Properties, L.L.C. dated December 9, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 68, page 33. For a more detailed description of said property, reference may be had to said plat of record.

AND SAVING AND EXCEPTING THEREFROM THE FOLLOWING"

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118. For a more detailed description of said property, reference may be had to said plat of record.

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EXHIBIT "C"

Initial Use Restrictions and Rules

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EXHIBIT "C"

INITIAL USE RESTRICTIONS AND RULES

The following rules and restrictions shall apply to the property described on Exhibit "A" of the Declaration of Covenants, Conditions, Restrictions and Easements for Westbury Park dated December 29, 1998, as may be amended (the "Property" and "Declaration") to which these Initial Use Restrictions and Rules are attached and shall apply until such time as they are amended, modified, repealed or limited by rules of the Westbury Park Residential Association, Inc. ("Association").

1. **General**. The Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or sales office for any real estate broker retained by Plantation Properties, L.L.C. ("Developer") to assist in the sale of property within the Property, office for any property manager retained by the Association or business offices for Developer or the Association consistent with this Declaration and any Supplemental Declaration).

2. **Restricted Activities.** The following activities are restricted within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors of the Association ("Board of Directors"):

(a) Parking of more than two vehicles per lot or home on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, boats, trailers, or stored or inoperable vehicles in places other than enclosed garages; provided, the Board may adopt reasonable regulations regarding guest and commercial parking;

(b) Raising, breeding, or keeping animals, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a home subject to such additional rules as may be adopted for the Property or any portion thereof, which rules may prohibit all pets or specific types of animals. Any pet that the Board in its sole discretion determines to be a nuisance shall be removed from the home upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

(c) Any activity or condition that interferes with the reasonable enjoyment of any part of the Property or that detracts from the overall appearance of the Property;

(d) Subdivision of a lot into two or more lots, or changing the boundary lines of any lot after a subdivision plat including such lot has been approved and filed in the Official Records of Beaufort County, South Carolina, except that Developer, and any person or entity expressly authorized in writing by Developer, shall be permitted to subdivide or replat lots which it owns;

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(e) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(f) Occupancy of a home by more than two persons per bedroom in the Unit. For purposes of this provision "occupancy" shall be defined as staying overnight in the home more than 30 days in any six-month period;

(g) Conducting, participating in, or holding of any events, functions or programs that involve games of chance, raffles, gambling, wagering, betting, or similar activities where the participants pay money or give other valuable consideration for the opportunity to receive monetary or other valuable consideration; provided, however, that the foregoing is not included to bar the occasional use of the interior of a residential dwelling on the Property for the activities described in this subparagraph (h) so long as such use is either; (x) in conjunction with fund-raising activities for a non-profit or charitable organization, or (y) is a private, social, non-commercial activity;

(h) Any business, trade, or similar activity, except as provided in Paragraph 3 and except that an Owner or occupant residing in a home may conduct "discrete business activities" within the home so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the home; the business activity does not involve regular visitation of the home or door-to-door solicitation of residents of the Property; and the business activity is consistent with the residential character of the Property and does not violate these Use Restrictions and Rules. Examples of "discrete business activities" include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that it determines interfere with the enjoyment or residential purpose of the Property in its sole and absolute discretion.

The leasing of a home in accordance with these Use Restrictions and Rules shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Developer or a Builder approved by Developer with respect to its development and sale of the Property or its use of any lots or homes which it owns within the Property, including the operation of a timeshare or similar program.

Garage sales, rummage sales, or similar sale not exceeding two consecutive days in duration will not be considered a business or trade, within the meaning of this subparagraph 2(i) so long as the Owners or occupants of a Unit do not hold, sponsor or participate in more than one such sale within the Property in any 12 month period.

Notwithstanding anything to the contrary in this Declaration, Developer may utilize a home as a show house or model home. Furthermore, Developer and any approved Builder may utilize a Unit as a sales office for homes being constructed within the Property; and

(i) Any modifications to existing construction or landscaping, or exterior additions to homes except as provided in Article IV.

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3. **Prohibited Conditions.** The following shall be prohibited within the Property:

(a) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the lot or home rotates among participants in the program fixed or floating time schedule over a period of years, except that Developer and its assigns may operate such a program with respect to lots or homes which it owns;

(b) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless completely contained within the dwelling of the home so as not to be visible from outside the dwelling or unless otherwise approved pursuant to Article IV, except that one such apparatus measuring no more than 24 inches in diameter may be placed on a lot unless the Board of Directors disapproves or the reviewing entity under Article IV determines that the apparatus is aesthetically incompatible with the surrounding structure or environment. No such structure shall be placed in the "Front Facade Zone." As such term is defined in the Design Guidelines, extend above the ridge line of any roof, or be visible from any street.

Developer and the Association have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Property.

4. **Leasing of Homes.** "Leasing" for purposes of this Declaration, is defined s regular, exclusive occupancy of a home by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Except as otherwise provided in any applicable Supplemental Declaration or other applicable covenants. Homes may be leased in their entirety, or a garage apartment that is separate from the primary dwelling on a lot may be leased; however, no single rooms or other fraction or portion of a home may be leased, nor shall any home or portion thereof be used for operation of a boarding house, "Bed and Breakfast" establishment, or similar accommodation for transient tenants.

Except for leases of garage apartments or as may otherwise be permitted by any applicable Supplemental Declaration, all leases shall be for an initial term of no less than one year, except with the prior written consent of the Board. Leases of garage apartments shall be for an initial term of no less than three months, and such garage apartments or homes shall not be leased to more than two separate tenants in any 12 month period.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. There shall be no subleasing or assignment of any lease unless prior written approval is obtained from the Board of Directors or its designated administrator.

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5. **Signs.** The following restrictions on signs shall apply to all lots within the Property unless otherwise stated or unless otherwise approved by the Board of Directors. All signs must meet the guidelines adopted by the Board of Directors.

(a) Each lot may have posted, prior to initial occupancy of the home, a sign setting forth the Owner's name and the name of the architect and builder of the home and, in the case of a lot or home owned by Developer or a Builder approved by Developer, a sign indicating that the lot or home is available for sale; provided, any such signs shall be removed at the time of initial occupancy.

(b) Except as provided in Paragraph 6(a) above, no "for sale" or "for lease" signs may be posted on a lot or home. An "open house" sign indicating that the Owner is hosting such an event may be posted on the lot for a period not to exceed three continuous days.

(c) One sign not exceeding 18" x 24" containing political or similar endorsements may be posted on a lot. Such sign may only be posted for 45 days prior to an election or a vote on a referendum and for two days thereafter.

(d) Developer may post "model home" or similar signs on a lot containing model homes open to the public prior to initial occupancy of the homes.

(e) A lot within a Home Business Neighborhood, as described in Paragraph 3 above, may be identified with one sign not to exceed 24" by 36."

(f) No other signs, except those required by law, including posters, circulars, and billboards, may be posted on any lot so as to be visible from outside the home; provided, however, Developer shall be entitled to post signs without Board approval.

6. **Window Coverings.**

(a) Unless the Board of Directors otherwise agrees, the only acceptable window coverings that may be affixed to the interior of any windows visible from any street, alley or other portion of the Property are drapes, blinds, shades, shutters and curtains. The side of such window coverings that is visible from the exterior of any improvements must be white or off-white in color.

(b) No window tinting or reflective coating may be affixed to any window that is visible from any street, alley or other portion of the Property, without the prior approval of Developer (or the Board of Directors, if Developer hereafter elects to delegate such approval responsibility to the Association). No mirrored coatings will be permitted.

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EXHIBIT "D"

Rules of Arbitration

The rules and procedures contained in the Uniform Arbitration Act as adopted by the State of South Carolina and codified in the Code of Laws of South Carolina, 1976, §15-48-10. et seq., as may be amended from time to time.

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EXHIBIT "E"

Bylaws of Westbury Park Residential Owners Association, Inc.

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BY-LAWS

OF

WESTBURY PARK RESIDENTIAL OWNERS ASSOCIATION, INC.

Article I
Name, Principal Office, Definitions

1.1 Name. The name of the Association shall be Westbury Park Residential Owners Association, Inc., (hereinafter referred to as the "Association").

1.2 Principal Office. The principal office of the Association shall be located in Beaufort County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Westbury Park Residential Properties filed in the Office of the Register of Mesne Conveyances of Beaufort County, South Carolina (the "Declaration"), unless the context indicates otherwise.

Article II
Membership and Meetings

2.1 Membership. The Association shall have two classes of membership, Class "A" and Class "B" as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designed by the Board either within the Properties or as convenient as possible and practical.

2.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Meetings shall be of the Members. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Owners or Members representing at least 25% of the total

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Class "A" votes of the Association. Signatures on any such petition may be filed by facsimile transmission or other electronic means provided that the signature clearly acknowledges the substantive content or purpose of the petition.

2.5 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally, or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officer or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes of which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raided before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because of quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough to leave less than a quorum, provided that Members representing at least 25% of the total Class "A" votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting. The voting rights of the Members shall be set forth in the Declarations, and such voting rights provisions are specifically incorporated by reference.

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2.9 Proxies. On any matter as to which an Owner is entitled to personally cast the vote for his Unit, such vote may be cast in person or by proxy, subject to limitations of South Carolina law relating to use of general proxies and subject to any specific provisions to the contrary in the Declaration of these By-Laws. No proxy shall be valid unless signed by the Owner of the Unit for which it is given or his duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and lawful adjournments of such meeting. In no event shall a proxy be valid more than 90 days after the date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit for which it was given.

2.10 Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible Members.

2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the present of the Members representing 25% of the total Class "A" votes in the Association and the presence of a duly appointed representative of the Class "B" Member shall constitute a quorum at all meetings of the Association.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of South Carolina. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at the meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III
Board of Directors

A. Composition and Selection.

3.1 Governing Body Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The Board of Directors shall

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have the authority to delegate any of its duties to agents, employees, or others; provided, however, in the event of such delegation, the Board of Directors shall remain responsible for any action undertaken by such delegate. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural; person, any officer, director, partner or trust officer of such member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3 Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the termination of the Class "B" Control Period as defined in Section 6.3(b) of the Declaration.

3.4 Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filed by votes of Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each election to serve until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many as nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" Members. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

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(b) Election Procedures. All elections shall be held by mail. The Secretary shall cause notice of the elections to be mailed or delivered to each Owner at least 10 days prior to the closing date established by the Board for filing ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a) above, and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be "election date."

Each Owner may cast the entire vote assigned to his Unit for each position to be filed from the state of candidates on which such Owner is entitled to vote. There shall be no cumulative voting.

On the election date, the Board or its designee shall open and count the ballots. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Notwithstanding any other provision of these By-Laws;

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such director's terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Member shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be

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appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Class "A" Members, with an equal number of directors elected from each Village and any remaining directorship filled at large by the vote of all Class "A" Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves. Upon the expiration of each director's term of office the Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve the unexpired portion of the term. Thereafter, the Class "A" Members shall be entitled to elect a successor to fill such position.

The directors elected by the Class "A" Member shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the board to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time a Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term.

The Section shall not apply to directors appointed by the Class "B" Member. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting

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from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors.

3.10 Notice; Waiver of Notice.

(a) Notices of meetings of the Board shall specify the time and place of the meeting and in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery, (ii) first class mail, postage prepaid: (iii) telephone communication either director to the director or to a persons at the director's office or home who would reasonably be expected to communicate such notice promptly to the director: or (iv) telephone facsimile, computer, fiber optics or other electronic communications device, with confirmation of transmission.

All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall also be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or other devices shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons

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participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum of the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum of that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called by be transacted without further notice.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of the majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members and, if required by law, all Owners, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and exclude persons other than directors, to discuss matters of a sensitive matter, such as pending or threatened litigation personnel matters, etc.

3.16 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

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C. Powers and Duties.

3.17 Powers. The Board of Directors shall have all of the powers and duties necessary for the administrations of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, these By-Laws, or South Carolina law do not direct to be done and exercised exclusively by the Voting Member or the membership generally.

3.18 Duties. The duties of the Board shall include, without limitation;

(a) preparation and adoption of annual budgets establishing each Owner's share of the Common Expenses and Service Area Expenses;

(b) carrying out those duties and responsibilities authorized in the Declaration;

(c) providing for the operation, care, upkeep and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association provided, any reserve fund may be deposited, in the director's best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatures required;

(h) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall be obligated to take action to enforce any covenant, restriction or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying insurance, as provided in the Declaration, providing for payment of all premiums and filing and adjusting claims, ans appropriate;

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(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to an prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association;

(n) permitting utility suppliers to use portions of the Common Area as may be determined necessary, in the sole discretion of the Board, to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law the Articles of Incorporation or the Declaration;

(p) cooperating with the members in upholding the Community-Wide standard; and

(q) assisting in the resolution of disputes between owners and others without litigation as set forth in the Declaration.

3.19 Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Plantation Properties, L.L.C. or Builders under the Declaration of these By-Laws, or interfere with development, construction of any portion of the Properties, or diminish the level of service being provided by the Association;

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions, approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Section 3.8, 3.9, and 3.10 and which notice shall except in the case of the regular meetings held pursuant to the By-Laws set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

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No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditures required to comply with applicable laws and regulations.

3.20 Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in subparagraphs (a), (f), (i), (j), (n) and (o) of Section 3.18. The Plantation Properties, L.L.C., or an affiliate of Plantation Properties, L.L.C. may be employed as managing agent or manger.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period, unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 90 days written notice.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise;

(a) accrual accounting, as defined by generally accepted accounting principals, shall be employed;

(b) accounting and control should conform to generally accepted accounting principals;

(c) cash accounts of the Association shall not be commingled with any other accounts;

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(d) no renumeration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the year in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expenses activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year (1) a balance sheet, (2) an operating (income) statement, and (3) a statement of changes in financial position for the fiscal year.

3.22 Borrowing. The Association shall have the power to borrow money from any legal purposes; provided, the Board shall obtain Member approval in the same manner provided in Section 8.4 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt outstanding exceeds or would exceed 20% of the budgeted gross expenses of the Association for that fiscal year.

3.23 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational or other agreements with the Westbury Park Commercial Property Owners Association, Inc., and other owners or residents

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associations within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24 Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose monetary fines which shall constitute a lien upon the Unit of the violator and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, Bylaws or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if any, appointed pursuant to Article V, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee or if none has been appointed, then before the Board in executive session. The alleged violation shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within 10 days after the hearing date.

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(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in Article XIV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV
Officers

4.1 Officers. The officers of the Association shall be a President, Vice-President, Secretary and Treasurer. Officers may, but need not, be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Voting Members.

4.3 Removal and Vacancies. The Board may remove any officer whenever, in its best judgment, the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically bo conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

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Article V
Committees

5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and functions as the board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including committee chair, may be removed by the vote of a majority of the Board. Each committee shall operate in accordance with the terms of the resolution establishing such committee.

5.2 Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these Bylaws.

Article VI
Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the same as the fiscal year adopted by the Declarant.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 Conflicts. If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any member or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, Bylaws and Articles of Incorporation, including any amendments, the rules of the Association, the membership register, books of account and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

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(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment

(a) By Class "B" Member. Until termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation or judicial determination, (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units, (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units, or (iv) to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association and the consent of the Class "B" Member, as long as such membership exists. In addition, the approval requirements set forth in Article XVI of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes

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necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action bo be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Official Records of Beaufort County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

If an Owner consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Plantation Properties, L.L.C., Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, or the assignee of such right of privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Westbury Park Residential Owners Association, Inc., a South Carolina corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 28th day of December, 1998.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 28th day of December, 1998.

_____[SEAL]
Secretary

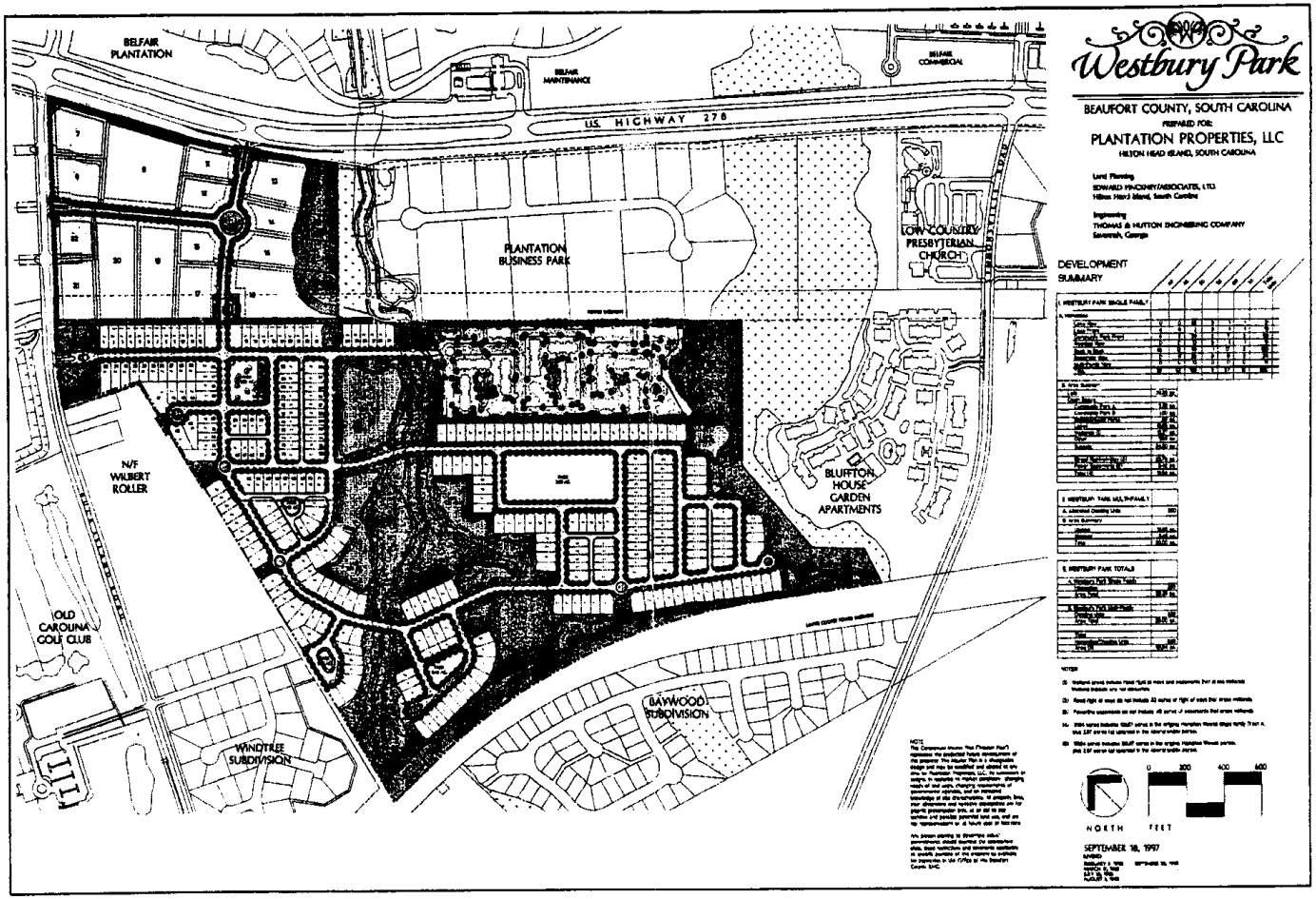
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Westbury Record on Appeal 0277

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

EXHIBIT "F"

Master Plan



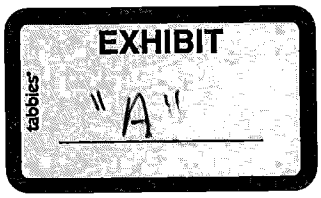
Westbury Record on Appeal 0279

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

JS+P 43238
FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 DEC 30 PM 2:22
BK 1122 PG 285
FOLDER#

358

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158
ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT

THIS ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT is made and entered into this ____ day of _____, 2015, among Plantation Properties, LLC (hereinafter "PPLLC"), Westbury Park Residential Association, Inc. (hereinafter "ROA") and Westbury Park Commercial Center Property Owners' Association, Inc. (hereinafter "COA").

AGREEMENT

WHEREAS, on November 1, 2005, PPLLC entered into an "Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park" with Montecito Westbury, LLC, pursuant to which certain assessment funds are paid to PPLLC on a monthly basis in connection with the Estate at Westbury Park condominiums (the "Estate Funds"), which is incorporated herein by reference and referred to as the "Estate Agreement;" and,

WHEREAS, PPLLC does agree that beginning on August 1, 2015 to relinquish any rights that it may have to the Estate Funds and assign such Estate Funds to the ROA and COA; and,

WHEREAS, the COA agrees not to pursue, by lawsuit or other means, PPLLC for any Estate Funds paid to PPLLC prior to August 1, 2015; and,

WHEREAS, the ROA and COA have entered into an agreement as to the division of the Estate Funds between them, whereby beginning on August 1, 2015 the Estate Funds are to be divided 80% to the ROA and 20% to the COA; and,

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

The ROA and the COA agree that the Estate Funds will be divided between them as follows: ROA: eighty percent (80%); COA: twenty percent (20%). The Estate Funds will be paid to the ROA which will remit the COA's portion of the funds within twenty (20) days of receipt of the same. The ROA shall not charge any administration fee for its collection and handling of the Estate Funds; provided, however, if legal action is necessary to collect the Estate Funds, the costs of collection shall be prorated and deducted from the Estate Funds. The ROA and COA agree to cooperate with each other in any required collection efforts regarding the Estate Funds.

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

WITNESSES:

WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158
ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

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WITNESSES:

PLANTATION PROPERTIES, LLC

By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

Brooke Boeke

Stephanie Metz

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Mar 18 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158
ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BEAUFORT COUNTY SC - ROD
BK 3709 Pgs 3041-3047
FILE NUM 2018057667
10/23/2018 04:34:22 PM
RCPT# 909791
RECORDING FEES 13.00

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

Prepared By and Without Benefit of Title Examination:
FINGER, MELNICK & BROOKS, P.A.
Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-7000

STATE OF SOUTH CAROLINA	)	NOTICE OF EXTENSION OF THE
	)	DECLARATION OF COVENANTS,
	)	CONDITIONS, RESTRICTIONS, AND
	)	EASEMENTS FOR PALMETTO LAKES
	)	APARTMENTS AT WESTBURY PARK
	)	(Record Book 1106 at Page 1225)
COUNTY OF BEAUFORT	)	(Record Book 2269 at Page 1997)

THIS NOTICE OF EXTENSION OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK (herein, the "***Notice***") is made this 23rd day of October, 2018, by WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation (herein, the "***Association***").

WITNESSETH

WHEREAS, on November 10, 1998, Plantation Properties, LLC (herein, the "***Declarant***") made and executed that *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, which was recorded on November 12, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1106 at Page 1225, as amended by that certain *Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments as Westbury Park*, dated November 1, 2005, which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2269 at Page 1997; (herein collectively, the "***Declaration***"); and,

WHEREAS, according to Section 8.01 of the Declaration, the fee owner of the Property identified in Exhibit A to the Declaration is obligated to pay the Declarant, or its successors and assigns, an annual assessment for "[the Owner's] share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area"; and,

WHEREAS, according to Section 9.01 of the Declaration, "[t]his Declaration, every provision hereof and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording, provided that the rights and easements which are stated herein to have a longer duration shall have such longer duration"; and,

WHEREAS, Section 9.01 of the Declaration states that "[t]his Declaration may be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, prior to the expiration of any term"; and,

WHEREAS, by virtue of that certain *Estate Payment Division Agreement and Assignment* entered into between the Declarant, the Association and the Westbury Park Commercial Center Property Owners' Association, Inc., a true and correct copy of which is attached hereto as Exhibit "A" (the "***Estate's Declaration Assignment***"), the Declarant assigned its declarant rights under the Declaration to the Association in accordance with Section 9.03 of the Declaration; and,

WHEREAS, the Association, as successor-in-interest to the Declarant, desires to renew the term of the Declaration for another ten (10) years pursuant to Section 9.01 of the Declaration; and,

WHEREAS, this *Notice of Extension* is being executed and recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, by the Association to reflect the Association's decision to renew the Declaration for an additional ten (10) years.

NOW, THEREFORE, pursuant to Section 9.01 of that certain *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, as amended from time to time, Westbury Park Residential Association, Inc., as successor in interest to Plantation Properties, LLC, hereby gives notice that it is exercising its right to renew the term of the aforesaid Declaration, as amended, for an additional ten (10) year period and that upon the recording hereof, the term of the aforesaid Declaration, as amended, shall be renewed for an additional ten (10) year period.

{*Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.*}

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____ (L.S.)
Name: Josh Hemmann
Title: Vice President

STATE OF PENNSYLVANIA)
)
COUNTY OF Lebanon)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 11th day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared JOSH HEMMANN as VICE PRESIDENT for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____ (SEAL)
Second Witness/Notary Public for Pennsylvania
Notary Printed Name: Shelley L Derr
My Commission Expires: October 29, 2018

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SHELLEY L. DERR, Notary Public
North Cornwall Twp., Lebanon County
My Commission Expires October 29, 2018

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

Attest: _____ (L.S.)
Name: Stacey Sawyer
Title: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 22 day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared STACEY SAWYER as SECRETARY for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

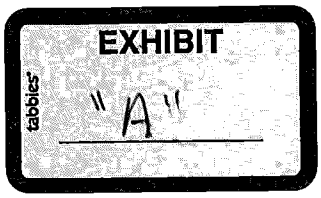
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

TASHA ARD
NOTARY PUBLIC
State of South Carolina
My Commission Expires May 22, 2023

_____ (SEAL)
Second Witness/Notary Public for South Carolina
Notary Printed Name: TASHA ARD
My Commission Expires: May 22, 2023

f:\client\v - z\westbury park res. association, inc\agreements\estates at westbury\notice of extension (erl.2).docx

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

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WITNESSES:

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WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

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By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

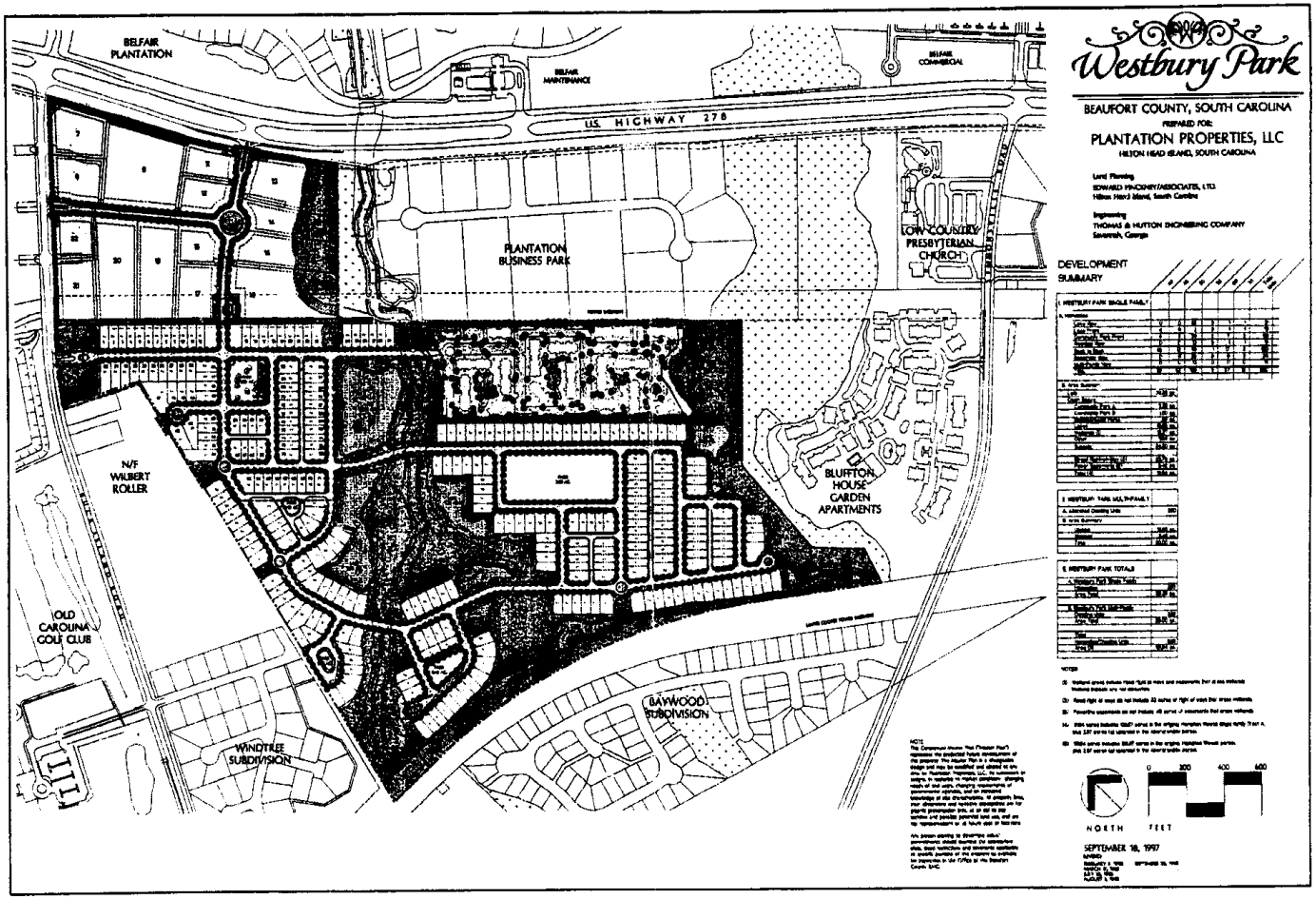
Brooke Boeke

Stephanie Metts

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

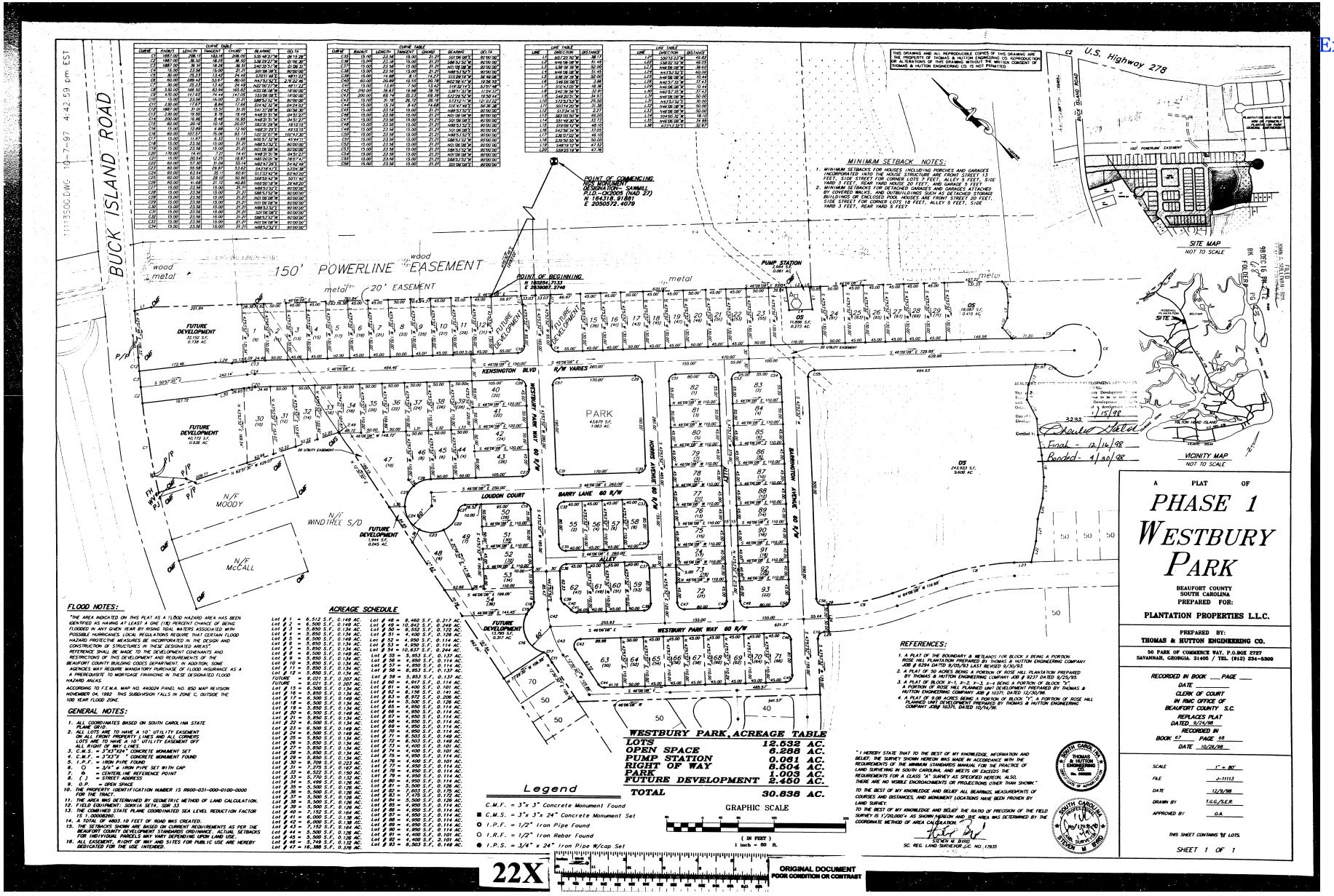


Westbury Record on Appeal 0291

ELECTRONICALLY FILED - 2020 Sep 14 11:56 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

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Westbury Record on Appeal 0292
Exhibit 8



A PLAT OF
PHASE 1 WESTBURY PARK

BEAUFORT COUNTY
SOUTH CAROLINA
PREPARED FOR:

PLANTATION PROPERTIES L.L.C.

PREPARED BY:
THOMAS & HUTTON ENGINEERING CO.
50 PARK OF COMMERCE WAY. P.O.BOX 2727
SAVANNAH, GEORGIA. 31406 / TEL. (912) 234-5300

RECORDED IN BOOK ___ PAGE ___
DATE ___
CLERK OF COURT
IN RMC OFFICE OF
BEAUFORT COUNTY S.C.
REPLACES PLAT
DATED 9/24/98
RECORDED IN
BOOK 57 PAGE 68
DATE 10/26/98

SCALE 1" = 80'
FILE J-11113
DATE 12/9/98
DRAWN BY: T.G.G./S.E.R.
APPROVED BY: G.A.

THIS SHEET CONTAINS 1 LOTS.

SHEET 1 OF 1

WESTBURY PARK, ACREAGE TABLE

LOTS	12.532 AC.
OPEN SPACE	6.288 AC.
PUMP STATION	0.061 AC.
RIGHT OF WAY	6.504 AC.
PARK	1.003 AC.
FUTURE DEVELOPMENT	2.450 AC.
TOTAL	30.838 AC.

GRAPHIC SCALE
(IN FEET)
1 inch = 80 ft.

Legend
C.M.F. = 3"x 3" Concrete Monument Found
C.M.S. = 3"x 3"x 24" Concrete Monument Set
I.P.F. = 1/2" Iron Pipe Found
I.R.F. = 1/2" Iron Rebar Found
I.P.S. = 3/4" x 24" Iron Pipe W/cap Set

FLOOD NOTES:
"THE AREA INDICATED ON THIS PLAT AS A FLOOD HAZARD AREA HAS BEEN IDENTIFIED AS HAVING AT LEAST A ONE (1%) PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS". REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE BEAUFORT COUNTY BUILDING CODES DEPARTMENT. IN ADDITION, SOME AGENCIES MAY REQUIRE MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.
ACCORDING TO F.E.M.A. MAP NO. 440029 PANEL NO. 0150 MAP REVISION NOVEMBER 04, 1992 THIS SUBDIVISION FALLS IN ZONE C, OUTSIDE THE 100 YEAR FLOOD ZONE.

GENERAL NOTES:
1. ALL COORDINATES BASED ON SOUTH CAROLINA STATE PLANE GRID.
2. ALL LOTS ARE TO HAVE A 10' UTILITY EASEMENT ON ALL FRONT PROPERTY LINES AND ALL CORNER LOTS ARE TO HAVE A 10' UTILITY EASEMENT OFF ALL RIGHT OF WAY LINES.
3. C.M.S. = 3"X3"X24" CONCRETE MONUMENT SET
4. C.M.F. = 3"X3" CONCRETE MONUMENT FOUND
5. I.P.F. = IRON PIPE FOUND
6. ○ = 3/4" x IRON PIPE SET WITH CAP
7. ⊕ = CENTERLINE REFERENCE POINT
8. ( ) = STREET ADDRESS
9. O.P. = OPEN SPACE
10. THE PROPERTY IDENTIFICATION NUMBER IS R600-031-000-0100-0000 FOR THE TRACT.
11. THE AREA WAS DETERMINED BY GEOMETRIC METHOD OF LAND CALCULATION.
12. FIELD EQUIPMENT: SOKKIA SET4, SDR 33
13. THE COMBINED STATE PLANE COORDINATED SEA LEVEL REDUCTION FACTOR IS 1.00006260.
14. A TOTAL OF 4803.10 FEET OF ROAD WAS CREATED.
15. THE SETBACKS SHOWN ARE BASED ON CURRENT REQUIREMENTS AS PER THE BEAUFORT COUNTY DEVELOPMENT STANDARDS ORDINANCE. ACTUAL SETBACKS FOR INDIVIDUAL PARCELS MAY VARY DEPENDING UPON LAND USE.
16. ALL EASEMENT, RIGHT OF WAY AND SITES FOR PUBLIC USE ARE HEREBY DEDICATED FOR THE USE INTENDED.

ACREAGE SCHEDULE
Lot # 1 = 6,512 S.F. 0.149 AC.
Lot # 2 = 5,850 S.F. 0.134 AC.
Lot # 3 = 5,850 S.F. 0.134 AC.
Lot # 4 = 6,500 S.F. 0.149 AC.
Lot # 5 = 5,850 S.F. 0.134 AC.
Lot # 6 = 5,850 S.F. 0.134 AC.
Lot # 7 = 5,850 S.F. 0.134 AC.
Lot # 8 = 5,850 S.F. 0.134 AC.
Lot # 9 = 5,850 S.F. 0.134 AC.
Lot # 10 = 5,850 S.F. 0.134 AC.
Lot # 11 = 5,850 S.F. 0.134 AC.
Lot # 12 = 5,850 S.F. 0.134 AC.
FUTURE = 9,021 S.F. 0.207 AC.
FUTURE = 9,021 S.F. 0.207 AC.
Lot # 13 = 5,850 S.F. 0.134 AC.
Lot # 14 = 5,850 S.F. 0.134 AC.
Lot # 15 = 5,850 S.F. 0.134 AC.
Lot # 16 = 5,850 S.F. 0.134 AC.
Lot # 17 = 5,850 S.F. 0.134 AC.
Lot # 18 = 6,500 S.F. 0.149 AC.
Lot # 19 = 5,850 S.F. 0.134 AC.
Lot # 20 = 6,500 S.F. 0.149 AC.
Lot # 21 = 5,850 S.F. 0.134 AC.
Lot # 22 = 6,500 S.F. 0.149 AC.
Lot # 23 = 6,500 S.F. 0.149 AC.
Lot # 24 = 6,500 S.F. 0.149 AC.
Lot # 25 = 5,850 S.F. 0.134 AC.
Lot # 26 = 5,850 S.F. 0.134 AC.
Lot # 27 = 5,850 S.F. 0.134 AC.
Lot # 28 = 5,850 S.F. 0.134 AC.
Lot # 29 = 5,850 S.F. 0.134 AC.
Lot # 30 = 9,709 S.F. 0.223 AC.
Lot # 31 = 7,152 S.F. 0.164 AC.
Lot # 32 = 6,522 S.F. 0.150 AC.
Lot # 33 = 5,500 S.F. 0.126 AC.
Lot # 34 = 5,500 S.F. 0.126 AC.
Lot # 35 = 5,500 S.F. 0.126 AC.
Lot # 36 = 5,500 S.F. 0.126 AC.
Lot # 37 = 7,152 S.F. 0.164 AC.
Lot # 38 = 5,500 S.F. 0.126 AC.
Lot # 39 = 5,500 S.F. 0.126 AC.
Lot # 40 = 6,000 S.F. 0.138 AC.
Lot # 41 = 7,152 S.F. 0.164 AC.
Lot # 42 = 6,000 S.F. 0.138 AC.
Lot # 43 = 5,500 S.F. 0.126 AC.
Lot # 44 = 5,500 S.F. 0.126 AC.
Lot # 45 = 5,500 S.F. 0.126 AC.
Lot # 46 = 5,748 S.F. 0.132 AC.
Lot # 47 = 16,388 S.F. 0.376 AC.
Lot # 48 = 9,460 S.F. 0.217 AC.
Lot # 49 = 10,240 S.F. 0.235 AC.
Lot # 50 = 6,552 S.F. 0.150 AC.
Lot # 51 = 4,950 S.F. 0.114 AC.
Lot # 52 = 4,950 S.F. 0.114 AC.
Lot # 53 = 4,950 S.F. 0.114 AC.
Lot # 54 = 10,637 S.F. 0.244 AC.
Lot # 55 = 5,953 S.F. 0.137 AC.
Lot # 56 = 4,950 S.F. 0.114 AC.
Lot # 57 = 4,950 S.F. 0.114 AC.
Lot # 58 = 6,953 S.F. 0.137 AC.
Lot # 59 = 8,953 S.F. 0.206 AC.
Lot # 60 = 4,947 S.F. 0.114 AC.
Lot # 61 = 4,950 S.F. 0.114 AC.
Lot # 62 = 6,156 S.F. 0.141 AC.
Lot # 63 = 8,972 S.F. 0.206 AC.
Lot # 64 = 5,304 S.F. 0.122 AC.
Lot # 65 = 4,950 S.F. 0.114 AC.
Lot # 66 = 4,950 S.F. 0.114 AC.
Lot # 67 = 4,950 S.F. 0.114 AC.
Lot # 68 = 4,950 S.F. 0.114 AC.
Lot # 69 = 6,453 S.F. 0.148 AC.
Lot # 70 = 6,503 S.F. 0.149 AC.
Lot # 71 = 4,950 S.F. 0.114 AC.
Lot # 72 = 4,950 S.F. 0.114 AC.
Lot # 73 = 4,950 S.F. 0.114 AC.
Lot # 74 = 4,950 S.F. 0.114 AC.
Lot # 75 = 4,400 S.F. 0.101 AC.
Lot # 76 = 4,400 S.F. 0.101 AC.
Lot # 77 = 4,400 S.F. 0.101 AC.
Lot # 78 = 4,950 S.F. 0.114 AC.
Lot # 79 = 4,950 S.F. 0.114 AC.
Lot # 80 = 4,950 S.F. 0.114 AC.
Lot # 81 = 4,950 S.F. 0.114 AC.
Lot # 82 = 4,950 S.F. 0.114 AC.
Lot # 83 = 4,950 S.F. 0.114 AC.
Lot # 84 = 4,950 S.F. 0.114 AC.
Lot # 85 = 4,950 S.F. 0.114 AC.
Lot # 86 = 4,950 S.F. 0.114 AC.
Lot # 87 = 4,950 S.F. 0.114 AC.
Lot # 88 = 4,950 S.F. 0.114 AC.
Lot # 89 = 4,950 S.F. 0.114 AC.
Lot # 90 = 4,950 S.F. 0.114 AC.
Lot # 91 = 4,950 S.F. 0.114 AC.
Lot # 92 = 4,950 S.F. 0.114 AC.
Lot # 93 = 6,503 S.F. 0.149 AC.

REFERENCES:
1. A PLAT OF THE BOUNDARY & WETLANDS FOR BLOCK X BEING A PORTION ROSE HILL PLANTATION PREPARED BY THOMAS & HUTTON ENGINEERING COMPANY JOB # 9294 DATED 9/05/93 LAST REVISED 9/30/93
2. A PLAT OF 50 ACRES BEING A PORTION OF ROSE HILL PLANTATION PREPARED BY THOMAS & HUTTON ENGINEERING COMPANY JOB # 9237 DATED 9/25/95.
3. A PLAT OF BLOCK X-1, X-2, X-3 X-4 BEING A PORTION OF BLOCK "X" A PORTION OF ROSE HILL PLANNED UNIT DEVELOPMENT PREPARED BY THOMAS & HUTTON ENGINEERING COMPANY JOB # 10371, DATED 12/20/96
4. A PLAT OF SUB ACRES BEING A PORTION OF BLOCK "X" A PORTION OF ROSE HILL PLANNED UNIT DEVELOPMENT PREPARED BY THOMAS & HUTTON ENGINEERING COMPANY JOB# 10371, DATED 10/24/98.

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED HEREON. ALSO, THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN."
TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL BEARINGS, MEASUREMENTS OF COURSES AND DISTANCES, AND MONUMENT LOCATIONS HAVE BEEN PROVEN BY LAND SURVEY.
TO THE BEST OF MY KNOWLEDGE AND BELIEF THE RATIO OF PRECISION OF THE FIELD SURVEY IS 1/20,000+ AS SHOWN HEREON AND THE AREA WAS DETERMINED BY THE COORDINATE METHOD OF AREA CALCULATION.

STEVEN E. ROSE
SC. REG. LAND SURVEYOR (LIC. NO. 17835

SOUTH CAROLINA PROFESSIONAL ENGINEER
THOMAS & HUTTON ENGINEERING
No. 00000
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA PROFESSIONAL ENGINEER
STEVEN E. ROSE
No. 17835

22X

ORIGINAL DOCUMENT
POOR CONDITION OR CONTRAST

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., Plaintiff/Counterclaim Defendant, v. ESTATE AT WESTBURY OWNERS ASSOCIATION, INC., Defendant/Counterclaim Plaintiff.	**MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

Defendant/Counterclaim Plaintiff Estate at Westbury Owners Association, Inc. ("Estate" or "Defendant") respectfully opposes Plaintiff's Motion for Temporary Injunction. Defendant's Motion for Partial Summary Judgment, and the memorandum and exhibits in support thereof, are incorporated herein.

Plaintiff cannot meet *any* of the required elements for a preliminary injunction because:

(1) Plaintiff will suffer *no* irreparable harm without the injunction. Indeed, the current situation has existed for many years. Plaintiff's motion itself was filed more than six months ago, in January 2020, and Plaintiff initially noticed the hearing for February 7, 2020. During the interim, the parties have functioned effectively.

(2) Plaintiff has *zero* likelihood of success on the merits. Plaintiff's legal claims are directly contrary to the underlying declarations and covenants; Defendant has fulfilled all of its responsibilities under the relevant documents; and Defendant does not have the lawful ability take many of actions the Plaintiff demands.

(3) Plaintiff has *plenty* of adequate remedy at law. In the highly unlikely event

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that Plaintiff prevails, Plaintiff can be monetarily compensated for the damages it claims—alleged damages to the gates, streets, and amenities at Westbury.

To the contrary, Defendant is entitled to summary judgment on many of the key issues in this dispute.

BACKGROUND

Defendant incorporates the statement of facts and arguments in its Memorandum in Support of Partial Summary Judgment. Summarized, Plaintiff and Defendant are neighboring communities that both were established by the same developer on the same tract of land (Westbury Park and Westbury Estate, respectively). Defendant is landlocked from access to outside roads, with the exception of an easement through Plaintiff's development along Kensington Boulevard (marked in red, below). That is how the property was developed, and that is how it has always been (since 1998).



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For decades, Defendant paid Plaintiff an exorbitant assessment to maintain Kensington Boulevard, as set forth in the governing documents. Over two decades, Defendant paid about $1.3 million for that maintenance. Indisputably, the requirement for Defendant to pay that assessment ended, as intended, in November 2018. Indisputably, the easement along Kensington Boulevard remains in place, and remains the only access to Defendant's community.

Indisputably, Plaintiff did not use the fee paid by Defendant for its sole purpose—to maintain Kensington Boulevard. Instead, the fee became a type of "slush fund" for Plaintiff. For example, Plaintiff took to using the money for mowing, trimming, and leaf removal of the front yards of all single-family and townhome lawns in Westbury Park. (Exhibit 1: Westbury Park, ROA, Board of Directors Memorandum, 3/17/2020). When the assessment obligation expired, Plaintiff appears to have gone into financial shock (no more free lawn care!). In this lawsuit, Plaintiff now seeks to punish Defendant and its residents.

STANDARD

South Carolina's Supreme Court has articulated the standard for preliminary injunctions:

> The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at

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> law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Compton v. S.C. Dept. of Corrections, 709 S.E.2d 639, 642 (S.C. 2011); *see also Hook Point, LLC v. Branch Banking and Tr. Co.*, 725 S.E.2d 681, 683 (S.C. 2012).

ARGUMENT

Plaintiff's written Motion demands broad mandates, but cites to no evidence whatsoever. At this writing, Plaintiff has filed no documents, affidavits, or other evidence in support of its Motion. Defendant objects to being required to defend against evidence filed for the first time at a hearing, without the chance to study it in advance to prepare a defense.

Plaintiff's Motion demands a preliminary injunction on eight points, which can be summarized in three categories:

1. Damage to the gates (points 1-4);
2. Using parks, green spaces, and playgrounds (points 5-7);
3. Provide identities of Westbury Estate owners and vehicles (point 8).

As an initial matter, Defendant agrees that nobody should be damaging the gates or other property. Defendant agrees that if the gates, or any other property, is unlawfully damaged, the police should be called and appropriate law enforcement action should be taken. However, Defendant is not the police (obviously), and it has no authority to enforce criminal proceedings, particularly outside of Westbury Estate property.

A. Plaintiff will not "suffer immediate, irreparable harm without the injunction"

A preliminary injunction is a drastic remedy. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). ("An injunction is

a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.") In addition to the fact that, at this writing, Plaintiff has filed no evidence that it will suffer "immediate, irreparable harm without the injunction," the undisputed facts belie Plaintiff's demand.

First, there is no "immediate" harm. *See Zabinski v. Bright Acres Associates*, 553 S.E.2d 110, 121 (S.C. 2001) ("The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.") (emphasis added). Critically, **the status quo is the current arrangement**. As discussed above, and in Defendant's Memorandum in Support of its Motion for Partial Summary Judgment, the current easement and communities have been in existence for at least two decades (since 1998). Each property owner took title in Westbury Park with notice (constructive and/or actual) of the configuration of the two communities, which are intertwined with each other by design. The relationship of Westbury Park and Westbury Estate is obvious to anyone living there, or who examines the neighborhood with any attentiveness. That is how they were set up and have functioned for many years. In sum, Plaintiff cannot prove "immediateness" of any sort.

Second, there is no "irreparable" harm. Typically, "irreparable harm" in preliminary injunction motions involves un-fixable damage that would be caused by changes in circumstances. *See, e.g., AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505 (S.C. App. 2009) (preliminary injunction barring commercial use of building as bed and breakfast in violation of existing deed restrictions against commercial use); *Peek v. Spartanburg Regl. Healthcare System*, 626 S.E.2d 34 (S.C. App. 2005), *holding modified by Poynter Invs., Inc. v.*

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Cent. Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010) (anesthesiologist established that irreparable harm would result from termination of her staff privileges by hospital). Here, the "damage" of which Plaintiff complains consists primarily of problems with the gate, and use of the park and playground by children and residents. Any problems with the gate have been, and should continue to be, addressed by police and Westbury Park's security. Plaintiff's complaint about "undesirable" children playing on the playground, or in the park, is certainly not "irreparable"—at worst, playground and parks can be repaired and refurbished if needed. In sum, Plaintiff cannot prove "irreparable" harm of any sort.

B. Plaintiff has little to no "likelihood of success on the merits"

A preliminary injunction may only be granted if the movant proves, conclusively, that it has a strong likelihood of success on the merits. Here, Plaintiff has filed no evidence at all to date. The undisputed facts, however, show that Plaintiff has little to no likelihood of success on the merits—and certainly not enough for a preliminary injunction.

First, Defendant incorporates its arguments and evidence in its Motion for Partial Summary Judgment. The documents and law are clear that Defendant—and each property owner at Westbury Estate, individually—each has an appurtenant easement over portions of Kensington Boulevard and Westbury Park Way, and has every right to use the easement for its intended purposes, including ingress and egress to the outside world.

Second, Plaintiff and Defendant agree that nobody should be destroying or

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tampering with the gates. Defendant has conveyed Plaintiff's gate policy to its residents, and it has stressed that the policy should be followed. *See, e.g.*, Exhibit 2; Exhibit 3; Exhibit 4. However, Defendant is an "Association of Co-Owners"[1] and does not have police authority over its residents once they leave Westbury Estate. *See Knightsbridge Prop. Owners Assn., Inc. v. Nadeau*, 2016-001696, 2018 WL 2129859, at *1 (S.C. App. May 9, 2018) ("[A] corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are ultra vires.") (*citing and quoting Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987)). Here, Defendant is a nonprofit corporation property owners association of limited powers—primarily to maintain, repair, and regulate the common areas within Westbury Estate property. Like other property owners associations, Defendant is not legally empowered to follow and regulate its residents' actions once they leave the Westbury Estate property. The Master Deed articulates the powers of the Westbury Estate property owners association, which do not include patrolling and punishing residents' actions outside of the Westbury Estate grounds:

> In the administration of the operation and management of the Regime, the [Estate at Westbury] Association shall have authority and power to enforce the provisions of this Master Deed, levy and collect Assessments in the manner hereinafter provided, and adopt, promulgate and enforce such rules and regulation **governing the use of the Units, Common Elements, Garage Common Elements and Limited Common Elements** as the Association may deem to be in the best interest of the Regime.

---

[1] *See, e.g.*, Exhibit 5 (Master Deed, p. 1, § 1.1.5: "Estate at Westbury Owners Association, Inc., a South Carolina not-for-profit corporation created or to be created **for the purpose of managing the affairs of the Regime**. **It constitutes the 'Association of Co-Owners' as defined in the Act**.") (emphasis added).

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Exhibit 5, p. 11, § 7.2 Membership (The Estate at Westbury Horizontal Property Regime Master Deed, recorded on 01/26/2006 in the Beaufort County Registrar of Deeds, at Book 2310, Pages 2012-2128) (emphasis added). Nor is Defendant responsible for residents' actions when they leave Westbury Estate.

An analogy is if a Westbury Estate resident was being disruptive at a nearby bar, or shoplifting at a nearby store. Westbury Estate would not have authority to punish that person for actions outside of the Westbury Estate property (and would not be responsible for that person's actions). So too with alleged problems with the gate, park, and playground on Westbury Park property. Instead of pursing this Defendant over those concerns, Plaintiff's remedy is the uniform and fair enforcement of its own policies within its borders, through police action or Westbury Park security.

C. Plaintiff has ample "adequate remedy at law"

If a party may be made whole by an award of money, it has an adequate remedy at law. *See Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 603 S.E.2d 905, 908 (S.C. 2004) ("Although Scratch Golf may be able to satisfy elements 1 and 2, it cannot satisfy element 3 because there was an alternative remedy at law available for Scratch Golf: the statutory remedy of attachment. Therefore, an injunction was not the appropriate remedy."). Here, all of Plaintiff's alleged harms can be fixed with money—the gates can be repaired and monitored by security; the playground can be painted and spruced up; the park can be landscaped. Plaintiff has no credible claim that is un-fixable with a monetary award. Accordingly, Plaintiff has an adequate remedy at law, and the motion should be denied.

D. If the Motion is granted, South Carolina law requires Plaintiff to post a bond.

S.C. Rule of Civil Procedure 65 requires a bond to be posted if Plaintiff's Motion is granted:

> (c) Security. Except in divorce, child custody and non-support actions where the giving of security is discretionary, **no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.** . . .

(emphasis added). In the event the Court grants Plaintiff's motion, Defendant requests Plaintiff post a bond of $1.3 million—the amount Defendant has paid in assessments over time—to compensate Defendant for the loss, damages, inconvenience, and misery inflicted on Defendant and its members. Among other things, the relief that Plaintiff is seeking will require a considerable amount of expense and person-power to enforce Westbury Estate residents' actions outside of Westbury Estate property. Additionally, granting Plaintiff's motion may well subject Westbury Estate to legal action by its residents for *ultra vires* actions.

CONCLUSION

For these reasons, Plaintiff's motion should be denied.

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Respectfully Submitted,

FORD WALLACE THOMSON LLC

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Exhibit 1

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WESTBURY PARK, ROA

BOARD OF DIRECTORS

Phil Mateo, Karen Parks, Jodi Butterworth, James Cook, Erik Hardy, Helen Lamarre

DATE: March 17, 2020

TO: Westbury Park, ROA Owners

FROM: Westbury Park, ROA Board of Directors

RE: **IMPORTANT CHANGES – Maintenance for single-family and Townhomes Front Lawns**

Recently, the Westbury Park Board of Directors voted to enter into a contract with a new landscape maintenance firm. This new landscaping contractor will soon begin performing general landscape services for the *common areas*, including *bi-annual planting of the seasonal flowers*, installation of *pine straw* in the mulched beds, weekly vacuum truck services, maintaining our pet waste stations and annual pruning of our trees. Once the final contract terms are complete, the new contractor will begin their services and will be fully up and running as of April 1.

A major change is that all mowing, trimming, and leaf removal for the **front yards of all single-family and townhome lawns will no longer be a service provided** under the new contract. **Effective immediately,** all resident's will be individually responsible for the maintenance of all areas of their yards.
While this decision was a difficult one, it was necessary for the following reasons:

- Westbury Park RA continues to experience operational challenges due to the loss of income from the easement agreement with the Estate at Westbury.

- In lieu of raising homeowner's fees, the Board chose to reduce the landscape expense portion of the 2020 operating budget to remain in line with our income. As many of you know, landscaping has historically been the single largest item of expense for our overall operating budget.

- The Board recognized that some Owners had already "opted out" of having the common area service provider handle maintaining their front yards. It has been difficult to manage the process of who did or did not want this service provided and many residents have expressed dissatisfaction with the commercial vendor's quality of the mowing and other lawn care techniques.

- Another factor was that most of the 'front' lawns of Westbury Park 's homes are relatively small so eliminating them would not have a major impact for most residents.

Therefore, the Board felt the fairest option was to terminate all front lawn maintenance.
As a reminder, residents remain responsible to ensure that they **also properly maintain all other areas of their yards and property** in compliance with the **Architectural Design Guidelines & Appearance**

and Maintenance Standards.

Adjusting to this change may create some challenges for some, so over the next few weeks, the Board will develop and provide a list of landscape firms that are either already performing services for some of your neighbors or have expressed interest is providing pricing proposals for residents who would like to consider this option.
Thank you for your understanding in this important matter. Since the growing season will be here soon, please begin to take all appropriate actions or arrangements to ensure your property will be properly maintained.

We are very excited about a new landscaping firm coming on-board and we hope that we will all soon see major improvements in the condition of our common area landscaping.

For more on official Westbury Park information visit the following:
Westbury Park website – https://www.westburyparksc.com/

If you have any questions or concerns, please don't hesitate to reach out to our Association Manager, Dave Lewellen.

Dave may be reached at the following:
Phone: *(843) 785-4775 ext. 207* **|** ***Email:*** *Dave@IMCHHI.com*

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[redacted]

Exhibit 2

[redacted]

-----Original Message-----
From: Estate at Westbury <mailer@payhoa.com>
To: Ralph Paine <dpaine11@gmail.com>
Cc: rpaine2790@aol.com
Sent: Tue, Jun 23, 2020 9:21 am
Subject: Westbury Park and Gate Access

THE ESTATE AT WESTBURY A CONDOMINIUM

New Message from Estate at Westbury

Go to my Account

Hello Ralph Paine,

Good morning EAW homeowners,

Westbury Park has implemented some new rules concerning the gates and access to the property. I've attached them as provided to me. Please take the time to make yourselves familiar with these rules, as we are bound by them. In addition to these new rules, we've received several complaints of people on motorcycles not following the rules. It is imperative you use the gate as intended and not ride around the gate nor enter through the "exit". Also, noise should be minimum.
PLEASE SHARE THIS INFORMATION WITH PROPERTY MANAGERS,

TENANTS, AND VENDORS!

Thank you,
Jeannette Prinsen
Community Manager

For any quest ons or concerns, p ease respond to th s ema .

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Gate Access & Security Rules and Regulations

I. GENERAL:

Westbury Park is a private, gated residential community and entry by the general public is prohibited except in accordance with the Association Governing Documents and this Policy.

Section 1.1 Definitions. The terms used in this Policy (hereinafter referred to as the "***Policy***") shall have the same meaning as contained within the recorded Declaration of Covenants, Conditions, and Restrictions for Westbury Park Residential Properties, as amended, unless the context requires otherwise or unless otherwise specified herein.

Section 1.2 Applicability. This Policy is enacted by the Board of Directors in accordance with Section 3.1 of the Declaration. This Policy shall be binding upon all Owners and lessees of Owners, their families, invitees, and guests, and any other Persons that use the roads, streets, sidewalks or other Common Areas of Westbury Park. All present and future co-owners, tenants, future tenants, or their employees, or any other person that might use the Common Areas in any manner, are subject to the rules and regulations set forth herein (and any amendments thereto). Each and every Person who accepts the right to use the roads, streets, parking facilities and other Common Areas of Westbury Park hereby consent to the application of and are bound by the Rules and Regulations established within this Policy.

Section 1.3 Conflicts. In the event of any conflict or ambiguity between this Policy and the provisions of a state statute, the Declaration, or the Bylaws, the provisions of such statute, the Declaration, or the Bylaws, as the case may be, shall control.

II. ACCESS TO THE PROPERTY:

Access to all properties within Westbury Park is restricted to ensure the safety & security of its owners and residents.

Section 2.1 Compliance. All vehicles using the roadways and parking areas of Westbury Park must have a valid state registration and license plate, and must comply with the rules and regulations regarding registration and access set forth herein. All Persons using the Common Area of Westbury Park, including but not necessarily limited to Owners, invitees, residents, and visitors (*e.g.*, guests, contractors, *etc.*) must obey the laws of the State of South Carolina and all rules and regulations established by this Policy and the Governing Documents. Administrative processes and procedures used to support this Policy may be changed and updated as required.

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Section 2.2 Access Points; Gate Rules. The two vehicle access gates and the sidewalks at the gate areas are the only authorized entry & exit points for Westbury Park. For the purposes of this policy, the gate located on Westbury Parkway near its intersection with Kensington Boulevard shall be known as the "***Main Gate***." The gate located on Kensington Boulevard near its intersection with Buck Island Road shall be known as the "***Buck Island Gate***."

(a) Only one vehicle at time may enter through the gate. Drivers must wait until the gate closes and then reopens from use of their device before attempting to enter. No tailgating is permitted.

(b) Breaches of the gate system include, but are not limited to: (i) tampering with gates or related control and surveillance equipment, in any way; (ii) tailgating; (iii) pushing through or around the ingress gates or attempting to enter through use of the egress only gates; and (iv) unauthorized use or sharing of a swipe card, FOB or access code.

Section 2.3 Owner and Resident Registration. All owners and full-time residents of Westbury Park, whether an Owner, a Member, a full-time tenant, or adult child of the same in Westbury Park Residential Association or the Estates at Westbury (herein, a "***Resident***"), are required to register their vehicles with the Association. Resident Vehicle Registration forms are available on-line or at the offices of the Association or the 3rd party Managing Agent of the Association and/or the Estates at Westbury. All Owners, Members, and Residents must complete the portion of the Registration Form to be included in the Resident Directory portion of the gated access control system, which is located at the Main Gate. The Resident Directory allows Residents to grant visitors the right to enter using an auto-dial feature that provides the Resident with the ability to remotely lift the gate arm.

(a) Vehicle registration is limited to one specific vehicle. Transferring decals, access devises, or registration to another vehicle is strictly prohibited. If a Resident changes vehicles at any point, a new Resident Registration form must be completed.

(b) Access devices, decals and bar codes must be surrendered by Resident upon the termination of the Resident's interest in Westbury Park.

(c) The Association may charge a reasonable fee to the Resident for the acquisition of an access device.

(d) Evidence of permanent residence within Westbury Park, via South Carolina Driver's License or Vehicle Registration, current active lease, or executed home ownership documents (*e.g.,* executed deed and/or HUD settlement statement or equivalent) is required for Resident Registration.

(e) Owners are responsible for notifying tenants of the requirements set forth herein.

(f) Rental agents and/or Residents are responsible for picking up the access devices for their tenants, and must first provide a fully executed copy of the lease which complies with the associated rules and policies of the Association. Owners and Residents are responsible to advise their visitors, vendors, contractors, including rental/leasing or real estate sales agents of the rules and policies for gaining access to Westbury Park.

Section 2.4 Owner and Resident Access. All Residents shall only use an authorized access device provided by the Association (*e.g.* electronic swipe card, electronic FOB, or RFID sticker) to enter

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Westbury via one of the two gates. In order to minimize the potential for delays and backups at the Main Gate, residents shall not use the Resident Directory's auto-dial system to engage the remote entry function for themselves. The Buck Island Gate is limited to Resident entry and entry by emergency personnel.

Section 2.5 Visitor Gate Access. Authorized and invited guests are welcome within Westbury Park. Residents may permit guest entry through the Resident Directory's auto-dial system. All guests must adhere with the Governing Documents.

Section 2.6 Commercial Visitors. All Persons who are accessing the Property and are performing a service for a fee (herein, a "***Contractor***") may only enter through the applicable Resident Directory's auto-dial system, unless such Contractor has obtained a temporary access control device or has received a 4-digit instant access code pursuant to this Policy.

(a) Contractors are permitted entry to Westbury Park to work between the hours of 8 A.M. and 7 P.M., Monday through Saturday. This provision does not apply to emergency contract services necessary to prevent or stop continued damage to a Unit or such services that are necessary for the health, safety or welfare of a Resident. Such services shall include but not necessarily be limited to emergency plumbing service and, post-storm temporary repairs.

(b) Contractors are not permitted to enter into Westbury Park for use of its facilities or amenities. Contractors are not permitted to solicit work, distribute flyers, post signage, or otherwise advertise while on the Property.

(c) Baby sitters, house sitters, domestic and healthcare support, and pet sitters, despite being paid for their services, may be treated as guests rather than Contractors in accordance with Section 2.6 of this Policy.

(d) Certain designated contractors, as set forth in Section 11.7 of the Declaration, may be authorized by the Westbury Park Residential Association's Property Manager to receive a 4-digit instant access code. These users are prohibited from sharing these codes with any unaffiliated drivers.

(e) In addition to any rules and regulations set by the ARC or any other Governing Document, Contractors shall clean up any trash or debris daily, including site debris that blows off the site and mud tracked onto roadways and remove from the Property. Any damage to any Common Area shall be reported to the Association promptly.

(f) Contractors that violate this Policy shall be subject to fines and possible permanent removal from property.

(g) Contractors may purchase a temporary access control device when the frequent nature of the work or services they perform on behalf of the Association, Residents, or the Estate at Westbury requires it. Only the Property Manager for Westbury Park Residential Association can authorize this type of purchase and the process may require proof of contract or an affidavit by the respective Resident pertaining to the frequency or need for an authorized device.

Section 2.7 Special Events. Special Westbury Park Owner or Resident sponsored events, including but not necessarily limited to parties or gatherings where the expected number of vehicles needing access is ten or more require a minimum advance notice of two (2) Business Days if a special access code is desired to facilitate guest access. Contact the Westbury Park Residential Property

Manager's office to obtain an application for a special event access code. All special event codes expire within a 12-24 hour period of time.

III. ENFORCEMENT:

This Policy was developed to enhance the quality of life of all persons within Westbury Park and to eliminate uses and dangers that work to the detriment of such goals. The purpose of this Policy is not to anticipate all potential acceptable or unacceptable behavior in advance. In fact, it is expressly intended that the Board, as appropriate, have discretion to enforce or not enforce technical violations hereof based upon their reasonable judgment. The exercise of discretion in approving or enforcing this Policy shall not be construed as a waiver of approval or the right to enforce in future circumstances, nor shall it preclude the Association from taking enforcement action.

Section 3.1 Enforcement. Violations of any rule or regulation set forth within this Policy, as determined by the Board, may subject the violator or any such other Person to disciplinary action as set forth within the Governing Documents, including but not limited to Section 3.24 of the Bylaws, which includes the imposition of monetary fines and the suspension of rights, and or any such action permitted under South Carolina. Moreover, to preserve the family-friendly atmosphere of Westbury Park, the Board, management, contracted security, or local law enforcement may dismiss any Resident, guest, Contractor, visitor or such other Person if their behavior is deemed in conflict with the provisions hereof or contrary to South Carolina law.

Section 3.2 Fines. Provided below is the fine schedule as enforced by Westbury Park as part of its efforts to maintain Westbury Park as a safe and friendly residential community:

Offense	**1st**	**2nd**	**3rd**	**4th**
Tailgating	$50.00	$50.00	$50.00	$50.00
Gate Breaches	$250.00	$500.00	$1,000.00	$1,000.00

Other offenses and fines may be set by the Board. Any incidents involving damages to a gate or other Common Area of Westbury Park shall include all costs of repair in addition to above-stated fines. The Association may also impose an administrative fee, as necessary, of $100.00 per hour for our third party Property Manager and Security vendor to review video footage, identify and locate the violator, prepare and issue notice of violation and fines. These fines and fees shall be paid within thirty (30) days of notice. These fines and fees are exclusive of any costs and/or legal fees incurred by the Association to enforce compliance with this Policy.

Section 3.3 Trespassing. Trespassing, as set forth within Section 16-11-620 of the South Carolina Code of Laws, within the Property shall be prohibited. Trespassers may be subject to fines, arrest or both as may be permitted by South Carolina law.

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THE ESTATE AT WESTBURY
A CONDOMINIUM

85 Kensington Boulevard
Bluffton, SC 29910

(843) 706-4763 - phone

Please be advised that Westbury Park is a private association not affiliated with The Estate at Westbury. Therefore, members of the Estate at Westbury Community are not allowed to exercise in their common areas, use their playground, fish in their lagoons, use their swimming pool, club house. or their park areas. EAW Community cannot bring coolers or lounge chairs to these areas or congregate in any way on their common properties.

Members of EAW are not allowed to use any amenity within Westbury Park.

In addition, please be advised that “harassing an alligator” is a violation under SCDNR and carries a hefty fine. This includes taking selfies near the alligator.

Members of the Estate at Westbury community are **only** allowed to use their sidewalks and roads to ingress and egress (come into and go out of) Estate at Westbury.

It is expected that Owners and/or Property Managers will pass this information on to their tenants.

Thank you,

Estate at Westbury Management

[redacted]

----- Forwarded message -----
From: Estate at Westbury <mailer@payhoa.com>
To: Adams Austin <ara7544@yahoo.com.my>
Sent: Thursday, 9 April 2020, 01:38:53 pm EDT
Subject: Westbury Park



New Message from Estate at Westbury

Go to my Account

Hello Adams Austin,

Good afternoon,

Please let this serve as a friendly reminder that Westbury Park is a separate community with a separate HOA. We do not have the rights or permission to use their amenities, or even their roads and sidewalks, besides access in and out of Estate at Westbury. Please limit your time and travels through Westbury Park.
Please pass this information on to your Property Managers and Tenants,

Thank you,
Jeannette Prinsen
HOA Manager

For any questions or concerns, please respond to this email.

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117 123 RB Launch 3912

Exhibit 5

BEAUFORT COUNTY SC- ROD
BK 02310 PGS 2012-2128
DATE: 01/26/2006 02:53:53 PM
INST # 2006007854 RCPT# 392470

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ADD DMP Record 2/15/2006 03:48:29 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	031	000	0266	0000	00

Charleston 269799-2

RECORDED
2006 Feb -15 05:21 PM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

i

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STATE OF SOUTH CAROLINA	)	**MASTER DEED: THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME**
	)	
COUNTY OF CHARLESTON	)	

THIS **MASTER DEED**, made by **MONTECITO WESTBURY, LLC**, a Delaware limited liability company ("Declarant"), pursuant to the Horizontal Property Act of South Carolina (the "Act"), is for the purpose of creating a horizontal property regime and establishing certain easements, covenants, and restrictions to run with the land. The Declarant, by executing and recording this Master Deed, submits the property described in Exhibit A herein (the "Property") to the provisions of the Act, and creates, with respect to the Property, a condominium to be governed by and subject to the provisions of this Master Deed and the Act. To that end the Declarant declares the following:

1. DEFINITIONS.

1.1. SPECIFIC DEFINITIONS

The definitions contained in Section 27-31-20 of the Act are incorporated in this Master Deed unless it clear from the context that a definition in the Act is contradictory to a definition in this Master Deed, in which event the definition in this Master Deed shall apply.

1.1.1. "Act" means the Horizontal Property Act, Section 27-31-20 et seq. of the 1976 Code of Laws of South Carolina, as amended from time to time. References to specific sections of the Act contained herein refer to the sections as designated at the time of recordation of this Master Deed.

1.1.2. "Added Property(s)" means real property, whether or not owned by the Declarant, that is made subject to this Master Deed with the written recorded approval of the Declarant.

1.1.3. "Apartment" means a "Unit", as defined herein.

1.1.4. "Assessment" means the charges from time to time assessed against a Unit by the Association in the manner herein provided, and includes both regular and special assessments.

1.1.5. "Association" means Estate at Westbury Owners Association, Inc., a South Carolina not-for-profit corporation created or to be created for the purpose of managing the affairs of the Regime. It constitutes the "Association of Co-Owners" as defined in the Act.

1.1.6. "Board of Directors" means the Board of Directors of the Association. The Board shall constitute that body referred to in the Act of South Carolina as "the board of administration."

1.1.7. "Building" means a structure or structures, containing in the aggregate two or more Units, comprising a part of the Property.

1.1.8. "Bylaws" means the Bylaws adopted by the Association that govern the administration and operation of the Association, as amended from time to time. The initial Bylaws are attached as Exhibit B.

1.1.9. "Co-owner" or "Owner" means any Person that owns a Unit. (Also see "Unit Owner", below.)

1.1.10. "Common Elements" means "general common elements" and "limited common elements" as defined in the Act and more specifically defined in Section 3 of this Master Deed. It includes, without limitation, all areas shown and designated as a Common Elements, or similar wording clearly indicating such intent, on or in (a) this Master Deed, including the exhibits attached to this Master Deed, as it may be amended from time to time, or (b) any recorded plat of

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the Property or recorded amendment or Supplement to the Master Deed that has been approved in writing by the Declarant. THE DESIGNATION OF ANY OF THE PROPERTY AS COMMON ELEMENTS SHALL NOT MEAN THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR ENJOYMENT THEREIN.

1.1.11. "Common Expense" means all liabilities or expenditures made or incurred by or on behalf of the Association, including, without limitation, expenses of administration, insurance, operation, and management; expenses of maintenance, repair or replacement of the Common Elements (including Limited Common Elements); and other expenses declared to be Common Expenses by this Master Deed or the Bylaws.

1.1.12. "Condominium" or "condominium ownership" means the form of ownership intended by the Master Deed, that is, ownership by Owners of individual Units, with a common right to a share of the Common Elements.

1.1.13. "Declarant" means Montecito Westbury, LLC, a Delaware limited liability company, its successors and assigns. The Declarant may assign its rights as Declarant, in whole or in part, by a written assignment signed by the Declarant and the assignee and duly recorded in the Register of Deeds for Beaufort County, South Carolina. Conveyance by Declarant or an Owner of a deed to a Unit or the existence of a mortgage on a Unit or the Property shall not be deemed to make the grantee or the mortgagee a "Declarant."

1.1.14. "Elevations" means the drawings showing the exterior characteristics and dimensions of the Buildings or other improvements on the Property, or showing the vertical location of Units or Common Elements in such improvements, which drawings are attached hereto as part of Exhibit C and by this reference made a part hereof, and any amendment or supplement thereto set forth in a recorded amendment or Supplement to the Master Deed that has been approved in writing by the Declarant.

1.1.15. "Floor Plans" means the plans for the Buildings that show the general configuration of Units, which plans are attached hereto as part of Exhibit C and by this reference made a part hereof, and any amendment or supplement thereto set forth in a recorded amendment or Supplement to the Master Deed that has been approved in writing by the Declarant.

1.1.16. "Garage Unit" has the meaning set forth in Section 3.5.1, below.

1.1.17. "Joint Owner" means a Person that owns a Unit with any other entity and the combination of which constitutes a single Unit Owner. Where a Person is a Joint Owner of a Unit, the Association may establish such rules and procedures as it deems appropriate to govern which Joint Owner or Owners has the right to act or communicate on behalf of the Unit in matters governed by this Master Deed.

1.1.18. "Limited Common Elements" means Common Elements that are reserved for the use of a certain Unit or Units to the exclusion of the other Units, and that are shown and designated as a Limited Common Element, or similar wording clearly indicating such intent, on or in (a) this Master Deed and the exhibits thereto, as amended from time to time, or (b) any recorded plat of the Property or Supplement to the Master Deed, including any exhibits thereto, that has been approved in writing by the Declarant. (See Section 3)

1.1.19. "Majority of Co-owners", "Majority of Owners" or "Majority in Interest" means fifty-one percent (51%) or more of the Percentage Interests, as shown in Exhibit D (for Units) or Exhibit D-1 (for Garage Units) to this Master Deed.

1.1.20. "Management Agent" means any entity retained by the Association as an independent contractor to supervise the use, maintenance and repair of the Common Elements, or portions thereof, or manage the business affairs of the Association.

1.1.21. "Master Deed" means this Master Deed and all amendments or supplements thereto filed of record from time to time in the Register of Deeds for Beaufort County, South

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Carolina.

1.1.22. "Occupant" means any individual lawfully occupying any Unit, including, without limitation, any Owner or tenant, their resident family members, and their guests, invitees, and licensees.

1.1.23. "Owner" means any Person that owns fee simple title to any Unit, or if applicable, Garage Unit. "Owner" has the same meaning as "Co-Owner", as that term is defined in the Act. "Owner" shall not mean (i) a mortgagee unless such mortgagee has acquired title to the Unit or Garage Unit, or (ii) any Person having a contract to purchase a Unit or Garage Unit but to which title has not been conveyed of record.

1.1.24. "Operation of the Property" means and includes matters relating to the administration, use, operation, maintenance, repair, replacement, renovation or development of the Property or portions of the Property, including the Common Elements.

1.1.25. "Percentage Interest" means, as applicable (a) the percentage of undivided interest in the Common Elements then appertaining to each Unit, as set forth in Exhibit D to this Master Deed; or (b) the percentage of undivided interest in the Garage Common Elements then appertaining to each Garage Unit, as set forth in Exhibit D-1 to this Master Deed.

1.1.26. "Person" means an individual, firm, corporation, limited liability company, partnership, association, trust or other legal entity.

1.1.27. "Plot Plan" means the plat(s) or survey(s) of the Property showing the location of any Building or other significant improvements on the Property, as shown as part of Exhibit C to this Master Deed, and any amendment or supplement thereto showing Added Property and set forth in a recorded amendment or Supplement to the Master Deed that has been approved in writing by the Declarant.

1.1.28. "Property" means the property described in Exhibit A to this Master Deed and any Added Property.

1.1.29. "Regime" means The Estate at Westbury Horizontal Property Regime created by the recordation of this Master Deed, as set forth in Section 27-31-30 of the Act.

1.1.30. "Rules and Regulations" means those standards governing the use, administration and operation of the Property as are more specifically set forth in Exhibit F to this Master Deed and any amendments or supplements thereto adopted in accordance with this Master Deed.

1.1.31. Unit Plans" means the plans showing the general configuration and horizontal dimensions of each type of Unit, as shown as part of Exhibit C, and any amendment or supplement thereto set forth in a recorded amendment or Supplement to the Master Deed that has been approved in writing by the Declarant.

1.1.32. "Unit" means an "Apartment" as that term is defined in the Act, and, with the exception of the Garage Units, includes one or more rooms and adjoining patio and/or balcony designated as part thereof, and occupying one or more floors or a part or parts thereof, designed or intended for independent use as a single family dwelling, together with its Percentage Interest in the Common Elements. (Also see Section 2.2.)

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2. GENERAL DESCRIPTION; STAGING; UNITS.

2.1. GENERAL DESCRIPTION AND STAGING OF DEVELOPMENT

2.1.1. General Description and Staging.

The Property is located at 85 Kensington Boulevard, Town of Bluffton, Beaufort County, South Carolina. The Property is accessed from U. S. Highway 278 East by Kensington Boulevard. The Property contains 320 flat-type Units in sixteen (16) Buildings. The Units consist of five (5) basic Unit configurations, as follows:

A-1:	One Bedroom, One Bath
A-2:	One Bedroom, One Bath
A-2 LOFT:	One Bedroom, One Bath, with loft
B-1:	Two Bedroom, Two Bath
C-1:	Three Bedroom, Two Bath

Thirty-six (36) carport spaces and forty-four (44) storage or maintenance spaces are contained in six (6) on-grade Parking Structures as eighty (80) "Garage Units", which are separate from the Units. (See Section 3.5, below.) The Property also contains, as part of the Common Elements, amenity facilities such as a clubhouse, swimming pool, lakes and on-grade parking. A Plot Plan showing the location of the Buildings, Parking Structures, clubhouse, certain amenity facilities, and on-grade parking is attached as part of Exhibit C. All Units, Garage Units and Common Elements exist in Stage One.

2.1.2. Number of Units and Garage Units.

The Regime contains a total of **320** Units and **80** Garage Units.

2.1.3. Subdividing or Consolidating Units.

No additional Units may be established by subdivision of existing Units, conversion of Common Elements, or otherwise. A lesser number of Units may be established by consolidating two or more existing Units into a single Unit provided that (i) such consolidation is approved in writing by the Board of Directors, the Owners of the Units to be consolidated, and any applicable regulatory entities, and (ii) such consolidation shall not modify the Percentage Interests of any Units not involved in such consolidation unless expressly approved in a recordable writing evidencing the approval of such Units, and (iii) in the absence of the approval referenced in (ii), above, the consolidated Unit shall have a Percentage Interest that is the sum of the previous Percentage Interests of the Units being consolidated into a single Unit. After confirmation of the approvals referenced in (i) and/or (ii), above, the Board of Directors shall cause to be recorded an amendment to this Master Deed amending any applicable provisions of this Master Deed (including any Exhibits). The Board of Directors may, in its sole discretion, determine whether any expenses of the Association in creating, approving, and recording such amendment shall be payable by the Owner or Owners of the Units being consolidated.

2.2. DIVISION INTO CONDOMINIUM UNITS

2.2.1. Units in Buildings.

Each Unit in a Building is depicted on the Plans (as identified below) and, in addition to any Limited Common Elements belonging to such Unit and the Unit's Percentage Interest in the Common Elements, consists of enclosed space within a Building bounded by the Perimeter Walls, Unfinished Ceiling, Unfinished Floor, exterior doors, and windows forming the Unit. For the purpose of further defining a Unit in a Building:

(a) "Unfinished Wall" means the studs, supports, and other wooden, metal, or similar structural materials to which the interior wall material, such as drywall, is attached, but not the interior wall material visible from the interior of the Unit.
(b) "Perimeter Wall" means Unfinished Walls surrounding all or part of the Unit.
(c) "Unfinished Ceiling" means the beams, joists, and wooden, concrete or other structural materials to which the interior ceiling material, such as drywall, is attached, but not the interior ceiling material visible from the interior of the Unit.
(d) "Unfinished Floor" means the beams, floor joists, and wooden, concrete or other floor

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or deck materials to which the interior floor material, such as wood, plywood sub-flooring or tile, is attached, but not the interior floor material visible from the interior of the Unit.

(e) A Unit includes (i) any non-bearing walls within the Unit; (ii) the drywall, plaster, insulation, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering attached to Perimeter Walls and non-bearing walls within the Unit, ceilings, or floors; (iii) windows, window frames and screens; awnings; and doors, door hardware and door frames serving only the Unit; (iv) any fireplace or stove hearth, facing brick, tile, stone or firebox; (v) removable appliances, equipment, wiring, fans, fixtures and hardware and all improvements contained within the Perimeter Walls, ceilings, and floors that serve only the Unit; (vi) spas, fountains or hot tubs within the Unit or within Limited Common Elements serving only the Unit; and (vii) any heating and cooling elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, ducts, chases, channels, compressors, air handling systems, controls, fans, registers, diffusers and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services solely to the Unit, wherever located. A Unit does not include any of the structural components of the Unit or utility or service lines, fireplace flues or utility chases located within the Unit that serve more than one Unit.

2.2.2. Attaching Items to Interior of Unit.

An Owner shall have the right to affix to the interior surface of the Perimeter Walls, ceiling, and floors of such Owner's Unit usual electrical wiring or fixtures, wall ornaments, and similar accessories if such action complies with applicable codes and does not, in the opinion of the Board of Directors, (a) materially and adversely affect any structural element, Common Elements, another Unit, or any equipment or system serving another Unit or Common Elements, (b) materially increase safety risks or insurance costs for the Building or Unit, or (c) violate the provisions of this Master Deed or the Rules and Regulations.

2.3. SUMMARY OF PLANS

In accordance with Section 27-31-110 of the Act, attached hereto and made a part of this Master Deed are the following documents, which cumulatively constitute the "Plans":

(a) Plot Plan, Typical Unit Types, Typical Building Types, Floor Plans, Unit Layouts, Building Elevations, and Parking Structures (Exhibit C).
(b) Percentage Interests: Units (Exhibit D)
(c) Percentage Interests: Garage Units (Exhibit D-1)

The Plot Plan shows the location and type of the Buildings, the location of Parking Structures and significant improvements, and some of the areas that are intended as Common Elements, as certified by a registered land surveyor. The Typical Unit Types show the approximate Unit configurations, sizes and designations of each Unit. The Floor Plans and Unit Layouts show the general location of Units and the general location and approximate dimensions of corridors, stairwells, elevators, storage areas and some Building areas that are intended as Common Elements or Limited Common Elements, by Building Type. The Building Elevations show the exterior characteristics and dimensions of the Buildings, by Building Type. The Parking Structures plans show the general location and approximate dimensions, the exterior characteristics, and the designations of each Garage Unit. Whenever square footage or other dimensions are shown on the Plans, they are approximate, reflecting such factors as (a) the measurement of square footage or dimensions can vary depending on the technique used (e.g. whether measured from interior finished or unfinished wall, floor or ceiling; from exterior wall, floor or ceiling; from beginning or finished grade; etc.) and (b) minor modifications may have been made during the construction process.

2.4 GENERAL DESCRIPTION OF BUILDINGS

2.4.1. Construction System Generally.

The exteriors of the Buildings are constructed primarily of painted cement composite siding and wood trim. Party walls between Units are primarily constructed of wooden studs and fire rated gypsum board. All Buildings are located on grade. The floor of first floor Units is slab on grade construction over which is applied either carpet, vinyl or ceramic tile,

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depending on location. The floor of second and third floor Units is truss joist construction with plywood underlayment and a gypsum topping, over which is applied either carpet, vinyl or ceramic tile, depending on location. Interior walls and ceilings consist of gypsum sheet board with a paint finish. Ceilings consist of sprayed gypsum sheets. Roofs are constructed primarily of fiberglass shingles over roof felt on plywood sheathing, which sheathing is attached to wooden roof trusses. Each Unit has an individual electric heat pump heating and air conditioning system.

2.4.2. General Description of Layout by Building Type.

2.4.2.1: Buildings 1, 7, 8, 9, 10, and 15 each contain twenty-four (24) Units on three (3) habitable levels, with the first, second and third floors each containing eight (8) Units. Most units are flats, but the third floor of Buildings 1, 8, 10, and 15 include both flats and units with lofts. The mix and general configuration of Unit are shown as part of Exhibit C.

2.4.2.2: Buildings 2, 3, 5, 6, 11, 12, 13 and 14 each contain twenty (20) Units on three (3) habitable levels, with the first and second floors each containing eight (8) Units and the and third floor containing four (4) units. Most units are flats, but the second floor of Building 6 includes both flats and units with lofts. The mix and general configuration of Unit types are shown as part of Exhibit C.

2.4.2.3: Buildings 4 and 16 each contain eight flat-type Units on two (2) habitable levels, with the first and second floors each containing four (4) Units. The mix and general configuration of Unit types are shown as part of Exhibit C.

2.5 GENERAL DESCRIPTION OF UNIT TYPES

2.5.1. Type A-1 Unit: One Bedroom, One Bath.

This Unit contains approximately 586 square feet. The entry door opens into the living room. The kitchen is accessed from the living room and a laundry area is accessed through the kitchen. The bedroom is also accessed from the living room and the bathroom and a closet are accessed from the bedroom. An unenclosed deck (which is a Limited Common Element for the Unit) is accessed from the living room. An enclosed storage area, which is part of the Unit, is accessed from the deck.

2.5.2. Type A-2 Unit: One Bedroom, One Bath.

This Unit contains approximately 672 square feet. The entry door opens into the living room. The kitchen is accessed from the living room and a laundry area is accessed from the kitchen. A dining area, the bathroom and the bedroom are accessed from a short hallway off the living room. A closet is accessed from the bedroom. An unenclosed deck (which is a Limited Common Element for the Unit) is accessed from the living room. An enclosed mechanical and storage area, which is part of the Unit, is accessed from the deck.

2.5.3. Type A-2 Unit: One Bedroom, One Bath with Loft.

This Unit contains approximately 672 square feet on the lower level and 211 square feet on the loft level. The entry door opens into the living room. A dining area is accessed from the living room and the kitchen is accessed from the dining area. A laundry area is accessed from the kitchen. The bathroom and the bedroom are accessed from a short hallway off the living room. A closet is accessed from the bedroom. An unenclosed deck (which is a Limited Common Element for the Unit) is accessed from the living room. An enclosed mechanical and storage area, which is part of the Unit, is accessed from the deck. A stair leads from the living room, over the entry door, to a loft area overlooking the living room below. An attic storage area is accessed from the loft.

2.5.4. Type B-1 Unit: Two Bedroom, Two Bath.

This Unit contains approximately 968 square feet. The entry door opens into the living room. The entry door opens into a short foyer, and a bathroom is accessed from the foyer. Bedroom #2 is accessed from a hallway leading from the foyer, which bedroom also has access to the bath previously referenced. The kitchen is accessed from the other side of the hallway and a laundry area is accessed from the kitchen.. The hallway opens into a living room on one side and a dining area on the other. Bedroom #1 and a mechanical area are accessed from the living room.. A second bathroom and a closet are accessed from Bedroom #1. An unenclosed deck (which is a Limited Common Element for the Unit) is accessed from the living room. An

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enclosed storage area, which is part of the Unit, is accessed from the deck.

2.5.5. Type C-1 Unit: Three Bedroom, Two Bath.

This Unit contains approximately 1,216 square feet. The entry door opens into the living room on one side and a dining area on the other side. The kitchen is accessed from a hallway from the living room and a pantry area is accessed from the kitchen. Bedroom #3, a bathroom across the hallway from Bedroom #3, and Bedroom #2 are accessed from the hallway. Bedroom #2 also has access to the bathroom off the hallway from a short passageway. Two closets are also accessed from the short passageway. Bedroom #1 is also accessed from the hallway through a second short passageway. A laundry area, linen storage and mechanical area are also accessed from this second short passageway. A second bathroom is accessed from Bedroom #1 and a closet is accessed from the second bathroom.. An unenclosed deck (which is a Limited Common Element for the Unit) is accessed from Bedroom #3. An enclosed storage area, which is part of the Unit, is accessed from the deck.

3. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

3.1. COMMON ELEMENTS

The Common Elements consist of the entire Property other than the Units (see Section 2, above), Garage Units and Garage Common Elements (see Section 3.5.1, below). In addition to any other Common Elements shown or described on the Plans, Common Elements include the clubhouse, swimming pool, lakes and on-grade parking shown on the Plot Plan and other portions of the Plans; any Units, Garage Units, or other facilities owned by the Association and used, rented or leased by the Association or its designees for such purposes as conducting leasing, sales, administration, storage, or other activities determined by the Board of Directors to be beneficial to the Association or the Owners; the steps and foyers into the Buildings; the stairs and hallways outside Units; on-grade parking (but not Parking Structures, as defined in Section 3.5, below); driveways and walkways; yards; plantings in or on Common Elements; areas containing mechanical, electrical; telecommunications or other equipment serving more than one Unit and the equipment therein unless the property of others; trash rooms and storage rooms serving more than one Unit; Unfinished Perimeter Walls, Unfinished Ceilings and Unfinished Floors (as defined in Section 2.2) and adjacent insulation; joists, beams, supporting walls, columns, and other structural elements; roofs, slabs, footings and foundations; alarm and communications systems, appliances, mechanical equipment, electrical equipment, heating and air conditioning equipment, other equipment, doors, built-in fixtures, pipes, wiring, conduits, channels, drains, ducts, chases or other utility lines and similar elements that serve more than one Unit; plus personal property and assets held and maintained for the joint use and enjoyment of all the Unit Owners.

3.2. LIMITED COMMON ELEMENTS GENERALLY

Limited Common Elements are not part of a Unit but are Common Elements that are reserved or reasonably required for the use of one or more, but not all, Units. Limited Common Elements may include, without limitation, unenclosed decks, porches, terraces and patios; specified portions of Common Elements described in Section 3.1. Except as otherwise expressly stated in this Master Deed or any Supplement to the Master Deed, the costs of maintaining, repairing and replacing Limited Common Elements shall be Common Expenses of the Association as a whole. The Board of Directors may re-designate Common Elements as Limited Common Elements and re-assign the use of Limited Common Elements to specific Units to the fullest extent permitted by the Act.

3.3. DISPUTES REGARDING STATUS OR BOUNDARIES

Because of the structural characteristics and arrangement of much of the Property, disputes may arise regarding issues such as whether an element is part of a Unit, a Limited Common Element, or a Common Element, or a Garage Unit or Garage Common Element. Unit Owners or Garage Unit Owners, as applicable, shall attempt to resolve such matters in a fair manner. If a dispute arises between Unit Owners, between Garage Unit Owners, or between a Unit Owner or Garage Unit Owner and the Association as to what portion of the Property constitutes a Unit, Garage Unit, Common Element or Limited Common Element, or the proper allocation of any costs or expenses relating to such areas, the Board of Directors shall have the authority to determine the proper designation of the disputed element and the allocation of any costs or expenses involved,

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after such consultation with others as it may determine to be appropriate. The determination of the Board of Directors shall be set forth in writing, shall be made in good faith, and shall not be clearly inconsistent with this Master Deed.

3.4. PERCENTAGE INTERESTS OF UNITS IN COMMON ELEMENTS

A chart showing the Percentage Interest of each Unit Owner is set forth in Exhibit D. A chart showing the Percentage Interest of each Garage Unit Owner is set forth in Exhibit D-1.

3.5. GARAGE UNITS

3.5.1. Garage Units Generally.

3.5.1.1. A "Garage Unit" is one of the eighty (80) spaces contained in six (6) on-grade Parking Structures located on the Property and designated A through F. A "Garage Unit" is separate from a "Unit", as defined in this Master Deed. A Garage Unit consists solely of a numerically defined space within a Parking Structure and an undivided Percentage Interest in "Garage Common Elements". There are three types of Garage Units: Storage, Maintenance and Garage Use. The forty-four (44) Storage Garage Units typically contain approximately 55 square feet. The single Maintenance Garage Unit, located in Garage Structure B, contains approximately 220 square feet and will be dedicated to the Association as a Common Element. The thirty-five (35) Garage Units for Garage Use typically contain approximately 220 square feet, with the exception of two Garage Units in Garage Structure A, which contain approximately 340 square feet. All Garage Units are accessed from Common Elements of the Regime. The Plans at Exhibit C show the designation, general location, exterior characteristics, and the approximate dimensions of each Parking Structure and each Garage Unit

3.5.1.2. A Garage Unit extends vertically to the interior surface of that portion of the Parking Structure's ceiling that is above the defined horizontal space for the Garage Unit, excluding any trusses or other structural element. All structural elements of a Parking Structure, such as its roof, perimeter and party walls, ceiling, trusses, floors, foundation, and any exterior doors or fittings constitute Garage Common Elements in which every Owner of a Garage Unit (but not Owners of Units) has an undivided Percentage Interest, as set forth in Exhibit D-1.

3.5.2. Conveying or Renting Garage Units.

A Garage Unit shall be initially be conveyed in fee simple by deed from the Declarant to an Owner at closing of the sale of a Unit and the Garage Unit, if such Owner entered into a contract with the Declarant (or its authorized designee) to purchase both a Unit and the Garage Unit. Thereafter, a Garage Unit Owner may convey by deed or rent the Garage Unit to any Owner of a Unit for such compensation as shall be agreed upon by the parties. During the term of any rental or assignment, the Garage Unit Owner shall continue to be responsible for all obligations as a Garage Unit Owner, but the renter or assignee shall also be responsible for complying with all rules and regulations established by the Association for use of Garage Units. Immediately upon conveyance, rental or temporary assignment of a Garage Unit, the Garage Unit Owner shall notify the Association in writing of the conveyance, rental or assignment, identify the Person then owning or having temporary use of the Garage Unit, and provide such information regarding such Person as may be determined by the Association.

3.5.3. Ownership Only by Unit Owners.

A Garage Unit cannot be owned by any Person other than a Unit Owner. If a Garage Unit Owner conveys to another Person a Unit and the Garage Unit is not conveyed to such Person in the deed conveying the Unit (or a separate deed conveying the Garage Unit) then, in the absence of written evidence that the conveying Unit Owner still owns another Unit, the Garage Unit shall be deemed to have been automatically conveyed to the Person that purchased the Unit previously owned by such Garage Unit Owner.

3.5.4. Garage Budget.

The cost of maintaining, repairing, renovating and insuring the Parking Structures and establishing any reserves for such purposes shall be set forth in a "Garage Budget" that is separate from the Association operating Budget referenced in Section 12.2, below. The Garage Budget shall be determined in a manner similar to that for the Association operating Budget.

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3.5.5. Assessments for Garage Units.

In addition to other Assessments under this Master Deed, each Garage Unit Owner shall pay a "Garage Assessment" to the Association, as a Special Assessment (see Section 12.3, below), based on the revenues determined by the Board of Directors to be required to fund the expenses under the Garage Budget. The Garage Assessment for each Garage Unit Owner shall be based on the Percentage Interest of such Garage Unit as set forth in Exhibit D-1.

3.5.6. Application of Principles and Procedures.

The general principles and procedures set forth in this Master Deed that apply to the Property, Units and Common Elements shall also apply to Garage Units and Garage Common Elements unless they are clearly inapplicable or their application would cause an inequitable or inappropriate result. In matters related to Parking Structures, where the terms "Unit", "Common Elements", "Owner", or "Budget" are used, such terms shall normally be deemed to mean "Garage Unit", "Garage Common Elements", "Garage Unit Owner" and "Garage Budget", as reasonably applicable.

4. REPAIR AND MAINTENANCE.

4.1. UNIT REPAIR, MAINTENANCE AND DECORATION

Units shall be maintained in a good, safe state of repair consistent with applicable codes, this Master Deed, and applicable Rules and Regulations. An Owner shall not allow any action or work that will impair the structural soundness of a Building or Unit; impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of a Building or Unit, impair any easement; or, without express approval by the Board of Directors, damage or adversely affect Common Elements. All maintenance, repairs and replacements to a Unit shall be the responsibility of the Owner of the Unit. Each Owner shall be responsible for all damages to any other Unit or to Common Elements caused by the failure of the Owner to maintain or make timely and appropriate repairs that are the responsibility of such Owner except to the extent that the cost of such repair is paid or payable from insurance proceeds to the Association. Except as may be provided in the purchase and sale agreement between an Owner and the initial purchaser of the Unit, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries.

4.2. COMMON ELEMENTS MAINTENANCE AND REPAIR

All maintenance, repairs and replacements to Common Elements shall be made by the Association and shall be charged to all Units as a Common Expense; provided that this shall exclude any maintenance, repairs and replacements to Parking Structures or to Limited Common Elements that are expressly made the responsibility of a specific Unit or Units by another provision of this Master Deed or any Supplement to the Master Deed. If any maintenance, repair, or replacement of any portion of the Common Elements is required because of the negligent or willful act or omission of an Owner or Occupant of a Unit, then such Owner and/or Occupant shall be responsible for such maintenance, repair, or replacement. Any expenses incurred by the Association for such maintenance, repair, or replacement that is not paid or payable from insurance proceeds to the Association shall be a personal obligation of such Owner; and, if the Owner fails to repay or cause to be repaid the expenses incurred by the Association in a timely manner after notice to the Owner of the amount owed, then the failure to so repay shall be collectible as a Special Assessment against the Unit and the Owner. The same principles shall apply to Garage Common Elements and Garage Units.

5. EASEMENTS.

5.1. EASEMENTS FOR ASSOCIATION

The Association and its directors, officers, agents and employees, including, but not limited to, any Management Agent of the Association and its officers, agents and employees, shall have a general right and easement to enter upon the Property in the performance of their respective duties, including, without limitation, the management, repair, maintenance and replacement of Common Elements. Except in situations that may then reasonably be thought to be emergencies or situations in which access may be needed to prevent damage to the Property, or unless otherwise expressly approved by the Owner(s) directly affected thereby, this easement shall be exercised only during

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normal business hours and then, whenever practicable, only upon advance notice to the Owner(s) directly affected thereby.

5.2. EASEMENT FOR DECLARANT

Declarant, its successors and assigns, shall have an alienable and transferable right and easement on, over, through, under, and across the Property for the purposes of (a) constructing, installing, maintaining, repairing and replacing portions of the Property or proposed Added Property, (b) storing materials, and (c) making such other uses of the Property as may be reasonably necessary or incident to the construction, renovation, repair, sale, rental and management of the Units, including, but not limited to, construction trailers, temporary construction offices, sales and rental offices, management offices, model residences, directional and marketing signs, and use of the Clubhouse or Units owned or rented by the Declarant; provided, however, that such rights shall not unreasonably interfere with the occupancy, use or enjoyment of a Unit by its Owner or Occupants. Except in situations that may then reasonably be thought to be emergencies or situations in which access is may be needed to prevent damage to the Property, or unless otherwise expressly approved by the Owner(s) directly affected thereby, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to any Owner(s) directly affected thereby. The exercise of such right and easement by Persons other than Declarant shall be undertaken only with the express approval of the Declarant. The Declarant shall have a transferable, perpetual power and authority to grant and accept easements to and from any private entity or public authority, agency, public service district, public or private utility or other Person, upon, over, under and across the Common Elements for constructing, installing, maintaining, repairing, inspecting and replacing television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, walkways, lighting, and all utility facilities and services, including, but not limited to, storm and sanitary sewer systems and electrical, gas, telephone, water and sewer lines. The rights of the Declarant hereunder shall automatically be assigned to the Association upon conveyance by the Declarant of the last Unit and last Garage Unit to another Person, other than a mortgagee, or such earlier time as Declarant records a Supplement to the Master Deed relinquishing its rights under this Master Deed or this section.

5.3. EASEMENT FOR REPAIR, MAINTENANCE AND EMERGENCIES

Some Common Elements may be located within Units or Garage Units or may be conveniently accessible only through Units or Garage Units. The Owners of other Units or Garage Units and the Association shall have an irrevocable easement, to be exercised by the Association as the Owners' agent, to have access to each Unit or Garage Unit and to all Common Elements or Garage Common Elements from time to time for the maintenance, repair, removal, or replacement of any of the Common Elements or Garage Common Elements therein or accessible therefrom or for making inspections or repairs therein necessary to prevent damage to the Common Elements or Garage Common Elements or to any Unit or Garage Unit. Except in a situation that is then reasonably thought to be an emergency or a situation in which access is then reasonably thought to be needed to prevent damage to the Property, or unless otherwise expressly approved by the Owner(s) directly affected thereby, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner(s) of the Unit(s) or Garage Unit(s) directly affected thereby.

5.4. EASEMENTS FOR ENCROACHMENTS

The Property is subject to the following easements for encroachments between Units and the Common Elements:

5.4.1. In favor of all Owners so that they shall have no legal liability if any part of the Common Elements or Garage Common Elements (including Limited Common Elements) encroaches upon a Unit or Garage Unit or other Common Elements;

5.4.2. In favor of the Owner of each Unit or Garage Unit so that the Owner shall have no legal liability if any part of such Owner's Unit or Garage Unit encroaches upon the Common Elements, Garage Common Elements or upon another Unit or Garage Unit; and

5.4.3. In favor of all Owners, the Association, and the Owner of any encroaching Unit or

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Garage Unit for the maintenance and repair of such encroachments.

Encroachments referred to this Section include, but are not limited to, encroachments caused by error, omission or variance from the original plans in the construction of the Common Elements, Garage Common Elements or any Unit or Garage Unit constructed; by error in the Plans or this Master Deed; by settling, rising, or shifting of the earth; or by changes in position caused by repair or reconstruction of any part of the Common Elements, Garage Common Elements or any Unit or Garage Unit in substantial conformity to the Plans.

5.5. PRIOR RECORDED EASEMENTS

The Property shall be subject to any easements shown on any prior recorded plat of the Property or shown or defined in this Master Deed.

5.6. GOVERNMENTAL EASEMENT

Police, fire, water, health and other authorized governmental officials, employees and vehicles shall have the right of ingress and egress to the Property, and any portion thereof, for the performance of their official duties, to the extent permitted by applicable law and any Rules and Regulations not contrary to applicable law that are adopted by the Board of Directors.

6. PERCENTAGE INTERESTS.

The Percentage Interest of Units is shown in Exhibit D. The Percentage Interest for Garage Units is shown in Exhibit D-1.

7. ASSOCIATION; ADMINISTRATION; VOTING; RECORDS.

7.1. THE ASSOCIATION; BOARD OF DIRECTORS

In order to provide for the effective administration of the Regime by the Unit Owners, Estate at Westbury Owners Association, Inc., a South Carolina not-for-profit corporation (the "Association") has been formed. The Association shall operate and manage the Regime and undertake and perform all acts and duties incident thereto in accordance with the provisions of this Master Deed and Bylaws of the Association, and the Rules and Regulations promulgated by the Association from time to time. The Board of Directors of the Association shall have authority to take all actions on behalf of the Association that do not require, by law, this Master Deed, or the Bylaws, a vote of by Owners, and the decision of the Board of Directors shall be binding upon the Association and the Owners. A copy of the initial Bylaws is annexed hereto and made a part hereof as Exhibit B.

7.2. MEMBERSHIP

The Owner of each Unit shall automatically be a member of the Association upon acquiring an ownership interest in a Unit. Membership in the Association shall be appurtenant to and not separable from ownership of a Unit. The membership of an Owner shall terminate automatically upon conveyance of title to the Unit previously owned by such Owner, regardless of the means by which such conveyance of title occurs. No Person holding any lien, mortgage or other encumbrance upon any Unit or Garage Unit shall be entitled solely by virtue of such lien, mortgage or other encumbrance to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Regime, the Association shall have authority and power to enforce the provisions of this Master Deed, levy and collect Assessments in the manner hereinafter provided, and adopt, promulgate and enforce such rules and regulation governing the use of the Units, Common Elements, Garage Common Elements and Limited Common Elements as the Association may deem to be in the best interest of the Regime.

7.3. VOTING

The Owner of a Unit shall have the right to cast the number of votes attributable to the Percentage Interest of such Unit. Votes may be cast in person or by written proxy at all meetings of the Association. The holder of a proxy need not be an Owner. Unless a different number, and not less than a Majority in Interest, is specified in this Master Deed or in the Bylaws, all actions requiring a vote of the Owners shall require approval of a Majority in Interest. Cumulative voting is prohibited. Further details regarding voting shall be set forth in the Bylaws.

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7.4. RULES AND REGULATIONS

The Board of Directors shall have authority to adopt, amend or supplement Rules and Regulations from time to time governing the use, administration and operation of the Property, subject to the terms of this Master Deed and the Bylaws. The initial Rules and Regulations are set forth in Exhibit F attached hereto and incorporated herein by reference. Rules and Regulations, or amendments or supplements thereto, that are adopted from time to time in accordance with this Master Deed shall be valid even if not recorded.

7.5. EMPLOYEES, MANAGEMENT AGENT AND MANAGEMENT AGREEMENT

The Board of Directors may employ and dismiss Persons on behalf of the Association and/or select a Management Agent or Agents, each of which shall have such authority and shall receive such compensation as is set forth in writing and approved by the Board of Directors. The Declarant or an affiliate of Declarant may serve as Management Agent. A copy of any agreement between the Association and the Management Agent shall be provided to any Owner upon written request to the Board of Directors, provided that the Association may charge a reasonable fee for any costs of reproduction, postage or personnel incurred. No management agreement shall be for a term longer than one (1) year, provided that a management agreement may provide for automatic extension for additional terms of not more than one (1) year unless either party notifies the other party within a defined period prior to the expiration of the existing term that it wishes to terminate the agreement or re-negotiate the agreement.

7.6. INDEMNIFICATION

The Declarant, Board of Directors, officers of the Association, and such employees of the Association and/or the Management Agent as the Board of Directors shall specify by written resolution from time-to-time (cumulatively, "Non-Liable Persons"), shall not be liable to the Owners or the Association for any mistake in judgment or acts or omissions unless such act or omission was made in bad faith or was the result of gross negligence or fraud by such Person. The Association shall indemnify and hold harmless such Non-Liable Persons against all liabilities to others arising out of any agreement made by such Non-Liable Persons on behalf of the Association unless such agreement was made in bad faith, was the result of gross negligence or fraud by such Non-Liable Person, or was in clear violation of a contractual obligation of such Non-Liable Person to the Association.

7.7. BOOKS AND RECORDS

Current financial records of the Association and a copy of this Declaration and the articles of incorporation, Bylaws, and Rules and Regulations of the Association shall be available for inspection by an Owner or any agent authorized in writing by an Owner, at the offices of the Association or such other location in Beaufort County as may be designated by the Association. The inspection shall occur at reasonable times during normal business hours. The Association shall have the right to require written notice of the particular financial records to be inspected not more than five (5) business days prior to the inspection date (or such longer period as may be reasonable if the records sought are not readily available). The inspection shall be scheduled and conducted in such a manner that the operations of the Association are not unduly disrupted and the safety and integrity of the records are ensured. The Association may charge a reasonable fee to cover the reproduction, postage and administrative expenses incurred by the Association as a result of an inspection.

8. INSURANCE.

8.1. TYPES OF INSURANCE

If such insurance is available at reasonable cost, the Association shall endeavor to obtain insurance coverage, in such amounts and with such deductibles as it shall reasonably determine, for the Property (including the Units and Garage Units), other property of the Association, and the activities of the Association, to cover the insurable interests of the Owners, the Association and their mortgagees therein, and the directors, officers employees and agents, if any, of the Association. Such coverage shall exclude personal property of an Owner (see Section 8.3), but the Association may provide information to Owners regarding coverage that is available for such personal property. The insurance coverage that the Association shall endeavor to obtain shall include:

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(i) loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies, based upon current replacement cost;

(ii) risks to the Property, such as vandalism, theft and malicious mischief;

(iii) comprehensive general public liability and, if applicable, automobile liability coverage, covering losses or damages resulting from accident or occurrences on or about the Property;

(iv) any coverage mandated by law or regulation, including, without limitation, worker's compensation coverage;

(v) fidelity insurance covering any person having access to or control over any substantial funds of the Association;

(vi) officers and directors, providing coverage against claims brought against the Board of Directors or any administrator or officers of the Association acting in such capacity; and for

(vii) such other insurance as the Association shall determine to be reasonable and desirable from time to time.

8.2. OTHER INSURANCE CRITERIA

The insurance coverage obtained by the Association shall, if feasible, provide that:

(i) the interest of the insured parties shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association;

(ii) the coverage shall not be terminated for non-payment of premiums without at least thirty (30) days' prior written notice to the Association;

(iii) subrogation shall be waived by the insurer with respect to the Association and its Board of Directors, employees and agents, and with respect to Owners, members of their families or household, and mortgagees;

(iv) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or Garage Common Elements or membership in the Association; and

(v) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

8.3. COLLECTION OF PREMIUMS FOR INSURANCE

Because consistent coverage for Units and Garage Units is essential as a result of their structural relationship and problems could ensue for other Owners and the Association if an Owner failed to properly insure the Owner's Unit or Garage Unit, insurance premiums and deductibles for the coverage set forth in Section 8.1 shall be a Common Expense of the Association, (a) except as set forth below and (b) except that insurance premiums and deductibles for coverage relating solely to Parking Structures shall be a Garage Common Expense payable only by Garage Unit Owners. If an insurer requires that coverage for the property value of a Unit, Garage Unit, or personal property of an Owner within a Unit or insurable events occurring within a Unit shall be in the name of the Association, rather than in the name of individual Owners or Garage Unit Owners, then premiums for such coverage shall (a) be allocated among Units and Garage Units in the same manner as the insurer determines to be reasonably allocable to each Unit and (b) be collected as a Special Assessment against the applicable Unit or Garage Unit, pursuant to Section 12.3.1. If the insurer does not allocate such premiums by Unit or Garage Unit, the premiums shall (a) be allocated among Units and Garage Units based on each Unit's or Garage Unit's Percentage Interest and (b) be

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collected as part of the Regular Assessment or as a Special Assessment against the applicable Unit or Garage Unit, pursuant to Section 12.3.1., as the Board of Directors shall determine. No Unit Owner or Garage Unit Owner may elect not to pay its proportionate share of the insurance obtained by the Association.

8.4. INSURANCE BY OWNERS

Each Owner, at such Owner's expense, shall obtain such insurance as the Owner determines is desirable for (a) furnishings and other personal property in the Unit or Garage Unit, (b) for liability insurance covering insurable events occurring within the Unit of such Owner (unless informed in writing by the Board of Directors that the insurance obtained by the Association provides coverage for events occurring within the Unit of such Owner), and (c) such other insurance coverage in relation to the Owner's Unit as the Owner determines is desirable, including property coverage for improvements to the Unit made by the Owner or a predecessor Owner that cause such Unit to differ from standard Units of a similar type. If approved by the Board of Directors, the Association may collect and pay premiums for such insurance as a Special Assessment against the applicable Unit(s), pursuant to Section 12.3.1. The existence of such insurance coverage is not intended to affect or replace any insurance coverage obtained by the Association, or give the Owner the right to refuse to pay such Owner's share of the premium for the insurance obtained by the Association, or cause the diminution or termination of such coverage obtained by the Association, or result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of the existence or non-existence of insurance coverage maintained or required by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a Special Assessment. Any insurance obtained by an Owner shall include a provision waiving the insurance company's right of subrogation against the Association and other Owners.

8.5. INSURANCE TRUSTEE

The Board of Directors may, at its discretion, retain any bank, trust company or South Carolina attorney or law firm, certified public accountant, or other Person authorized by law to act as trustee, agent or depository (the "Insurance Trustee") on behalf of the Association for the purpose of receiving or distributing any insurance proceeds. If so, the Board of Directors may delegate to the Insurance Trustee any powers or duties of the Association set forth in this Section 8. The Insurance Trustee shall not be liable for payment of premiums, the renewal or sufficiency of the policies, or failure to collect any insurance proceeds. The fees and reasonable expenses of the Insurance Trustee shall be a Common Expense.

8.6. USE OF PROCEEDS IF DAMAGE TO UNITS ONLY

If a loss occurs only to a Unit or Garage Unit, without any loss to Common Elements or Garage Common Elements, the Owner and any mortgagee of such Unit or Garage Unit shall use the proceeds of any insurance of the Association to effect necessary repairs to the Unit or Garage Unit. The Owner shall obtain estimates and/or bids for the cost of repairing and reconstructing the damaged Unit or Garage Unit. The Owner shall provide adequate information to the Association to confirm the cost of repairing and reconstructing the damaged Unit or Garage Unit, the existence of a valid contract to repair and reconstruct the damaged Unit or Garage Unit, and that the insurance proceeds are sufficient to pay for the same. The Association shall disburse the net insurance proceeds received because of the loss directly to the Owner of the damaged Unit(s) or Garage Unit(s) pursuant to such procedures as the Association shall reasonably determine. Because of the problems that could ensue for other Owners and the Association if an Owner failed to properly repair or reconstruct the Owner's Unit or Garage Unit, if the insurance proceeds are insufficient to pay the cost of the repair of the damaged Unit or Garage Unit, the Board of Directors may, in its sole discretion, subject the damaged Unit or Garage Unit to a Special Assessment for the remaining funds necessary to repair the Unit or Garage Unit.

8.7. USE OF PROCEEDS IF DAMAGE TO COMMON ELEMENTS ONLY

If loss occurs only to Common Elements (including Limited Common Elements) or Garage Common Elements, the Board of Directors or Insurance Trustee shall obtain estimates and/or bids for the cost of repairing and reconstructing the damaged Property and determine whether insurance

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proceeds are sufficient to pay for the same. If the insurance proceeds are insufficient to pay the cost of the repair and reconstruction, the Board of Directors may, in its sole discretion, impose a Special Assessment on all Units to provide for the remaining funds necessary to repair or reconstruct the Common Elements or Garage Common Elements. The Association shall then promptly contract for the necessary repairs or reconstruction to the Common Elements or Garage Common Elements.

8.8. USE OF PROCEEDS IF DAMAGE TO BOTH UNITS AND COMMON ELEMENTS

Because of the administrative and construction coordination complications that can occur if a loss occurs to one or more Units and to Common Elements (including Limited Common Elements) or Garage Common Elements, the Board of Directors may determine that all insurance proceeds received as a result of such loss shall be delivered to the Association or Insurance Trustee. The Association or Insurance Trustee shall obtain estimates and/or bids for the cost of rebuilding and reconstructing the damaged Property and determine whether insurance proceeds are sufficient to pay for the same. Because of the problems that could ensue for other Owners and the Association if an Owner failed to properly repair or reconstruct the Owner's Unit, if the insurance proceeds are insufficient to pay the cost of the repair of the damaged Units, the Board of Directors may, in its sole discretion, subject the damaged Units to a Special Assessment for the remaining funds necessary to repair the Units. If the insurance proceeds are insufficient to pay the cost of the repair and reconstruction of the damaged Common Elements or Garage Common Elements, the Board of Directors may, in its sole discretion, impose a Special Assessment on all Units to provide for the remaining funds necessary to repair or reconstruct the Common Elements or Garage Common Elements. The Association shall then promptly contract for the necessary repairs and reconstruction of the Common Elements or Garage Common Elements and the damaged Units. If, however, in the sole opinion of the Board of Directors, the necessary repairs to the damaged Units are repairs that can be accomplished without detrimentally affecting other Owners or the Common Elements or Garage Common Elements, then the Association may allow the Owner of the Unit to contract directly for the repair of the Unit. In such event, the Owners or mortgagees of the damaged Units shall apply the insurance proceeds and any applicable Special Assessment to effect necessary repair and restoration to the Units.

8.9. USE OF EXCESS PROCEEDS

If funds of the Association remain after completion of repairs and reconstruction and payment of any Insurance Trustee's fees and other fees or costs, such funds shall be distributed (i) first, to the Unit Owners or Garage Unit Owners who paid Special Assessments for repair and reconstruction in the same proportion as their Special Assessment bears to all Special Assessments for repair and reconstruction, until all Special Assessments (and such imputed interest thereon, if any, as the Board of Directors determines is appropriate and reasonable) have been repaid, (ii) second, to such reserves of the Association as the Board of Directors shall determine is reasonable, and (iii) third, to the Unit Owners or Garage Unit Owners in proportion to their Percentage Interests.

8.10. WHEN RECONSTRUCTION NOT REQUIRED

In accordance with Section 27-31-250 of the Act, reconstruction is not mandatory if more than two-thirds of the Property must be reconstructed. If such provision of the Act is amended, then the amended provision shall apply.

8.11. CONTRACT ADMINISTRATION DURING RECONSTRUCTION

The Board of Directors, Insurance Trustee, Unit Owners and Garage Unit Owners shall endeavor to require all substantial contractors, suppliers and providers of services during repair and reconstruction to deliver waivers of mechanics liens on the Property and execute any affidavit required by law or reasonably required by any insurer or the Association.

8.12. RIGHTS OF MORTGAGEES

No holder, insurer or guarantor of the mortgage on a Unit or Garage Unit (a "Mortgagee") shall have any right to participate in the determination of whether any portion of the Property is to be rebuilt, nor shall any Mortgagee have the right to require that insurance proceeds be used to repay its loan, except in accordance with this Section 8. Notwithstanding, any Mortgagee that has

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provided to the Association the information required by Section 10.5, below, shall have the right to timely written notice by the Association of (a) any condemnation or material casualty loss that adversely affects either a material portion of the Property subject to this Master Deed or the Unit securing the mortgage of such Mortgagee; (b) any delinquency exceeding 60 days in the payment of the Assessments or charges owed to the Association by the Owner of the Unit securing the mortgage of such Mortgagee; (c) a lapse, cancellation or material modification of any insurance policy maintained by the Association relating to the Unit securing the mortgage of such Mortgagee; and (d) any proposed action that requires the consent or approval of a specified percentage of Mortgagees.

8.13. ATTORNEY-IN-FACT FOR OWNER

Each Owner hereby irrevocably constitutes and appoints the Board of Directors and any Insurance Trustee, or either of them, as such Owner's true and lawful attorney-in-fact for the purpose of dealing with any matters relating to the Unit or Garage Unit of the Owner and arising under this Section 8. As attorney-in-fact, the Board of Directors and any Insurance Trustee, or either of them, may execute all documents with respect to the interest of the Owner that may be necessary or appropriate to the powers granted hereby.

9. CONDEMNATION.

9.1. IF RESTORATION WILL OCCUR

If the Property or any part thereof shall be taken or condemned by any authority having a power of eminent domain, any compensation therefor shall be payable to the Association or such bank, trust company or law firm authorized to do business in South Carolina as the Board of Directors shall designate as Trustee for all Unit Owners, Garage Unit Owners and Mortgagees affected thereby, according to the loss or damages to the Common Elements, Garage Common Elements, Units and Garage Units. To the extent deemed feasible by the Board of Directors, such proceeds shall be used by the Association to restore or replace the condemned Property on the remaining Property. In so doing, the Association shall follow the concepts and procedures set forth in the preceding Section 8, as applicable.

9.2. IF RESTORATION WILL NOT OCCUR

If the Board of Directors determines that such restoration or replacement is impracticable, the Association shall, with the proceeds received from such condemnation or taking, remove all necessary remains of such improvements so taken or condemned, restore the remaining Property affected to good and orderly condition, and equitably distribute any remaining proceeds from such condemnation or taking to the Association, Unit Owners or Garage Unit Owners affected thereby. In so doing, the following principles shall apply:

9.2.1. The total amount allocated to a taking of or injury to the Common Elements or Garage Common Elements shall be apportioned among Owners on the basis of each Owner's Percentage Interest in the Common Elements or Garage Common Elements.

9.2.2. The respective amounts allocated to the taking of or injury to a particular Unit shall be apportioned to the Owner of that particular Unit or Garage Unit involved.

9.2.3.The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board of Directors determines to be equitable.

10. MISCELLANEOUS.

10.1. UNIT AND GARAGE UNIT MORTGAGES

Each Unit Owner shall have the right, subject to the provisions hereof, to make a separate mortgage or encumbrance on his Unit and any Garage Unit owned by such Unit Owner. No Unit Owner or Garage Unit Owner shall have the right to make or create, or cause to be made or created, any mortgage, encumbrance or other lien on or affecting other Property.

10.2. REAL ESTATE TAXES

It is intended that real estate taxes, assessments, and other charges of any taxing or assessing authority shall be separately assessed against each Unit and Garage Unit and the Unit's or Garage

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Unit's corresponding Percentage Interest in the Common Elements or Garage Common Elements. If such taxes, assessments or charges are taxed on the Property as a whole, then each Unit Owner shall pay its proportionate share thereof in accordance with the Unit's and Garage Unit's respective Percentage Interest. In such instance, the Board of Directors shall endeavor to determine the amount due and notify each Unit Owner and Garage Unit Owner as to the real estate taxes payable for such Unit and Garage Unit. No forfeiture or sale of the Property as a whole for delinquent taxes, assessments, or charges shall ever divest or in any way affect the title to an individual Unit or Garage Unit so long as the applicable tax, assessment, or charge on the Unit and Garage Unit is currently paid in a timely manner.

10.3. RESTRICTIONS ON RENTALS AND INTERVAL OWNERSHIP

In order to alleviate problems of security and disruption associated with frequent changes in occupancy, Units and Garage Units shall not (a) be divided into or operated as "timeshares" or interval ownership segments or (b) be leased or rented for periods less than one hundred eighty (180) consecutive days. Any lease or rental agreement shall be in writing and the Unit Owner shall ensure that Occupants of the Units understand and fully comply with the provisions of this Master Deed and the Rules and Regulations. If rented or leased, the Unit Owner shall notify the Management Agent or such other entity as the Board of Directors shall determine, in writing, in advance of occupancy, of the name(s), home address(es), and home telephone number of the renter(s) or lessee(s). If requested by the Management Agent or the Board of Directors, the renting or leasing Owner shall provide evidence reasonably satisfactory to the requesting entity to confirm the term of rental or lease.

10.4. NOTICE OF SALE OR OTHER CONVEYANCE

If an Owner sells or otherwise conveys a Unit or Garage Unit, the conveying Owner shall promptly cause to be furnished to the Association, in writing, the name, home address and home telephone number of such purchaser or transferee and the forwarding address of the conveying or leasing Owner. The Association may require a transferor or transferee Owner to provide a copy of the deed or other instrument by which the Unit or Garage Unit was conveyed. When any Person receives title to a Unit or Garage Unit by devise or inheritance, or by any other method not heretofore considered, it shall be the responsibility of the Person acquiring title to notify the Association that such transfer has occurred and to provide the information set forth above.

10.5. INFORMATION REGARDING MORTGAGEES

Any holder, insurer or guarantor of the mortgage on a Unit or Garage Unit (a "Mortgagee") may provide to the Association from time-to-time, in writing, current information regarding its mortgage interest in any Unit. Such information shall include the Unit or Garage Unit number and address; the name of Owner(s) of the Unit or Garage Unit; the name, address, telephone and facsimile number of the Mortgagee and the name of a contact person or persons for the Mortgagee. If the interest of the Mortgagee is terminated or the interest of the Mortgagee is lawfully assigned to another entity, the Mortgagee shall promptly notify the Association of such termination or assignment, including comparable information regarding any assignee of its interest. If any request for approval or consent is sent by certified or registered mail to a Mortgagee at its address of record by the Association, the Declarant, or their authorized agent, and no responsive written answer is received from the Mortgagee within 21 calendar days of such notice, then the approval or consent requested shall be deemed to have been given by the Mortgagee.

11. NOTICES.

11.1. NOTICE PROCEDURE

Whenever notice is required or permitted under the terms of this Master Deed, it shall be in writing and (a) personally delivered or (b) sent postage or delivery charges prepaid either (i) by United States mail, certified, return receipt requested, in which case notice shall be deemed to occur on the certified date of delivery or rejection of delivery or (ii) if within the United States, by First Class or Priority United States mail, in which case notice shall be deemed to occur four (4) calendar days after date of postmark, or (iii) by any dependable delivery service that provides evidence of delivery, in which case notice shall be deemed to occur on the certified date of delivery. Notices by other methods, such as facsimile or e-mail transmission, shall be valid if the recipient thereof acknowledges receipt in writing.

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11.2. ADDRESSES

All notices to Owners shall be delivered or sent to such address as has been provided , in writing, from time to time, by the Owner to the Association, or if no address has been so provided to the Association or no current address is known, then at the address of the Owner of the Unit on the property tax records of Beaufort County, South Carolina or at any other address that would constitute a valid address for service of process.

All notices to Declarant shall be delivered to:

Montecito Westbury, LLC
c/o Montecito Property Company, LLC
7785 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7561

or to such other address as has been provided, in writing, from time to time, by the Declarant to the Association.

All notices to the Association shall be delivered in care of the Association at:

Estate at Westbury Owners Association, Inc.
c/o Management Agent
85 Kensington Boulevard
Bluffton, SC 29910

or to such other address as has been provided, in writing, from time to time, by the Association.

All notices to Mortgagees shall be delivered or sent to such address as has been provided, in writing, from time to time, to the Association pursuant to Section 10.5, above, or to any other address that would constitute a valid address for service of process.

12. ASSESSMENTS.

12.1. PURPOSE OF ASSESSMENTS

The Assessments shall be used to accomplish the provisions set forth in this Master Deed and to promote the health, safety, convenience and general welfare of the Owners, including the improvement and maintenance of the Common Elements or Garage Common Elements, as applicable.

12.2. REGULAR ASSESSMENTS AND BUDGET

12.2.1. Fiscal Year and Annual Budget

The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. (In the initial year after recordation of this Master Deed, the Board of Directors may, in its sole discretion, prepare or cause to be prepared the Budget for the balance of the current fiscal year.) The Budget, once approved by the Board of Directors, shall serve as the basis for Assessments to all Owners (the "Total Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year; provided, however, that the Board of Directors may, in its sole discretion, submit the proposed Budget to a vote of the Owners. If the Association fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Total Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase during the current Year over the preceding Year, in the Consumer Price Index, all Urban Consumers, United States City Average, All Items (the "CPI") or its successor index, as determined by the Board of Directors. In order to provide time to determine any applicable increase, the "Year" for determining the CPI shall be measured from October 1 through September 30. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. The Association shall furnish to each Unit Owner a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the Assessment payable by such

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Owner for the fiscal year. (For information on Garage Budget, see Section 3.5.4, above.) The same principles shall apply to the Garage Budget.

12.2.2. Financial Statement

Within ninety (90) days following the close of the Association's fiscal year, the Board of Directors shall endeavor in good faith to cause an unaudited or audited financial statement of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon written request, a copy of the Annual Report shall be provided to any Owner of any Unit, but the Association may charge a reasonable fee to cover the reproduction, postage and administrative expenses incurred.

12.2.3. Elements of Budget

The Budget and the Assessments shall be based upon annual estimates by the Association of its revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Elements and the operation of the Association. Such estimated expenses and costs may include, among other things, the following: expenses of management, including compensation of any Management Agent; taxes and assessments; insurance premiums and deductibles; repairs and maintenance; wages and personnel expenses for Association employees; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds for existing or anticipated expenses or costs of the Association; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities that may be incurred by the Association. Such expenses and costs shall constitute the "Common Expenses". The same principles shall apply to the Garage Budget.

12.2.4. Apportioning Assessments

Except as expressly stated in this Master Deed, the Owner of each Unit shall pay that percentage of the Assessments as the Percentage Interest for such Unit bears to all Percentage Interests. The same principles shall apply to Garage Units and Garage Percentage Interests.

12.2.5. When Assessments Are Payable

Unless the Board of Directors elects a different payment period, the Assessments shall be due and payable monthly, prior to the first day of the month to which the Assessments apply. After a Unit Owner has been notified of the amount of the periodic Assessment, no further notice of the Assessment due shall be required.

12.3. SPECIAL ASSESSMENTS

12.3.1. Special Assessments by Board of Directors

In addition to the regular Assessments authorized above, the Board of Directors may levy Special Assessments applicable to no more than a three (3) year period to cover costs such as any unbudgeted property taxes or assessments; in the event of an insured loss or claim, any deductible amount under the insuring policy; and unbudgeted repairs, costs, fees or expenses, etc. of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Common Elements. Except as set forth below, Special Assessments shall be allocated among Units in the same manner as other Assessments. In addition to Special Assessments of all Units, the Association may levy a Special Assessment against a particular Unit (i) to cover the costs of providing services to or on behalf of a particular Unit or Owner of such Unit at the request of such Owner or (ii) to cover costs incurred as the result of the failure of the Owner or Occupants of the Unit, their agents, guests, invitees or licensees, to execute any responsibility they may have under this Master Deed, the Bylaws or the Rules and Regulations. The same principles shall apply to Special Assessments for Garage Units.

12.3.2. Special Assessments with Owner Approval

Any other Special Assessment shall be approved by a Majority of Owners (or Garage Unit Owners, if applicable to Garage Common Elements), as defined in Section 1. Meetings or votes of Owners for the special purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners of the Units, in accordance with the notice procedure set forth in the Bylaws. The meeting or vote shall occur no earlier than the date specified in the Bylaws for a special meeting of the Association. The notice shall state generally the purpose and amount of the proposed Special Assessment.

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12.3.3. When Special Assessments Are Due

Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner.

12.4. INITIAL WORKING CAPITAL ASSESSMENT

In order to provide the Association with adequate working capital funds, the Association shall collect from a new Owner of a Unit, at the time of transfer of ownership to such Owner, an amount equal to one sixth (1/6) of the annual regular Assessment for such Unit in effect at the time of the transfer. This provision shall not apply to any transfer of ownership which is exempt from the imposition of a deed recording fee under South Carolina law (currently, South Carolina Code Section 12-24-40). The Association may maintain the working capital funds in one or more reserve accounts to meet unforeseen expenditures or use the funds to pay Operating Expenses of the Association. Such payments shall not be considered advance payments of regular Assessments and shall not be refundable at the time of transfer of ownership by the Owner making the payment. In the event of non-payment of the Working Capital Assessment, the amount due shall be collected as a Special Assessment pertaining to that Unit only. No Working Capital Assessment shall be applicable to Garage Units.

12.5. EFFECT OF NON-PAYMENT OF ASSESSMENTS

Any Assessment (including any Special Assessment) that is not paid to the Association when due shall be delinquent. The Board of Directors may levy a "late charge" not to exceed five percent (5%) of the amount due, plus simple interest at a rate not to exceed five (5) percent over the Prime Lending Rate as set forth in The Wall Street Journal from the date when the Assessment is due until the date it is received by the Association. Such charges shall be added to and collected in the same manner as other Assessments. The Board of Directors may, in its sole discretion, waive all or any portion of such charges or interest if it determines that the failure to pay the Assessment or charge when due was caused by circumstances beyond the control of the Owner or other good cause. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Unit.

12.6. LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS

Assessments, including Special Assessments, interest and charges thereon, and costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit or Garage Unit at the time when the assessment was due and, unless expressly agreed by the Association, also of any subsequent Owner, (ii) a charge on the Unit or Garage Unit to which such assessments are applicable and (iii) a continuing lien and encumbrance upon such Unit or Garage Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may prepare a written notice of lien setting forth the amount of the unpaid Assessment or Special Assessment, the due date, the amount remaining unpaid, including any interest or charges, the name of the Owner of the Unit or Garage Unit, and a description of the Unit or Garage Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any Management Agent of the Association and may be recorded in the Register of Deeds for Beaufort County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment, but notice of lien shall not be a condition precedent to or delay the attachment of the lien, which shall attach on the date that the Assessment is levied or the date of the event that gives rise to the obligation to pay the Association. Such lien may be enforced as set forth in this Master Deed or otherwise permitted by law.

12.7. SUBORDINATION OF LIEN; MORTGAGEE RIGHTS

Unpaid Assessments then due and payable on a Unit or Garage Unit shall be paid by the conveying Owner at the time of any conveyance of the Unit or Garage Unit, or, if not paid, shall be payable by the Person to which the Unit or Garage Unit is conveyed. Pursuant to Section 27-31-210 of the Act, the lien on a Unit or Garage Unit for unpaid Assessments shall be subordinate to the liens for any unpaid taxes and any duly recorded prior mortgage or other duly recorded lien on the Unit or Garage Unit. Sale or transfer of any Unit or Garage Unit shall not affect the lien for unpaid Assessments. However, pursuant to Section 27-31-210(b) of the Act, if a mortgagee of any mortgage of record or other purchaser of a Unit or Garage Unit obtains title at a foreclosure sale, the

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Person acquiring title shall not be liable for Assessments allocable to the Unit or Garage Unit that accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale. Unless the Board of Directors determines that such unpaid Assessments shall be waived or reduced by the Association, such unpaid Assessments shall be deemed Common Expenses collectible from all Unit Owners, including the Person acquiring title, its successors and assigns, in accordance with their respective Percentage Interests.

12.8. STATEMENT OF ACCOUNT

Upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association or its duly authorized agent shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

(i) The amount of unpaid annual Assessment or Special Assessment, if any, applicable to such Unit.

(ii) The amount of the current annual Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due.

(iii) The amount of any credit for advance payments of annual Assessments or Special Assessments.

The Association may charge a reasonable fee to cover the reproduction, postage and administrative expenses incurred in providing such a statement. Unless such written statement is delivered within twenty-one (21) calendar days after receipt of the request (or such longer period as is authorized in the request) and any reasonable fee charged by the Association, the Association shall have no right to assert a priority lien on the Unit for the amount of unpaid annual Assessment or Special Assessment, if any, applicable to such Unit.

13. REMEDIES OF ASSOCIATION.

13.1. REMEDIES AND ENFORCEMENT

Each Owner shall comply with this Master Deed, the Bylaws and the Rules and Regulations adopted pursuant to this Master Deed, as they may be amended from time to time. Failure to comply shall be grounds for the Association to impose fines (as a Special Assessment and after notice as set forth in Section 12.3.3); institute an action to recover sums due, for damages, for injunctive or equitable relief, or for specific performance; or exercise any other enforcement right that may exist in law in equity. Such actions shall be maintained by the Board of Directors on behalf of the Association. The Association may bring an action at law against a delinquent Owner personally for the collection of any delinquent Assessment or Special Assessment, or foreclose the lien against the delinquent Owner's Unit in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the subject Unit. Failure on the part of Declarant or the Association to exercise any right, power or remedy herein provided shall not be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to any violation or breach occurring prior to subsequent thereto. No right of action shall accrue in favor of and no action shall be brought or maintained by any Person against Declarant or the Association because of its failure to bring an action as a result of any purported or threatened violation or breach by any Person of the provisions of this Master Deed, the Bylaws or any Rules and Regulations of the Association.

13.2. ATTORNEYS FEES AND COSTS

In any suit, arbitration, counterclaim or other legal action by the Declarant or the Association to enforce any of the provisions of the Master Deed or the Bylaws, or any appeal thereof, if the Declarant or the Association is the prevailing party, the Declarant or the Association shall be entitled to recover its costs and disbursements and reasonable attorneys' fees and expenses from any other party to the suit or action that is subject to this Master Deed.

13.3. DISCHARGE OF MECHANIC'S LIENS

The Association may cause to be discharged any mechanic's lien or other encumbrance that in the opinion of the Association may constitute a lien against the Common Elements. If less than

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all of the Owners are responsible for the existence of said lien, the Owners responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

14. AMENDMENTS.

14.1. AMENDMENT TO MASTER DEED BY ASSOCIATION

Amendments to this Master Deed, other than those authorized by Sections 14.2 and 14.2, below, shall be approved by at least two-thirds (2/3rds) of the Percentage Interests then existing, in accordance with the procedure set forth in the Bylaws; provided, however, (a) no amendment that imposes a greater economic or legal burden on Declarant than the burden that exists under the current provisions of this Master Deed shall be valid unless it is approved, in writing, by Declarant, and (b no amendment that increases the Percentage Interest of any Owner shall be valid unless it is approved, in writing, by the affected Owner(s).

14.2. AMENDMENTS TO MASTER DEED BY DECLARANT

Notwithstanding any other provision herein or in the Bylaws, Declarant may amend or supplement this Master Deed without the consent of the Association, any Owner, any easement grantee, or any mortgagee if, in Declarant's opinion, based on advice of legal counsel, such amendment is necessary to (a) correct any scrivener's error in this Master Deed; (b) bring any provision of the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination that is in conflict with this Master Deed; (c) enable any reputable title insurance company to issue title insurance coverage with respect to any Units subject to this Master Deed; (d) enable any mortgagee to make mortgage loans, on reasonable terms; (e) enable any insurer to provide insurance required by this Master Deed; or (f) clarify any provision of this Master Deed or eliminate any conflict between provisions of this Master Deed.

14.3. AMENDMENTS TO RULES AND REGULATIONS

Amendments to Rules and Regulations may be made by a majority of the Board of Directors.

15. GENERAL.

15.1. TITLE

Every Unit Owner and Garage Unit Owner shall promptly cause to be duly recorded with the Register of Deeds for Beaufort County the deed or other document conveying the Unit or Garage Unit to such Owner. Upon written request of the Association, the Owner shall file a true copy of such evidence of title with the Association or its designee.

15.2. APPLICABLE LAW AND INTERPRETATION

This Master Deed and the Bylaws shall be construed in accordance with the laws of the State of South Carolina. In all cases, the provisions set forth or provided for in this Master Deed shall be construed together, given that interpretation that is reasonable, be liberally interpreted and, if necessary, be extended or enlarged by reasonable implication as to make them fully effective. The captions herein as to the contents of various portions of the Master Deed are inserted only for convenience and are not to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to any Person, as defined herein, shall in all cases be assumed where reasonably required. The effective date of this Master Deed shall be the date of its filing for record in the Register of Deeds for Beaufort County, South Carolina.

15.3. CONFLICTS WITH ACT OR LAW

This Master Deed is intended to comply with the Act and, to the extent reasonable, shall be so construed. If any provision of this Master Deed clearly conflicts with a mandatory provision of the Act or applicable law, the provisions of the Act or applicable shall apply and control. If such conflict invalidates any provision of this Master Deed, such invalidation will not affect any of the other provisions contained herein unless the result would clearly be inequitable, and the other provisions shall remain in full force and effect.

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15.4. TRANSFER OF DECLARANT'S RIGHTS

Unless the transfer of a right or interest of Declarant is expressly stated in this Master Deed to occur upon the earlier happening of a defined event, any right or interest of Declarant reserved or contained in this Master Deed may be transferred or assigned by the Declarant to any Person, either separately or with other rights or interests, by written instrument executed by both Declarant and the transferee and recorded in the Register of Deeds for Beaufort County, South Carolina.

15.5. MODIFYING SYSTEM OF ADMINISTRATION OF ASSOCIATION

The system of administration of the Association may be modified in accordance with the provisions of South Carolina Code Section 27-31-160 or any successor statute defining the applicable procedure.

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IN WITNESS WHEREOF, the Declarant has hereunto set its Hand and Seal this 25th day of January, 2006.

WITNESSES:

MONTECITO WESTBURY, LLC
A Delaware limited liability company

By: Janice R. Long

Print Name: Janice R. Long
Its: Vice President

STATE OF FLORIDA)

COUNTY OF DUVAL)

ACKNOWLEDGMENT

I, CYNTHIA GONZALES **a Notary Public, hereby certify that**

JANICE R. LONG **, as Vice President of Montecito Westbury, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.**

Subscribed to and sworn before me this 25th **day of** JANUARY **, 2006.**

(SEAL)

Signature of Notary Public
Notary Public for Florida

My Commission Expires: December 6, 2008

CYNTHIA S. GONZALES
MY COMMISSION EXPIRES
December 6, 2008
#DD 377334
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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EXHIBIT "A": LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown on a plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D. Bluffton Township, Beaufort County, South Carolina" prepared by Terry S. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998 and revised October 28, 1998, and recorded in the Register of Deeds for Beaufort County, South Carolina in Plat Book 67 at Page 118, further and last revised January 26, 1999 and recorded February 23, 1999 in Plat Book 69 at page 23.

Together with certain non-exclusive access, utility, signage and drainage easements appurtenant thereto.

Being the same property conveyed to Montecito Westbury, LLC by deed of Westbury Park Apartments, Ltd. dated October 28, 2005 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on November 2, 2005 in Book 2261 at Page 1673.

Being TMS Number 600-031-000-0266-0000.

Declarant's Address:

Montecito Westbury, LLC
c/o Montecito Property Company, LLC
7785 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7561

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EXHIBIT "B": BYLAWS

BYLAWS

OF ESTATE AT WESTBURY OWNERS ASSOCIATION, INC.

A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act and the South Carolina Horizontal Property Act, the Board of Directors of Estate at Westbury Owners Association, Inc., a South Carolina nonprofit mutual benefit corporation, has adopted the following Bylaws for such corporation.

1. NAME AND PRINCIPAL OFFICE

1.1. Name.

The name of the nonprofit corporation is "Estate at Westbury Owners Association, Inc.", hereinafter referred to as the "Association".

1.2. Offices.

The principal offices of the Association shall be in South Carolina.

2. DEFINITIONS

2.1. Definitions.

Except as otherwise provided herein or required by the context hereof, all capitalized terms used herein are intended to have the same meaning as any similar terms set forth in the Master Deed of The Estate at Westbury Horizontal Property Regime (the "Master Deed"), if such Master Deed is then recorded in the office of the Register of Deeds for Beaufort County, and all amendments or supplements thereto filed for record from time to time.

3. MEMBERS; VOTING AND MEETINGS

3.1. Members.

Each Owner of a Unit shall be a Member of the Association. If the Member is a corporation, partnership, limited liability company, trust, tenancy in common, joint tenancy, or similar entity or ownership arrangement, it is the entity or ownership arrangement which is the Member, and not each shareholder, partner, member, beneficiary or trustee, joint tenant or tenant in common, etc. who is a Member. In order to permit the efficient administration of the business and operations of the Association, the rights and authority of Members are limited to the extent set forth in the Master Deed or these Bylaws unless otherwise required by applicable law.

3.2. Notice of Ownership.

In order to confirm Membership, upon purchasing a Unit in The Estate at Westbury Horizontal Property Regime, the Owner of such Unit shall promptly furnish to the Association a legible copy of the instrument conveying ownership to the Owner (e.g. a recorded deed), which copy shall be maintained in the records of the Association. This provision shall not apply to the Declarant or any Owner of a Unit who purchases his Unit from the Declarant.

3.3. Annual and Regular Meetings.

The first meeting of the Members shall be held within one (1) year from the date of recording of the Master Deed. Unless otherwise determined by the Board of Directors, subsequent annual meetings shall be held on such dates and at such location in Beaufort County, South Carolina as the Board of Directors may determine.

3.4. Special Meetings.

Pursuant to South Carolina Code Section 33-31-702, a special meeting of the Members shall be held (a) upon the call of the President of the Association or the Board of Directors, or (b) if the holders of at least five percent (5 %) of the Percentage Interests sign, date and deliver to an officer of the Association a written demand for a special meeting describing the purpose for which it is to be held. (The close of business on the thirtieth [30th] day before delivery of the written demand is the record date for determining whether the five percent (5 %) requirement has

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been met.) If a notice for a special meeting demanded under (b) is not given within thirty (30) days of the date the written demand is properly delivered to an officer of the Association, a person signing the demand may set the time and place of the meeting in Beaufort County, South Carolina and give notice in accordance with these Bylaws. Only those matters that are within the purposes described in the meeting notice may be conducted at a special meeting.

3.5. Notice of Meetings.

Unless a shorter time is permitted by applicable law, the Association shall notify Members of the place, date and time of each meeting or ballot in lieu of a meeting at least ten (10) days prior thereto. Notice shall be given in accordance with the procedure set forth in Section 10. A Member may waive any notice required by these Bylaws or applicable law by written waiver, signed by the Member, delivered to the Secretary or President of the Association or the Board of Directors, either before or after the event. Attendance by a Member at a meeting or participation in a ballot waives objection to lack or notice or defective notice thereof unless the Member, prior to the end of the meeting or ballot, submits a written objection to the meeting or ballot.

3.6. Voting by Members.

3.6.1. In all votes or ballots by Members, each Owner of a Unit or Garage Unit shall have the same number of votes as the Percentage Interest of such Unit or Garage Unit, unless otherwise expressly required by law. The Percentage Interest of each Unit and Garage Unit is defined in the Master Deed.

3.6.2. Pursuant to South Carolina law, in decisions requiring the approval of Members, at least fifty-one percent (51%) of the Percentage Interests shall be required to constitute approval.

Example: Members having thirty percent (30%) of the cumulative Percentage Interests vote to approve a matter and Members having twenty-five percent (25%) of the cumulative Percentage Interests vote not to approve the matter. Although fifty-five percent (55%) of the cumulative Percentage Interests cast votes, and at least fifty-one percent (51%) of those casting votes voted to approve the matter, approval did not occur. In this example, fifty-one percent (51%) of all Percentage Interests would have to vote to approve the matter. (Note: this example is provided for mathematical purposes only.)

3.6.3. In approving any decision requiring the approval of Members, the Members may delegate to the Board of Directors or any officer of the Association the authority to determine and implement such details or matters as the Members determine.

Example: Assume that the Members approve obtaining a loan to the Association in a principal amount not to exceed $10,000 "on such terms and conditions as shall be approved by the Board of Directors." In such case, the Board of Directors shall have authority to determine such details as the term of the loan, the interest rate, the repayment schedule, the security for the loan, etc.

3.6.4. Cumulative voting is prohibited.

3.7. Quorum of Members.

Fifty-one percent (51%) of the cumulative Percentage Interests shall constitute a quorum for the transaction of business at any meeting or vote of the Members. A meeting may be conducted by any means that permits all Members participating to communicate simultaneously (such as a telephone conference call).

3.8. Proxies and Authority of Person Voting.

A Member may be represented by a written proxy that in the reasonable opinion of the President or Secretary of the Association evidences the intention of the Member to permit the holder of the proxy to vote on such Member's behalf. A proxy may be held by any Person, including, without limitation, any authorized representative of a Management Agent of the Association. The Board of Directors, or, in its absence, the President of the Association, shall

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have the authority to determine, in their sole reasonable discretion, whether any individual claiming to have authority to vote for a Member has such authority. If the Member is a corporation, partnership, limited liability company, trust, tenancy in common, joint tenancy, or similar entity or ownership arrangement, the Association may require the individual purporting to vote for such Member to provide reasonable evidence that such individual (the "Representative") has authority to vote for such Member. Unless the authority of the Representative is challenged in writing at or before the time of voting, or is challenged orally at the time of voting, however, the Association may accept such Representative as a person authorized to vote for such Member, regardless of whether adequate evidence of such authority is provided.

4. BOARD OF DIRECTORS

4.1. General Powers.

The Board of Directors of the Association (the "Board") shall manage the property, affairs, and business of the Association. The Board shall constitute that body referred to in the Horizontal Property Act of South Carolina as "the board of administration." The Board may exercise all of the powers of the Association, whether derived from law, the Master Deed, the Articles of Incorporation, or these Bylaws, except such powers as are expressly vested in another Person, including the Members as a whole, by such sources. Such powers shall include, without limitation, selection, hiring and dismissal of personnel or entities necessary for administering the affairs of the Association. Unless otherwise expressly set forth in law, the Master Deed, the Articles of Incorporation, or these Bylaws, the Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association and the Members. Unless prohibited by applicable law, the Board may, in writing or by resolution of the Board, delegate to one or more officers or to a Management Agent or Agents, such of its duties, responsibilities, functions, and powers, as it determines are appropriate.

4.2. Number, Tenure, and Qualifications.

4.2.1 Until the election of a successor Board of Directors pursuant to Section 4.2.2, the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as determined and designated by Declarant from time-to-time. A Controlling Interest shall exist as long as Declarant owns Units to which at least fifty-one percent (51%) of the cumulative Percentage Interests are allocable. Directors need not be Members.

4.2.2. Within one hundred eighty (180) days after the date on which the Declarant no longer has a Controlling Interest, or such earlier time as the Declarant records a document waiving its authority to designate the Board, or notifies the Members that it is waiving its authority to designate the Board as of a defined date, the successor Board shall be selected as follows:

A. The successor Board shall consist of five (5) individuals, each of whom shall serve for a three (3) year staggered term. Initially, however, in order to create a staggered Board, one (1) Director shall be elected for a one (1) year term, two (2) Directors shall be elected for a two (2) year term, and two (2) Directors shall be elected for a three (3) year term. The two (2) individuals receiving the highest number of votes shall be elected to a three (3) term, the two (2) individuals receiving the next highest number of votes shall be elected to a two (2) year term, and the individual receiving the next highest number of votes shall be elected to the one (1) year term.

B. Thereafter, upon the expiration of the designated term, each Director shall be elected for a three (3) year term. If a Director resigns or is replaced, the replacement Director shall serve for the balance of the applicable term. It is not necessary that a Director be a Member. An individual may serve as a Director for more than one (1) term, but no individual shall serve as a Director for a period in excess of six (6) consecutive years.

C. The current Board of Directors of the Association shall constitute a Nominating Committee to nominate competent and responsible individuals to serve as Directors of the Association. At the discretion of the Board of Directors, elections of Directors shall be held either (i) by written ballot distributed to the Owners of Units without a meeting or (ii) by

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written ballot at a meeting of the Member. In all cases, the Board of Directors shall determine the form of the written ballot, but the ballot shall contain one or more blank spaces for additional Persons to be nominated.

D. Notice of the election shall be given in accordance with Section 3.5. If election is by written ballot distributed to Member without a meeting, the ballot or accompanying materials shall state a date by which the ballot must be returned to the Association in order to be counted. The notice shall contain the names of those persons recommended by the Nominating Committee, but, if the vote will occur at a meeting, the notice shall state that Member may make other nominations at the meeting.

E. Each Member shall be authorized to cast as many votes as the number of Directors to be elected (i.e. if two Directors are being elected, then a Member may vote for two nominees). Votes shall be weighted to reflect the Percentage Interest allocable to each Unit. (See Section 3.6.1).

4.3. Annual and Regular Meetings.

The first meeting of the Board of Directors shall be held within one (1) year from the date of recording of the Master Deed. Unless otherwise determined by the Board of Directors, subsequent annual or regular meetings shall be held on such dates and at such location as the Board of Directors may determine.

4.4. Special Meetings.

Special meetings of the Board may be called by or at the request of the Chairman of the Board of Directors or any two (2) Directors (or if there are only two Directors, then any Director). The Director(s) calling a special meeting of the Board may fix any place within Beaufort County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. Notice shall be in accordance with the procedure set forth in Section 10. Any Director may waive notice of a meeting.

4.5. Quorum, Telephonic Meetings and Manner of Acting.

A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means that permits all participating Directors to communicate simultaneously (such as a telephone conference call). The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such.

4.6. Compensation.

No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other that in their capacities as Directors.

4.7. Resignation and Removal.

A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1 and 4.2.2, above).

4.8. Vacancies.

If a vacancy shall occur in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by a vote of a majority of the remaining Directors. If a vacancy shall occur in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors (i.e. by the Declarant or the

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Members, as set forth in Sections 4.2.1 and 4.2.2, above). Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

4.9. Informal Action by Directors.

Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

4.10. Election of Chairman of Board.

The Chairman of the Board of Directors shall be elected by a majority of the Board at any meeting. The Chairman shall serve until the earlier of (a) such time as a new Chairman shall be elected, (b) his resignation as Chairman, (c) his resignation or removal as a Director, or (d) his death. The Board of Directors may elect a Vice Chairman to serve in the absence of the Chairman. If a Vice Chairman is elected, he shall also be a Vice President of the Association.

5. OFFICERS

5.1. Number.

The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect.

5.2. Election, Tenure, and Qualifications.

The officers of the Association shall normally be elected by the Board at the annual meeting of the Board. In the event of failure to choose officers at such annual meeting of the Board, officers may be chosen at any subsequent regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold any two or more of such offices. No individual holding two or more offices shall act in or execute any instrument in the capacity of more than one office. It is not necessary that an officer be a Director or a Member.

5.3. Subordinate Officers and Agents.

The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or an Owner.

5.4. Resignation and Removal.

Any officer may resign at any time by delivering a written resignation to the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.5. Vacancies and Newly Created Offices.

If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

5.6. The President.

The Chairman of the Board of Directors shall serve as the President of the Association. The President shall preside at meetings of the Board and at meetings of Members of the Association. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

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5.7. The Vice President.

The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him. The Board may elect more than one Vice President. (Also see Section 4.10.)

5.8. The Secretary.

The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Master Deed, any resolution of the Board or applicable law may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

5.9. The Treasurer.

The Treasurer shall have custody and control of the funds of the Association, subject to the action of the Board, which may include authorization for other entities, such as a Management Agent, to handle day-to-day matters under the general direction of the Treasurer or the Board. When requested by the President or the Board to do so, the Treasurer shall report the state of the finances of the Association. He shall perform such other duties as the Board may require of him.

5.10. Compensation.

No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

6. COMMITTEES

6.1. Designation of Committees.

The Board may from time-to-time appoint such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee appointed hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer or a Member of the Association.

6.2. Proceedings of Committees.

Unless appointed by the Board, each committee appointed hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep adequate records of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

6.3. Quorum and Manner of Acting.

At each meeting of any committee designated hereunder by the Board, the presence of committee members constituting at least a majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the committee members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual committee members thereof shall have no powers as such.

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6.4. Resignation and Removal.

Any committee member designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, of the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5. Vacancies.

If a vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining committee members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any Board meeting.

7. INDEMNIFICATION

7.1. Indemnification.

Unless expressly prohibited by applicable law, the Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or Management Agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner the Person reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2. Determination.

If a Director, officer, employee, or Management Agent of the Association is successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he or it shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or Management Agent is proper in the circumstances because he or it has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of Directors (excluding any Director whose indemnification is being considered).

7.3. Advances.

Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a Directors (excluding any Director whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or Management Agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.4. Scope of Indemnification.

The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Master Deed, Articles of Incorporation, Bylaws, agreements, vote of disinterested Members of Directors, or

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applicable law. The indemnification authorized hereby shall apply to all present and future Directors, officers, employees, and Management Agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or Management Agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons.

7.5. Insurance.

The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified.

7.6. Payments and Premiums.

All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

8. FISCAL YEAR AND SEAL

8.1. Fiscal Year.

The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2. Seal.

The Board may by resolution provide a corporate seal that shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Seal" or "Corporate Seal."

9. RULES AND REGULATIONS

9.1. Rules and Regulations.

The Board may from time to time adopt, amend, repeal, and enforce reasonable Rules and Regulations governing the use and operation of the Property, to the extent that such Rules and Regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Master Deed, or law. Without limitation, such Rules and Regulations may include establishment of reasonable fees for guests or for special use of facilities in the Common Element, definition of the times and conditions of use of facilities in the Common Element, and reasonable charges for failure to observe the terms of this Master Deed or the Rules and Regulations. Upon request of any Owner, such Owner shall be provided a copy of the Rules and Regulations or the Master Deed, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.

10. NOTICES

10.1. Notices.

Whenever notice is required or permitted under the terms of these Bylaws, it shall be in writing and (a) personally delivered or (b) sent postage or delivery charges prepaid either (i) by United States mail, certified, return receipt requested, in which case notice shall be deemed to occur on the certified date of delivery or rejection of delivery or (ii) if within the United States, by First Class or Priority United States mail, in which case notice shall be deemed to occur four (4) calendar days after date of postmark, or (iii) by any dependable delivery service that provides evidence of delivery, in which case notice shall be deemed to occur on the certified date of delivery. Notices by other methods, such as facsimile or e-mail transmission, shall be valid if the recipient thereof acknowledges receipt in writing or electronic confirmation of receipt is received by the sender.

10.2. Addresses.

All notices to Owners shall be delivered or sent to such address as has been provided from time to time by the Owner, in writing, to the Association, or if no address has been so provided to

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the Association or no current address is known, then at the address of such Owner's respective Unit or the address then shown as that of the Owner on the property tax records of Beaufort County, South Carolina, or to any other address that would constitute a valid address for service of process.

All notices to Declarant shall be delivered in care of:

Montecito Westbury, LLC
c/o Montecito Property Company, LLC
7785 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7561

or to such other address as has been provided, in writing, from time to time, by the Declarant to the Association.

All notices to the Association shall be delivered

Estate at Westbury Owners Association, Inc.
c/o Management Agent
2011 Highway 17 North
Mt. Pleasant, SC 29466

or to such other address as has been provided, in writing, from time to time, by the Association.

All notices to mortgagees shall be delivered or sent to such address as has been provided, in writing, from time to time, to the Association pursuant to Section 10.5 of the Master Deed, or to any other address that would constitute a valid address for service of process.

11. OTHER STATUTORY PROVISIONS

In compliance with Section 27-31-160 of the South Carolina Horizontal Property Act, the provisions governing the care, upkeep and surveillance of the property of the Association and its general or limited common elements and services; the manner of collecting from Owners for payment of common expenses of the Association; the hiring and dismissal of the personnel necessary for the works, and the general or limited common services for the property of the Association; and the procedure for modifying the system of administration of the Association created by the Master Deed, are set forth in the Master Deed of the Association. By reference, such provisions are incorporated herein.

12. AMENDMENT OF BYLAWS

12.1. Amendment by Association.

The Bylaws may be amended by either (a) approval of the proposed amendment by at least fifty-one percent (51%) of the Percentage Interests, or (b) approval of the proposed amendment by vote of two thirds of the then-existing Board of Directors. If approval is sought in the manner set forth in (a), then notice of the proposed amendment shall be given to the Members in writing by a Member or Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. If approval is sought in the manner set forth in (b), then notice of the proposed amendment shall be given to the Board in writing by a Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. No amendment to the Bylaws that imposes or reasonably could be construed to impose a greater economic or legal burden on Declarant than exists under the then current provisions of these Bylaws shall be valid unless it is approved, in writing, by Declarant, and no amendment of the Bylaws that is contrary to this statement shall be valid.

12.2. Amendment by Declarant.

The Declarant may amend the Bylaws without the consent of the Association, any Owner or any mortgagee if, in Declarant's reasonable opinion, such amendment is not inconsistent with applicable law and is necessary to (i) correct any scriveners error or bring any provision of the Bylaws into compliance or conformity with the provisions of the Master Deed or any applicable governmental statute, rule or regulation or any judicial determination that is in conflict with the

Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Master Deed; (v) enable any insurer to provide insurance required by the Master Deed; (vi) clarify any provision of the Bylaws or the Master Deed or eliminate any conflict between provisions of the Bylaws and/or the Master Deed; or (vii) comply with advice of legal counsel.

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EXHIBIT "C": PLOT PLAN, UNIT PLANS, FLOOR PLANS, ELEVATIONS, UNIT SIZES AND DESIGNATIONS; GARAGE UNIT DESIGNATIONS

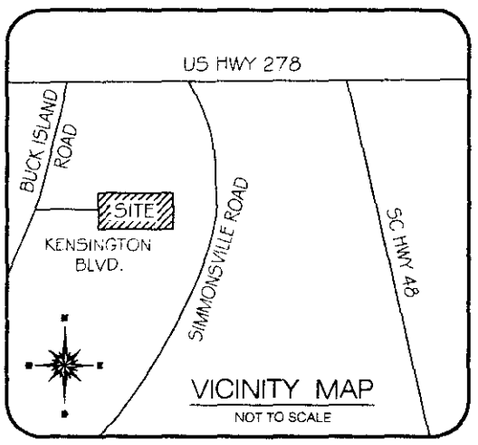
Westbury Record on Appeal 0353

EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

BARRETT
SURVEYING GROUP
TELE: 864-834-3732
FAX: 864-834-3079
Email: barrettgroup@belisouth.net
223-A Poinsett Highway
Travelers Rest, SC 29690



VICINITY MAP
NOT TO SCALE

INDEX OF DRAWINGS

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EXHIBIT "A"	
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CERTIFICATION

I hereby state that to the best of my knowlwdge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a class "B" survey as specified therein; also there are no visible encroachments or projections other than shown.

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 23203 R. SCOTT BARRETT

SOUTH CAROLINA BARRETT SURVEYING GROUP C02842 CERTIFICATE OF AUTHORIZATION

1-18-06

R. Scott Barrett, PLS — Date
SC Registration No. 23203

USSURVEY@USSURVEYOR.COM
U.SURVEYOR®
4859 RIVERWIND POINTE DRIVE
EVANSVILLE, INDIANA 47715
1-800-TO SURVEY

SHEET NAME: CERTIFICATION VICINITY MAP

SCALE: Scale 1" = 100'
100 50 0 100

JOB NUMBER: SS 36511

SHEET 1 OF 56

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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

LAND DESCRIPTION

PARCEL I:
All that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23, ("Plat") ("Property"), which Property is more particularly described as follows:

Commencing at the intersection of the centerline of Buck Island Road right of way and the centerline of Kensington Boulevard right of way, said point having S.C. grid coordinates of N160,697.1278, E2,038,367.5012: thence, along the centerline of Kensington Boulevard, S 50°52'48" E a distance of 283.27' to a point; thence S 46°01'21" E, a distance 1,737.73' to a point; said point having S.C. grid coordinates of N159,311.7609, E2,039,837.7662; said point also being the point of beginning; thence along the eastern boundary of Simpsonville Canal N 08°09'05" E, a distance of 18.39'; thence N 13° 04'21" W, a distance of 27.74; thence N 13°04'21" W, a distance of 2.26'; thence N 03°13'51" E, a distance 31.36; thence N 73°53'24" E, a distance of 25.49'; thence N 49°20'23" E, a distance of 34.93'; thence N 40°36'28" E, a distance of 32.81'; thence N 10°42'37" E, a distance of 18.09' to an iron rebar set; thence along the southern right of way of a 150' power line easement S 46°06'08" E, a distance of 1,706.16' to a concrete monument found; thence along the western property line of N/F Bluffton House Apartments S 43°53'52" W, a distance of 525.65' to an iron rebar set; thence N 46°05'35" W, a distance of 1,643.33' to an iron rebar set; thence along the aforementioned canal, N 59°24'50" E, a distance of 33.92'; thence N 48°18'43" E, a distance of 47.52'; thence N 39°50'27" E, a distance of 50.00'; thence N 36°06;34" E, a distance of 46.10'; thence N 42°56'05" E, a distance of 37.05'; thence N 19°08'43" E, a distance of 48.10'; thence N 51°49'01" E, a distance of 33.73'; thence N 65°05'22" E, a distance of 49.10'; thence N 65°05'22" E, a distance of 6.08'; thence N 08°09'05" E, a distance of 30.00; to a point; said point being the true point of beginning.

PARCEL II-Non-Exclusive Access and Utility Easement-Residential Area:
Permanent, non-exclusive right for (a) vehicular and pedestrian access over and across the roads shown on that certain plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23 as "Kensington Blvd." and that portion of "Westbury Park Way" within block X-1 by Westbury Park Apartments, Ltd., an Alabama limited partnership doing business in South Carolina as Westbury Park Apartments, Limited Partnership ("Westbury"), its successors and assigns, and Westbury's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Westbury and all other persons who reasonably need, on Westbury's behalf, access to Property, and (b) a five (5') foot Utility Easement measured from the centerline of buried utility cables and lines, on each side of said buried utility cables and lines within the right of way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property. All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

PARCEL III- Non-Exclusive Access Easement-Commercial Area:
Permanent, non-exclusive right for vehicular and pedestrian access over and across the portion of "Westbury Park Way" north of Block X-1, as shown on that certain plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23, by Westbury, its successors and assigns, and Westbury's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Westbury and all other persons who reasonably need, on Westbury's behalf, access to the Property. All the above as established in Reciprocal Easement Agreement dated December 31, 1996 and recorded January 2, 1997 in Deed Book 912., page 11, and in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

PARCEL IV-Signage Easements:
Permanent, non-exclusive easement for Westbury's directional signs at the approximate locations shown as follows on that certain plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23:
1. At the intersection of the east right of way of Buck Island Road and Kensington Boulevard;
2. At the southwest corner of the intersection of Kensington Boulevard and Westbury Park Way; and
3. At the northwest corner of the intersection of Arley Way and Westbury Park Way.
All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

PARCEL V- Drainage Easement
Permanent, non-exclusive Twenty-Five Foot (25') Storm Drainage Easement as more fully shown on that certain plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, and revised October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 67, page 118, further and last revised January 26, 1999, and recorded February 23, 1999 in Plat Book 69, page 23. All the above as established in Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park dated November 10, 1998 and recorded in Deed Book 1106 at page 1225.

Derivation for Parcel I: This being the identical property heretofore conveyed to Westbury Park Apartments, Ltd., an Alabama limited partnership, dated November 10, 1998, recorded November 12, 1998, in Deed Book 1106, page 1245.

TMS # R600 031 000 0266 0000

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SHEET NAME: LAND DESCRIPTION

SCALE: Scale 1" = 100'
100 50 0 100

JOB NUMBER: SS 36511

EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

NOTES

1) WRITTEN DIMENSIONS HAVE PRECEDENCE OVER SCALED DIMENSIONS.

2) ALL AREAS NOT INCLUDED IN BOUNDARIES OF UNITS OR LIMITED COMMON ELEMENTS ARE COMMON ELEMENTS.

3) FOR ALL OTHER PERTINENT INFORMATION, REFER TO THE MASTER DEED OF WHICH THIS IS A PART.

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LEGEND

BL	Building line
CL	Centerline
CMP	Corrugated metal pipe
CT	Crimp top
DE	Drainage easement
EP	Edge of pavement
IPO	Iron pin old
IPS	Iron pin set
N&C	Nail & cap
OT	Open top
RB	Rebar
RCP	Reinforced Conc Pipe
R/W	Right of Way
SD	Storm Drain
SS	Sanitary Sewer
SSE	Sanitary Sewer Easement

VCP	Vitrified clay pipe
EM	Electric meter
CB	Catch basin
CI	Curb inlet
DI	Drop inlet
	Elec trans
	Fire hydrant
	Gas meter
GV	Gas valve
IP	Iron pin
LP	Light pole
MHBS	Manhole (bellsouth)
MHSD	Manhole (sd)
MHSS	Manhole (ss)
MHT	Manhole telephone
CO	Clean out

PP	Power pole
TEL	Telephone pedestal
WM	Water meter
WV	Water valve
CTV	Cable tv
X	Chain link fence
FOC	Fiber optic cable
GAS	Gas line
OHP	Overhead power
OHT	Overhead telephone
OU	Overhead utilities
SD	Storm drain
SS	Sanitary sewer
UGP	Underground power
UGT	Underground tel
W	Water line

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SHEET NAME: NOTES & LEGEND

SCALE: Scale 1" = 100'
100 50 0 100

JOB NUMBER: SS 36511

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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

NOTES CORRESPONDING TO SCHEDULE B

C1 Reciprocal Easement Agreement between Hampton Land Company, LLC, Coligny Plaza Limited Partnership, and Plantation Properties, LLC recorded in the Beaufort County Register of Deeds Office on January 2, 1997 in Book 912 at Page 11. Does affect the subject property. Access easement plotted.

C2 Easement from Westbury Park Apartments, Ltd. to Palmetto Electric Cooperative, recorded in the Beaufort County Register of Deeds Office on June 16, 1999 at Book 1183 at Page 504. Does affect the subject property. Blanket easement. Nothing to plot.

C3 Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park recorded in the Beaufort County Register of Deeds Office on November 12, 1998 in Book 1106 at Page 1225. Matters that affect are plotted.

C4 Declaration of Restrictive Covenants by Plantation Properties, LLC and Westbury Park Apartments, Ltd. recorded in the Beaufort County Register of Deeds Office on February 18, 1999 in Book 1138 at Page 1333. Wetland buffer does affect the property. Plotted.

C5 Amendment of Declaration of Restrictive Covenants by Plantation Properties, LLC in Westbury Park Apartments, Ltd. recorded in the Beaufort County Register of Deeds Office on February 26, 1999 in Book 1141 at Page 1326. Document not provided. Cannot address.

C6 County Building Setback, Wetlands, Wetland Buffers, Sewer, Telephone, CATV, and other utility infrastructure, Relocatable Storm Drain Easement, Right of Way shown as "Kensington BAVD" and all other matters depicted on that plat entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury park, Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell S.C.R.L.S. #11059 Surveying Consultants, dated October 7, 1998, and revised October 28, 1998 and recorded in the Beaufort County Register of Deeds Office on February 23, 1999 in Plat Book 69 at Page 23. Does affect the subject property. Plotted.

C7 Easement in favor of South Carolina Electric & Gas Company recorded in the Beaufort County Register of Deeds Office in 1976 in Book 235 at Page 42. Does affect the subject property. Blanket easement. Nothing to plot.

C8 Easement in favor of Palmetto Electric Cooperative, Inc. recorded in the Beaufort County Register of Deeds Office on November 30, 1989 in Book 541 at Page 1427. Does not appear to affect the property. Easement appears to be located beyond the boundary limits of the subject property. Document does not provide adequate information to make an accurate plotting.

C9 Easement in favor of Central Electric Power Cooperative, Inc. recorded in the Beaufort County Register of Deeds Office on August 18, 1969 in Book 66 at Page 183. Does not affect the property from a burdening standpoint. Plotted.

C10 Right of Way Agreement in favor of Palmetto Electric Cooperative recorded in the Beaufort County Register of Deeds Office in Book 106 at Page 40. Does not affect the property from a burdening standpoint. Plotted.

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SHEET NAME: SCHEDULE B NOTES

SCALE: Scale 1" = 100'
100 50 0 100

JOB NUMBER: SS 36511

SHEET 4 OF 56

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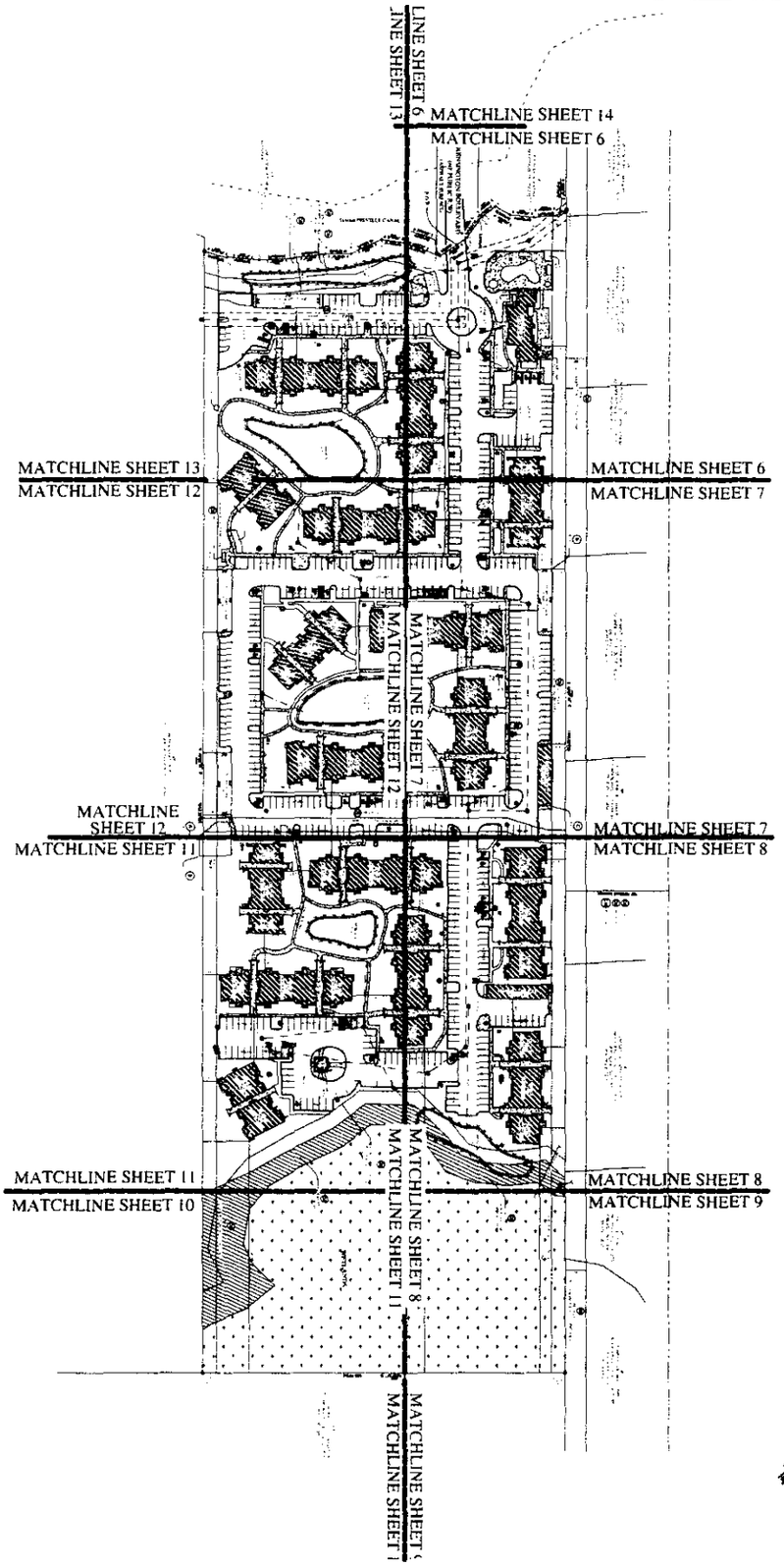


EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

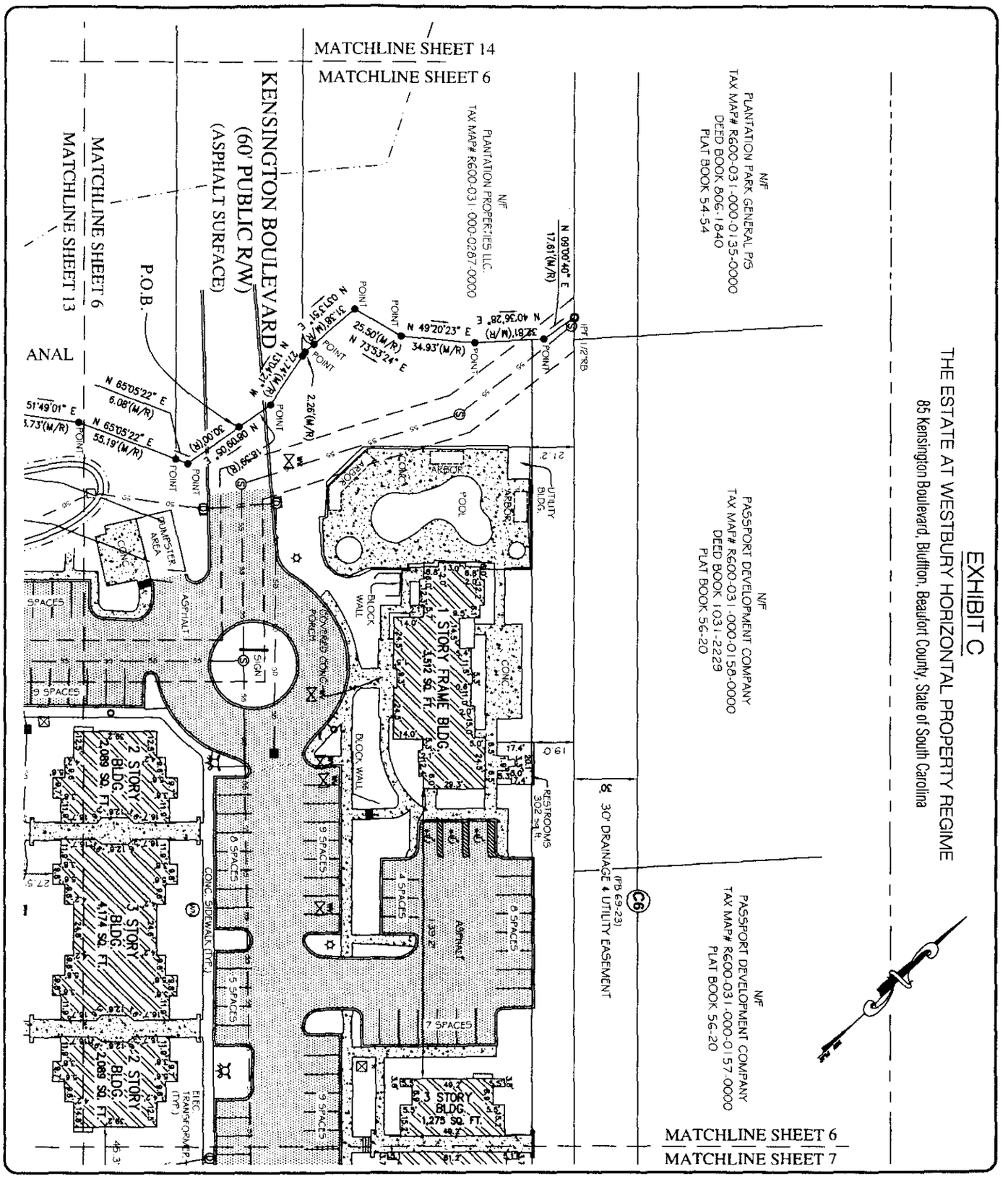
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EVANSVILLE, INDIANA 47715
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SHEET NAME: BOUNDARY & IMPROVEMENT KEY MAP

SCALE: Scale 1" = 250'
250' 125' 0 250'

JOB NUMBER: SS 36511

SHEET 5 OF 56



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EVANSVILLE, INDIANA 47715

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SHEET NAME:

BOUNDARY & IMPROVEMENT SURVEY

SCALE: Scale 1" = 60'

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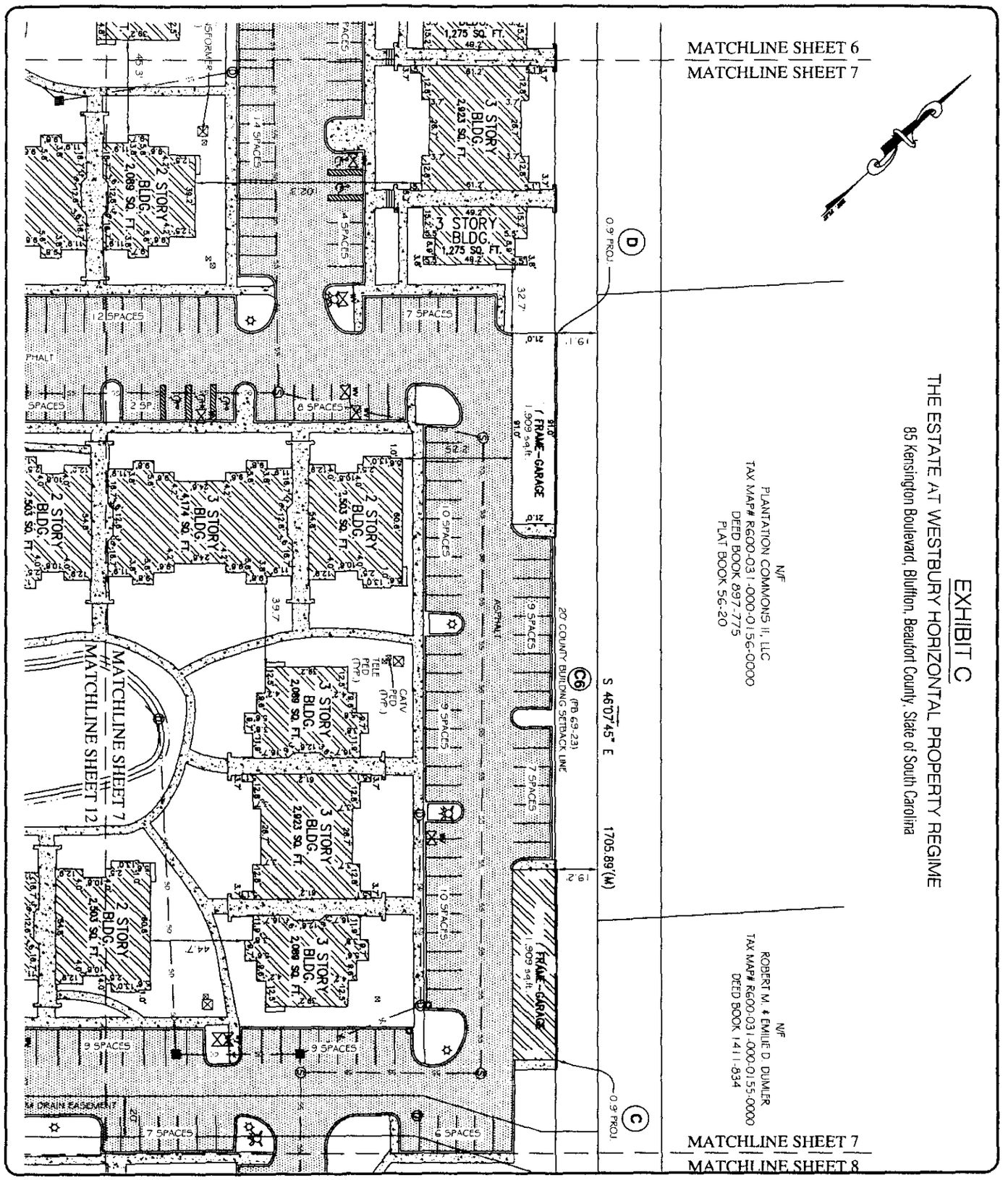
JOB NUMBER: SS 36511

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Book2310/Page2058



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SHEET NAME:

BOUNDARY & IMPROVEMENT SURVEY

SCALE: Scale 1" = 60'

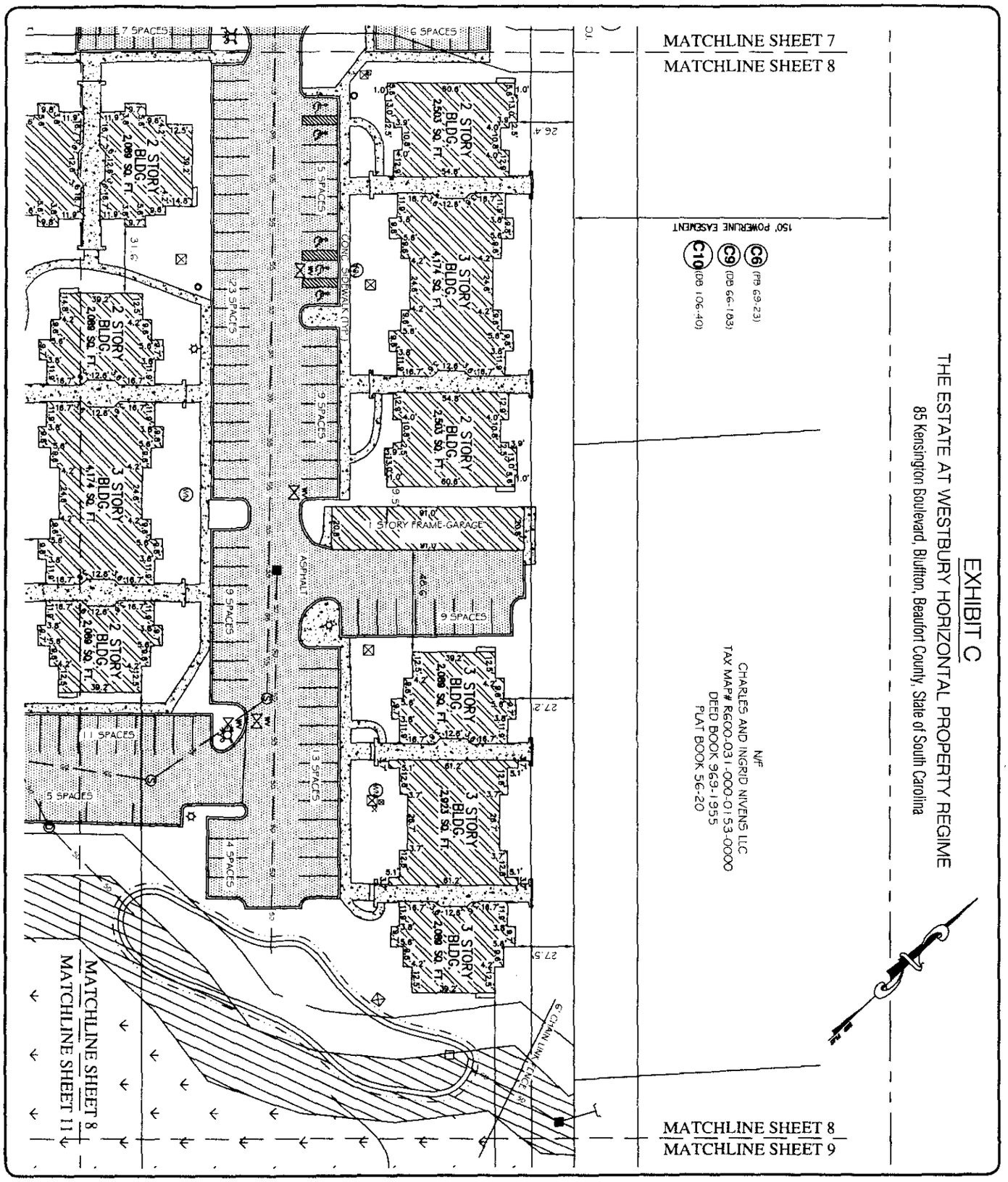
60' 30' 0 60'

JOB NUMBER: SS 36511

SHEET 7 OF 56

Westbury Record on Appeal 0360

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SHEET NAME:

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SCALE: Scale 1" = 60'

60' 30' 0 60'

JOB NUMBER: SS 36511

SHEET 8 OF 56

Westbury Record on Appeal 0361

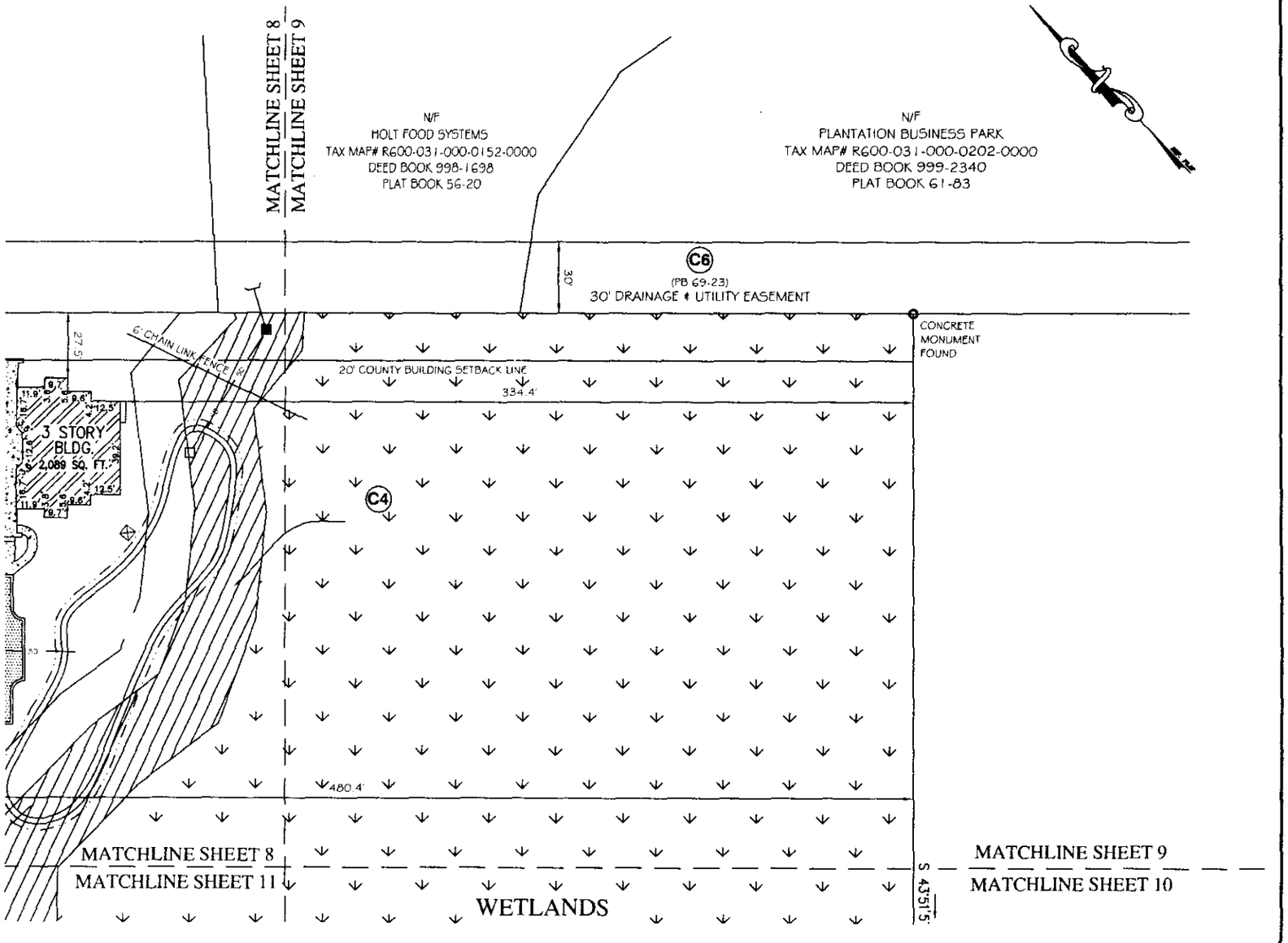
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Book2310/Page2060

EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina



SCALE: Scale 1" = 60' (60' 30' 0 60')

JOB NUMBER: SS 36511

SHEET 9 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

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Book2310/Page2061

Westbury Record on Appeal 0362

EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

SCALE: Scale 1" = 60' (60' 30' 0 60')

JOB NUMBER: SS 36511

SHEET 10 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

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Book2310/Page2062

Westbury Record on Appeal 0363

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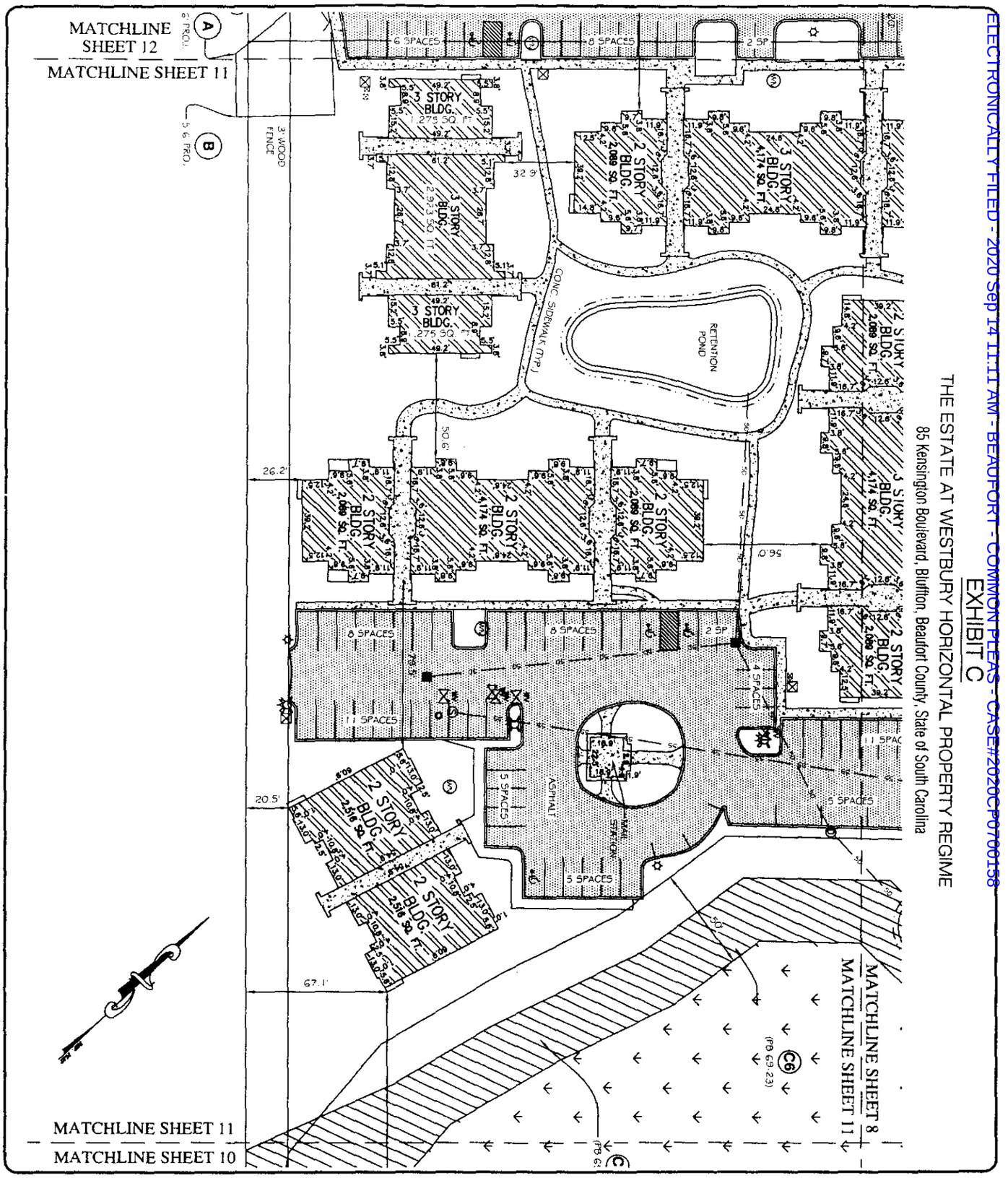


EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

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SHEET NAME:

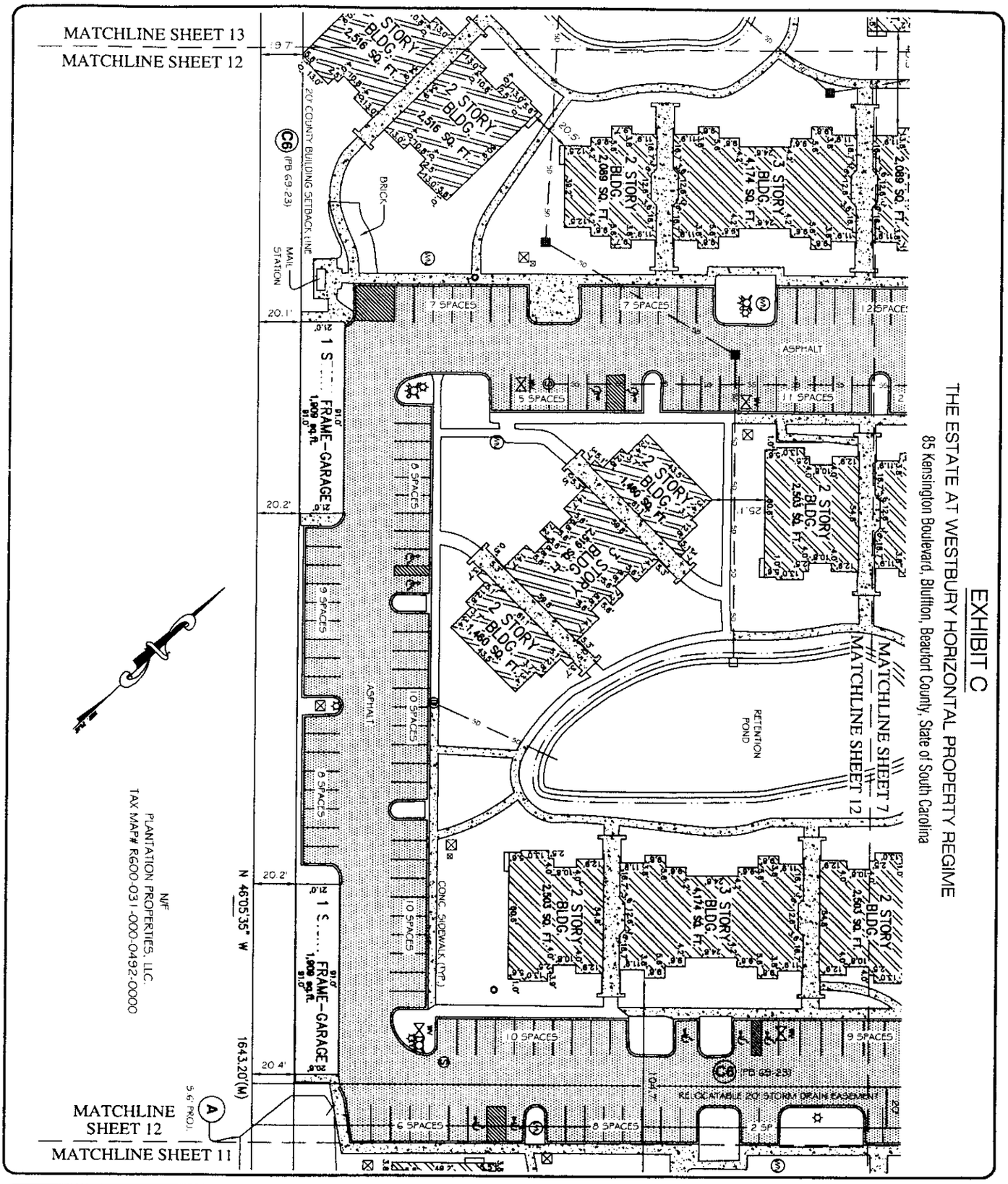
BOUNDARY & IMPROVEMENT SURVEY

SCALE: Scale 1" = 60'

60' 30' 0 60'

JOB NUMBER: SS 36511

SHEET 11 OF 56



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SHEET NAME:

BOUNDARY & IMPROVEMENT SURVEY

SCALE: Scale 1" = 60'

60' 30' 0 60'

JOB NUMBER: SS 36511

SHEET 12 OF 56

Westbury Record on Appeal 0365

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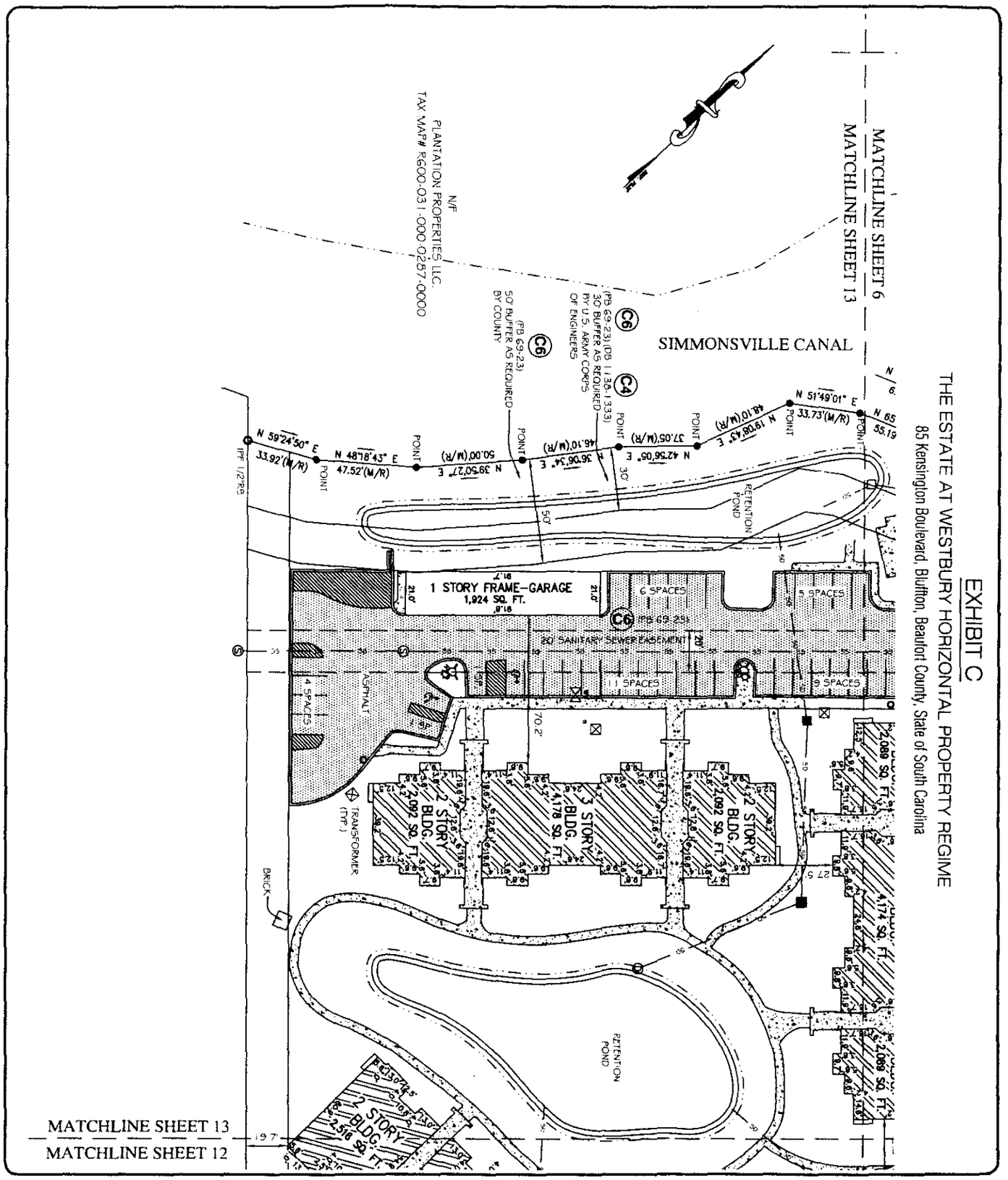


EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

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SHEET NAME:

BOUNDARY & IMPROVEMENT SURVEY

SCALE: Scale 1" = 60'

60' 30' 0 60'

JOB NUMBER: SS 36511

SHEET 13 OF 56

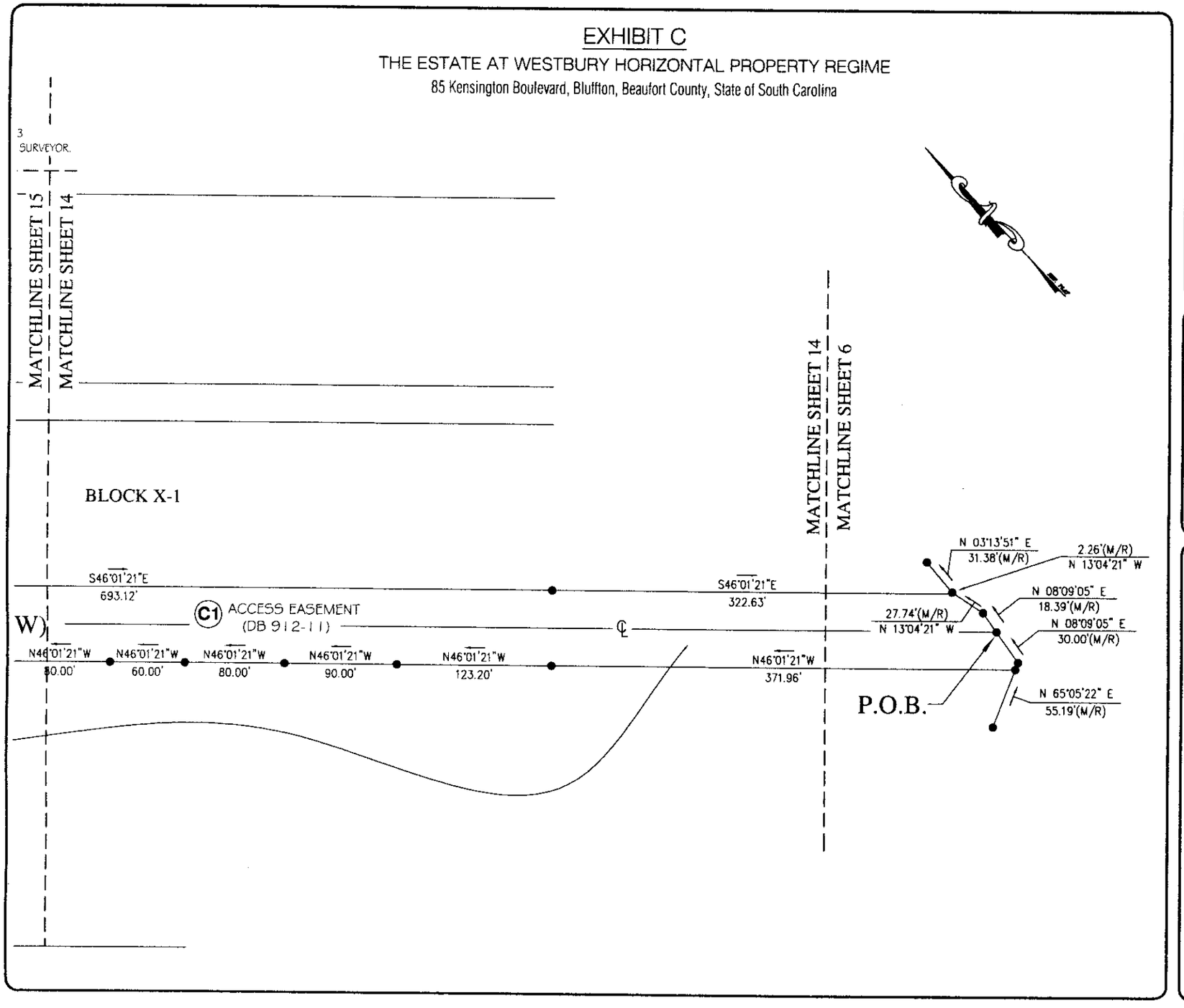
Westbury Record on Appeal 0366

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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina



SCALE: Scale 1" = 100'

JOB NUMBER: SS 38511

SHEET 14 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

SCALE: Scale 1" = 100' (100' 50' 0 100')

JOB NUMBER: SS 36511

SHEET 15 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

C6 (PB 69-23)

NOTES:
1. ARLEY WAY AND WESTBURY PARK WAY ARE PRIVATE ROADS AND WILL BE MAINTAINED BY WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS ASSOCIATION, INC.
2. KENSINGTON BOULEVARD IS A PRIVATE ROAD AND WILL BE MAINTAINED BY WESTBURY PARK RESIDENTIAL OWNERS ASSOCIATION, INC.

MATCHLINE SHEET 17

MATCHLINE SHEET 16

150' POWERLINE EASEMENT

BLOCK X-2

BLOCK X-1

BUCK ISLAND ROAD
(68' PUBLIC R/W)

P.O.C.

S50°52'48"E 89.28' L4 S50°52'48"E 115.00' C2

S46°01'21"E 589.46'

L3 S50°52'48"E 283.27'

C1 ACCESS EASEMENT (DB 912-11)

N50°52'48"W 90.56' L2 N50°52'48"W 103.81' C1 L1

N46°01'21"W 589.46'

(PARCEL IV)
SIGN EASEMENT AREA

MATCHLINE SHEET 16
MATCHLINE SHEET 15

SCALE: Scale 1" = 100' 100' 50' 0 100'

JOB NUMBER: SS 36511

SHEET 16 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

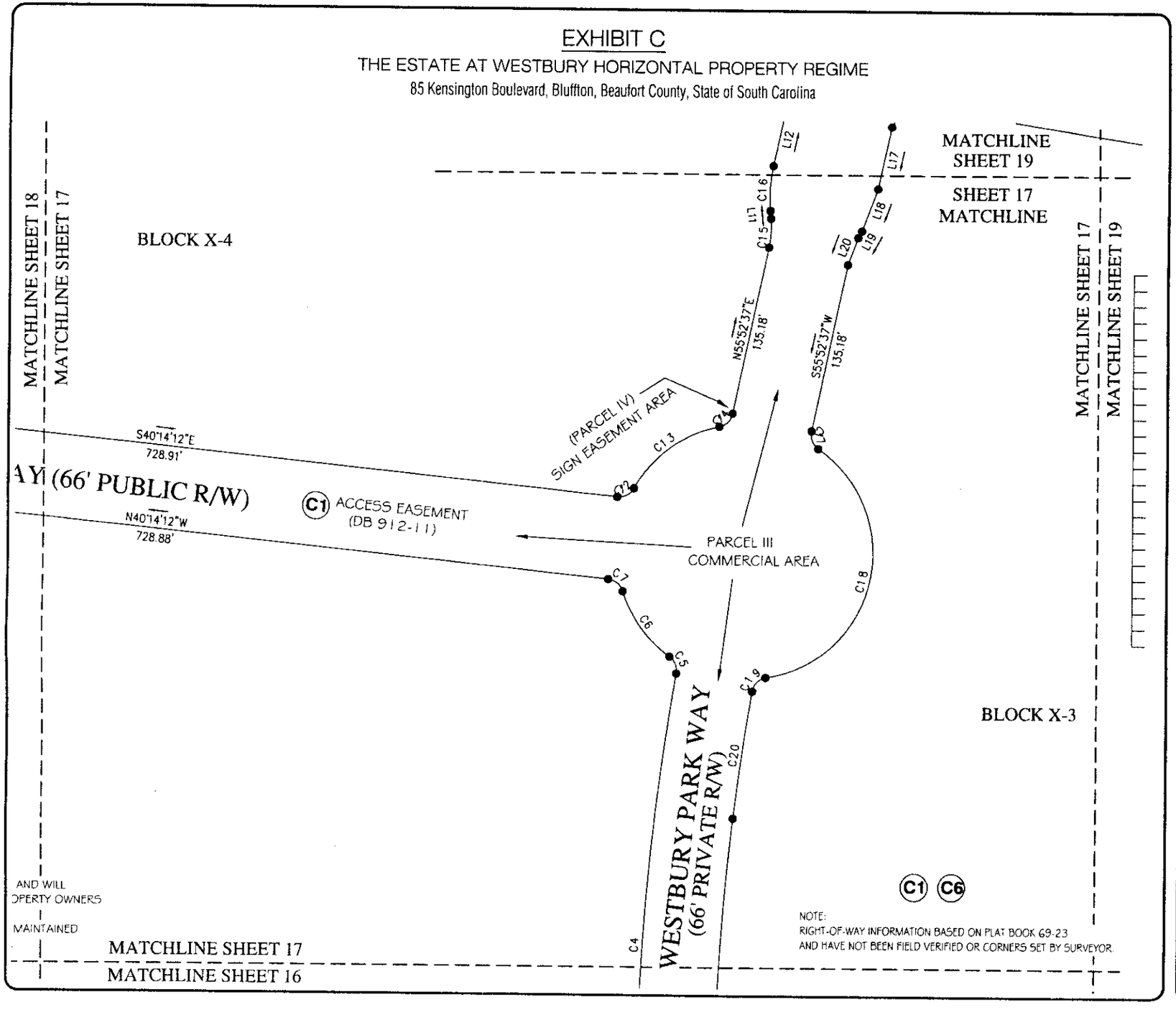
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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina



NOTE:
RIGHT-OF-WAY INFORMATION BASED ON PLAT BOOK 69-23
AND HAVE NOT BEEN FIELD VERIFIED OR CORNERS SET BY SURVEYOR.

SCALE: Scale 1" = 100'
100' 50' 0 100'

SHEET 17 OF 56

JOB NUMBER: SS 38511

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

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Book2310/Page2069

EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina

NOTES:

1. ARLEY WAY AND WESTBURY PARK WAY ARE PRIVATE ROADS AND WILL BE MAINTAINED BY WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS ASSOCIATION, INC.
2. KENSINGTON BOULEVARD IS A PRIVATE ROAD AND WILL BE MAINTAINED BY WESTBURY PARK RESIDENTIAL OWNERS ASSOCIATION, INC.

SCALE: Scale 1" = 100' (100' 50' 0 100')

JOB NUMBER: SS 36511

SHEET 18 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

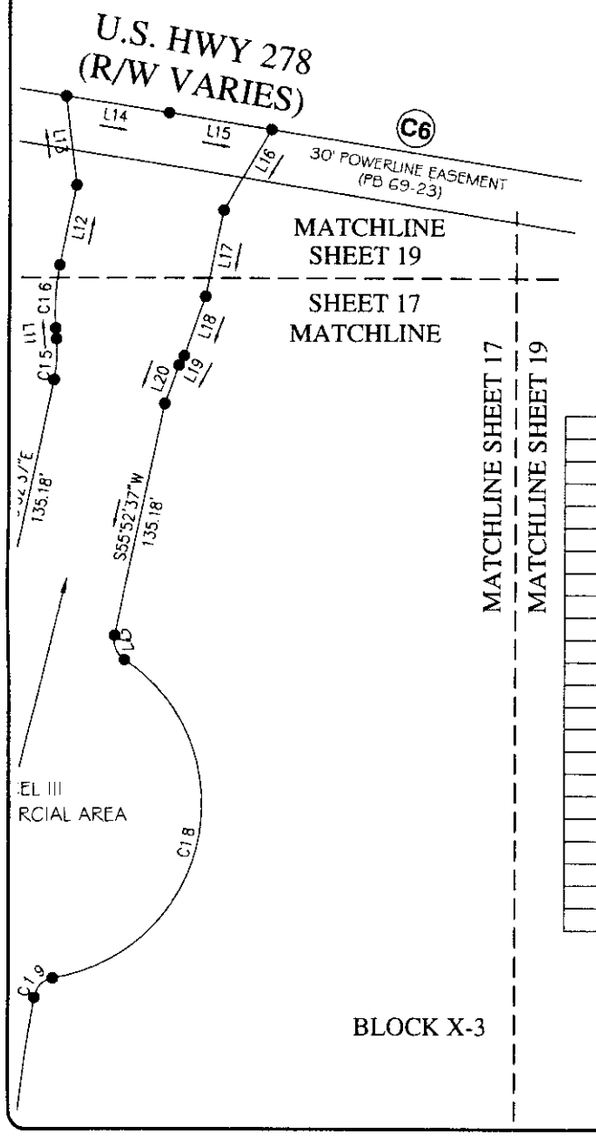
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EXHIBIT C

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

85 Kensington Boulevard, Bluffton, Beaufort County, State of South Carolina



LINE TABLE		
LINE	LENGTH	BEARING
L1	11.19'	N50°52'48"W
L2	37.43'	N60°52'48"W
L3	73.01'	N40°07'29"E
L4	37.43'	S40°52'48"E
L5	20.23'	N35°21'44"E
L6	24.29'	N40°14'12"W
L7	40.93'	N68°17'12"W
L8	119.88'	N42°14'58"E
L9	39.24'	S19°57'26"E
L10	39.26'	S40°14'12"E
L11	6.14'	N38°54'24"E
L12	46.61'	N55°52'37"E
L13	51.67'	N36°55'19"E
L14	59.86'	S36°56'37"E
L15	60.23'	S36°56'37"E
L16	53.62'	S74°32'10"W
L17	50.58'	S55°52'37"W
L18	35.99'	S64°21'43"W
L19	6.14'	S72°50'50"W
L20	23.25'	S64°21'43"W
L21	20.23'	S52°35'44"W

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	DIRECTION	CHORD
C1	14.41'	170.00'	4°51'29"	7.21	N48°27'05"W	14.41'
C2	19.51'	230.00'	4°51'33"	9.76	S48°27'05"E	19.50'
C3	27.10'	15.00'	103°30'11"	19.03	N88°58'39"E	23.56'
C4	433.05'	2033.00'	12°12'16"	217.35	N47°38'22"E	432.23'
C5	15.57'	13.00'	68°38'40"	8.88	N21°25'01"E	14.66'
C6	65.09'	100.00'	37°17'44"	33.75	N07°25'22"E	63.95'
C7	15.95'	13.00'	70°18'25"	9.15	N07°14'50"W	14.97'
C8	25.04'	78.50'	18°16'24"	12.63	N49°20'02"W	24.93'
C9	38.74'	121.50'	18°16'14"	19.54	N49°20'03"W	38.58'
C10	38.74'	121.50'	18°16'14"	19.54	S31°08'21"E	38.58'
C11	25.04'	78.50'	18°16'24"	12.63	S31°08'21"E	24.93'
C12	15.95'	13.00'	70°18'25"	9.15	S73°13'33"E	14.97'
C13	87.11'	100.00'	49°54'33"	46.53	N82°02'28"W	84.38'
C14	16.03'	13.00'	70°37'51"	9.21	N89°00'17"E	15.03'
C15	23.34'	78.50'	17°01'57"	11.75	N47°23'30"E	23.25'
C16	36.12'	121.50'	17°02'04"	18.20	N47°23'30"E	35.99'
C17	16.03'	13.00'	70°37'51"	9.21	S22°44'56"W	15.03'
C18	240.78'	100.00'	137°57'21"	260.21	S56°31'28"W	186.69'
C19	16.35'	13.00'	72°02'29"	9.45	S87°21'23"W	15.29'
C20	102.37'	1967.00'	2°58'55"	51.20	S52°10'33"W	102.36'
C21	316.80'	1967.00'	9°13'41"	158.74	S46°04'34"W	316.46'
C22	27.10'	15.00'	103°30'11"	19.03	S01°01'21"E	23.56'

SCALE: Scale 1" = 100' (100' 50' 0 100')

JOB NUMBER: SS 38511

SHEET 19 OF 56

SHEET NAME: BOUNDARY & IMPROVEMENT SURVEY

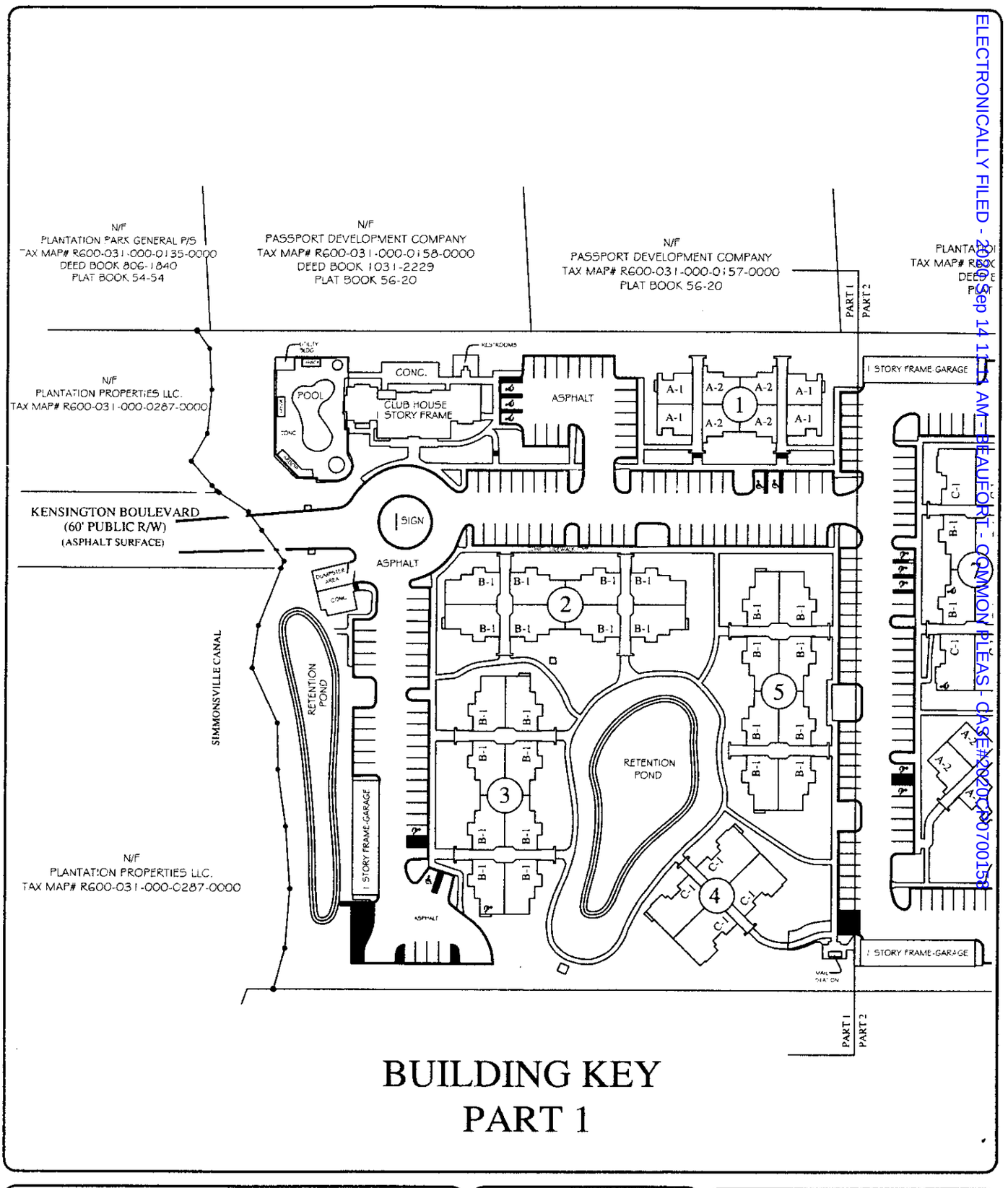
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Book2310/Page2071

Westbury Record on Appeal 0372

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BUILDING KEY
PART 1

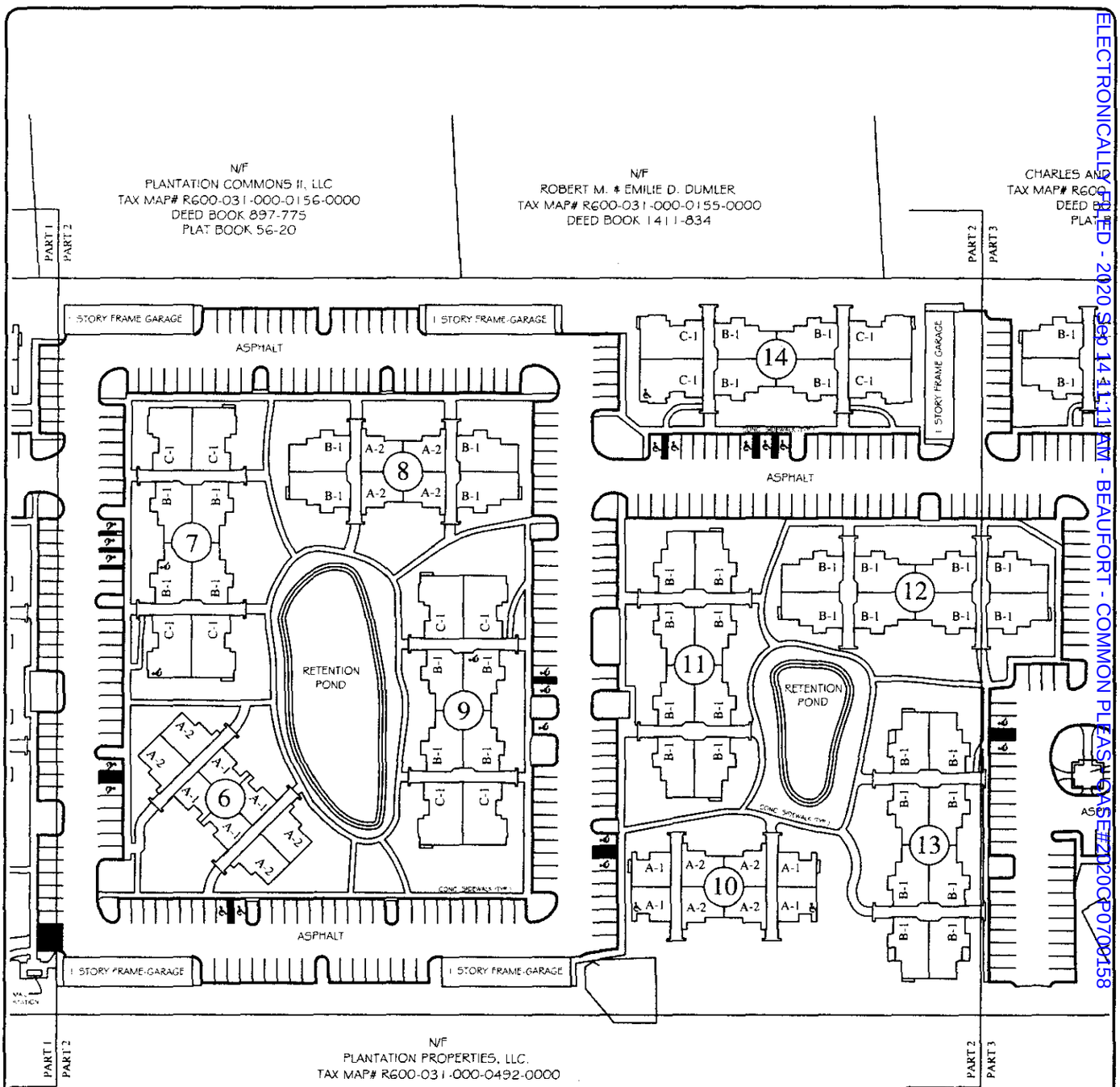
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SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 38511

SHEET 20 OF 56



BUILDING KEY
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SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

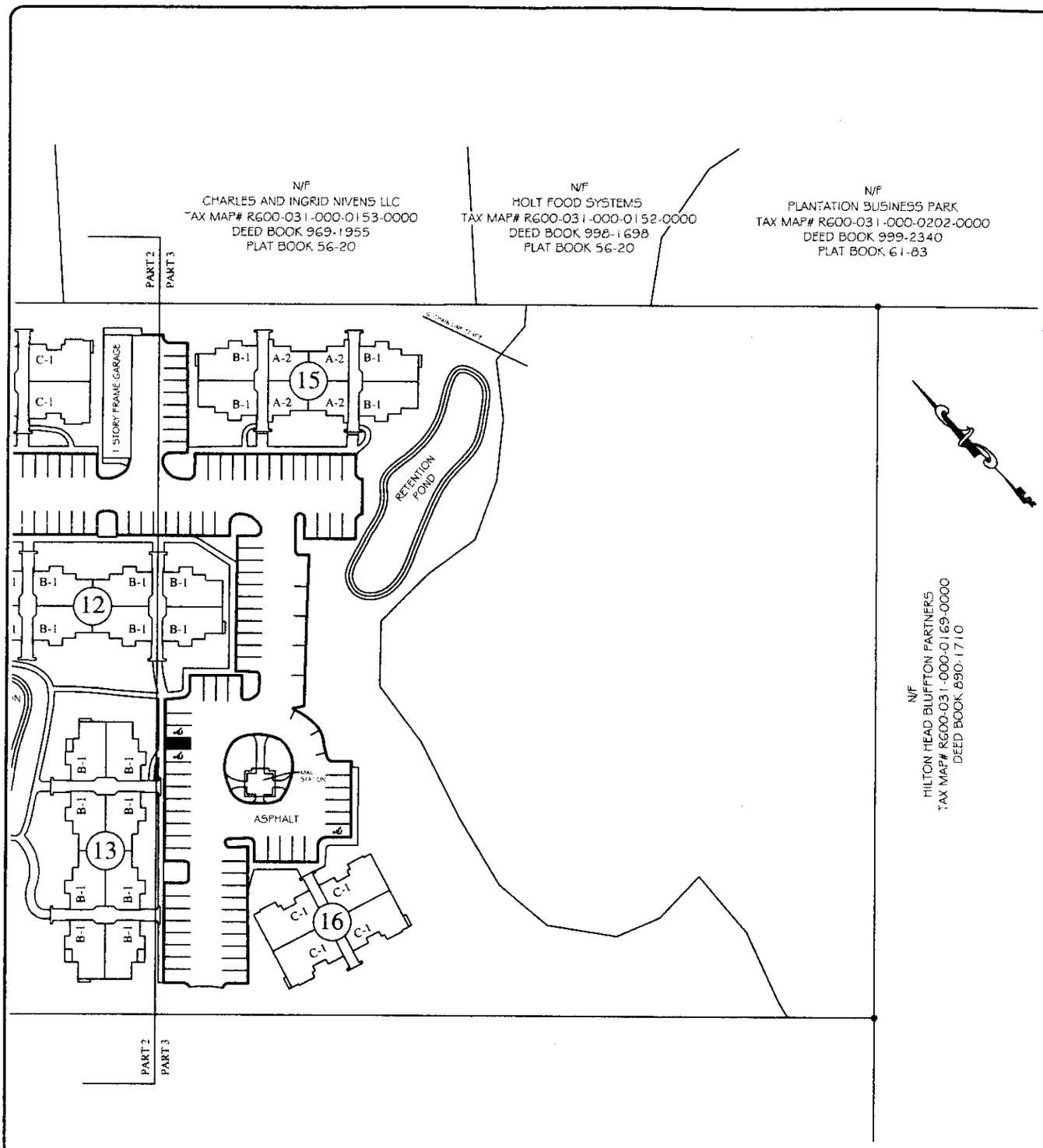
SCALE: Scale 1" = 20'
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JOB NUMBER: SS 36511

SHEET 21 OF 56

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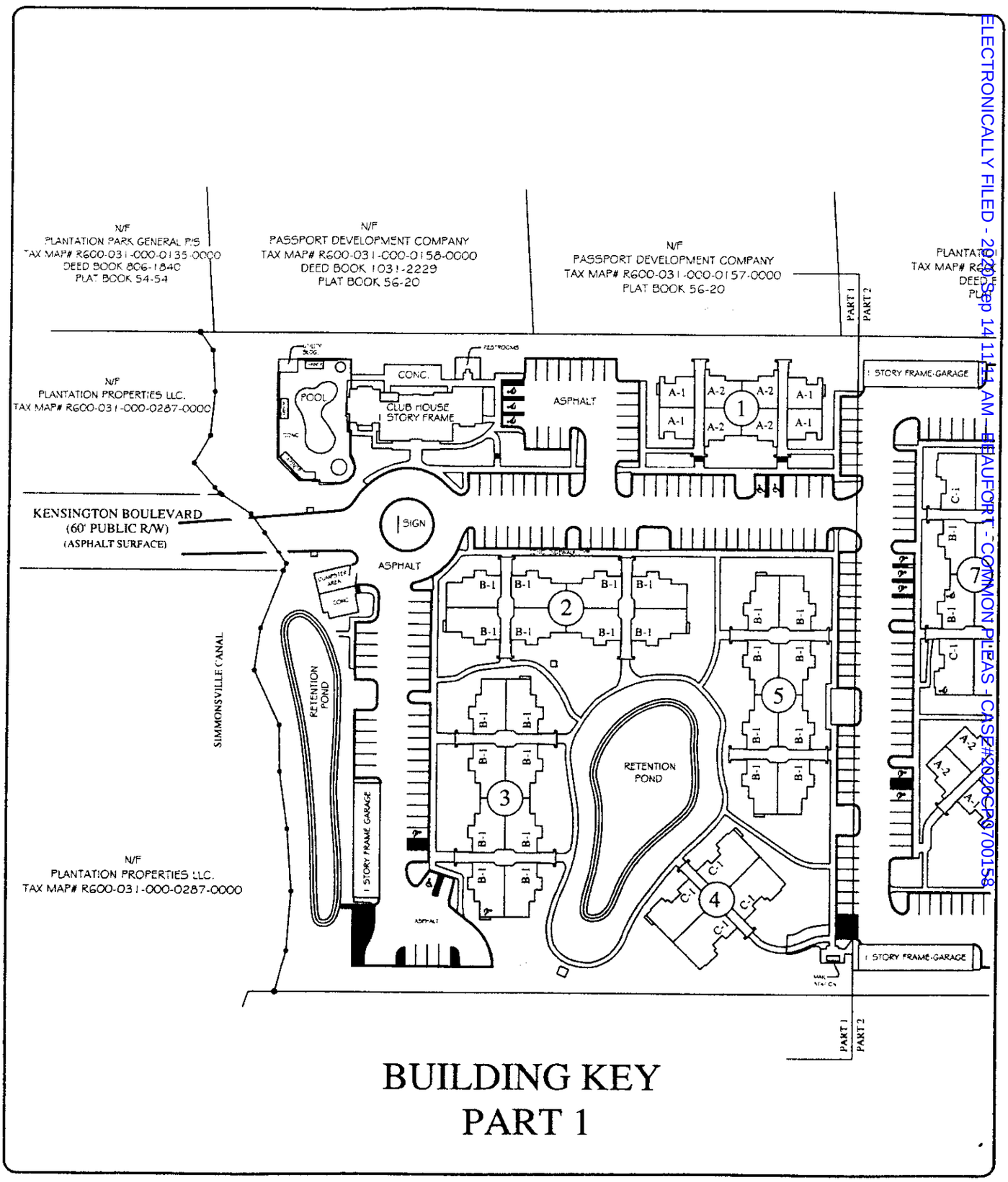
SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 22 OF 56

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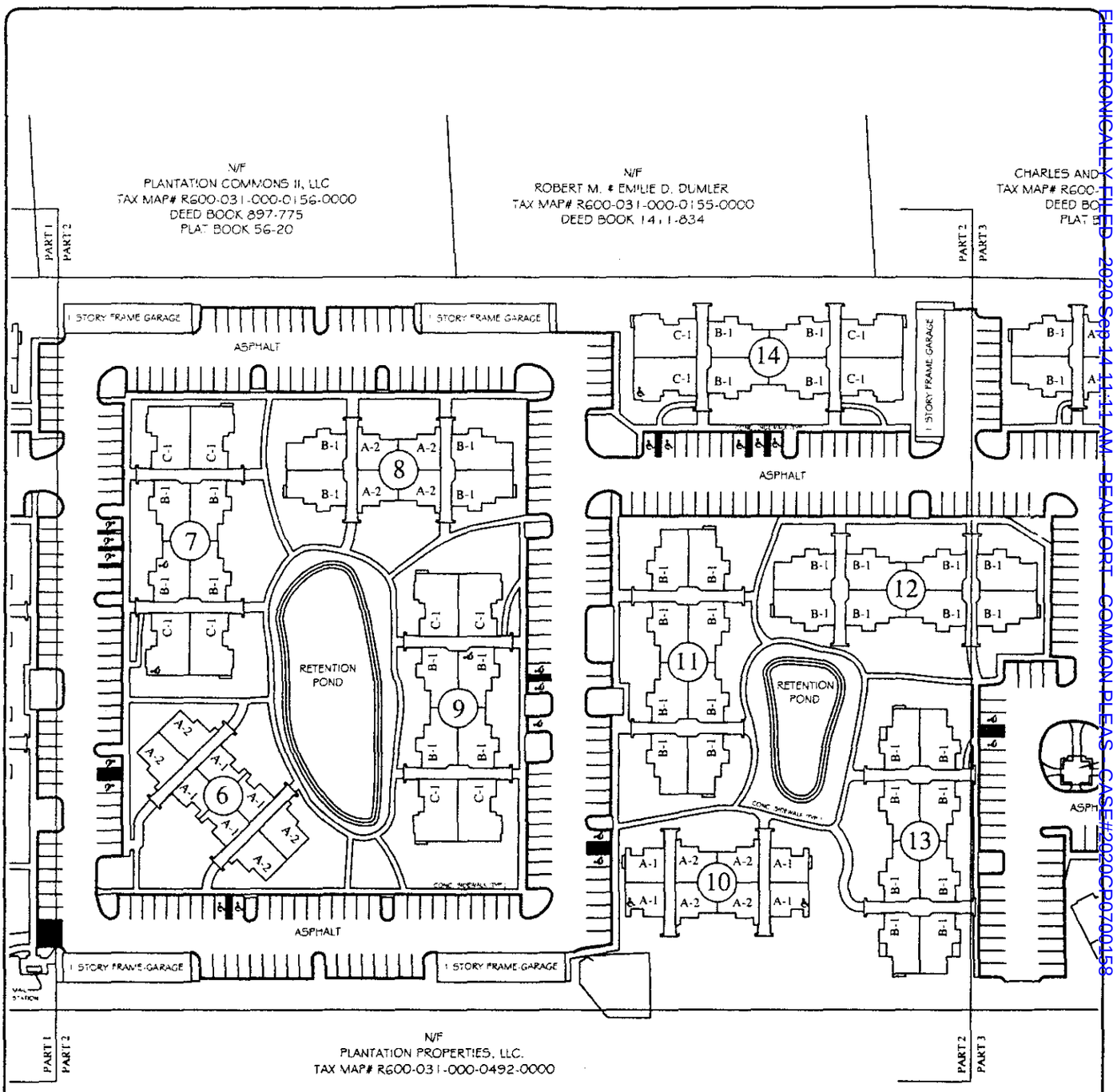
SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 20 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



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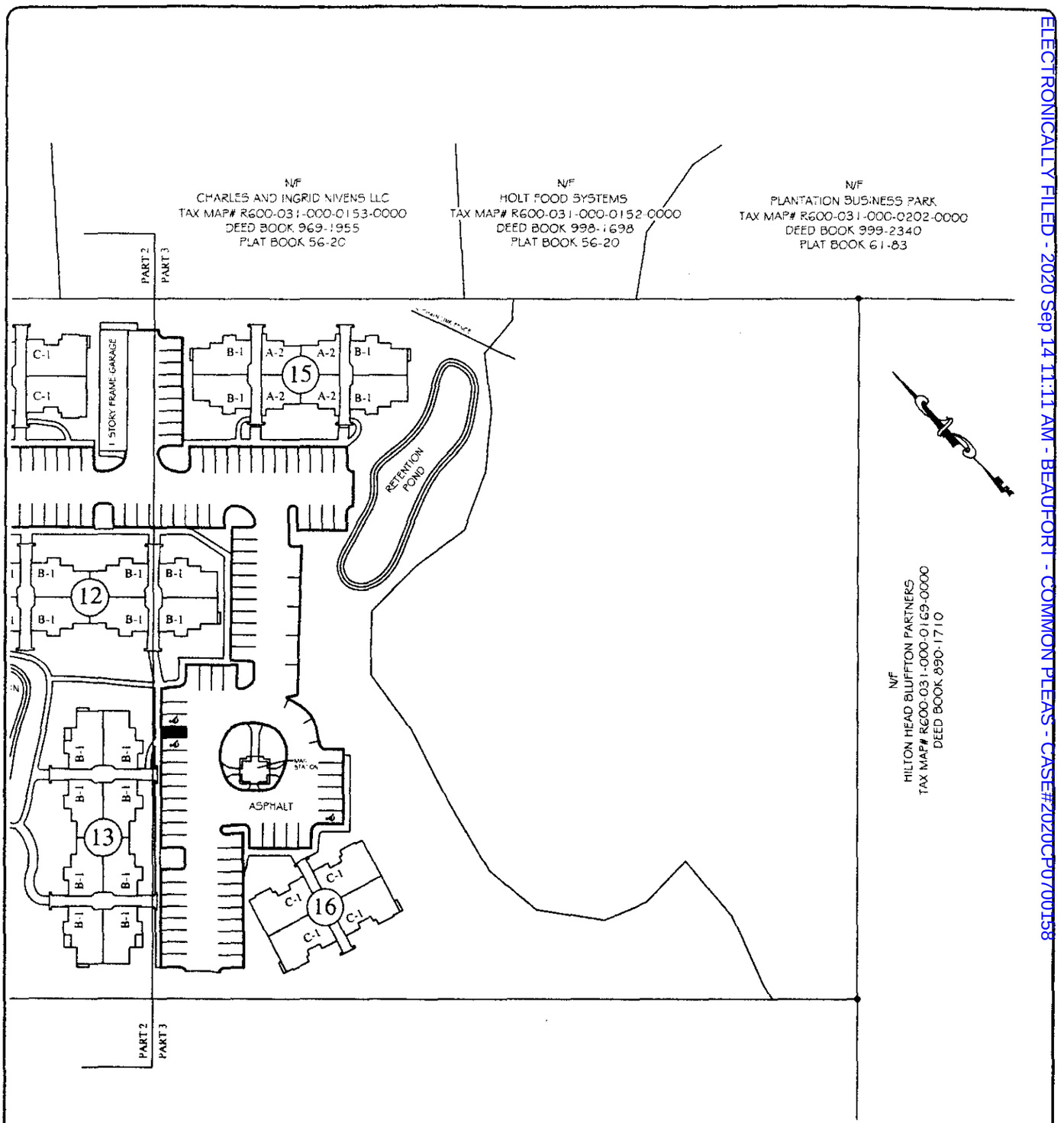
SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 21 OF 56

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BUILDING KEY
PART 3

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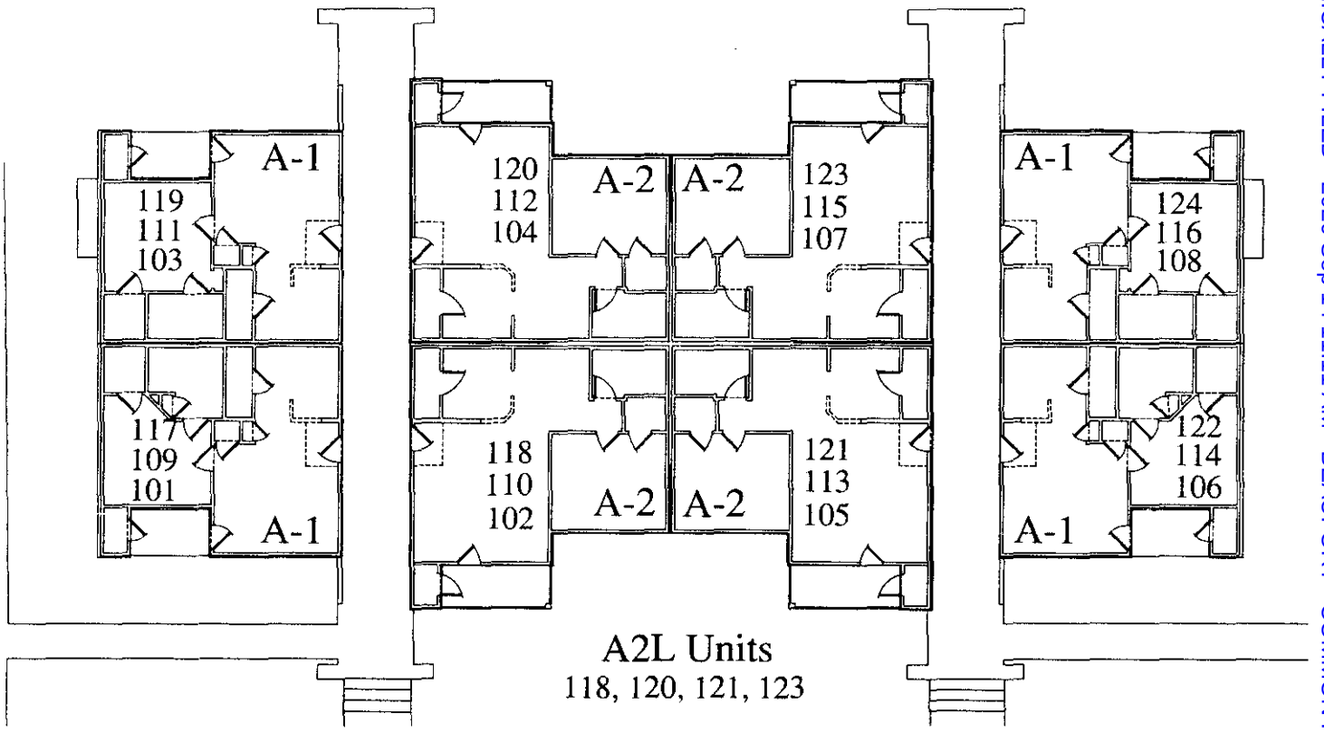
SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
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JOB NUMBER: SS 36511

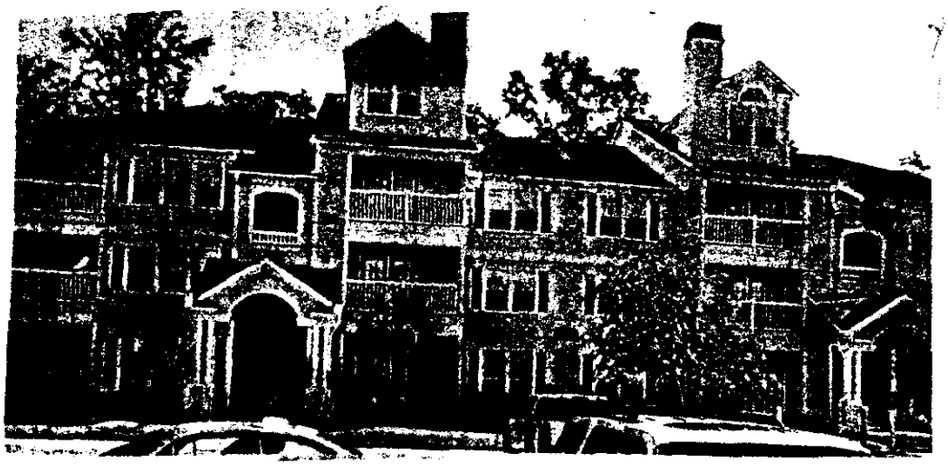
SHEET 22 OF 56

BUILDING 1 FLOOR PLAN (TYPICAL TO ALL FLOORS)



A2L Units
118, 120, 121, 123

FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 1

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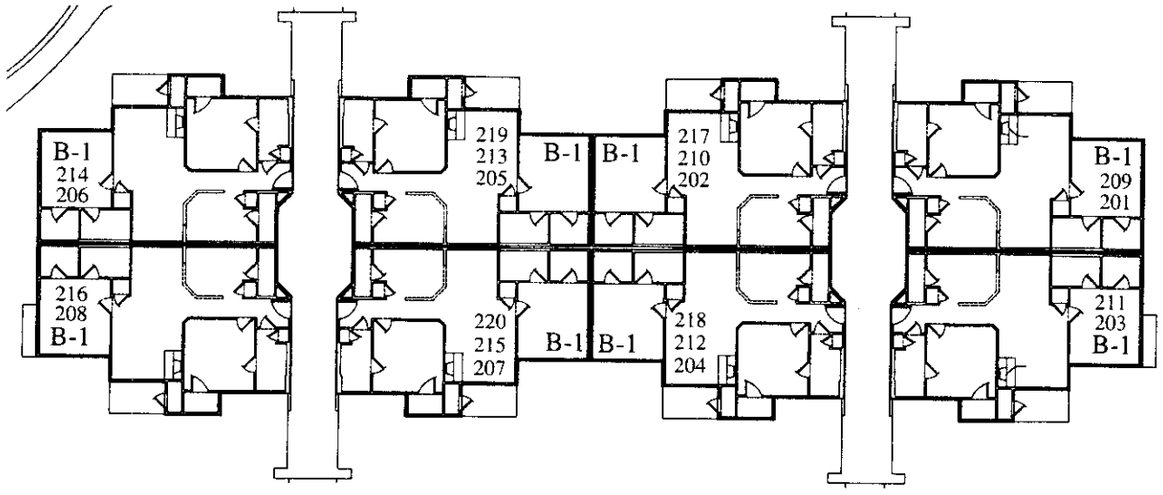
SHEET NAME:
BUILDING UNIT LOCATION KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 23 OF 56

BUILDING 2 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 2

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SHEET NAME:
BUILDING 2
UNIT LOCATION
KEY MAP

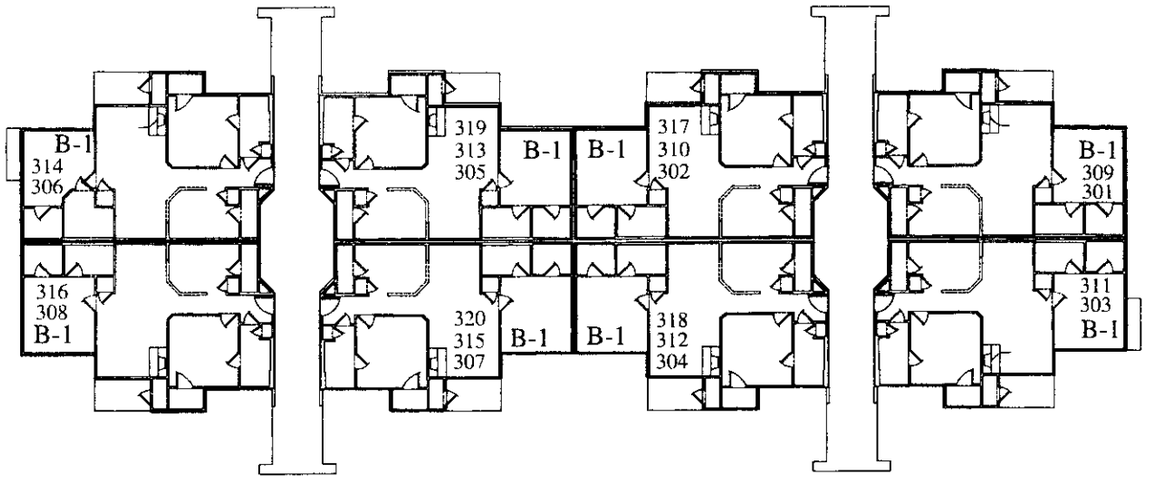
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER:
SS 36511

SHEET 24 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 3 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 3

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U.S. SURVEYOR®
4089 RIVERWIND POINTE DRIVE
EVANSVILLE, INDIANA 47715
1-800-TO SURVEY

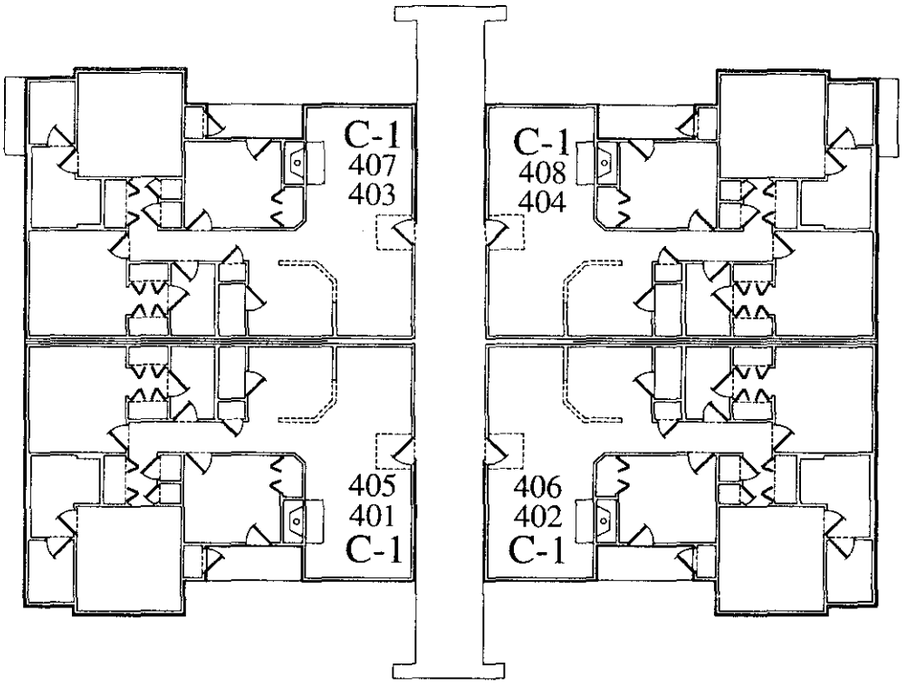
SHEET NAME:
BUILDING 3
UNIT LOCATION
KEY MAP

SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 25 OF 56

BUILDING 4 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 4

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4929 RIVERWIND POINTE DRIVE
EVANSVILLE, INDIANA 47715
1-800-TO SURVEY

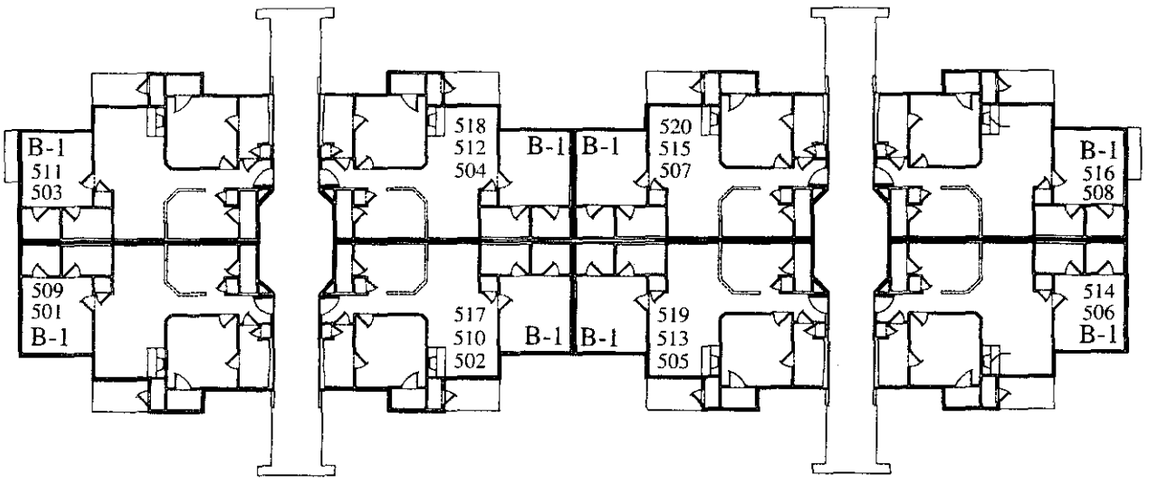
SHEET NAME:
BUILDING 4
UNIT LOCATION
KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 26 OF 56

BUILDING 5 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 5

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4229 RIVERWIND POINTE DRIVE
EVANSVILLE, INDIANA 47715
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SHEET NAME:
BUILDING 5
UNIT LOCATION
KEY MAP

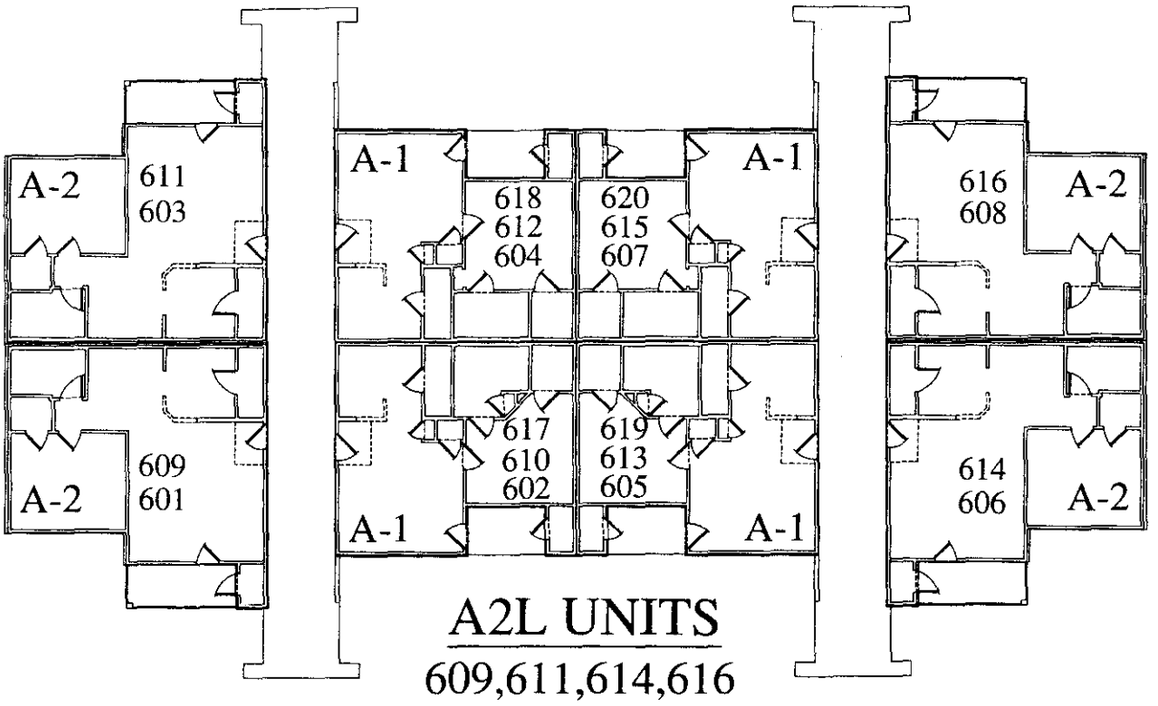
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 27 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700150

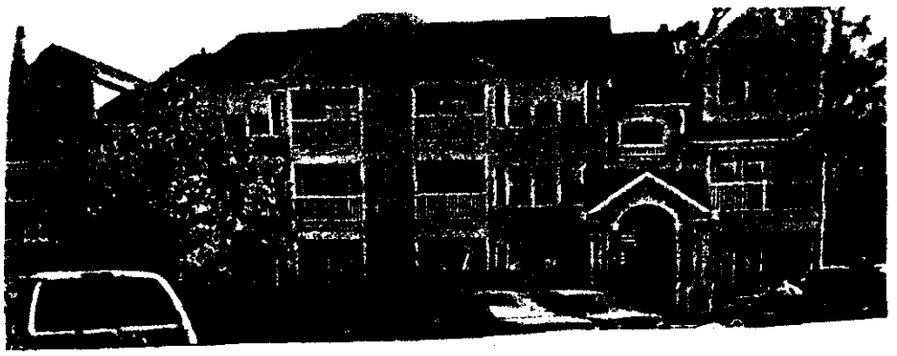
BUILDING 6 FLOOR PLAN (TYPICAL TO ALL FLOORS)



A2L UNITS

609,611,614,616

FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 6

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SHEET NAME:
BUILDING 6
UNIT LOCATION
KEY MAP

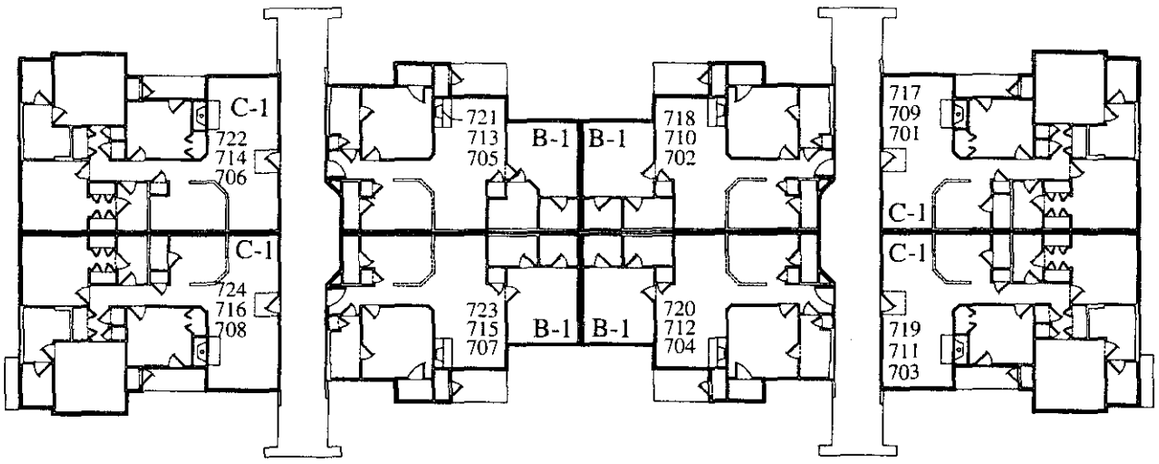
SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 28 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 7 FLOOR PLAN (TYPICAL TO ALL FLOOR PLANS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 7

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4889 RIVERWIND POINTE DRIVE
EVANSVILLE, INDIANA 47715
1-800- TO SURVEY

SHEET NAME:
BUILDING 7
UNIT LOCATION
KEY MAP

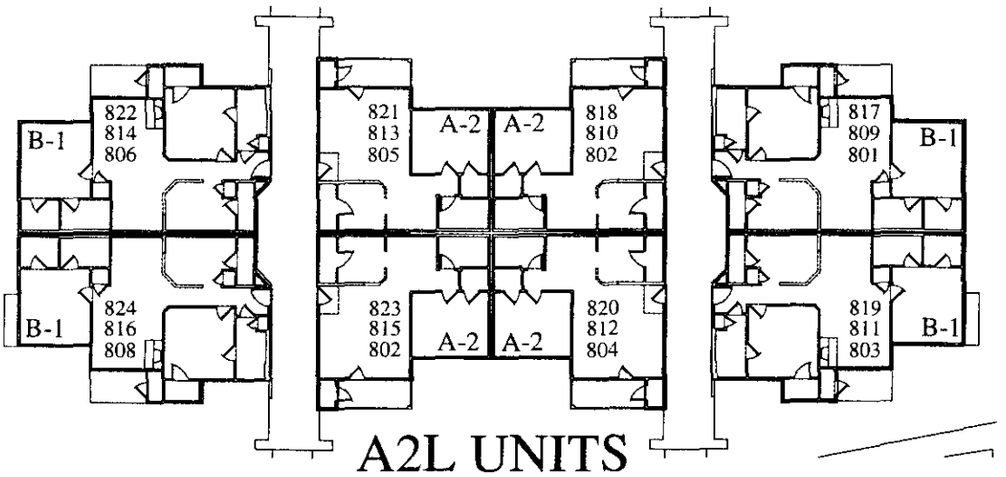
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 29 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 8 FLOOR PLAN (TYPICAL TO ALL FLOORS)



A2L UNITS

818,820,821,823

FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



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SHEET NAME:
BUILDING 8
UNIT LOCATION
KEY MAP

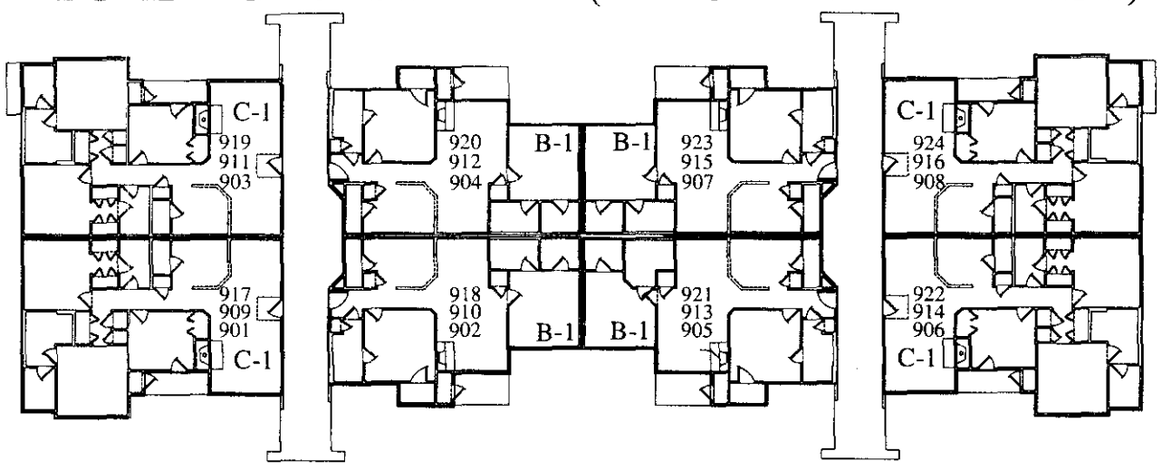
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 30 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 9 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 9

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SHEET NAME:
BUILDING 9
UNIT LOCATION
KEY MAP

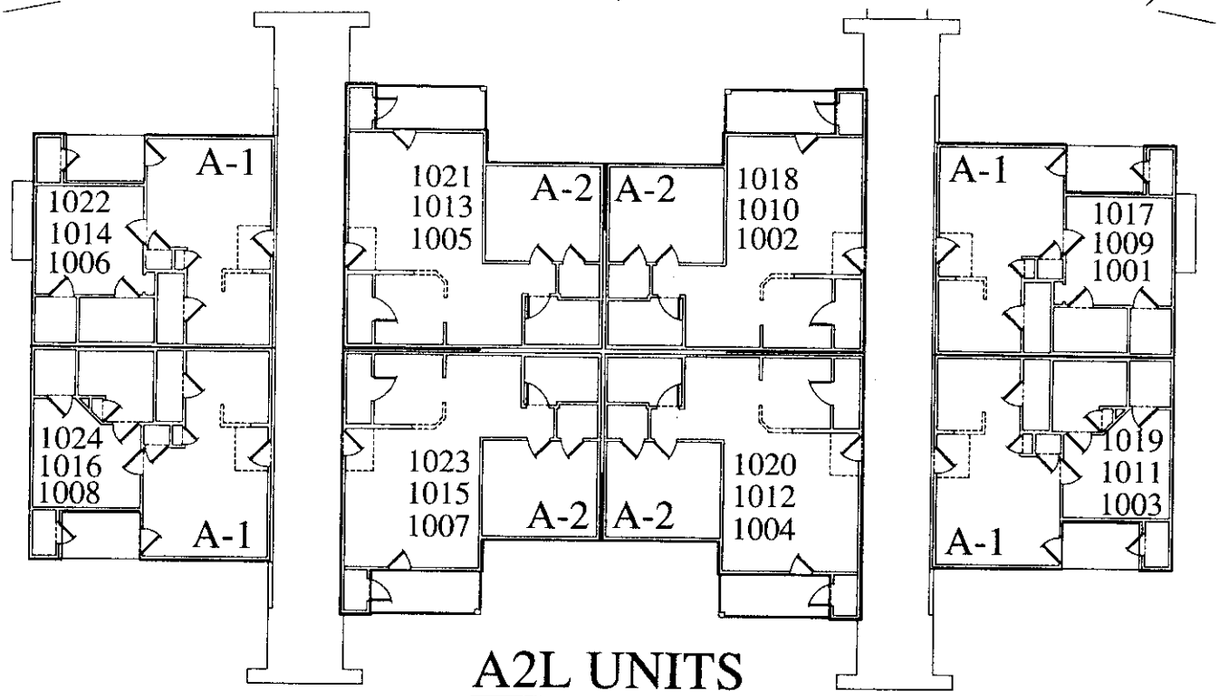
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER:
SS 36511

SHEET 31 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 10 FLOOR PLAN (TYPICAL TO ALL FLOORS)



A2L UNITS

1018,1020,1021,1023

FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 10

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SHEET NAME:
BUILDING 10
UNIT LOCATION
KEY MAP

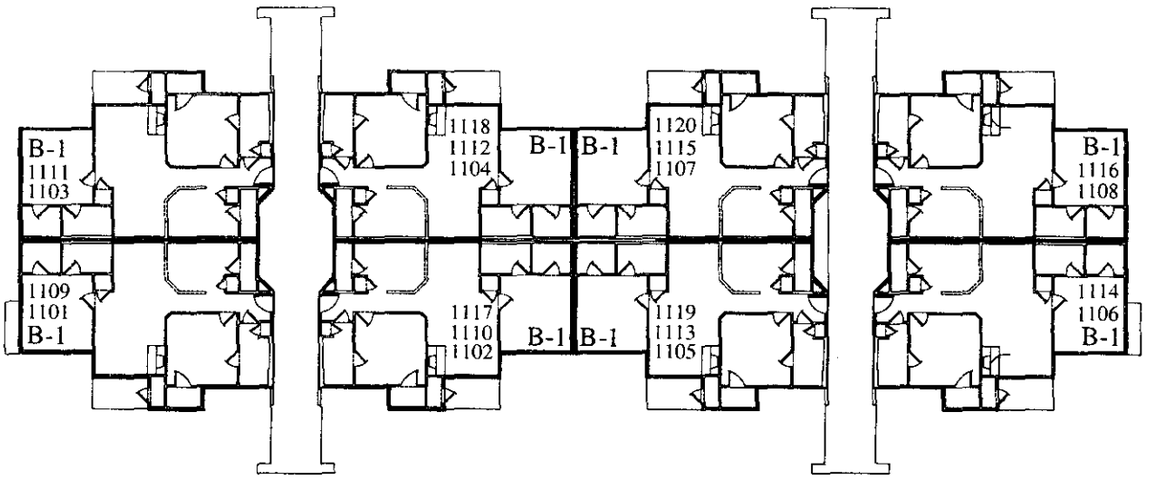
SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 32 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 11 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 11

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SHEET NAME:
BUILDING 11
UNIT LOCATION
KEY MAP

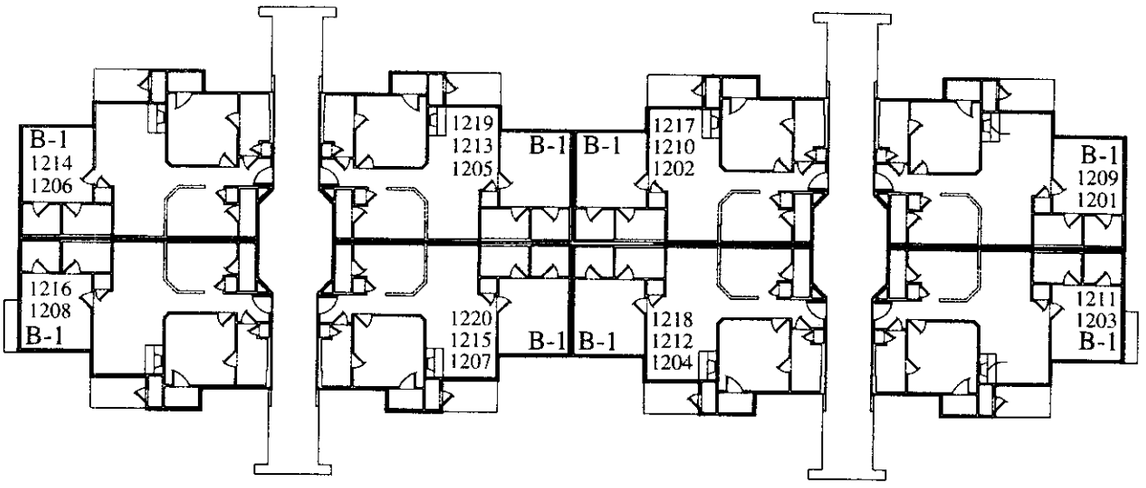
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 33 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 12 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 12

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SHEET NAME:
BUILDING 12
UNIT LOCATION
KEY MAP

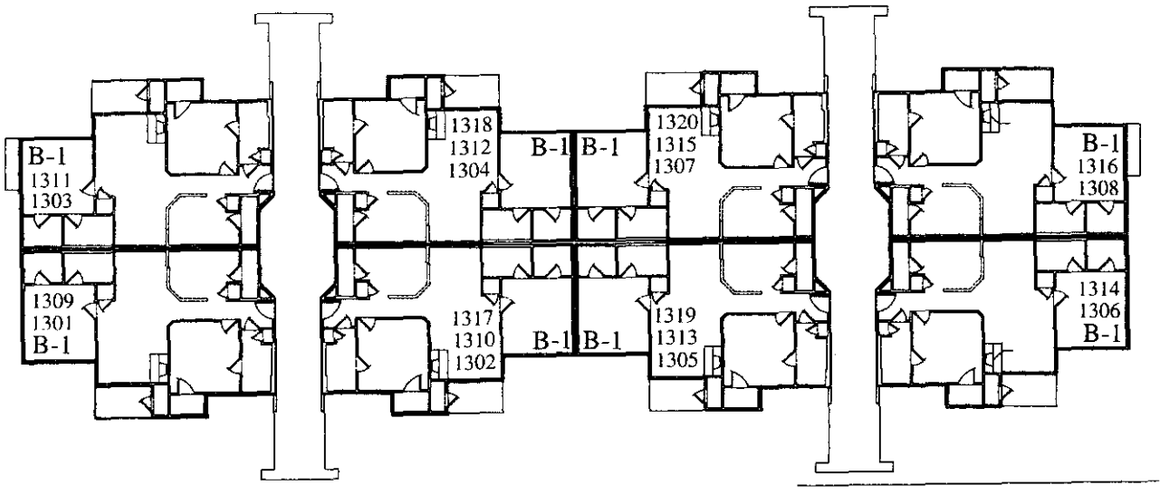
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 34 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 13 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 13

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SHEET NAME:
BUILDING 13
UNIT LOCATION
KEY MAP

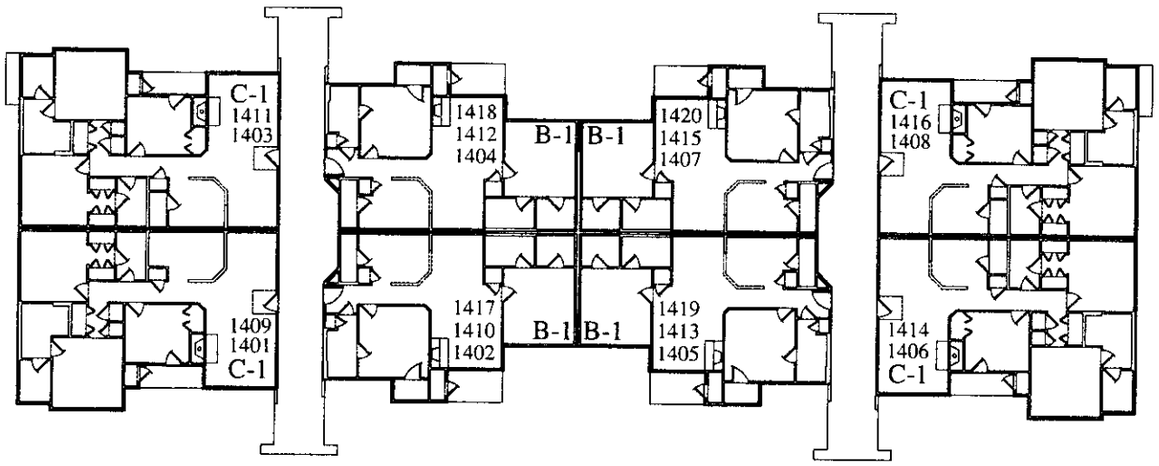
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

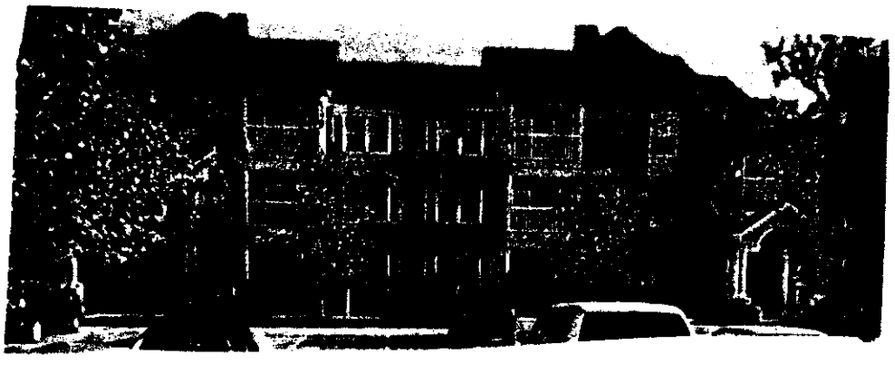
SHEET 35 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 14 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 14

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SHEET NAME:
BUILDING 14
UNIT LOCATION
KEY MAP

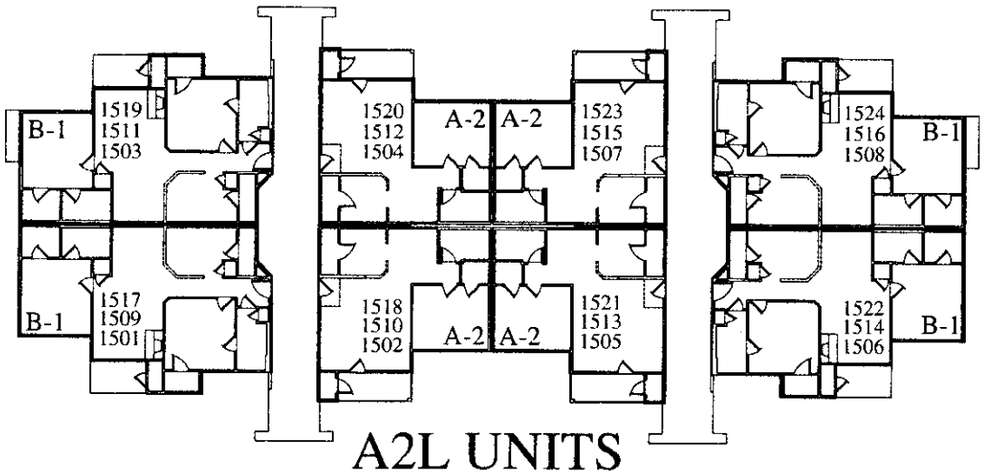
SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 38511

SHEET 36 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

BUILDING 15 FLOOR PLAN (TYPICAL TO ALL FLOORS)



A2L UNITS

1518,1520,1521,1523

FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 15

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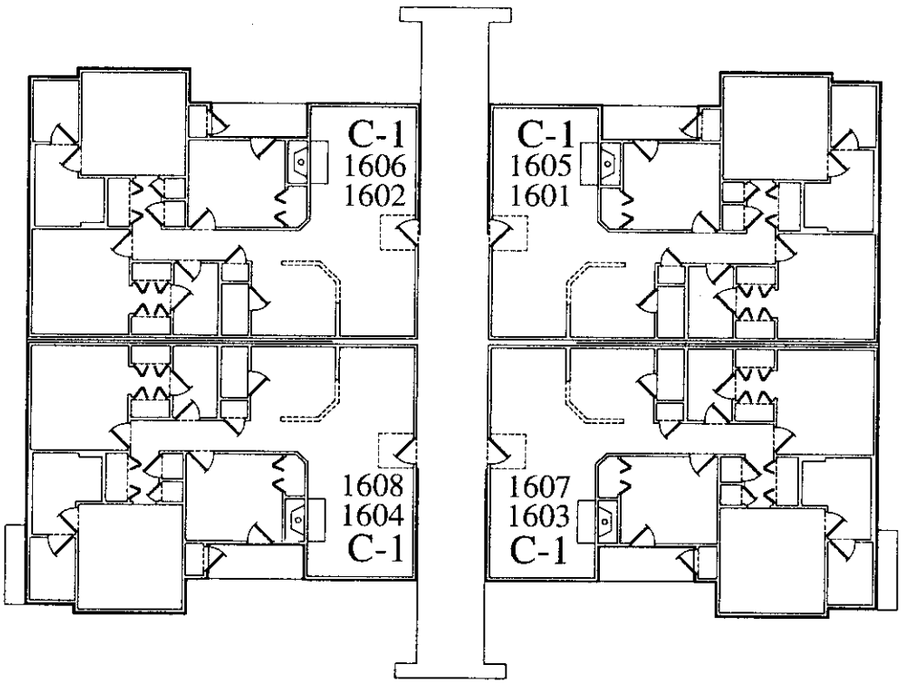
SHEET NAME:
BUILDING 15
UNIT LOCATION
KEY MAP

SCALE: Scale 1" = 30'
30 15 0 30

JOB NUMBER: SS 36511

SHEET 37 OF 56

BUILDING 16 FLOOR PLAN (TYPICAL TO ALL FLOORS)



FOOTNOTE: WHERE MORE THAN ONE UNIT NUMBER IS SHOWN WITHIN A FLOOR PLAN, THE BOTTOM UNIT NUMBER SHOWN IS ON THE FIRST FLOOR, THE MIDDLE UNIT NUMBER IS ON THE SECOND FLOOR AND ANY THIRD NUMBER IS ON THE THIRD FLOOR.



BUILDING 16

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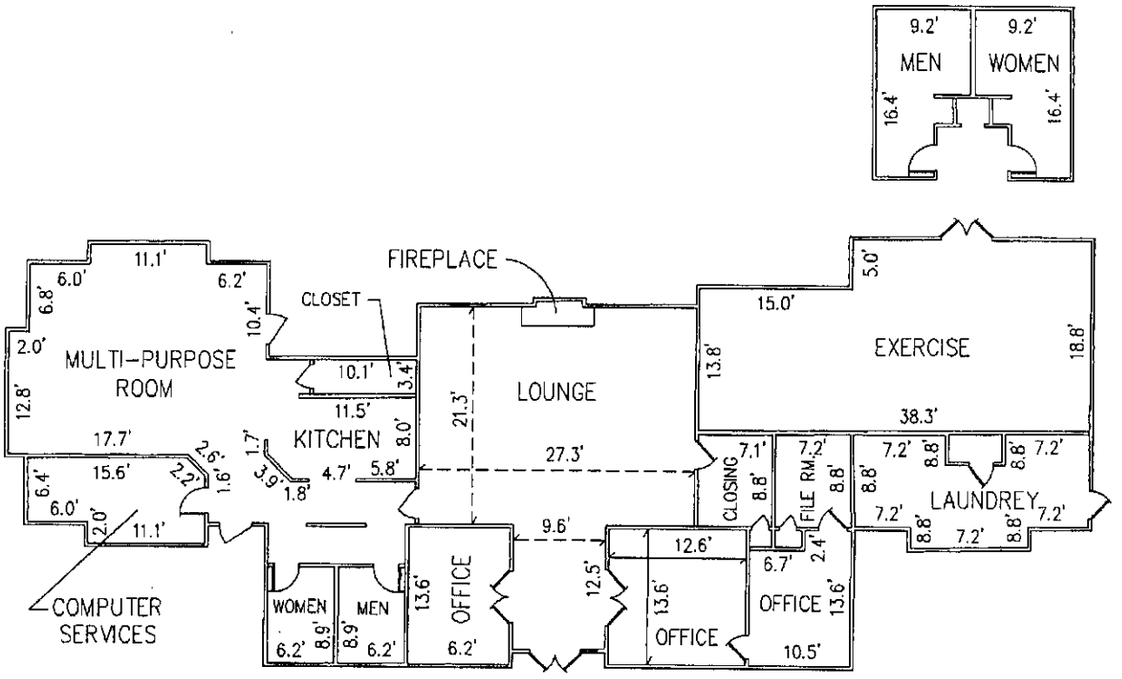
SHEET NAME:
BUILDING 16
UNIT LOCATION
KEY MAP

SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 38 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158





CLUBHOUSE
3,401 SQ.FT.
RESTROOMS
275 SQ.FT.
(COMMON ELEMENT)

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SHEET NAME:
CLUBHOUSE
UNIT LOCATION
KEY MAP

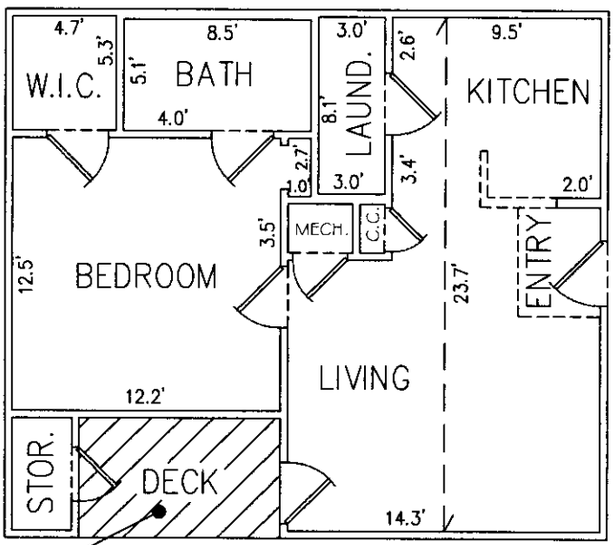
SCALE: Scale 1" = 20'
20 10 0 20

JOB NUMBER: SS 36511

SHEET 39 OF 56

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LIMITED COMMON ELEMENT FOR UNIT

Unit A1

586 sq.f.t

Unit Numbers

101,103,106,108,109,111,114,116,117,119,122,124,
602,604,605,607,610,612,613,615,617,618,619,620,
1001,1003,1006,1008,1009,1011,1014,1016,1017,1019,1022,1024

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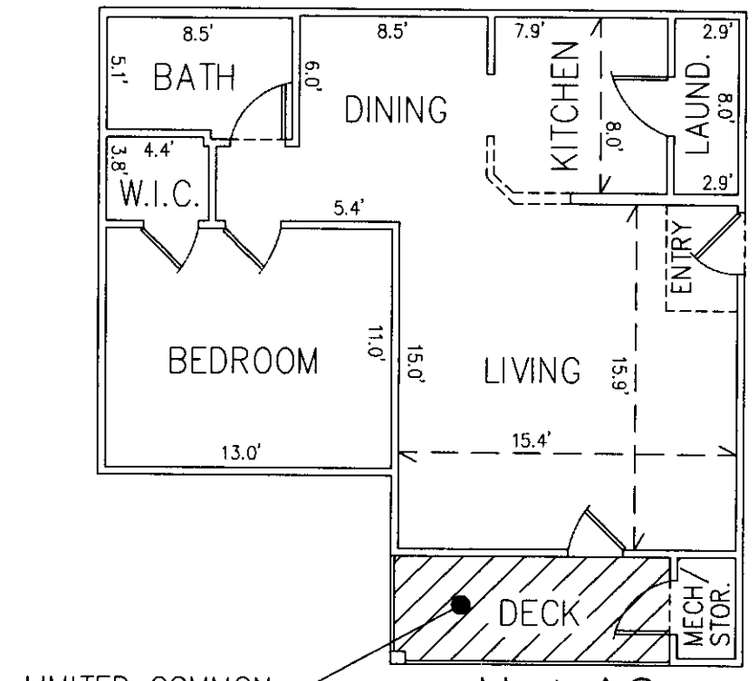
SHEET NAME: TYPICAL UNIT A1 DETAIL

SCALE: Scale 1" = 8'
8 4 0 8

JOB NUMBER: SS 36511

SHEET 40 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



Unit A2

672 sq.ft.

Unit Numbers

102,104,105,107,110,112,113,115,
601,603,606,608,
802,804,805,807,810,812,813,815,
1002,1004,1005,1007,1010,1012,1013,1015,
1502,1504,1505,1507,1510,1512,1513,1515

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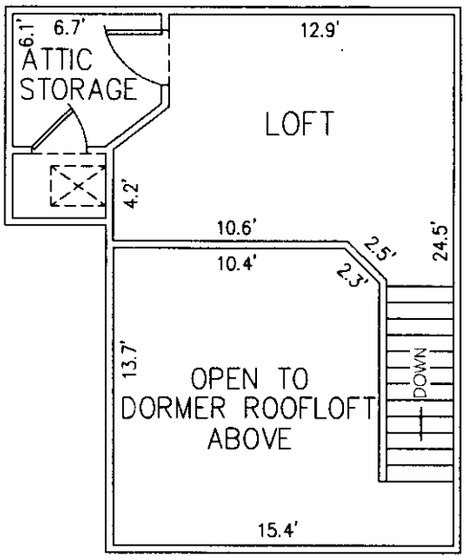
SHEET NAME: TYPICAL UNIT A2 DETAIL

SCALE: Scale 1" = 8'
8 4 0 8

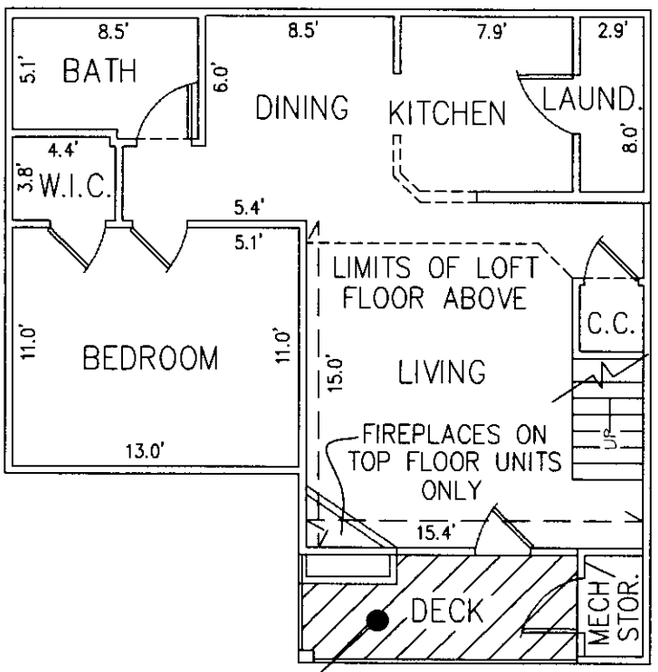
JOB NUMBER: SS 36511

SHEET 41 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



Unit A2 Loft
Upper Plan
211 sq.ft.



LIMITED COMMON ELEMENT FOR UNIT

Unit A2 Loft
Lower Plan
672 sq.ft.

Unit Numbers

118,120,121,123,
609,611,614,616,
818,820,821,823,
1018,1020,1021,1023,
1518,1520,1521,1523

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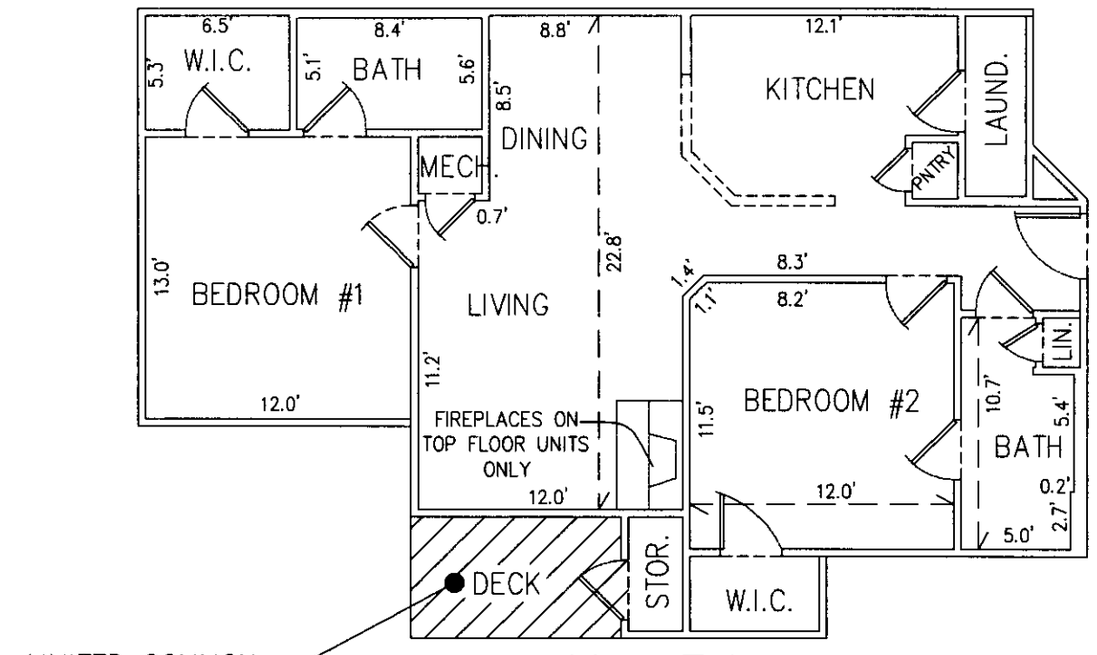
SHEET NAME: TYPICAL UNIT A2 W/LOFT LOWER DETAIL

SCALE: Scale 1" = 8'
8 4 0 8

JOB NUMBER: SS 36511

SHEET 42 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0200738



Unit B1

968 sq.ft.

Unit Numbers

201,202,203,204,205,206,207,208,209,210,211,212,213,214,215,216,217,218,219,220,
301,302,303,304,305,306, 307,308,309,310,311,312,313,314,315,316,317,318,319,320,
501,502,503,504,505,506,507,508,509,510,511,512, 513,514,515,516,517,518,519,520,
702,704,705,707,710,712,713,715,718,720,721,723,801,803,806,808,809,811,814,816,817,819,822,824,
902,904,905,907,910,912,913,915,918,920,921,923
1101,1102,1103,1104,1105,1106,1107,1108,1109,1110,1111,1112,1113,1114,1115,1116,1117,1118,1119,1120,
1201,1202,1203,1204,1205,1206,1207,1208,1209,1210,1211,1212,1213,1214,1215,1216,1217,1218,1219,1220,
1301,1302,1303,1304,1305,1306,1307,1308,1309,1310,1311,1312,1313,1314,1315,1316,1317,1318,1319,1320,
1402,1404,1405,1407,1410,1412,1413,1415,1417,1418,1419,1420
1501,1503,1506,1508,1509,1511,1514,1516,1517,1519,1522,1524

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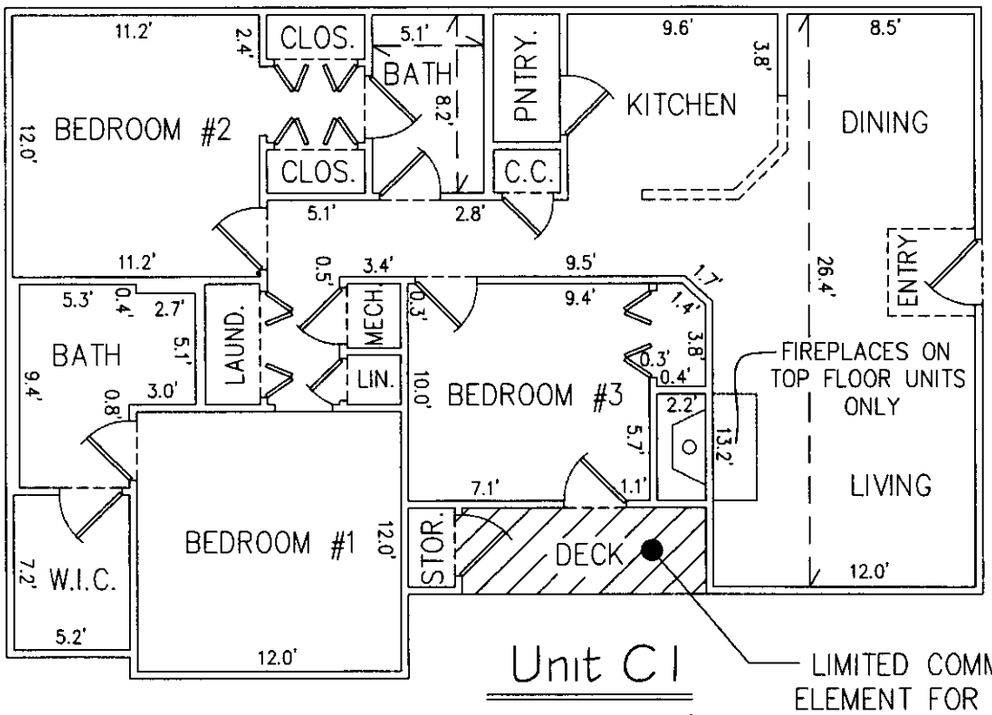
SHEET NAME: TYPICAL UNIT B1 DETAIL

SCALE: Scale 1" = 8'
8 4 0 8

JOB NUMBER: SS 36511

SHEET 43 OF 56

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Unit C1

1216 sq.ft.

Unit Numbers

401,402,403,404,405,406,407,408,
701,703,706,708,709,711,714,716,717,719,722,724,
901,903,906,908,909,911,914,916,917,919,922,924,
1401,1403,1406,1408,1409,1411,1414,1416
1601,1602,1603,1604,1605,1606,1607,1608

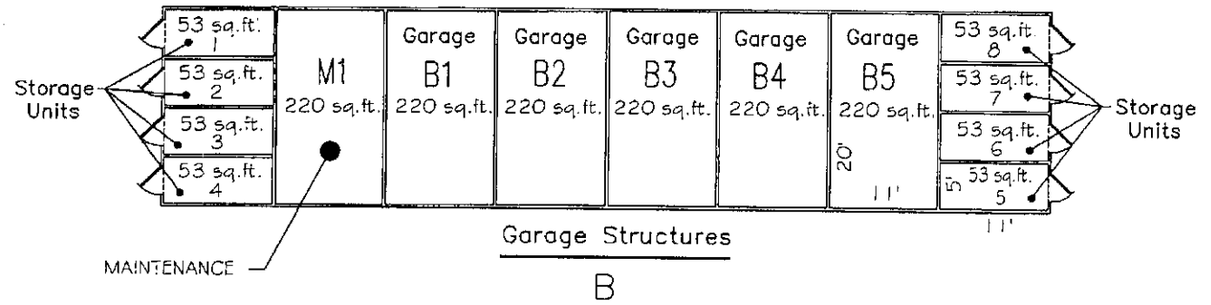
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SHEET NAME: TYPICAL UNIT C1 DETAIL

SCALE: Scale 1" = 8'
8 4 0 8

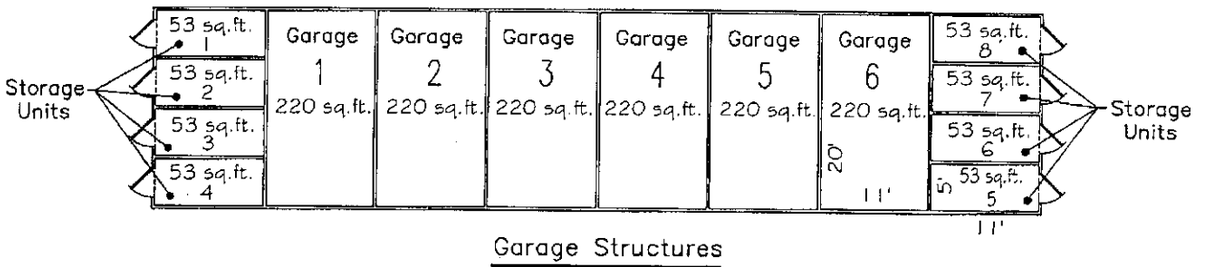
JOB NUMBER: SS 36511

SHEET 44 OF 56



Garage Structures

B



Garage Structures

C, D, E, F

NOTE:
THE NUMBER SHOWN WITHIN A BAY, SUCH AS "1" IS A GARAGE UNIT NUMBER AND SHOWS TYPICAL LOCATION OF THAT GARAGE UNIT. FOR EXAMPLE, IN GARAGE STRUCTURE C, THE GARAGE UNIT NUMBER FOR BAY 1 WOULD BE C1. GARAGE COMMON ELEMENTS ARE DEFINED IN THE MASTER DEED.

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SHEET NAME:
TYPICAL GARAGE STRUCTURE PLAN AND DETAIL

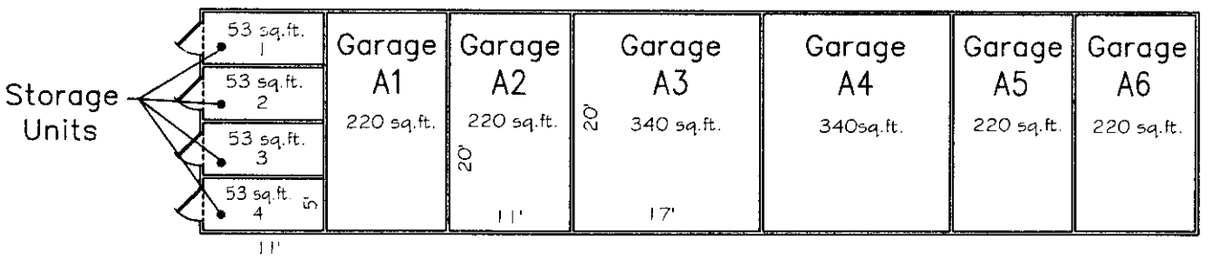
SCALE: Scale 1" = 16'
16 8 0 16

JOB NUMBER: SS 38511

SHEET 45 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

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Garage Structures

A

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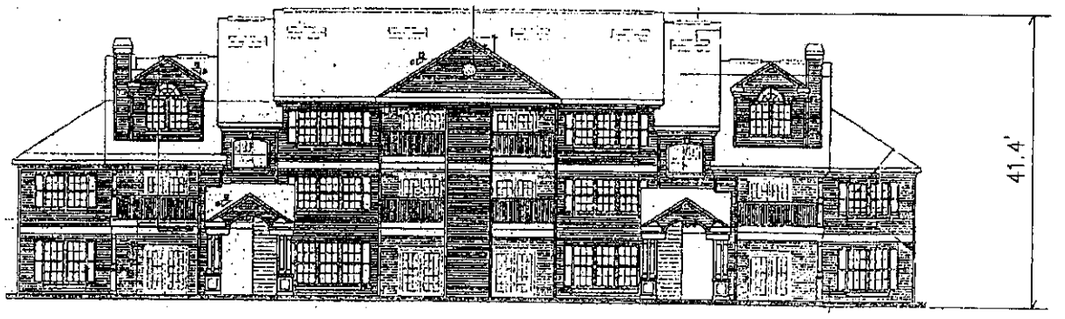
SHEET NAME:
TYPICAL GARAGE STRUCURE PLAN AND DETAIL

SCALE: Scale 1" = 16'
16 8 0 16

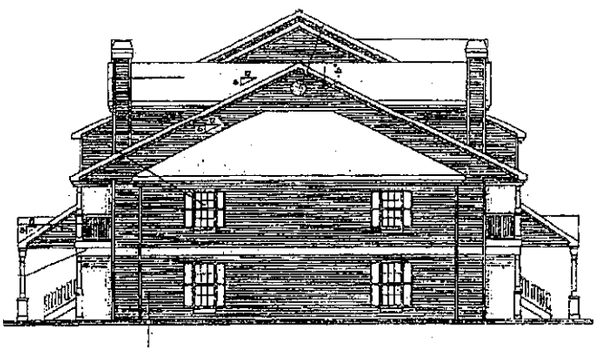
JOB NUMBER: SS 36511

SHEET 46 OF 56

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Front Elevation



Side Elevation

Building 6

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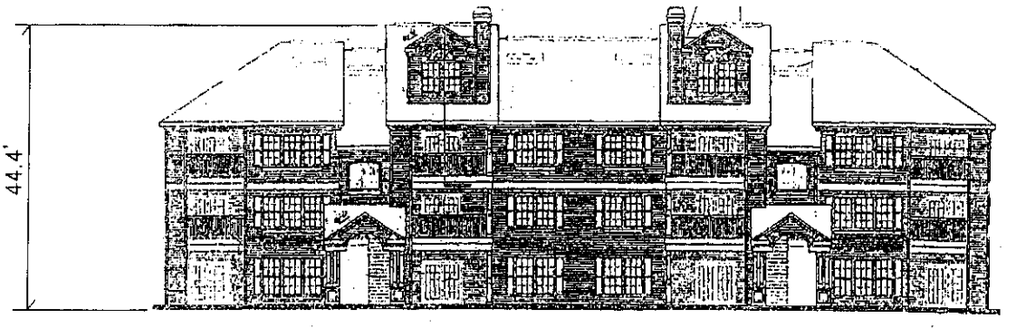
SHEET NAME:
BUILDING ELEVATIONS

SCALE: Not-to-Scale

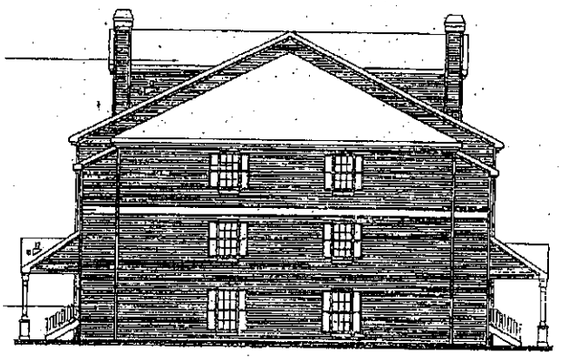
JOB NUMBER: SS 36511

SHEET 47 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



Front Elevation



Side Elevation

Buildings 1 & 10

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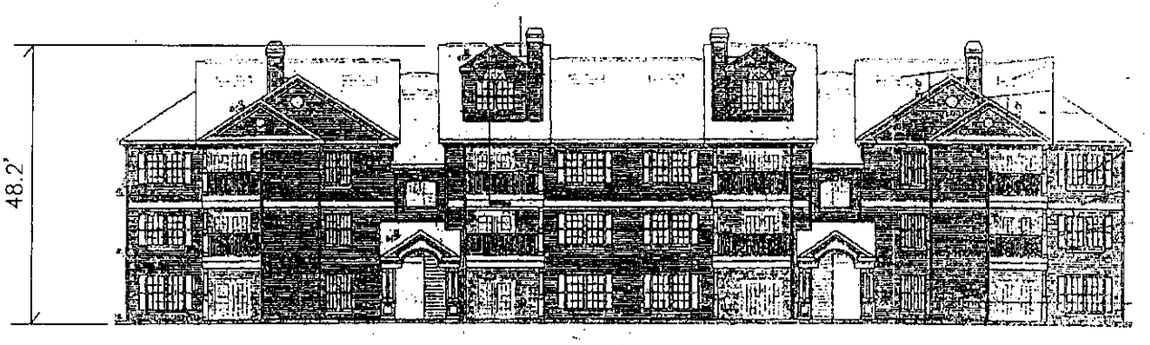
SHEET NAME: BUILDING ELEVATIONS

SCALE: Not to Scale

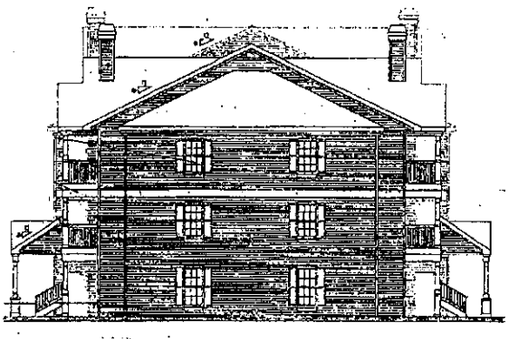
JOB NUMBER: SS 38511

SHEET 48 OF 56

ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



Front Elevation



Side Elevation

Buildings 8 & 15

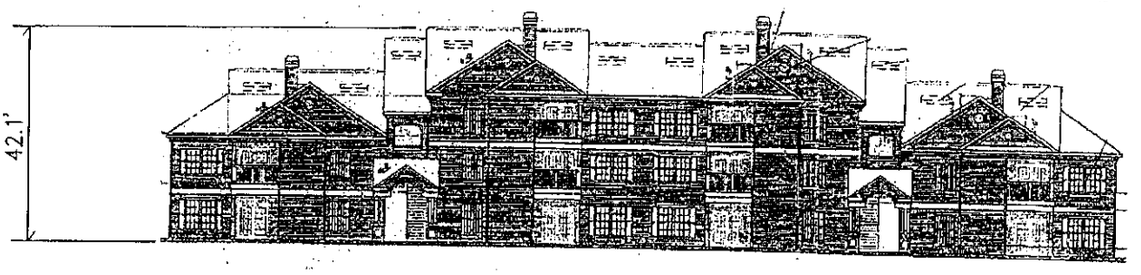
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SHEET NAME: BUILDING ELEVATIONS

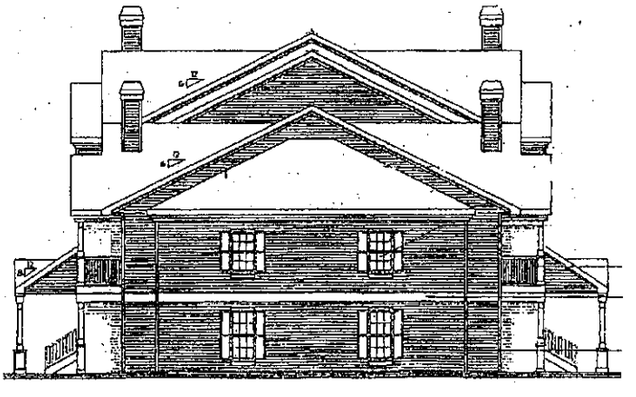
SCALE: Not to Scale

JOB NUMBER: SS 36511

SHEET 49 OF 56



Front Elevation



Side Elevation

Buildings 2, 3, 5, 11, 12 & 13

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SHEET NAME: BUILDING ELEVATIONS

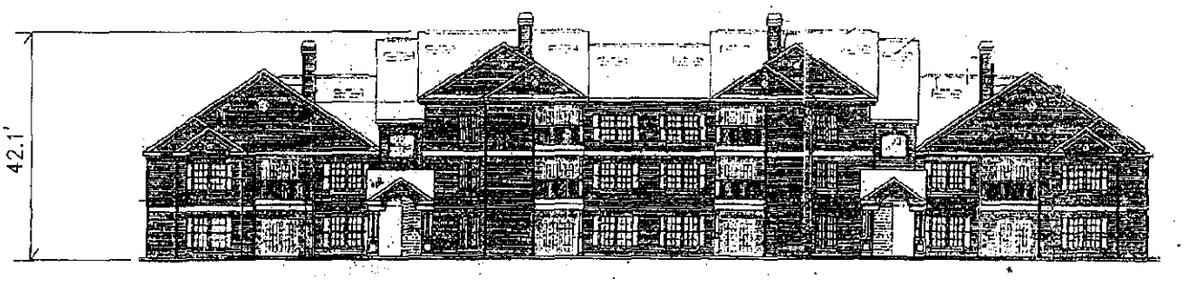
SCALE: Not to Scale

JOB NUMBER: SS 36511

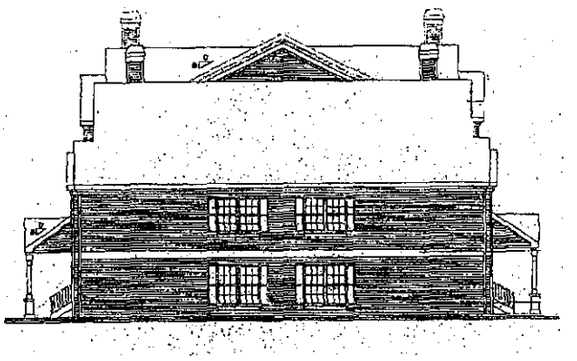
SHEET 50 OF 56

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Front Elevation



Side Elevation

Building 14

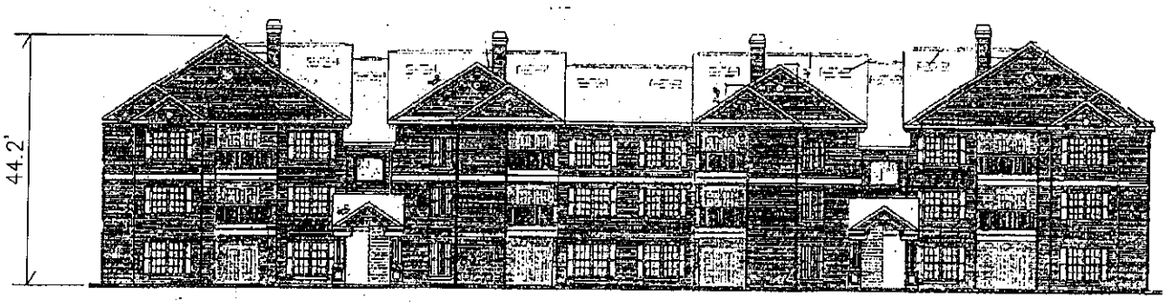
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SHEET NAME:
BUILDING ELEVATIONS

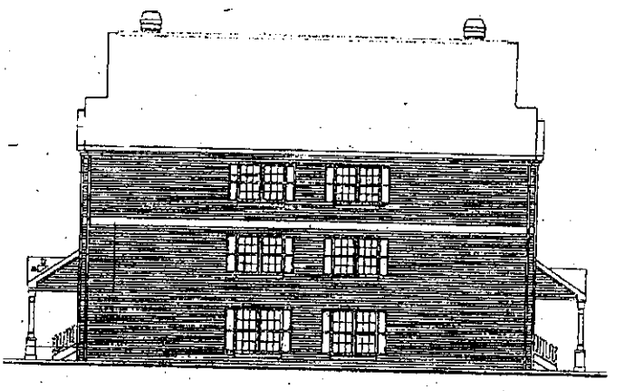
SCALE: Not to Scale

JOB NUMBER: SS 35511

SHEET 51 OF 56



Front Elevation



Side Elevation

Buildings 7 & 9

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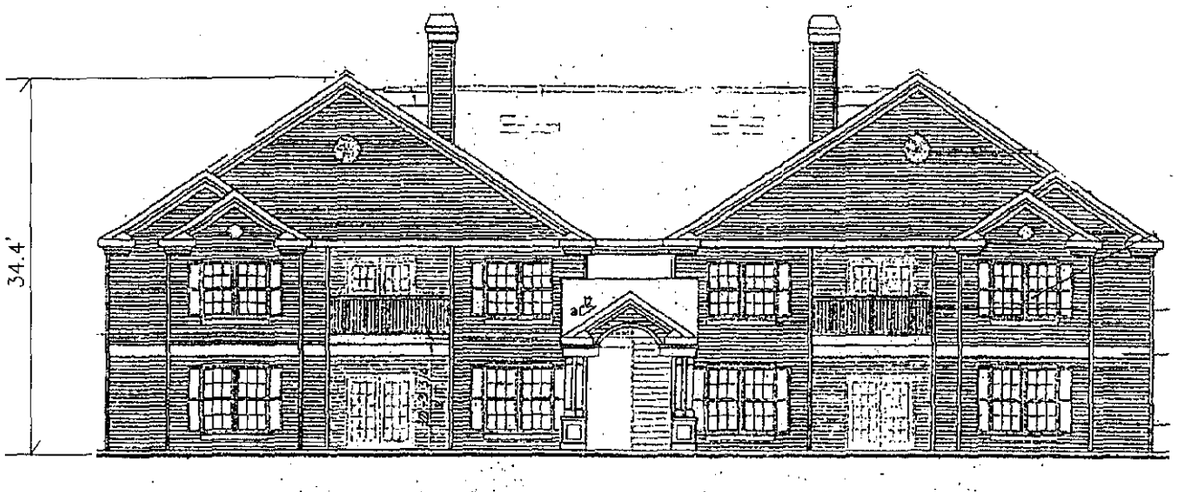
SHEET NAME: BUILDING ELEVATIONS

SCALE: Not to Scale

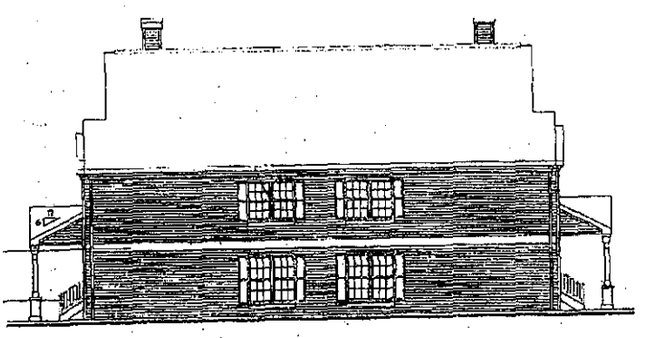
JOB NUMBER: SS 36511

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Front Elevation



Side Elevation

Buildings 4 & 16

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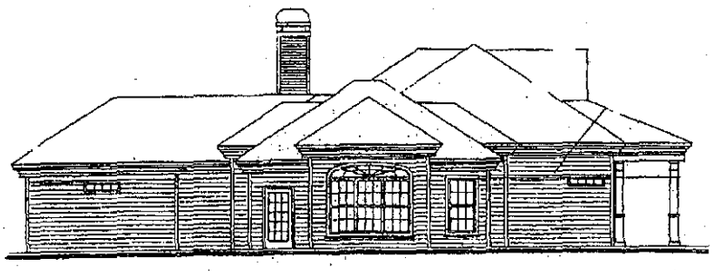
SHEET NAME: BUILDING ELEVATIONS

SCALE: Not to Scale

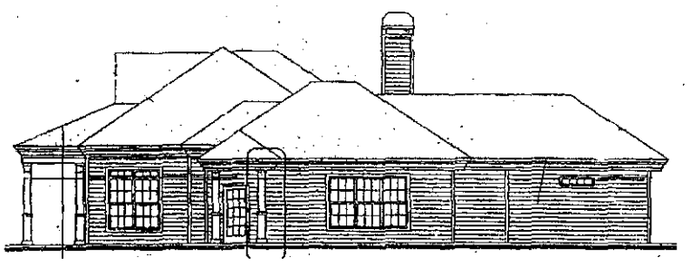
JOB NUMBER: SS 36511

SHEET 53 OF 56

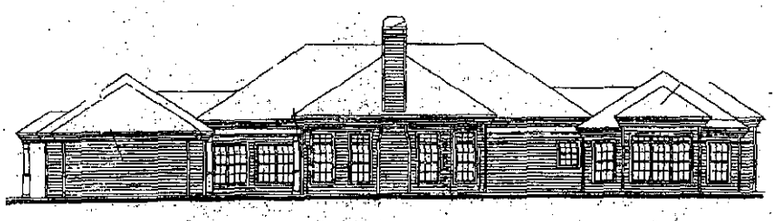
ELECTRONICALLY FILED - 2020 Sep 14 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158



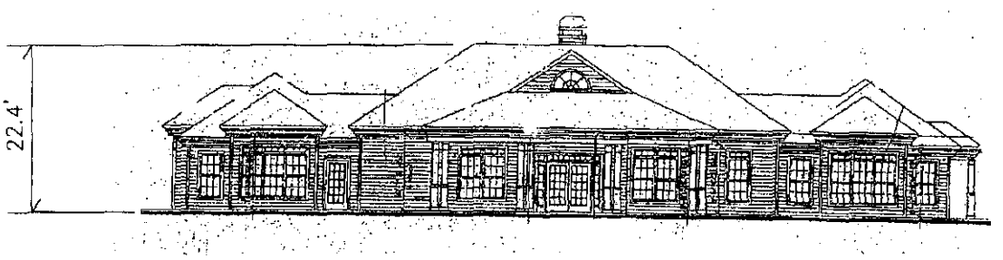
Club House Left Side Elevation



Club House Right Side Elevation



Club House Rear Elevation



Club House Front Elevation

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SHEET NAME:
BUILDING ELEVATIONS

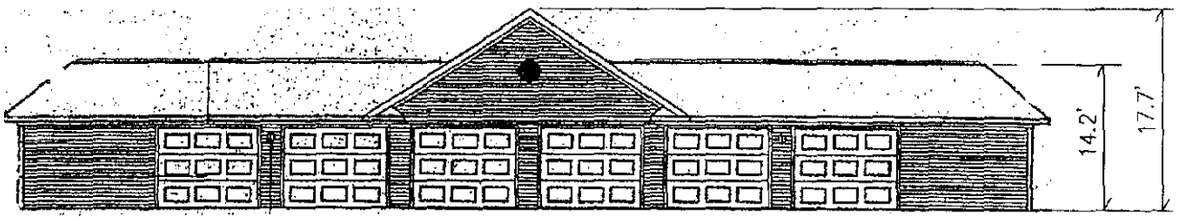
SCALE: Not to Scale

JOB NUMBER: SS 38511

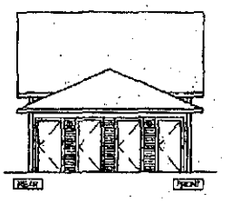
SHEET 54 OF 56

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Garage Front Elevation



Garage Side Elevation

Garage Structures B, C, D, E and F

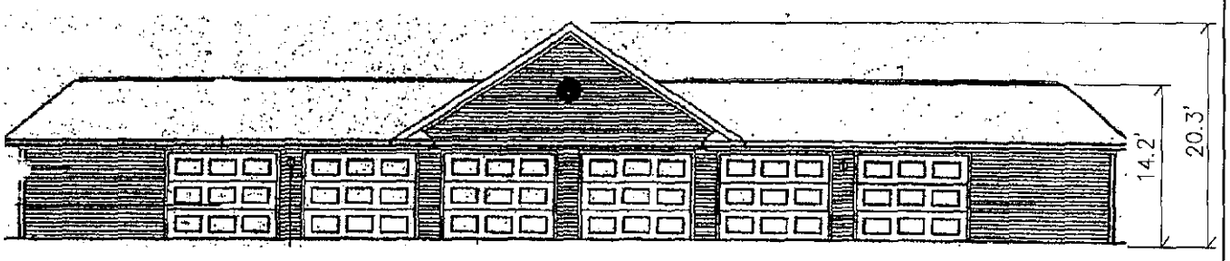
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SHEET NAME:
BUILDING ELEVATIONS

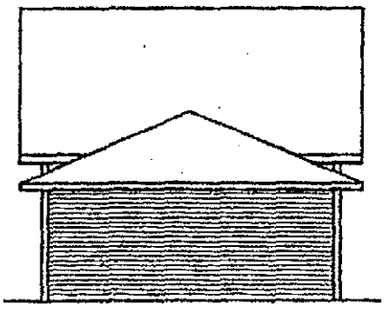
SCALE: Not to Scale

JOB NUMBER: SS 36511

SHEET 55 OF 56



Garage Front Elevation



Garage Side Elevation

Garage Structure A

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SHEET NAME: BUILDING ELEVATIONS

SCALE: Not to Scale

JOB NUMBER: SS 38511

SHEET 56 OF 56

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EXHIBIT "D": PERCENTAGE INTERESTS: UNITS

BLDG/UNIT		TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
1	101	A1	1.0	0.19873
1	102	A2	1.15	0.22854
1	103	A1	1.0	0.19873
1	104	A2	1.15	0.22854
1	105	A2	1.15	0.22854
1	106	A1	1.0	0.19873
1	107	A2	1.15	0.22854
1	108	A1	1.0	0.19873
1	109	A1	1.0	0.19873
1	110	A2	1.15	0.22854
1	111	A1	1.0	0.19873
1	112	A2	1.15	0.22854
1	113	A2	1.15	0.22854
1	114	A1	1.0	0.19873
1	115	A2	1.15	0.22854
1	116	A1	1.0	0.19873
1	117	A1	1.0	0.19873
1	118	A2LOFT	1.4	0.27822
1	119	A1	1.0	0.19873
1	120	A2LOFT	1.4	0.27822
1	121	A2LOFT	1.4	0.27822
1	122	A1	1.0	0.19873
1	123	A2LOFT	1.4	0.27822
1	124	A1	1.0	0.19873
2	201	B1	1.65	0.32790
2	202	B1	1.65	0.32790
2	203	B1	1.65	0.32790
2	204	B1	1.65	0.32790
2	205	B1	1.65	0.32790
2	206	B1	1.65	0.32790
2	207	B1	1.65	0.32790
2	208	B1	1.65	0.32790
2	209	B1	1.65	0.32790
2	210	B1	1.65	0.32790
2	211	B1	1.65	0.32790
2	212	B1	1.65	0.32790
2	213	B1	1.65	0.32790
2	214	B1	1.65	0.32790
2	215	B1	1.65	0.32790
2	216	B1	1.65	0.32790
2	217	B1	1.65	0.32790
2	218	B1	1.65	0.32790
2	219	B1	1.65	0.32790
2	220	B1	1.65	0.32790
3	301	B1	1.65	0.32790
3	302	B1	1.65	0.32790
3	303	B1	1.65	0.32790
3	304	B1	1.65	0.32790
3	305	B1	1.65	0.32790
3	306	B1	1.65	0.32790
3	307	B1	1.65	0.32790
3	308	B1	1.65	0.32790
3	309	B1	1.65	0.32790
3	310	B1	1.65	0.32790
3	311	B1	1.65	0.32790
3	312	B1	1.65	0.32790
3	313	B1	1.65	0.32790
3	314	B1	1.65	0.32790
3	315	B1	1.65	0.32790

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	BLDG/UNIT	TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
3	316	B1	1.65	0.32790
3	317	B1	1.65	0.32790
3	318	B1	1.65	0.32790
3	319	B1	1.65	0.32790
3	320	B1	1.65	0.32790
4	401	C1	2.1	0.41733
4	402	C1	2.1	0.41733
4	403	C1	2.1	0.41733
4	404	C1	2.1	0.41733
4	405	C1	2.1	0.41733
4	406	C1	2.1	0.41733
4	407	C1	2.1	0.41733
4	408	C1	2.1	0.41733
5	501	B1	1.65	0.32790
5	502	B1	1.65	0.32790
5	503	B1	1.65	0.32790
5	504	B1	1.65	0.32790
5	505	B1	1.65	0.32790
5	506	B1	1.65	0.32790
5	507	B1	1.65	0.32790
5	508	B1	1.65	0.32790
5	509	B1	1.65	0.32790
5	510	B1	1.65	0.32790
5	511	B1	1.65	0.32790
5	512	B1	1.65	0.32790
5	513	B1	1.65	0.32790
5	514	B1	1.65	0.32790
5	515	B1	1.65	0.32790
5	516	B1	1.65	0.32790
5	517	B1	1.65	0.32790
5	518	B1	1.65	0.32790
5	519	B1	1.65	0.32790
5	520	B1	1.65	0.32790
6	601	A2	1.15	0.22854
6	602	A1	1.0	0.19873
6	603	A2	1.15	0.22854
6	604	A1	1.0	0.19873
6	605	A1	1.0	0.19873
6	606	A2	1.15	0.22854
6	607	A1	1.0	0.19873
6	608	A2	1.15	0.22854
6	609	A2LOFT	1.4	0.27822
6	610	A1	1.0	0.19873
6	611	A2LOFT	1.4	0.27822
6	612	A1	1.0	0.19873
6	613	A1	1.0	0.19873
6	614	A2LOFT	1.4	0.27822
6	615	A1	1.0	0.19873
6	616	A2LOFT	1.4	0.27822
6	617	A1	1.0	0.19873
6	618	A1	1.0	0.19873
6	619	A1	1.0	0.19873
6	620	A1	1.0	0.19873
7	701	C1	2.1	0.41733
7	702	B1	1.65	0.32790
7	703	C1	2.1	0.41733
7	704	B1	1.65	0.32790
7	705	B1	1.65	0.32790
7	706	C1	2.1	0.41733
7	707	B1	1.65	0.32790
7	708	C1	2.1	0.41733
7	709	C1	2.1	0.41733

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BLDG/UNIT		TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
7	710	B1	1.65	0.32790
7	711	C1	2.1	0.41733
7	712	B1	1.65	0.32790
7	713	B1	1.65	0.32790
7	714	C1	2.1	0.41733
7	715	B1	1.65	0.32790
7	716	C1	2.1	0.41733
7	717	C1	2.1	0.41733
7	718	B1	1.65	0.32790
7	719	C1	2.1	0.41733
7	720	B1	1.65	0.32790
7	721	B1	1.65	0.32790
7	722	C1	2.1	0.41733
7	723	B1	1.65	0.32790
7	724	C1	2.1	0.41733
8	801	B1	1.65	0.32790
8	802	A2	1.15	0.22854
8	803	B1	1.65	0.32790
8	804	A2	1.15	0.22854
8	805	A2	1.15	0.22854
8	806	B1	1.65	0.32790
8	807	A2	1.15	0.22854
8	808	B1	1.65	0.32790
8	809	B1	1.65	0.32790
8	810	A2	1.15	0.22854
8	811	B1	1.65	0.32790
8	812	A2	1.15	0.22854
8	813	A2	1.15	0.22854
8	814	B1	1.65	0.32790
8	815	A2	1.15	0.22854
8	816	B1	1.65	0.32790
8	817	B1	1.65	0.32790
8	818	A2LOFT	1.4	0.27822
8	819	B1	1.65	0.32790
8	820	A2LOFT	1.4	0.27822
8	821	A2LOFT	1.4	0.27822
8	822	B1	1.65	0.32790
8	823	A2LOFT	1.4	0.27822
8	824	B1	1.65	0.32790
9	901	C1	2.1	0.41733
9	902	B1	1.65	0.32790
9	903	C1	2.1	0.41733
9	904	B1	1.65	0.32790
9	905	B1	1.65	0.32790
9	906	C1	2.1	0.41733
9	907	B1	1.65	0.32790
9	908	C1	2.1	0.41733
9	909	C1	2.1	0.41733
9	910	B1	1.65	0.32790
9	911	C1	2.1	0.41733
9	912	B1	1.65	0.32790
9	913	B1	1.65	0.32790
9	914	C1	2.1	0.41733
9	915	B1	1.65	0.32790
9	916	C1	2.1	0.41733
9	917	C1	2.1	0.41733
9	918	B1	1.65	0.32790
9	919	C1	2.1	0.41733
9	920	B1	1.65	0.32790
9	921	B1	1.65	0.32790
9	922	C1	2.1	0.41733
9	923	B1	1.65	0.32790
9	924	C1	2.1	0.41733

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BLDG/UNIT		TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
10	1001	A1	1.0	0.19873
10	1002	A2	1.15	0.22854
10	1003	A1	1.0	0.19873
10	1004	A2	1.15	0.22854
10	1005	A2	1.15	0.22854
10	1006	A1	1.0	0.19873
10	1007	A2	1.15	0.22854
10	1008	A1	1.0	0.19873
10	1009	A1	1.0	0.19873
10	1010	A2	1.15	0.22854
10	1011	A1	1.0	0.19873
10	1012	A2	1.15	0.22854
10	1013	A2	1.15	0.22854
10	1014	A1	1.0	0.19873
10	1015	A2	1.15	0.22854
10	1016	A1	1.0	0.19873
10	1017	A1	1.0	0.19873
10	1018	A2LOFT	1.4	0.27822
10	1019	A1	1.0	0.19873
10	1020	A2LOFT	1.4	0.27822
10	1021	A2LOFT	1.4	0.27822
10	1022	A1	1.0	0.19873
10	1023	A2LOFT	1.4	0.27822
10	1024	A1	1.0	0.19873
11	1101	B1	1.65	0.32790
11	1102	B1	1.65	0.32790
11	1103	B1	1.65	0.32790
11	1104	B1	1.65	0.32790
11	1105	B1	1.65	0.32790
11	1106	B1	1.65	0.32790
11	1107	B1	1.65	0.32790
11	1108	B1	1.65	0.32790
11	1109	B1	1.65	0.32790
11	1110	B1	1.65	0.32790
11	1111	B1	1.65	0.32790
11	1112	B1	1.65	0.32790
11	1113	B1	1.65	0.32790
11	1114	B1	1.65	0.32790
11	1115	B1	1.65	0.32790
11	1116	B1	1.65	0.32790
11	1117	B1	1.65	0.32790
11	1118	B1	1.65	0.32790
11	1119	B1	1.65	0.32790
11	1120	B1	1.65	0.32790
12	1201	B1	1.65	0.32790
12	1202	B1	1.65	0.32790
12	1203	B1	1.65	0.32790
12	1204	B1	1.65	0.32790
12	1205	B1	1.65	0.32790
12	1206	B1	1.65	0.32790
12	1207	B1	1.65	0.32790
12	1208	B1	1.65	0.32790
12	1209	B1	1.65	0.32790
12	1210	B1	1.65	0.32790
12	1211	B1	1.65	0.32790
12	1212	B1	1.65	0.32790
12	1213	B1	1.65	0.32790
12	1214	B1	1.65	0.32790
12	1215	B1	1.65	0.32790
12	1216	B1	1.65	0.32790
12	1217	B1	1.65	0.32790
12	1218	B1	1.65	0.32790
12	1219	B1	1.65	0.32790

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BLDG/UNIT		TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
12	1220	B1	1.65	0.32790
13	1301	B1	1.65	0.32790
13	1302	B1	1.65	0.32790
13	1303	B1	1.65	0.32790
13	1304	B1	1.65	0.32790
13	1305	B1	1.65	0.32790
13	1306	B1	1.65	0.32790
13	1307	B1	1.65	0.32790
13	1308	B1	1.65	0.32790
13	1309	B1	1.65	0.32790
13	1310	B1	1.65	0.32790
13	1311	B1	1.65	0.32790
13	1312	B1	1.65	0.32790
13	1313	B1	1.65	0.32790
13	1314	B1	1.65	0.32790
13	1315	B1	1.65	0.32790
13	1316	B1	1.65	0.32790
13	1317	B1	1.65	0.32790
13	1318	B1	1.65	0.32790
13	1319	B1	1.65	0.32790
13	1320	B1	1.65	0.32790
14	1401	C1	2.1	0.41733
14	1402	B1	1.65	0.32790
14	1403	C1	2.1	0.41733
14	1404	B1	1.65	0.32790
14	1405	B1	1.65	0.32790
14	1406	C1	2.1	0.41733
14	1407	B1	1.65	0.32790
14	1408	C1	2.1	0.41733
14	1409	C1	2.1	0.41733
14	1410	B1	1.65	0.32790
14	1411	C1	2.1	0.41733
14	1412	B1	1.65	0.32790
14	1413	B1	1.65	0.32790
14	1414	C1	2.1	0.41733
14	1415	B1	1.65	0.32790
14	1416	C1	2.1	0.41733
14	1417	B1	1.65	0.32790
14	1418	B1	1.65	0.32790
14	1419	B1	1.65	0.32790
14	1420	B1	1.65	0.32790
15	1501	B1	1.65	0.32790
15	1502	A2	1.15	0.22854
15	1503	B1	1.65	0.32790
15	1504	A2	1.15	0.22854
15	1505	A2	1.15	0.22854
15	1506	B1	1.65	0.32790
15	1507	A2	1.15	0.22854
15	1508	B1	1.65	0.32790
15	1509	B1	1.65	0.32790
15	1510	A2	1.15	0.22854
15	1511	B1	1.65	0.32790
15	1512	A2	1.15	0.22854
15	1513	A2	1.15	0.22854
15	1514	B1	1.65	0.32790
15	1515	A2	1.15	0.22854
15	1516	B1	1.65	0.32790
15	1517	B1	1.65	0.32790
15	1518	A2LOFT	1.4	0.27822
15	1519	B1	1.65	0.32790

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BLDG/UNIT		TYPE	VALUE	% INTEREST (OF 100% CUMULATIVE)
15	1520	A2LOFT	1.4	0.27822
15	1521	A2LOFT	1.4	0.27822
15	1522	B1	1.65	0.32790
15	1523	A2LOFT	1.4	0.27822
15	1524	B1	1.65	
16	1601	C1	2.1	0.41733
16	1602	C1	2.1	0.41733
16	1603	C1	2.1	0.41733
16	1604	C1	2.1	0.41733
16	1605	C1	2.1	0.41733
16	1606	C1	2.1	0.41733
16	1607	C1	2.1	0.41733
16	1608	C1	2.1	0.41733

TOTAL A1 UNITS:
36

A1 UNIT VALUE:
1.0 per Unit

TOTAL VALUE A1 UNITS:
36 x 1.0 = 36.0

TOTAL A2 UNITS:
36

A2 UNIT VALUE:
1.14675 per Unit

TOTAL VALUE A2 UNITS:
36 X 1.15 = 41.283

TOTAL A2 LOFT UNITS:
20

A2 LOFT UNIT VALUE:
1.4917 per Unit

TOTAL VALUE A2 LOFT UNITS:
20 X 1.4 X = 29.834

TOTAL B1 UNITS:
180

B1 UNIT VALUE:
1.65154 per Unit

TOTAL VALUE B1 UNITS:
180 X 1.65 = 297.277

TOTAL C1 UNITS:
48

C1 UNIT VALUE:
2.07463 per Unit

TOTAL VALUE C1 UNITS:
48 X 2.1 = 99.582

TOTAL UNITS: 320

TOTAL VALUE ALL UNITS:
503.976

% INTEREST BY UNIT TYPE:

A1: 0.1983%
A2: 0.2274%
A2 LOFT: 0.2958%
B1: 0.3275%
C1: 0.4114%

ALL % INTEREST BY UNIT TYPE:

TOTAL A1: 7.1432%
TOTAL A2: 8.1915%
TOTAL A2 LOFT: 5.917%
TOTAL B1: 58.9863%
TOTAL C1: 19.7593%

TOTAL % INTEREST: 100%

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EXHIBIT "D-1": PERCENTAGE INTERESTS: GARAGE UNITS

(Note:"S" means Storage space. "M" means Maintenance space (to be conveyed to Association as a Common Element)."G" means Garage space.)

GARAGE BUILDING	SPACE NUMBER	TYPE AND VALUE	% INTEREST (OF 100% CUMULATIVE)
A	1	S-1.0	0.5405 %
A	2	S-1.0	0.5405 %
A	3	S-1.0	0.5405 %
A	4	S-1.0	0.5405 %
A	A1	G-4.0	2.16216 %
A	A2	G-4.0	2.16216 %
A	A3	G-4.0	2.16216 %
A	A4	G-4.0	2.16216 %
A	A5	G-4.0	2.16216 %
A	A6	G-4.0	2.16216 %
B	1	S-1.0	0.5405 %
B	2	S-1.0	0.5405 %
B	3	S-1.0	0.5405 %
B	4	S-1.0	0.5405 %
B	5	S-1.0	0.5405 %
B	6	S-1.0	0.5405 %
B	7	S-1.0	0.5405 %
B	8	S-1.0	0.5405 %
B	B1	G-4.0	2.16216 %
B	B2	G-4.0	2.16216 %
B	B3	G-4.0	2.16216 %
B	B4	G-4.0	2.16216 %
B	B5	G-4.0	2.16216 %
B	M1	M-1.0	0.5405 %
C	1	S-1.0	0.5405 %
C	2	S-1.0	0.5405 %
C	3	S-1.0	0.5405 %
C	4	S-1.0	0.5405 %
C	5	S-1.0	0.5405 %
C	6	S-1.0	0.5405 %
C	7	S-1.0	0.5405 %
C	8	S-1.0	0.5405 %
C	C1	G-4.0	2.16216 %
C	C2	G-4.0	2.16216 %
C	C4	G-4.0	2.16216 %
C	C4	G-4.0	2.16216 %
C	C5	G-4.0	2.16216 %
C	C6	G-4.0	2.16216 %

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GARAGE BUILDING	SPACE NUMBER	TYPE AND VALUE	% INTEREST (OF 100% CUMULATIVE)
D	1	S-1.0	0.5405 %
D	2	S-1.0	0.5405 %
D	3	S-1.0	0.5405 %
D	4	S-1.0	0.5405 %
D	5	S-1.0	0.5405 %
D	6	S-1.0	0.5405 %
D	7	S-1.0	0.5405 %
D	8	S-1.0	0.5405 %
D	D1	G-4.0	2.16216 %
D	D2	G-4.0	2.16216 %
D	D4	G-4.0	2.16216 %
D	D4	G-4.0	2.16216 %
D	D5	G-4.0	2.16216 %
D	D6	G-4.0	2.16216 %
E	1	S-1.0	0.5405 %
E	2	S-1.0	0.5405 %
E	3	S-1.0	0.5405 %
E	4	S-1.0	0.5405 %
E	5	S-1.0	0.5405 %
E	6	S-1.0	0.5405 %
E	7	S-1.0	0.5405 %
E	8	S-1.0	0.5405 %
E	E1	G-4.0	2.16216 %
E	E2	G-4.0	2.16216 %
E	E4	G-4.0	2.16216 %
E	E4	G-4.0	2.16216 %
E	E5	G-4.0	2.16216 %
E	E6	G-4.0	2.16216 %
F	1	S-1.0	0.5405 %
F	2	S-1.0	0.5405 %
F	3	S-1.0	0.5405 %
F	4	S-1.0	0.5405 %
F	5	S-1.0	0.5405 %
F	6	S-1.0	0.5405 %
F	7	S-1.0	0.5405 %
F	8	S-1.0	0.5405 %
F	F1	G-4.0	2.16216 %
F	F2	G-4.0	2.16216 %
F	F4	G-4.0	2.16216 %
F	F4	G-4.0	2.16216 %
F	F5	G-4.0	2.16216 %
F	F6	G-4.0	2.16216 %
Total Units:		**Value All Units:**	
80		**185**	**100%**

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EXHIBIT "D-1": PERCENTAGE INTERESTS: GARAGE UNITS (CONTINUED)

TOTAL "S" (Storage or Maintenance) UNITS: 45	**TOTAL "S" UNIT VALUE: 45 x 1.0 Value per Unit = 45.0**	**PERCENTAGE INTEREST OF ONE "S" UNIT = 1.0/185 = 0.54054% TOTAL "S" UNITS: 45 X 0.5405% = 24.3243%**
TOTAL "V" (Vehicle Use) UNITS: 35	**TOTAL "V" UNIT VALUE: 35 x 4.0 Value per Unit = 140.0**	**PERCENTAGE INTEREST OF ONE "V" UNIT = 4.0/185 = 2.16216% TOTAL "S" UNITS: 35 X 2.16216% = 75.6756**
TOTAL UNITS: 80	**TOTAL VALUE ALL UNITS: 185.0**	**TOTAL % INTEREST: 100%**

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EXHIBIT "E": ARCHITECT OR ENGINEER'S CERTIFICATION

In accordance with the requirements of SC Code Section 27-31-110, the certification of Barrett Surveying Group, by R. Scott Barrett, South Carolina Registered Surveyor 23203, is shown on the Plans set forth in Exhibit C of the Master Deed for The Estate at Westbury Horizontal Property Regime. I certify that such plans graphically show the dimensions, area and location of each Unit therein and the dimensions, area and location of Common Elements affording access to each Unit therein, within normal construction and plan tolerances.

MRB 1-23-20

Mark R. Binsz, P.E.
SC Registration No. 16178

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EXHIBIT "F": RULES AND REGULATIONS

THE ESTATE AT WESTBURY HORIZONTAL PROPERTY REGIME

In order to create a congenial, pleasant, safe and dignified living atmosphere that is respectful of the concerns of Owners of Units, these Rules and Regulations have been adopted. These Rules and Regulations supplement the Master Deed of the Regime and the Bylaws of the Association. They apply to Owners and their families, tenants, guests, agents, invitees, contractors, and employees.

1. Residential and Business Usage.

A. Units shall be utilized for single family residential purposes only. No business or business activity shall be carried on in any Unit or Garage Unit at any time; provided, however, that, to the extent allowed by applicable zoning laws, private business activities may be conducted in a Unit as long as such use is incidental to the primary residential use of the Unit and does not violate any applicable law, involve any exterior signage or advertising of the Unit as a place of business, require frequent visits by clients or business associates to the Property, or unduly contribute to parking, traffic, telecommunications or security problems for the Property, all in the sole opinion of the Board of Directors.

B. The provisions in (A) above shall not preclude (i) such business activity of the Association or any Management Agent as is reasonably required for the effective operation of the Property and the Association, (ii) with the written permission of the Board of Directors of the Association, use, rental or leasing of any Units or Common Elements for such lawful purposes as leasing or sale of Units, Association administration, storage, or other activities determined by the Board of Directors to be beneficial to the Association or the Owners; (iii) showing of any Unit or Garage Unit for sale or permitted leasing purposes during normal business hours and in accordance with any procedures established by the Board of Directors to preserve a congenial, pleasant, safe and dignified living atmosphere, or (iv) business operations of the Declarant, its agents, successors, assigns or designees during the period of constructing, renovating, marketing or managing the Property, including, without limitation, leasing, sales, administration, storage, or similar activities.

C. The Board of Directors of the Association may lease, on such terms as it shall determine are appropriate, a reasonable part of the Common Elements, such as a part of the Clubhouse, to a licensed real estate brokerage firm to assist Owners in the leasing or sale of their Units or Garage Unit. Such lease shall be for a period not exceeding three (3) years but may contain provisions for multiple extensions for periods not to exceed one (1) year at a time. The lease shall require that (a) the brokerage firm be a member of the Multiple Listing Service (or a similar organization that provides an opportunity for other participating brokerage firms to participate in sales), (b) the Association shall be indemnified by the brokerage firm against any claims against the Association resulting from any activities of the brokerage firm that do not comply with applicable law or regulations, (c) the brokerage firm shall not represent that it is the sole broker authorized to sell or lease Units, and (d) commissions shall be determined solely by the brokerage firm and the Owner of the Unit or Garage Unit to be sold or leased, but the commissions proposed by the brokerage firm shall not exceed those commonly charged for similar services in the Charleston area.

2. Timesharing and Rentals:

Pursuant to Section 10.3 of the Master Deed, in order to alleviate problems of security and disruption associated with frequent changes in occupancy, Units shall not (a) be divided into or operated as "timeshares" or interval ownership segments or (b) be leased or rented for periods less than one hundred eighty (180) consecutive days. If leased or rented, the Unit Owner shall ensure that Occupants of the Units understand and fully comply with the provisions of this Master Deed and these Rules and Regulations. If rented or leased, the Unit Owner shall notify the Management Agent or such other entity as the Board of Directors shall determine, in writing, in advance of occupancy, of the name(s), home address(es), and home telephone number of the renter(s) or lessee(s). If requested by the Management Agent or the Board of Directors, the

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renting or leasing Owner shall provide evidence reasonably satisfactory to the requesting entity to confirm the term of rental or lease.

3. Use of Owners' Terraces and Other Common Elements.
Any Owner wishing to use any Common Elements for a private event shall comply with such additional specific rules or conditions as may be determined by the Board of Directors or the Management Agent. These rules may include fees or deposits for costs of staff, cleanup, utilities, damages, etc. In order to reduce safety and noise concerns, unless otherwise expressly determined by the Board of Directors or the Management Agent, use of Common Elements for private events is limited to the hours of 8:00 A. M. to midnight. Persons less than eighteen (18) years of age must be accompanied by a person who is eighteen (18) years of age or older. Access for personal guests or invitees of a Unit Owner must be authorized by a Unit Owner or Occupant who is eighteen (18) years of age or older.

4. Prohibited Uses.
The Owner and Occupants of a Unit or Garage Unit shall not permit or suffer anything to be done on the Property that will, in the sole reasonable opinion of the Board of Directors or Management Agent, (i) increase the insurance rates on the Unit, or Garage Unit, Common Elements or Garage Common Elements over those rates that would reasonably be anticipated from use of the Unit for its normal purposes, (ii) obstruct or interfere with the rights of other Unit Owners or the Association, (iii) violate any law, permit or regulation of a governmental body.

5. Owner Responsible for Conduct of Others in Unit.
Each Unit Owner shall be deemed responsible to the Association for the results of the actions or omissions of Occupants of the Unit and their agents, invitees, guests, and pets while on the Property, but the responsibility of the Unit Owner shall not relieve any Occupant of the Unit or their agents, invitees, or guests from any liability to the Association or any other Person for their acts.

6. Access to the Property.
Access for personal guests or invitees to the Unit of a Unit Owner may be authorized by the Unit Owner and Occupants of the Unit who are sixteen (16) years of age or older. Personal guests and invitees may not authorize access for others unless given approval to do so by the Board of Directors or the Management Agent. Only persons with proper authorization may remain on the Property. The Management Agent may establish additional check-in or sign-in procedures and time limits for vendors, suppliers, repair and service personnel, etc. Upon request of the Management Agent or its employee, an Association employee, a law enforcement official, security personnel retained by the Association, or any Unit Owner or Occupant who is eighteen (18) years of age or older, a person on the Property shall provide proper identification and, if purportedly an authorized guest or invitee, shall provide the name, Unit number and telephone number of the person who authorized access for the person.

7. Pets.
No animals, livestock, reptiles, fowl or poultry shall be raised, bred or kept on the Property, except that dogs, cats or other non-exotic household pets, cumulatively totaling not more than three (3), may be kept, provided that they are not kept, bred or maintained for commercial purposes and are housed within the Unit. Such household pets must not constitute a nuisance or cause unsanitary conditions. Frequent or continuing barking or howling of a dog or any other frequent or continuing noise caused by a pet that is clearly audible in another Unit shall be a nuisance. Pets shall not be allowed on Common Elements (other than Limited Common Elements serving only the Unit in which the pet is kept) unless the pet acts in a non-threatening way to other persons and is under leash or is carried by a responsible person. No pet shall be permitted to leave its excrement on Common Elements other than any Common Elements expressly authorized by the Board of Directors, and the owner of such pet shall cause such excrement to be immediately removed. The Board of Directors shall have the right to determine, in its sole discretion, whether a particular pet meets the criteria set forth above, and, if not, it may require the owner or keeper of the pet to remove such pet from the Property.

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8. Offensive Activities.

Noxious, offensive or illegal activities shall not be carried out on the Property, nor shall anything be done thereon that reasonably is an annoyance or nuisance to the Occupants of other Units or persons properly using the Common Elements. Without limiting the generality of this provision, the following shall not be permitted on the Property: (a) speakers, horns, whistles, bells or other devices that emit sounds that are clearly audible in other Units or the Common Elements (other than Limited Common Elements serving only the Unit in which they are located), except security and fire alarm devices or other devices expressly approved in writing by the Board of Directors, or (b) unusually bright, flashing or pulsating lights that are visible from another Unit or the Common Elements (other than Limited Common Elements serving only the Unit in which they are located).

9. Signs, Mail Receptacles and Window Treatments.

Unless otherwise expressly permitted in writing by the Board of Directors or the Management Agent, an Owner shall place no sign, advertisement or notice on the Property other than inside such Owner's Unit (in which case the sign, advertisement or notice shall not be visible outside the Unit), or within Common Elements reserved by the Board of Directors for such purposes, in which case the sign, advertisement or notice shall comply with any procedures or criteria approved by the Board of Directors. This provision shall not apply to any signage that is part of the original construction of the Property or any replacement therefor that is substantially the same as the original signage. The Board of Directors shall have the right to issue specifications for and/or approve as to location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similar delivered materials; property identification markers; and name signs. The Board of Directors shall also have the right to issue specifications for and/or approve any window treatments (e.g. shades, blinds, draperies, shutters, etc.) that are visible outside a Unit.

10. Antennas and Telecommunications Equipment.

Unless otherwise expressly permitted in writing by the Board of Directors or the Management Agent, no television, radio or other telecommunications antenna, aerial, component or dish shall be erected on a Unit, Garage Unit, Common Elements or Garage Common Elements in a manner that causes it to be visible under normal use conditions from another Unit or the Common Elements (other than Limited Common Elements serving only the Unit in which it is located). No telecommunications equipment installed on the Property after completion of construction shall unreasonably interfere with the operation of normal telephone, television or other telecommunications systems for other Units, as determined by the Board of Directors.

11. Approval of Modifications.

(1) Unless otherwise expressly permitted in writing by the Board of Directors (or its authorized designee, such as an architectural review committee), no painting, decoration, attachment to, or modification of a Unit, Garage Unit, Common Elements or Garage Common Elements that would be visible from any other Unit or any portion of the Common Elements (other than Limited Common Elements serving only the Unit in which it is located), no modification of the Common Elements or Garage Common Elements (including Limited Common Elements), and no modification of the structural, mechanical, electrical or plumbing systems of a Unit or Garage Unit shall be permitted until two (2) sets of plans showing the nature, shape, dimensions, materials, color and location thereof have been submitted to and approved by the Board of Directors (or its authorized designee). Approval shall not be required for replacement of a mechanical, electrical or plumbing component within a Unit or Garage Unit by a component of equal or better quality that is compatible with other systems in the Unit and the Building and complies with applicable codes.

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(2) The Board of Directors (or its authorized designee) may determine that certain attachments to a Unit, Garage Unit, or any portion of the Common Elements or Garage Common Elements, such as, without limitation, balcony ceiling fans and exterior lights, must be uniform in appearance and location in order to preserve the visual harmony of the community.

(3) The Board of Directors (or its authorized designee) shall have three (3) calendar weeks from receipt of all required information to review the submitted information. It may approve, reject or modify the proposed plans based on its perception of the consistency and harmony of the plans with the Master Deed, the original structure, and other practical and aesthetic factors deemed appropriate by the Board of Directors or its authorized designee. If notice of approval, disapproval, proposed modification or request for additional information is not received by the submitting Owner within such three (3) calendar week period, the plans shall be deemed approved. If the Board of Directors or its authorized designee determines that professional advice is required in order to evaluate the submitted information or to monitor the execution of the proposed modification, it may impose reasonable fees to cover the costs to the Association. Such fees shall payable by the applicant as a pre-condition of such evaluation or modification.

(4) Compliance with the above procedures is not a substitute for compliance with other applicable building, zoning, subdivision and development standards ordinances and codes, or other covenants that may apply to the work. The Board of Directors, its authorized designee, the Association, the Management Agent, and their respective officers, employees and agents shall not be responsible for any defects in any plans or specifications approved by the Board of Directors or its authorized designee, nor for any defects in any work done according to such plans and specifications.

12. Trash.

Trash, garbage or other waste shall be placed in areas designated by the Board of Directors or the Management Agent. Except when moving household garbage or waste to designated disposal or pickup areas, it shall be kept in closed, sanitary containers inside the Unit. Household garbage or waste deposited at designated disposal or pickup areas shall be stored in sealed plastic bags. No trash, garbage or other waste shall be left on decks, terraces, patios or porches or in Common Elements or Garage Common Elements not expressly intended for such storage, such as corridors, steps, and driveways or pathways.

13. Obstruction and Use of Common Elements

Unless otherwise expressly approved in writing by the Board of Directors or Management Agent, (a) corridors, steps, and driveways or pathways for ingress and egress shall be used for no other purpose other than normal transit through them and (b) nothing shall be stored or kept on any part of the Common Elements (including Limited Common Elements). Corridors, steps, and driveways or pathways shall not be used as play areas.

14. Parking.

The Board of Directors may assign on-grade parking spaces not within Parking Structures for the exclusive use of specified Units. Unless expressly approved by the Board of Directors or Management Agent:

(1) Unit Occupants and agents, guests or invitees of Unit Occupants shall not (a) park any vehicle except in the parking space(s) reserved for that Unit, if any, or in parking spaces reserved for overflow Occupant parking, as determined by the Board of Directors, unless expressly permitted by the Owner or tenant of the Unit having the right to park in such parking space, or (b) park in such a manner as to unreasonably impede ready access to another parking space.

(2) The Board of Directors may require that vehicles parked in a parking space (a) register with the Management Agent, (b) display a sticker or permit specified by the Management

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Agent and (c) comply with such other procedures as may be approved by the Board of Directors.

(3) Parking or storage spaces in Garage Structures (and, if on-grade parking spaces are assigned to a specific Unit) shall not be rented or assigned to persons who are not Occupants of Estate at Westbury. If a Unit is rented, parking or storage spaces in Garage Structures or any on-grade parking spaces assigned to such Unit shall not be rented or assigned to persons who are Occupants of Estate at Westbury for periods that exceed the term of rental of the Unit to such Occupant. All such parking space or storage space rentals shall terminate upon conveyance of the Unit to which the parking or storage spaces are assigned. If the Occupants of a Unit do not require use of a parking space assigned to the Unit, and wish to rent or assign the parking space for use by other Occupants, the Owner of such Unit shall notify the Board of Directors or the Management Agent of the name and Unit number of the other Occupant to whom the parking space has been rented or assigned, and the period of such rental or assignment. If the Occupants of a Unit do not require use of a parking space assigned to the Unit, and wish to make the parking space available for use by other Occupants, the Owner of such Unit shall notify the Board of Directors or the Management Agent of the period during which such rental or assignment is available and the rental amount, if any, that the Owner will accept. The Board of Directors or the Management Agent shall maintain a list of such available parking spaces for review by Estate at Westbury Occupants. Nothing shall preclude the Association from using or renting an available parking space for visitor parking or other uses.

(4) No motorcycle, golf cart or other motorized recreational vehicle shall be parked or stored in parking areas unless it is (a) operable and properly licensed and (b) parked in accordance with any other rules or regulations established by the Association..

(5) Unless otherwise expressly approved by the Management Agent, only one vehicle shall be parked in a parking space.

(6) The Association and Management Agent shall not be responsible for any loss of or damage to vehicles or articles within vehicles parked on the Common Elements or Garage Common Elements.

15. Unauthorized Vehicles and Uses; Towing.

(1) Unless otherwise expressly approved by the Board of Directors or the Management Agent, no unlicensed or inoperable vehicle; mobile home; boat; house trailer or other trailer; camper; motor vehicle with sleeping facilities; bus; or truck or commercial vehicle over one (1) ton capacity shall be parked or stored on the Property; provided that trucks and other commercial vehicles that will reasonably fit into a designated parking space or other space approved by the Board of Directors or Management Agent shall be permitted on the Property for loading, unloading or maintenance services during normal business hours; and emergency vehicles shall be permitted on the Property at any time when reasonably required.

(2) Vehicle repairs on the Property shall be limited to minor emergency repairs requiring a short period for completion, such as replacement or charging of a dead battery or repair of a flat tire.

(3) Vehicles violating these Rules and Regulations may be towed at the sole cost and risk of the violator and without notice to the violator.

16. Responsibility for Damage to Common Elements.

If any maintenance, repair, or replacement of any portion of another Unit or the Common Elements or Garage Common Elements is required because of the negligent or willful act or omission of an Owner or Occupant of a Unit, then such Owner or Occupant shall be responsible for such maintenance, repair, or replacement. (For further provisions, see Article IV of the

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Master Deed.)

17. Keys, Locks and Emergency Access.
In order to respond to emergency situations or deal with problems in adjacent areas, the Management Agent may require that the Unit owner provide a passkey for each Unit, which key shall be kept in a locked space under the control of the Management Agent. Except in situations reasonably believed to be emergencies or situations in which access is reasonably believed to be needed to prevent damage to the Unit or adjacent areas, access to a Unit shall occur only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of the Unit. Keys and locks for Units shall not be altered or installed without prior consent of the Management Agent, which shall not be unreasonably denied. If consent is given, the Owner shall provide a copy of the replacement key to the Management Agent.

18. Solicitations.
Persons soliciting contributions or the purchase of goods or services, and persons seeking to distribute materials, brochures or information may be denied access to the Property unless (a) expressly required by law or (b) expressly invited, by name, as a guest of a specific Unit Owner or tenant, in which event the person invited shall limit the solicitation to the person(s) expressly inviting them.

19. Grills.
Because of safety and insurance concerns, only natural or propane gas or electric grills are permitted on the Property. Grills burning charcoal, wood, paper or other flammable materials are prohibited. Use of permitted grills shall follow proper procedures for fire prevention, cleanup, and smoke and odor control.

20. Penalties for Violations.

(1) In the event of failure to comply with these Rules and Regulations, the Board of Directors shall take such action as it determines is appropriate to enforce the Rules and Regulations or to remedy the problem caused by the failure to comply. Without waiver of any other enforcement rights that the Board of Directors, the Association or any Owner may have under the Master Deed or applicable law, the Board of Directors may also impose a Special Assessment on the applicable Unit of up to $100 for each violation of these Rules and Regulations.

(2) For an initial violation, the Board of Directors shall give the non-complying Owner or tenant of the applicable Unit written notice of the violation and, if desired, the action that is required in order to cure the violation. Unless otherwise provided in the Master Deed or these Rules and Regulations, or unless the Board of Directors or Management Agent determines that the violation constitutes a safety hazard, violation of law or an emergency situation, the Owner or tenant shall have 24 hours from receipt of notice, or such additional time as may be authorized, in writing, by the Board of Directors or Management Agent, to cure the violation or to provide reasonable evidence that no violation exists. No further notice shall be required prior to enforcement after notice of the initial violation is given.

21. Waivers of Rules and Regulations.
The Board of Directors or the Management Agent may, for good cause, as determined in its sole discretion, waive violations of these Rules and Regulations. Such waiver shall be in writing and a copy of such waiver shall be either maintained for a reasonable period in the records of the Association or recorded in the Register of Deeds for Beaufort County, South Carolina.

22. Amendment of Rules and Regulations.
The foregoing Rules and Regulations are subject to amendment by the Board of Directors and may be supplemented by other rules and regulations promulgated by the Board of Directors.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CONSENT OF MORTGAGEE

WHEREAS, Hypo Real Estate Capital Corporation, as agent (the "Mortgagee") is the holder of a mortgage and related lien documents on the property located in the Town of Bluffton, Beaufort County, South Carolina being more particularly described in Exhibit A to this Master Deed (the "Property"), which Property is being converted by Montecito Westbury, LLC, a Delaware limited liability company, into a South Carolina horizontal property regime known as The Estate at Westbury Horizontal Property Regime;

WHEREAS, the Mortgagee now wishes to consent to the conversion of the Property into the foregoing South Carolina horizontal property regime, but nevertheless reserve all rights and remedies pursuant to its mortgage and other documents evidencing and securing the subject loan;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the Mortgagee hereby consents to the submission of the Property to the South Carolina Horizontal Property Act, Sec. 27-31-10 et seq., South Carolina Code of Laws, 1976, as amended, by Montecito Westbury, LLC, a Delaware limited liability company, pursuant to the terms of this Master Deed; provided, however, notwithstanding the foregoing consent, the Mortgagee nevertheless reserves all rights and remedies pursuant to its mortgage and other documents evidencing and securing the subject loan including, but not limited to, the collateral assignment of the Declarant's rights pursuant to the Master Deed.

WITNESSES (as to both signatures):

Tim Alexander
Associate

Candice B. Biscocho
Associate

MORTGAGEE:
HYPO REAL ESTATE CAPITAL CORPORATION
as Agent

By: _____ (Seal)
Celeste Stinson
Its: Director

By: _____
Christopher Peters
Its: Director

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ACKNOWLEDGEMENT

I, THOMAS FERGUSON, Notary Public for the State of New York do hereby certify that Hypo Real Estate Capital Corporation by CELESTE STINSON, its DIRECTOR, and CHRIS PETERS its DIRECTOR, personally appeared before me this 13th day of JAN, 2006, and acknowledged the due execution of this Consent Of Mortgagee.

_____ (Seal)
Notary Public for New York
My commission expires: _____

THOMAS B. FERGUSON
Notary Public, State of New York
No. 01FE4637789
Qualified in Queens County
Commission Expires July 31, 2006

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2020-CP-07-00158
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.	)	
	)	PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSIITON TO SUMMARY JUDGMENT AND IN SUPPORT OF ITS MOTION FOR A TEMPORARY INJUNCTION
Plaintiff,	)	
v.	)	
ESTATE AT WESTBURY OWNERS ASSOCIATION, INC.,	)	
Defendant.	)	

TO: Ian Ford, Esq., Ainsley Tillman, Esq., and Evan Bromley, Esq., Attorneys for Defendant:

9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

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be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

Section 9.01, Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park[1]

[1] The Plaintiff begins it brief by including the entire text of Section 9.01 of the Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park. The Defendant failed to include the text of the second sentence of Section 9.01 in the body of its 34 page Memorandum in Support of Summary judgment. Further, in its cut and paste excerpt of 9.01, the Defendant fails to include the second sentence of § 9.1, excluding language that expressly sets forth the procedure and method that the Declarant, its Successors or Assigns may unilaterally *renew* the Declaration for successive 10 year terms. The Plaintiff submits for the Court's edification that the second sentence of Section 9.01 is the crux of a great deal of this case.

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I. THE PLAINTIFF'S LIKELIHOOD OF SUCCESS ON THE MERITS IS GREAT AND THE DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT SHOULD BE DENIED

MATERIAL FACTUAL BACKGROUND

The Defendant, Estate at Westbury Owners Association, Inc. (herein, the "Estate") is a horizontal property regime per the laws of South Carolina created on or about 2005. Prior to 2005, the development now known as the Estate was known as "Palmetto Lakes Apartments," and was owned by an individual owner, with all units being rental appartments. Thus, now a condominium complex, the Estate is the successor in interest to certain recorded instruments, including the "Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park." ((BK 57094 / PG 1225), Beaufort County ROD) (herein, the "Apartment Declaration") (**Exhibit 1**).

The Estate exists on a 20 acre parcel of land with 320 units (herein, the "Apartment Parcel"). The Apartment Parcel is northeast to Westbury Park Residential Association, Inc. (herein, "Westbury Park") and contiguous to it. It is possible to place an separate access to it from Plantation Park Rd., which would have been done between 2009 and 2011 had the Estates not refused the free development of that separate entrance by Beaufort County and Westbury Park. **Exhibit 2** (Estate at Westbury Board Meeting Minutes dated 12/11/10 discussing the detriments of a back gate and positive renting/selling point of entering the Estate community through a "private, peaceful attractive residential neighborhood"); **Exhibit 3** (Letter

from Estate at Westbury turning down the nearly free development of a second entrance in 2011).

Kensington Boulevard is a residential street within Westbury Park with individual houses placed fairly closely together on both sides. Presently, the only way to access the Apartment Parcel is through Westbury Park, on Kensington Blvd. While Westbury Park has over 350 residential units, it sits on over 120 acres. Thus, the thoroughfare of Kensington Blvd. receives an extraordinary amount of traffic from residents and vendors of the Estates, a 20 acre parcel with 320 units, significantly effecting the quality of life for the residents along the corridor.

a. Applicable provisions of the Apartment Declaration

Perhaps anticipating future friction that such land use planning could create, the Declarant of the Apartment Parcel, Plantation Properties, LLC, included Sections 2:01 and 2:02, establishing the Restrictions and the Purpose of Restrictions of the Apartment Declaration:

> 2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

> 2.02 Purpose of Restrictions: The purposes of these restrictions is to insure proper development and use of the Property to be in keeping with the community wide standards established for the Westbury Park Commercial Subdivision, and the Westbury Park Residential Subdivision, the latter of which is contiguous to the Property.

Pg. 1, **Exhibit 1**.

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Article VII, Sections 7.02(a)-(b) of the Apartment Declaration sets forth vehicular and pedestrian right of ways from the two roadway entrances of Westbury Park to the Apartment Parcel (where the Estate is located)[2]:

> 7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.
>
> (a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.
>
> (b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

Article VIII of the Apartment Declaration (**Exhibit 1**) sets forth fixed Assessments, put in place initially for Palmetto Lakes Apartments, paid to the Declarant, and lien rights held by the Declarant in the event of a failure to pay:

[2] The Plaintiff maintains and does not waive the argument that the Declaration does not create a right of way, easement, or any other real property interests as it is not contain an Acknowledgement, in violation of SC Code § 30-5-10, et seq.

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ARTICLE VIII

ASSESSMENTS

8.01 The Owner, its successors or assigns (but not tenants), by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on an annual basis the sum of $17,500.00 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This Assessment shall become due and payable on February 1 of each year and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall remain the responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

8.02 The Assessment as set forth hereinabove shall commence on January 1, 1999, be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers, All Items (Base Year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstances will the Annual Assessment fall below the minimum of $17,500.00 per year.

8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

b. **The 2005 Amendment to the Apartment Declaration Allowing Conversion to Condominium Units and Modifying the Assessment**

In 2005, the Apartment Declaration was *AMENDED* to allow the Apartment Parcel to be converted to condominium units, which was previously prohibited (see

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Exhibit 1, § 5.02(a)). In approving this Amendment to the Apartment Declaration, the Declarant and the owner of the Apartment Parcel agreed to *alter and change* the Assessment payment from $17,500 per year, to a base amount of $7,200 a month. Specifically, Sections 4 and 5 of the Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (herein, the "Amendment") (**Exhibit 4**), state:

> 4. The first two sentences of Section 8.01 shall be deleted and, the following sentences shall be inserted at the beginning of Section 8.01. "The Owner, its successors or assigns, by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on a monthly basis in the amount of $7,200 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This assessment shall become due and payable on the 15th day of each month, and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. In the event the Owner converts the Property to the condominium form of ownership, the resulting condominium association shall have the obligation to collect adequate funds from the individual unit owners and pay the Assessment directly to the Declarant."
>
> 5. Section 8.02 shall be deleted and the following sentence shall be inserted at the beginning of Section 8.02. "The Assessment as set forth hereinabove shall commence on January 1, 2006, and shall be adjusted annually to reflect changes in the Consumer Price Index for all urban Consumers, All Items (base year 1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstance will the Annual Assessment fall below the minimum of $86,400.00 per year."

The Plaintiff draws reference to the fact that, in the Amendment, which was signed by both the Declarant and the Owner of the Estate's predecessor in interest, no inspection rights were granted. No rights for an accounting or for reconciliation were provided. And, instead, it was specifically stated that, "Under no circumstance will the Annual Assessment fall below the minimum of $86,400.00 per year."

c. Westbury Park's October 2018 Renewal of the Declaration

Section 9.01 of the Apartment Declaration states (in its entirety):

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9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

In 2015, Declarant Rights for the Apartment Declaration were assigned Westbury Park and Westbury Park Commercial Association. Westbury Park is the Declarants successor. Per the plain terms of Section 9.01 of the Declaration, Westbury Park Residential Association renewed the Apartment Declaration for a period of 10 years on October 23, 2018 by filing a Notice of Extension with the Register of Deeds (**Exhibit 5**) (Notice of Extension of the Declaration of Covenants, Conditions, Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park, and recording assignment of Declarant Rights).

D. **The Estate of Westbury's Material Breach of the Declaration and Easement Agreement**

Section 9.01 of the Declaration—the Term and Renewal section—speaks nothing of joint filing. It does not require any filing renewing the Declaration to be acknowledged. As stated above, on October 23, 2018, the Declaration was renewed by Westbury Park. Ironically, also on or about October 23, 2018, Westbury Park received correspondence from the Estate (dated October 15, 2018) stating that it would not recognize or take part in any *extension* of the declaration. In this correspondence, the Defendant failed acknowledge or include the express procedure

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for the Declarant, its successors or its assigns to unilaterally renew Section 9.01 (**Exhibit 6**) (Correspondence from Counsel for Defendant, declaring that the Estate will not extend the declaration, and failing to reference Section 9.01 of the Declaration). Indeed, as set forth more fully below, Sections 9.01 and 9.02 contain material differences showing the instrument's intent.

Section 9.01 (set forth verbatim, above) **expressly sets forth the manner in which the Declaration may be Renewed in successive 10 year terms by the Declarant or its successors or assigns, alone.** Thus, it specifically controls the natural length of the Declaration by its original terms and not to its unnatural termination, or alteration of its content, substance, or any extension not in congress with its original terms. Section 9.01 sets forth a unilateral right for the Declarant or its successors or assigns to *renew* the Declaration by filing "Notice of Extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term." This is different from altering, modify or otherwise extending the Declaration to different terms or in a different manner than what is already included in the text of the Declaration.

Compare Section 9.01 *with* the text of 9.02:

> 9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

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Section 9.02 speaks nothing to the Declarant's right to renew the Declaration for successive 10 year terms. Instead, its terms clearly set forth a different meaning and purpose—a requirement for a joint filing in the event that the Declaration is *changed* from its existing terms. "*This declaration, or any provision hereof, or any covenant, condition or restriction contained herein*, may only be terminated, extended, modified, or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly." (emphasis added). That is, if the contents of this Declaration are to be *changed*, the Declarant and Owner must do so together. **Importantly**, for a filing under section 9.02 to be effective, it must be "Executed and acknowledged and recorded." Again, 9.01 specifically does not require a joint filing for renewal, and it says nothing of being "executed and acknowledged jointly." Section 9.02 does.

i. <u>The differences between the recording procedure and execution procedure found between Section 9.01 an Section 9.02 have meaning</u>.

Clearly, the differences between the recording procedure and execution procedure contained in 9.01 and 9.02 have meaning. An Acknowledgement is a defined term under South Carolina law. (indeed, there is an "Act" for that SC Code § 26-3-10, et seq.). By including the requirement that an alteration under Section 9.02 be "executed and acknowledged jointly" and setting forth a different procedure for the Declarant or its assigns to unilaterally file a Notice renewing the Declaration in preordained ten year terms in 9.01 (as opposed to modifying or expanding its existing content as is set forth in 9.02), the drafter of the instrument conveys its intent treat

a renewal of the Declaration which does not change the substance thereof differently from a modification. "[I]t is the duty of the court to construe deeds and determine their legal effect, where there is no such ambiguity as requires parol proof and submission to the jury." Hunt v. Forestry Comm'n, 358 S.C. 564, 569, (S.C. App. 2004)(*quoting* 26A C.J.S. Deeds § 168 (2001)).

Here, because the Plaintiff renewed the Declaration under Section 9.01 in strict conformity with its terms, it will succeed in the suit, and the Defendant's Motions for Summary Judgment as to the Plaintiff's claims must fail.

II. THE ESTATE AT WESTBURY'S COUNTERCLAIMS ARE WITHOUT MERIT.

a. The Estate waived its right to an Accounting, Unjust Enrichment, and/or Breach of Fiduciary Duty Claims long ago.

From 1998 to 2018, the Estate has no record of any objection to the assessment and no record of a demand for a single reconciliation or for an accounting of the assessment funds. Jeanette Prinson Dep 49:11—52:17 (Sept. 2, 2020)(HOA Manager for Defendant); Austin Adams Dep. 38:4—39:12 (Sept. 2, 2020)(Vice President of the Defendant). If nothing else, the Plaintiff holds a significant argument that the Estate waived all claims towards any relief for an Accounting, Unjust Enrichment, Breach of Fidiciary Duty, or Breach of Contract, and assented to the terms of the contract long, long ago.

Further, the Plaintiff submits that the failure to request relief before October 2018 was because it was known then, and should be now, that the Assessment constitutes a fixed fee specifically set forth in the contract for the Apartment Parcel's

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use, enjoyment and access to its property, as well as constituting consideration for the substantial burden placed on Westbury Park for the traffic that exists on the purported easement corridor, and the cumbersome effect the same has to its residents safety and quality of life.

Looking closely at the contract at issue—the Apartment Declaration and its Amendment (pertinent terms included in text, above)—grant no rights whatsoever to an accounting, reconciliation or even an implication that the money should be set aside for a specific purpose. Instead, it states plainly and definitively that the amounts paid are "as its share." Period.

Moreover, the payment structure has a floor of $86,400.00/year. This amount constitutes the payment of an assessment fee. The Defendant has no equitable right to be repaid amounts paid without protest or legal right to claw-back funds that were specifically owed under a fixed-fee contract.

The intangible value represented by the "Easement fee" is perhaps best expressed by the Board of the Estate at Westbury in **Exhibit 2**, where it recognizes that its community would suffer from a second entrance because:

- it is presently the " 'Hidden Jewel of Bluffton" because we are hidden from themain highway and aligned with a quiet residential neighborhood."
- The back gate "may attract unwanted pedestrian visitors to the community. . . ." And, the "Estate will experience increased community through-traffic generated from the Westbury Community seeking a fast

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approach to Highway 278" (that is, what Westbury Park has suffered for over 20 years from the Estate residents and visitors).

- "Units directly at the back gate will suffer loss of tranquility, privacy, vehicle noise and possible reduction in property values"

Westbury Park submits that each of these concerns is the precise reason the Easement Fee existed, and are realities that its residents suffer and live through every day.

b. The Estate is barred from obtaining any relief under the Doctrine of Unclean Hands.

Since October 2018, the Estate has refused to make any further payments toward the assessment and, again, for the first time after paying the assessment for 20 years, demanded an accounting for its payments without basis. This is wholly against the common law duty of a Dominant Estate's responsibility to pay its portion of maintenance and care of an easement.

Further, it appears the Estate made the decision to breach the easement agreement and refuse to make any payment to Westbury Park without a Board or owner vote authorizing the act. See Jeanette Prinson Dep. 46:24-48:19. In so doing, it subjects itself to a judgment for back payments, interests, attorney's fees, and ultimately, potential foreclosure on its common elements. It did not seek a declaratory judgment ruling from the court. Instead, it took a tenuous and extreme position arguing against the plain reading of the Declaration and still omits key language in its arguments which is the crux of case between the parties to this day. Indeed, the Accounting demand and the Estate's declaration that it would make no

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further payments whatsoever to Westbury Park for its use of its streets, security, and maintenance and operation of the gates appears to be *Ultra Vires* act by the Board of the Estate at Westbury, entered into with a vote or authority.

c. The Estate acknowledges that the Apartment Declaration does not contain terms granting it the rights or relief that it is seeking

The Estate's Vice President acknowledged at his deposition that the assessment agreement at issue contains no language or "verbiage" stating that the Estate has any right to an accounting regarding payments made to Westbury Park. Adams Dep. 67:4—9. Mr. Adams acknowledges that no language sets forth a requirement that the money would be deposited in a trust, constructive or otherwise. Id. 67:10—15. Mr. Adams acknowledges that the Apartment Declaration does not contain verbiage stating that it has a right to a reconciliation or any type of inspection rights. Id. 67:16—21. In the same deposition, Mr. Adams acknowledges that "[a] contract states what it states." Id. 61:4-6.

d. Westbury Park is not the real party at interest relative to the Defendant's Counterclaims.

To further complicate the Estate's position, until recently, Westbury Park Residential Association received only a portion of the Assessment funds, with the Declarant retaining the majority. The Estate knows that Westbury Park received but a small portion of the money it paid to the Declarant over time, yet it choses not name the Declarant as a party.

In sum, the Plaintiff's likelihood of success on the merits in the underlying action is great, the Defendant's Motions for Summary Judgment should be denied,

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and the Plaintiff's Motion for a Temporary Injunction should be granted, for further reasons set forth below.

III. THE RELIEF THE PLAINTIFF SEEKS IN ITS MOTION FOR A TEMPORARY INJUNCTION IS REASONABLE, PROPER AND NECESSARY UNDER THE CIRCUMSTANCES

While it is undoubtedly the correct rule that a court of equity will not interfere by injunction in cases of nuisances, trespasses, and like injuries to property when the parties can have complete redress in a court of law, still if it appears that irreparable mischief will be done by withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights [218 S.C. 272] from hurt or destruction.

Carter v. Lake City Baseball Club, 218 S.C. 255, 62 S.E.2d 470 (S.C. 1950)

a. **The Plaintiffs have documented over one hundred incidents of unauthorized gate access by Estate at Westbury residents and guests, and scores of incidents of trespass upon Westbury Park common property since December 2018, and they continue.**

1. Despite the Defedant's representations that the Plaintiffs have provided "no evidence" to them regarding the Defendant's conduct, the Plaintiffs shared with the Defendants scores of videos and photographs documenting entry by Estate residents, guests, or vendors violating Westbury Park's Rules and Regulations concerning gate entry, use of common property, and/or traffic infractions.

B. **The Defendant holds the responsibility of regulating their member's use of the area subject to the purported easement, and, the Plaintiff has the right to regulate conduct on its common property**

1. The Estate acknowledges that it is "bound" by "Westbury Park's rules concerning the gates and access to the property." See Exhibit 2, Estate at Westbury's Memorandum in Opposition to Temporary Injunction.

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2. It is clear that Westbury Park has the right to regulate and enforce conduct on its own property. See Howorka v. Harbor Island Owners' Association, Inc., 292 S.C. 381, 356 S.E.2d 433 (S.C. App. 1987)

C. Defendant fails to reasonably enforce its existing rules and regulations, making it impossible for Plaintiff to regulate conduct on its property

1. Defendant admits that it and its members ["we"] are "bound" by Westbury Park's Rules and Regulations Id., yet it refuses to take any meaningful administrative action when notified of its residents' breach of those very Rules and Regulations.

D. Defendant has consistently failed to implement reasonable rules, fines, warnings, or other deterrents to prevent its members and occupants from damaging Westbury Park property and violating its Rules and Regulations.

E. Defendant fails to cooperate with Westbury Park in any meaningful manner to allow it to enforce Rules and Regulations as to its property, to prevent property damage and criminal acts, and to restrain trespassing by its residents;

1. While Westbury Park appreciates steps made to acknowledge cooperation is needed, all recent actions taken by the Estate are in response to demands made by Westbury Park or in response to this litigation.

Defendant's Exhibit 2, Exhibit 3, and Exhibit 4 to its Memorandum in Opposition are a direct result of and in response to the Plaintiff's lawsuit and correspondence. See **Exhibit 8** (Letter to Defendant dated June 20, 2019 Notifying Defendant of Default and of Gate Trespass by Security for the Estate at Westbury); **Exhibit 9** (Letter to Defendant dated April 8, 2020 notifying Defendant of violations by its residents). Like the Defendant in Mack v. Edens, "only when [the Estate] was sued did [it] relent." 306 S.C. 433, 437; 412 S.E.2d 431, 434 (S.C. App. 1991) (holding

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that injunction was a proper remedy for trespass on land from the release of water, even when the Defendant abated the act after being sued).

Further, the court should give no weight to this hearing being continued from its original date: It was originally continued as a courtesy to the Defendant and, thereafter, it was continued until the parties could appear in person due to the Covid-19 crisis.

F. **The Defendant's actions and inactions cause or constitute a serious risk of irreparable harm to the Plaintiff**

1. While the Defendant disparages and undermines the Plaintiff's claims to a continual trespass to its real property in its brief, South Carolina law is clear: continuous trespassing constitutes conduct that is proper for a court to enjoin. Carter v. Lake City Baseball Club, 218 S.C. 255, 272 62 S.E.2d 470 (S.C. 1950)

Injunction is the proper remedy for a continuous trespass to land. Mack v. Edens, *Supra* (citing McClellan v. Taylor, 54 S.C. 430, 32 S.E. 527 (1899). The Plaintiff's documentation of repeated, recurring trespass to its real property fixtures (gates) and of its real property (streets, sidewalks, parks, lagoons and other common areas) by Estate owners, residents and/or guests and repeated recurring trespass upon its amenities and Common Elements constitutes a continual trespass.

Similarly, the Defendant's owners residents and guests continual and repeated brazen violations of the Plaintiff's Rules, Regulations and public safety laws (operating vehicles through exit ways to avoid gates, pushing the gates open, failing to stop at stop signs, etc.), constitutes a serious risk and likelihood of permanent injury. Without assistance from the Estate with cooperation in enforcing its own

Rules and Regulations as to vehicle registration, occupant monitoring, and occupant registries, Westbury Park is largely powerless to effectively enforce its rules, regulate conduct on its property, and prevent further action. Without the Estate taking enforcement actions on violations of gate policy, Westbury Park is powerless to prevent future harm.

Because of the permanent and recurring nature of the injury, which cannot otherwise be prevented, this court should enjoin the continuous trespassing of Estate owners and residents and protect Westbury Park's property rights from further hurt and destruction. See Mack v. Edens, 306 S.C. 433, 412 S.E.2d 431 (S.C. App. 1991).

G. The Plaintiff has a high degree of likelihood of success on the merits.

The Plaintiff draws reference to their arguments in this memorandum in opposition to Summary Judgment.

Respectfully submitted,

/s/Benjamin T. Shelton

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Hilton Head Island, South Carolina
September 15, 2020

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 10th day of November, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant") as follows:

ARTICLE I

RECITALS

1.01 Declarant is the owner of the approximately twenty (20) acre parcel of real property in Bluffton Township, Beaufort County, South Carolina; more fully described on attached Exhibit "A" (the "Property").

1.02 General Plan: To establish a general plan for the improvement and development of the Property, Declarant hereby subjects the Property to the conditions, covenants and restrictions set out below, upon and subject to which all of the Property shall be hereafter owned, leased, hypothecated and used.

ARTICLE III

GENERAL PROVISIONS

2.01 Establishment of Restrictions: Declarant, owner of the Property, hereby declares that the Property is now held, and shall hereafter be owned, leased, hypothecated and used subject to the restrictions set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of, and pass with, and be enforceable as equitable servitudes by the Owner or Lessee of each and every portion of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any Owner or Lessee of each and every portion of the Property.

2.02 Purpose of Restrictions: The purposes of these restrictions is to insure proper development and use of the Property to be in keeping with the community wide standards established for the Westbury Park Commercial Subdivision, and the Westbury Park Residential Subdivision, the latter of which is contiguous to the Property.

2.03 Definitions:

(a) Improvements: "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, fence, walls, landscaping, poles, signs and any structures of any type or kind.

(b) Owner: "Owner" shall mean the owner of the fee interest in the Property.

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(c) Plat: That certain Plat thereof prepared by Surveying Consultants entitled "ALTA/ACSM Land Survey of 20.00 Acre Parcel, a Section of Block X-1 a Portion of Rose Hill Plantation, Bluffton Township, Beaufort County, South Carolina, dated the 7th day of October, 19 98 and recorded in the records of the RMC Office for Beaufort County, South Carolina in Plat Book 67 Page 118."

(d) Required Streets: "Required Streets" shall mean Westbury Park Way and Kensington Boulevard as shown on the Plat.

(e) Westbury Park Commercial Area: "Westbury Park Commercial Area" shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 63 at Page 183.

(f) Westbury Park Residential Area: "Westbury Park Residential Area" shall mean all or any portion of that tract of land situate, lying and being in Rose Hill Planned United Development, Bluffton Township, Beaufort County, South Carolina, containing 128.973 acres, more or less, shown and described as "BLOCK X-1" on that certain plat entitled "A Plat of Block X-1, X-2, X-3, and X-4 being a portion of Block "X" prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SCRLS 11079, dated December 30, 1996 and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 58 at Page 198, less and except the Property.

2.04 Prior to Construction: "Prior to construction", the Owner shall maintain the Property in a neat and orderly condition free of weeds and other debris.

ARTICLE III

REGULATION OF IMPROVEMENTS

3.01 County Requirements:

(a) Nothing herein shall supersede the County of Beaufort's present or future requirements and ordinances. All of said requirements and ordinances, shall prevail, and it shall be the responsibility of Owner to conform to them.

(b) General: No structure, of any kind, and no part thereof, shall be placed on the Property closer to the property line than permitted by the County of Beaufort, giving consideration to any variance that may be obtained.

3.02 Completion of Construction: After commencement of construction of any structure, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in partly finished condition any longer than reasonably necessary for completion thereof.

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3.03 Excavation: No excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded.

3.04 Landscaping: Landscaping shall be installed prior to occupancy or within sixty (60) days after the completion of the first building on the Property, whichever occurs first. All areas in the Property not used for structures, parking, storage, sidewalks, amenities, driveways and other improvements, shall be planted and maintained with grass and landscaping.

3.05 Signs: No billboard or advertising sign shall be permitted. No attached or detached signs or displays identifying Owner or the apartment complex on the Property shall be used unless their design has first been submitted to and approved by Declarant in writing, so as to assure a dignified and basically uniform appearance of all signs and displays within the Property.

3.06 Storage and Loading Areas - Outside Storage: After all construction of the Improvements is complete, no construction, landscape or maintenance material, supplies or products shall be stored or permitted to remain on the Property in unscreened areas. Screening of storage areas shall be accomplished by the use of landscaping, walls, buildings, fencing or any combination thereof, to a height sufficient to screen the stored items, except that such height shall not exceed eight feet.

3.07 Waste Disposal: No waste material or refuse shall be dumped, placed or (except during construction) allowed to remain on the Property outside a permanent structure unless it is in closed containers of a quality to control odors and behind a visual barrier screening such areas so that they are not visible from neighboring properties or public streets. All such waste and trash materials shall be regularly removed and shall not be allowed to accumulate.

3.08 Off-Street Parking:

(a) The arrangement, access and number of all parking spaces and lots shall conform to applicable County of Beaufort requirements and ordinances, giving consideration to any variances that may be obtained.

(b) Automobile parking areas shall be provided with entrances, exits and aisles adequate to provide safe movement of vehicles.

(c) Subject to the Development Regulations of Beaufort County, South Carolina, the front yard and exterior side yard setback areas may be used for parking and access ways. However, not less than 20 feet of the setback areas (exclusive of wetlands), as measured from the property line, shall be landscaped.

(d) Adequate off-street parking shall be provided to accommodate all parking needs of employees, tenants and visitors on the Property.

3.09 Trucking and Loading:

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(a) Adequate turn around room area shall be provided for safe operation of trucks in loading areas.

(b) Trucking areas shall be adequately designed and paved for the type of operation intended.

3.10 Building Regulations: Any building erected on the Property shall conform to the following construction practices:

(a) The exterior of all structures erected on the Property shall be constructed in accordance with the Approved Plans (as hereinafter defined).

(b) All buildings erected shall conform to the applicable building codes and ordinances of the County of Beaufort, giving consideration to any variance that may be obtained.

(c) Exterior walls shall be painted or suitably treated in accordance with the Approved Plans.

3.11 Care, Maintenance and Repairs: All structures, landscaping and improvements from time to time placed upon the Property in accordance with the terms hereof or the requirements and ordinances of the County of Beaufort shall be maintained in good clean condition and repair at all times, normal wear and tear excepted.

3.12 Drainage: All drainage of water from the Property and Improvements thereon shall drain or flow into easement areas provided for such purpose as shown on the Plat, and all slopes and terraces shall be maintained as to prevent any erosion thereof upon any streets or adjoining property and in accordance with the applicable ordinances of the County of Beaufort and the State of South Carolina.

ARTICLE IV

APPROVAL OF PLANS

4.01 Submission of Plans: No improvements shall be erected, placed, altered, maintained or permitted to remain on the Property until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural designs, signs, landscaping, and a tree survey indicating trees to be removed and replaced shall have been submitted to and approved in writing by Declarant (the "Approved Plans").

4.02 Standards for Approval: Approval by Declarant shall be based, among other things, on conformity and harmony of external design with neighboring sites; relation to topography, grade and finished ground elevation of the site being improved to that of neighboring sites; proper design of main exterior elevation with respect to nearby streets; and conformity of plans and specifications to the purpose and general plan and intent of these restrictions. All structures and walls shall be

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constructed of maintenance free durable material. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

4.03 Time for Approval: If Declarant fails to either approve or disapprove such plans and specifications within twenty (20) days after the same have been submitted to and received by Declarant it shall be conclusively presumed that Declarant has approved the plans and specifications.

Upon receipt of approval from Declarant pursuant to this section, the Owner to whom the same is given shall, within six (6) months of acquisition of title, satisfy all conditions thereof, subject to force majeure, and diligently proceed with the commencement and completion of all approved construction and alterations. In all cases, work shall be substantially completed within two (2) years from the date of commencement of construction. It there is a failure to comply with this paragraph, then the approval given pursuant to this section shall be deemed revoked unless Declarant, upon written request made to it prior to the expiration of said two (2) year period, grants a written extension of the time for completing work.

4.04 Release of Liability: Neither Declarant nor its successors or assigns shall be liable for damages to anyone submitting plans to them for approval or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant for approval agrees, by submission of such plans, and every Owner of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant to recover any such damages.

ARTICLE V

REGULATION OF OPERATIONS AND USES

5.01 Permitted Operations and Uses: The Property is subject to the restriction that it be used for the construction and operation of an apartment complex to contain not more than three hundred twenty (320) apartments, which shall be utilized for residential purposes only.

5.02 Other Operations and Uses: The Owner shall be subject to the following restrictions:

(a) Resubdivision of the Property: The property shall not be split, divided or subdivided for sale, resale, gift, transfer or otherwise, nor shall its boundary lines be altered, without the prior written approval of Declarant.

(b) Temporary Buildings: No temporary building, trailer, garage or building under construction shall be used temporarily or permanently as a residence on the Property except as temporary sleeping or living quarters required or desirable for security purposes. Owner or Owner's contractors may use temporary structures, such as construction trailers while developing the Property.

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(c) Fences: No fence or wall of any kind shall be erected, maintained or altered on the Property without the prior approval of Declarant.

(d) Antenna/Satellite Dish: Except with the prior written approval of Declarant, no outside television or radio aerial, satellite dish or antenna or other device for the reception and transmission of radio or television or other electronic signals, including telecommunications towers shall be erected or maintained on any portion of the Property or upon the exterior of any buildings erected on the Property. Declarant shall approve an application for the installation of one (1) satellite dish to provide television services to the apartments, so long as the satellite dish or other receiving device shall not be visible from the ground on any property contiguous to the Property.

(e) Clothes lines, Garbage Cans, Mailboxes: No clothes lines visible from any property contiguous with the Property shall be permitted. All equipment and garbage cans shall be kept in a garbage can screened by adequate planning or approved fencing so as to conceal them from view by neighboring residence and streets.

(f) Parking and Related Restrictions: (i) No vehicle belonging to Owner or any of Owner's tenants shall be permitted to park on any of the streets that provide access to the Property that are not contained within the Property or on any property contiguous to the Property; and (ii) no school bus, truck (other than pick-up trucks), commercial vehicle (over one (1) ton capacity), house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, or like equipment shall be permitted on the Property on a permanent basis unless stored within garages or carports.

(g) Lagoon Front and Wetlands: Owner and Owner's tenants shall conform to all restrictions placed by applicable laws, ordinances and covenants on lagoons or wetlands on the Property.

(h) Solid Waste: (i) Neither Owner nor any of Owner's tenants shall dump rubbish, garbage or any other form of solid waste on the Property; (ii) except during construction, neither Owner nor any other contractor shall burn rubbish, garbage or any other form of solid waste on the Property; (iii) except for building materials employed during the course of any construction on the Property, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on the Property unless screened or otherwise handled in a reasonable manner; and (iv) at all times, containers for the collection of rubbish, garbage or any other form of solid waste must be maintained in a screened or enclosed area.

(i) Nuisances: No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done on the Property by Owner or any of Owner's tenants which may be or may become a public or private nuisance to the Westbury Park community.

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ARTICLE VI

ENFORCEMENT

6.01 Equitable Servitudes: All of the provisions herein contained shall run with the land and shall be enforceable at law or in equity as equitable servitudes by Declarant.

6.02 Attorneys Fees: In any legal or equitable proceeding for the enforcement of this Declaration or to restrain any violation of this Declaration or any provision hereof, the prevailing party shall, in addition to all other costs, be entitled to recover from the non-prevailing party reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.03 Inspection: Declarant may from time to time at any reasonable hour or hours, and after reasonable notice to Owner, enter and inspect any property subject to these restrictions (other than the interior of any apartments) to ascertain compliance therewith. No such entry or inspection shall disrupt or disturb any of Owner's tenants or Owner's operations of the Property, unless Owner's tenants or Owner's operation of the Property are the cause for entry.

6.04 Failure to Enforce Not a Waiver of Rights: The failure of Declarant or any Owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

ARTICLE VII

EASEMENTS

7.01 Easements for Declarant: Declarant hereby reserves for itself its successors and assigns the "Relocatable 20' Sanitary Sewer Easement" and that certain "Relocatable 20' Storm Drain Easement" as more fully shown on that certain Plat entitled "ALTA/ACSM Land Title Survey of 20 Acre Parcel, Westbury Park, a section of BLOCK X-1 a portion of Rose Hill PUD, Bluffton Township, Beaufort County, South Carolina" prepared for Declarant by Surveying Consultants, dated October 7, 1998, a copy of which is recorded in the records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 67 at Page 118 ("Plat")." Owner shall have the right to relocate the easements described herein prior to its commencement of construction of improvements on the Property, provided such relocation does not make the easements unusable.

7.02 Easements for Owner: Subject to the provisions hereof and the restriction contained in Subparagraph 7.02(a) hereafter, Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners, all employees, contractors, suppliers, vendors and other representatives of Owner and all other persons who reasonably need, on Owner's behalf, access to the "Property" shall have a right and easement of use of those certain easements as hereinafter more fully described as shown on the Plat.

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(a) Perpetual non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with US Highway 278 and its intersection with Kensington Boulevard. This right-of-way is relocatable by Declarant and/or Buck Island, L.L.C. provided such relocated easement affords the Property adequate and proper access to and from US Highway 278. It is specifically agreed and understood notwithstanding anything to the contrary herein, construction traffic and construction suppliers are prohibited from utilizing this easement for access to or from the Property. Owner shall be responsible to place signs directing all construction traffic and construction suppliers going to the Property to only use Kensington Boulevard as shown on the Plat, and to insert provisions within construction contracts specifying the allowable access route.

(b) Perpetual non-exclusive right for vehicular and pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the Property.

(c) Permanent, non-exclusive easement for Owner's directional signs, as approved by Declarant pursuant to the provisions herein, at the approximate locations shown as follows on the Plat:

1. At the intersection of the east right-of-way of Buck Island Road and Kensington Boulevard; the easement for this sign shall not be relocatable;

2. At the southwest corner of Kensington Boulevard and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278 and Buck Island Road; and

3. At the northwest corner of the intersection of Arley Way and Westbury Park Way; this easement can be relocated provided that the relocated directional sign easement must afford adequate and proper directions to the Property from US Highway 278.

(d) Permanent, Non-Exclusive Twenty-Five Foot (25') Storm Drain Easement as more fully shown on the Plat.

(e) A Five Foot (5') Utility Easement (measured from the center line of buried utility cables and lines) on each sides of said buried utility cables and lines within the rights-of-way of Kensington Boulevard for the purpose of installing, maintaining, repairing, replacing and/or relocating when necessary any utility lines providing utilities to the Property.

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ARTICLE VIII

ASSESSMENTS

8.01 The Owner, its successors or assigns (but not tenants), by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on an annual basis the sum of $17,500.00 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This Assessment shall become due and payable on February 1 of each year and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. The reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Residential Area shall remain the responsibility of the Westbury Park Residential Owners Association, Inc., and the reasonable care and replacement of the Required Streets and landscaping within the Westbury Park Commercial Area shall remain the responsibility of the Westbury Park Commercial Center Property Owners Association, Inc.

8.02 The Assessment as set forth hereinabove shall commence on January 1, 1999, be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers, All Items (Base Year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstances will the Annual Assessment fall below the minimum of $17,500.00 per year.

8.03 The Assessment shall, if not paid within thirty (30) days of its due date, constitute a lien against the Property until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina Law) and costs of collection (including attorney and paralegal fees). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first priority mortgage of record made in good faith and for value. Notwithstanding the foregoing to the contrary, the subordination of the Assessment lien to the lien of any first priority mortgage of record shall only apply to such Assessments which have become due and payable prior to foreclosure. Any mortgagee who acquires title to the Property by foreclosure shall be liable for Assessment thereafter becoming due. All other persons acquiring liens or encumbrances on the Property after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

ARTICLE IX

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

9.01 Term: This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may

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be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina prior to the expiration of any term.

9.02 Termination and Modification: This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof by the Declarant and Owner jointly. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina. No such termination, extension, modification or amendment shall be in violation of County requirements and/or ordinances.

9.03 Assignments of Declarant's Rights and Duties: Any or all of the rights, powers and reservations of Declarant herein may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignments, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 Constructive Notice and Acceptance: Every person who now owns or acquires any fee simple title in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

10.03 Paragraph Headings: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

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10.04 Effect of Invalidation: If any provision of this Declaration is held to be invalid by any final judgment in a contested judicial proceeding the invalidity of such provision shall not affect the validity of the remaining provisions hereof and the same shall remain in full force and effect.

WITNESSES:

Karen B Murphy

PLANTATION PROPERTIES, L.L.C.

By: James N. Richardson, Jr.
Its: Managing Member

Attest:

By: William W. Jones, Jr.
Its: Member

Buck Island, L.L.C. joins in this Declaration for the sole purpose of confirming the easements granted in Paragraphs 7.02(a) and 7.02(c)(3), and for no other purposes whatsoever.

WITNESSES:

Karen B. Murphy

BUCK ISLAND, L.L.C.

By:
Its: MANAGING PARTNER

Attest:

By: William W. Jones, Jr.
Its: Member

Westbury Record on Appeal 0457

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named BUCK ISLAND, L.L.C., by its appropriate officers, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Karen B. Murphy

SWORN TO before me this 10th
day of November, 1998

Notary Public for South Carolina
My Commission Expires: Oct 19, 2003

ST. 2-A:DISK#5\PALMETTO.COV

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EXHIBIT "A"

Legal Description

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118 ("Plat") ("Property"). For a more detailed description, reference is made to said Plat of record.

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2346 JSP

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 NOV 12 PM 12:20

BK 1106 PG 1225
FOLDER#

1238

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THE ESTATE AT WESTBURY
A CONDOMINIUM

Present:
Louise Haaker – President
Aldo Roccisano-Treasurer
Jaziel Green - Association Manager

Absent:
Jose Fuentez – Vice President

- **Meeting Called to order 12/11/2010 at 2:00 PM-Louise Haaker**

- **President Haaker opened the meeting.**

Budget: Reserve funds are secured with CD's invested locally.
Regime fees have been increased minimally and that was unavoidable due to unit foreclosures, tardy payments, inflationary cost of supplies and unanticipated shortfalls in revenues. Budgeted contracts are reviewed annually to ascertain the best prices.
No special assessments are anticipated at this time.
HOA Property Manager Jaziel Green was commended for her six years of continuous service.
Owners were encouraged to make their management company and/or tenants aware of the regulations applied to the property and enforced by the property manager.

Updates presented by Association Manager:

- **Utility Billing Information Requested by Board President**

A review of our costly third-party water billing service resulted in the HOA taking over the billing service. This will be implemented in the first quarter 2011. Owners were informed of this change in a separate notice which went out with 2011 budgetary information. It was noted that water/sewer costs and to whom the bill is sent (tenant or owner) will not be changed. Elimination of the 3rd party billing service will omit their related inspection charges which will be done in-house by HOA employees and we should be able to pass that savings on. **The Hoa office will notify all owners when any changes are to happen, until then water bills should be paid as usual to UBS until further notice.** Regardless of how or to whom the bill is sent, ultimately it is the responsibility of the unit owner for the cost of water/sewer service.

- **Proposed Back Gate Entrance**

Westbury Record on Appeal 0461

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Westbury Community has approached the Estates at Westbury to consider their offer to construct a back entrance and gate to the Estates, citing their perceived benefits to our community. The board noted the negative aspects far outweighed any benefits.

1. We presently have a positive selling/renting point to enter the Estate community through a private, peaceful, attractive residential neighborhood. We are the "Hidden Jewel of Bluffton" because we are hidden from the main highway and aligned with a quiet residential neighborhood. A back gate will not enhance this.
2. A back gate may attract unwanted pedestrian visitors to the community from other properties that have a high incidence of crime in the Bluffton area from Simmonsville Road, substantiated by police reports.
3. Estate will experience increased community through-traffic generated from the Westbury Community seeking a fast approach to Highway 278. As it is now, we have cars backing out from unit parking spaces onto the community roadway.
4. Units directly at the back gate will suffer loss of tranquility, privacy, vehicle noise and possible reduction in property values.
5. Additional reliance on maintenance and upkeep of a new gate based on our historical insufficient management of the current gates.
6. Continued payments to Westbury Community to enter through the present Kensington Blvd. for which we pay $89,000+ annually even with construction of a new gate.

The matter has not been resolved and at the suggestion of the Beaufort County Planning Commission, talks are ongoing. Homeowners will be included in any final decision.

- **Southern State Management (SSM)**

As a result of the day-to-day monitoring of the in-house rental management company (SSM) by the HOA manager, the board was made aware of complaints from owners regarding their performance and management of the units under their rental control. SSM was given notice to correct the matter which could impact renewal of their annual contract. SSM advised the Board in all earnest of their efforts to address concerns. The Board and Association manager will monitor their services and is open to comments from owners using SSM services. Comments or concerns should be addressed to Jaziel Green at jaziel@theestateatwestbury.com The matter was tabled.

- **Exterior repairs of certain building.**

In accordance with our attorney, contracts have been made with an architect and staff engineer to assess the construction damages due to poor workmanship of the original developer. Additional information will be provided as the matter develops. In the interim all buildings are stable.

Respectfully submitted,

Jaziel Green

Home Owners Association Manager
Approved by Louise K. Haaker, President

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THE ESTATE AT WESTBURY
A CONDOMINIUM

Open Board Meeting
December 11th

Board Members In Attendance

Louise Haaker-President

Aldo Roccisano-Treasure

Jose Fuentez-Absent

Association Manager

Jaziel Green-Present

Home Owners in attendance:

1. Janet Belle Isle 604
2. Jim McGill 1302
3. Tom Oglesby 819
4. Jan Buchanan 701
5. Jerilyn L. Lawrence 1515
6. Beverley Adams 1214
7. Robert Tan 1401/406
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____

Meeting

From: nagycr@att.net 12/10/10 20:26
To: jaziel@theestateatwestbury.com

Sure wish I could be in Bluffton for this meeting with my list of concerns.

1. Do we have enough of Staff to handle the up keep of our community?

2. Regarding the landscape on the property I would like to see more attention to replacing dead shrubs and pulling weeds around the condo's for
better eye appeal and apperance.

3. Absentee owners (Investors) be made more responsible for the appearance of their condos with regard to broken blinds and what their tenant
keeps on the patio's.

4. Replacing patio chairs and lounges with strap furniture for easy maintenace around the pool area.

5. Partime staff on weekends to oversee the property.

6. I agree with the board regarding a back gate that is not needed unless we are told by Beaufort County.

7. Jaziel and her staff are doing their best with the community. I beleive a community needs to have a Strong HOA and Board Members to maintain
a Quality Community to live in or invest in.

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Westbury 103

From: "Thomas J. Fair" <tfair8@verizon.net> 12/13/10 08:19
To: "'Jaziel'" <jaziel@theestateatwestbury.com>
Cc: TFAIR8@VERIZON.NET

Good morning Jaziel-

Hope you had a nice weekend.

I am planning on being at Westbury tomorrow Tuesday Dec 14th afternoon arriving around 2:30 – 3pm-
I would like obtain a key for our unit from you-
- I will pay you the ($12.00) I think you said-

I am planning on being in and out of the unit during the day Tuesday, Wednesday, Thursday and Friday

Thank you.

Best Regards,
Tom
Thomas J. Fair
Direct Line: 508 259 1071
Email: tfair8@verizon.net

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Board Meeting

From: "Deb Schumann" <compugal@charter.net> 12/10/10 18:35
To: "Jaziel" <jaziel@theestateatwestbury.com>

I regret I can't attend. As an interested owner, I am glad to be given the opportunity. Perhaps with more notice in the future, I can plan on being around. Regardless, I'd like to make a few comments/suggestions.

1. I applaud Jaziel for her actions regarding the proposed new gate. From what I can understand, it makes little sense to do this and could cause our community even more grief. I agree that the current control of the gate leaves much to be desired. I haven't been able to get through the entrance near Publix for months and yet, I have never been behind someone with a number code who can't get through. It's been very frustrating, and makes me wonder why? I do believe though that we should be able to withhold payment because even if we aren't paying for the gate itself, we play for the "privilege" of using their roads(are they private?) and we can't use part of their roads if we can't get in that side gate. I might suggest all owners be encouraged to contact that group/person in charge regularly to voice their frustration.

2. I also applaud the board/Jaziel for sticking to the HOA fee scale as stated in the original covenants. I purposely purchased the size I did because I couldn't afford the higher amounts for larger condos. I don't think it's fair to expect smaller condos to subsidize larger ones. I don't yet know what next year's payment will be, but I was glad to see the decrease, especially since an owner in the Westbury housing community itself told me she pays $100 a year for all services-and she has an entire house.

3. I'd like to know if anyone has put in a screened in "porch" yet. I'd like to see how it looks and get an idea of the total cost. I'm glad to see this option, although I can't finance such an improvement at the current time.

4. The back gutters are in strong need of cleaning out. The drain closest to my unit is still broken/ or has been damaged again.

5. As a long distance owner, I'd like to have someone on staff I could ask to check on things for me (ie enter my apt. with my permission)-maybe 2 times a year if requested.

6. I really think we should install some security cameras near the pool area and garbage area. I haven't used the pool in a year because trying to enjoy it was nigh impossible due to the large number of infractions I witnessed the first time: a dog was running around (its owners clearly in the pool area-telling everyone to keep the gate closed so the dog wouldn't get out!); non/residents were drinking beer around the pool deck; children were in the hot tub when it was working*/not (*which seemed to be seldom); loud music was being played. Realistically, such behaviors are hard to control, if not impossible, but perhaps the threat of being "caught at it" along with the infraction list and fines I saw this past year, might help deter some if it, or make it easier to respond to. The garbage area camera might help deter illegal dumping.

7. Managing a community is no easy task, and I appreciate the work you try to do. Thanks!

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condo #704

From: "frances brechemin" <franno@shentel.net> 12/12/10 16:53
To: "Jaziel" <jaziel@theestateatwestbury.com>

Hi Jaziel. having a problem with the kids in 704. There are about 10 kids yelling and fighting in front of condo. I ask them to knock it off but that was a waste of time. The tall kid about 17 is throwing the small kids against the van parked in front. Someone is going to get hurt. I thought they moved out. Guess not. If it keeps up I'm calling the cops. Its about 5pm. This is just for your info. ...Thanks...Fran

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Home Owners Meeting

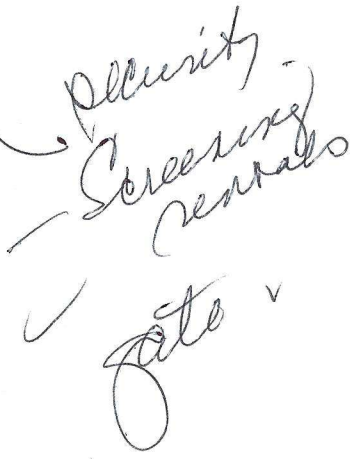
From: "Dave & Mary Gauvin" <mdgauvin@cox.net> 12/08/10 19:45
To: "Jaziel Green" <jaziel@theestateatwestbury.com>

Dave & Mary Gauvin
100 Kensington blvd
Unit 1108
Bluffton SC 29910

Re:Annual Meeting

Jaziel, thank you for the notice of the annual meeting. Mary & I cannot attend this year, but we do have a few comments. 1. the increase in condo fee's is fine as long as it is used to aid in the upkeep of the property. We were down for a couple of weeks prior to thanksgiving. We noticed that the wood trim and siding on many units needed a good cleaning. as well as grounds up keep. times are tough and things need to be addressed. 2. we also notice since we are not there all the time the different influx of renters. for the most part all was OK, however there was more loud music coming from cars driving through as well as from individual units. As well as some tenants think it is a speedway through the complex. Also Mary was awoke one night around 3:30 am to an SUV driving between the condo's near the lagoon and 2 men got out and began urinating out side. She was afraid to say anything at the time. The complex has great potential and generally a very nice place to live. Maybe the rental process can be a little more stringent, to control who is granted the privilege of living in the Estate at Westbury. I have also read some unflattering blogs and articles about the complex. I also have heard remarks from people I play golf with telling me that it is where a lot of the local crime comes from. Lucky I only believe only half of what I hear. I do enjoy the time we spend there and look forward to when we retire and live there full time.Our comments are only out of concern for the betterment of our community. Bluffton is a great place to live and so is the Estate at Westbury. We also know that you work very hard to keep everything under control keep up the good work.

Sincerely,
Dave & Mary Gauvin



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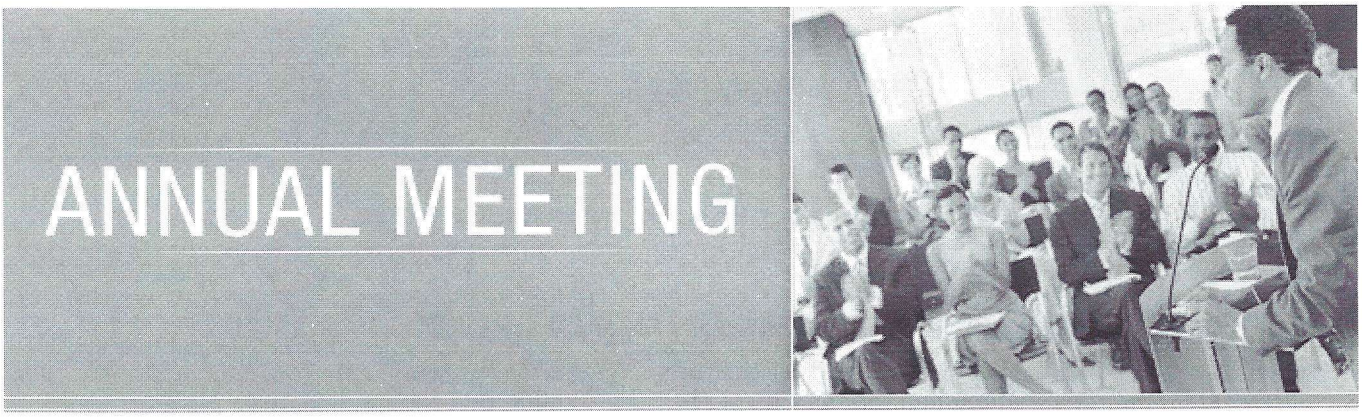
Re: 1305

From: "Kim Dorr" <kdorr25@yahoo.com> 12/10/10 10:33
To: jaziel@theestateatwestbury.com

Happy Holidays my friend!!! I am working Sat night and will not be able to attend meeting this year. Thank you for doing such a great job as our manager!! I am happy road will not be built, that was ridiculous, especially after I read how much Westbury receives for use of the private gate(80,000?)..I do not have any complaints, just wish our condos were marketable!
Thank you for all you do, Merry Christmas,
xoKim

--- On **Wed, 12/8/10, Jaziel Green** ***<jaziel@theestateatwestbury.com>*** wrote:

From: Jaziel Green <jaziel@theestateatwestbury.com>
Subject: The Estate at Westbury eMail Bulletin
To: "Kimberly A. Dorr" <kdorr25@yahoo.com>
Date: Wednesday, December 8, 2010, 12:32 PM



Open Board Meeting
December 11th Saturday

Time: 2:00-4:00
Place:The Estate Clubhouse

PLEASE REMEMBER TO RSVP

Office number: 843 706-4763 or jaziel@theestateatwestbury.com

The Board of Directors and I encourage owners to attend this meeting to address any questions regarding the 2011 budget as well as any concerns regarding the Association. If you are an owner who can not attend but has a question or concern you may send to me at

Dec. 11 meeting

From: "bub" <crostalt@mindspring.com> 12/09/10 10:29
To: jaziel@theestateatwestbury.com

Jaziel,

We are unable to attend the meeting on Saturday. We would like to take this time to thank the board for keeping expenses and regime fees low. We are hoping that 2011 will see Bluffton and the economy bouncing back.

As for the gate situation, we still do not know enough about this but agree with the overall idea in your letter that the current gates have enough problems. Therefore another gate will only make the problem worse. We would like to read more about this just so that if owners are asked to get involved we can make an informed decision. Is there a web-site where we can read about this?

Thank you in advance and happy holidays,

Warren and Amy Johnson (609, 712, and 1210)

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THE ESTATE AT WESTBURY
A CONDOMINIUM

November 23rd 2010

All Checks must have your account # to insure accurate deposits
Payable to: The Estate at Westbury-P.O. Box 11903-Newark, NJ 07101-4903

Greetings, Edward M Fahy

This has been a hectic year for all with the economy and employment situations affecting every family. Due to prudent management of the property, operations and guidance from the Board, the finances at The Estate at Westbury community have remained stable and our property services are at a high level of quality. We commend our management team and all employees on the property for the dedication and reliability.

Our reserve fund is specifically dedicated to replace and/or update the infrastructure concerns which are so vital to insure property value and keep pace with the Bluffton community. We are addressing on-going exterior maintenance of our buildings particularly with the aging of the community. These are expected concerns and your Board is prepared to address these matters in a timely manner. We do not anticipate the need for any special assessments at the present time.

Regime fees: These fees are an integral part of our community revenues. Last year we experienced unpaid regime fees due to delinquencies, foreclosures and property liens. Changes are modest for the 2011 year. In accordance with the condo documents, the percent of expenses is based on the square footage of each unit which is in proportion of the total community. The percent's are established in the condo documents.

Number and Type of Unit	Percent of Community Expense	Basic Home Owners Association Dues	Add this amount for a garage	Add this amount for a storage unit
36 - 1 bedroom -S	0.1983	$105.36	$33.22	$8.30
36 - 1 bedroom-M	0.2274	$120.82	$33.22	$8.30
20 - 1 bedroom loft	0.2958	$157.16	$33.22	$8.30
180 - 2 bedroom	0.3275	$174.00	$33.22	$8.30
48 - 3 bedroom	0.4114	$218.57	$33.22	$8.30

Coupon books for monthly regime fees have been discontinued. A majority of our owners do not use them, but choose to have a direct payment made through their bank or send a payment with their notation of the unit clearly marked on the payment. Therefore, we have eliminated the cost of printing and postage for coupon books. However, if you desire a tear sheet with designated months to include with your payment, this can be supplied by contacting Jaziel and we will accommodate you. Please remember dues are payable the 1st of each month and will have a late fee of $40 if received after the 15th. Please make your payment in a timely manner, for your conveyance we have added address labels.

Open Board Meeting is scheduled for:
Saturday, December 11, 2010
Place: The Estate Club House
From: 2:00pm to 4:00pm.
Please RSVP to Jaziel 843-706-4763, email: Jaziel@theestateatwestbury.com
The budget will be discussed as well as any concerns you may have. See you there!
From your Board of Directors and Jaziel Green, Association Manager
The Estate at Westbury - 85 Kensington Blvd., Bluffton, SC 29910

		2010 APPROVED BUDGET		2011 APPROVED BUDGET	
		MONTHLY	ANNUAL	MONTHLY	ANNUAL
INCOME:			0		0
Regime Fees		48,266.11	579,193.32	53,096.57	637,158.88
Garage Fees - 35 Garages $9/mo		0.00	0.00	0.00	0.00
Storage Fees 44 Storages $2.25/mo		0.00	0.00	0.00	0.00
Late Fees		1,400.00	16,800.00	1,400.00	16,800.00
Working Capital		350.00	4,200.00	350.00	4,200.00
	0	0.00	0.00	0.00	0.00
	0	0.00	0.00	0.00	0.00
SUBTOTAL INCOME		50,016.11	**$ 600,193.32**	54,846.57	**$ 658,158.88**
	0	0.00	0.00	0.00	0.00
OTHER INCOME		0.00	0.00	0.00	0.00
Corporate Suite Rent		700.00	8,400.00	992.25	11,907.00
Screening Fee Income		200.00	2,400.00	102.00	1,224.00
Keys, Locks		250.00	3,000.00	347.25	4,167.00
Cable Revenue		700.00	8,400.00	719.40	8,632.80
Utility Reimbursement		7,500.00	90,000.00	6,982.70	83,792.40
Misc. Income		28.00	336.00	166.25	1,995.00
Soda Machine Income		11.00	132.00	8.25	99.00
Admin Fees		0.00	0.00	6.25	75.00
NSF Fees		0.00	0.00	5.00	60.00
Clubhouse Rental		25.00	300.00	25.00	300.00
Website Revenue		80.00	960.00	19.00	228.00
Washer/Dryer Income		25.00	300.00	4.50	54.00
Tenant Violation/Fines		120.00	1,440.00	122.00	1,464.00
Interest Income		230.00	2,760.00	16.00	192.00
Interest Income Capital		350.00	4,200.00	175.00	2,100.00
Transfer to Capital Reserve		(4,175.00)	(50,100.00)	(6,754.23)	(81,050.76)
Transfer from Capital to Operating		1,085.00	13,020.00	986.00	11,832.00
CD Maturity		450.00	5,400.00	210.00	2,520.00
SUBTOTAL OTHER INCOME		7,579.00	**$ 90,948.00**	3,957.62	**$ 47,491.44**
	0	0.00	0.00	0.00	0.00
TOTAL INCOME		57,595.11	**$ 691,141.32**	58,804.19	**$ 705,650.32**
	0	0.00	0.00	0.00	0.00
	0	0.00	0.00	0.00	0.00
EXPENSES:		0.00	0.00	0.00	0.00
	0	0.00	0.00	0.00	0.00
PAYROLL EXPENSES		0.00	0.00	0.00	0.00
Salary Expense		11,612.92	139,355.04	9,676.83	116,121.97
Group Health Insurance		360.00	4,320.00	360.00	4,320.00
	0	0.00	0.00	0.00	0.00
TOTAL PAYROLL		12,027.92	**$ 144,335.04**	10,324.23	**$ 123,890.77**
	0	0.00	0.00	0.00	0.00
UTILITIES		0.00	0.00	0.00	0.00
Electric - House		3,500.00	42,000.00	3,260.00	39,120.00
Water		2,560.00	30,720.00	3,154.00	37,848.00
Sewer		4,400.00	52,800.00	4,851.00	58,212.00
Gas Utilities		100.00	1,200.00	10.00	120.00
Telephone		670.00	8,040.00	602.00	7,224.00
Trash Removal		1,400.00	16,800.00	2,053.00	24,636.00
	0	0.00	0.00	0.00	0.00
TOTAL UTILITIES		12,630.00	**$ 151,560.00**	13,930.00	**$ 167,160.00**
	0	0.00	0.00	0.00	0.00

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MAINTENANCE EXPENSES		0.00		0.00		0.00	0.00
Fountain Mo Service		168.94		2,027.28		170.00	2,040.00
Plumbing Contract		50.00		600.00		155.00	1,860.00
Electric Contract		50.00		600.00		1,000.00	12,000.00
Pool Contract Repairs/Maintenance		50.00		600.00		400.00	4,800.00
Cleaning Supplies		20.00		240.00		3.50	42.00
Building Maintenance & Repairs		0.00		0.00		1,000.00	12,000.00
Pool Service Contract		210.00		2,520.00		650.00	7,800.00
Grounds Maint, Elec, Pl, Driv, Comm		1,100.00		13,200.00		2,342.00	28,104.00
Golf Cart Maint		100.00		1,200.00		111.37	1,336.44
Gate Repairs & Entrance Cards		55.00		660.00		110.00	1,320.00
Gym Equipment Repairs		50.00		600.00		50.00	600.00
Garage Door Maint		0.00		0.00		0.00	0.00
		#REF!		#REF!		#REF!	#REF!
Exterminating & Termite Bond		966.00		11,592.00		967.00	11,604.00
Landscape Contract		1,500.00		18,000.00		2,400.00	28,800.00
Flowers- Pine Straw-Sod		500.00		6,000.00		500.00	6,000.00
Landscape Improvement		0.00		0.00		228.00	2,736.00
Monitoring/Batt/Ann Exting-bld exp		1,250.00		15,000.00		625.00	7,500.00
Courtesy Officer		300.00		3,600.00		0.00	0.00
TOTAL MAINTENANCE		6,869.94		**$ 82,439.28**		11,411.87	**$ 136,942.44**
	0	0.00		0.00		0.00	0.00
G & A EXPENSES		0.00		0.00		0.00	0.00
Admin & General		165.00		1,980.00		165.00	1,980.00
Coupons		110.00		1,320.00		0.00	0.00
Computer Expense		25.00		300.00		70.00	840.00
Office Equipment Rental		13.00		156.00		10.40	124.80
Licenses & Permits		80.00		960.00		137.00	1,644.00
Master Assoc. Dues increase?		7,488.00		89,856.00		7,488.00	89,856.00
Clubhouse Food & Drink		25.00		300.00		66.00	792.00
Bank Charges		0.00		0.00		0.00	0.00
Office Supplies		125.00		1,500.00		146.00	1,752.00
Postage		83.00		996.00		127.00	1,524.00
Credit Services		95.00		1,140.00		52.00	624.00
Property Insurance		15,450.00		185,400.00		10,482.42	125,789.04
Audit Fee		0.00		0.00		89.00	1,068.00
Legal Expense		400.00		4,800.00		380.00	4,560.00
Property Management increase?		1,453.00		17,436.00		1,490.00	17,880.00
Resident Activities		0.00		0.00		0.00	0.00
Signs/Banners		0.00		0.00		50.00	600.00
	0	0.00		0.00		0.00	0.00
TOTAL G & A EXPENSES		26,097.00		**$ 313,164.00**		22,184.82	**$ 266,217.84**
	0	0.00		0.00		0.00	0.00
TOTAL EXPENSES		57,624.86		**$ 691,498.32**		58,836.92	**$ 706,043.05**
		0.00				0.00	
	0	0.00		0.00		0.00	0.00
NET EXCESS (DEFICIT)		**$ (29.75)**		**$ (357.00)**		**$ (32.73)**	**$ (392.73)**
	0			0			0

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1/18/2011

Westbury Park ROA
C/O Kevin Farruggio, Vice President
4454 Bluffton Park Crescent, Suite 107
Bluffton, SC29910

Response to proposal of back entrance for The Estate at Westbury community

The Estate at Westbury Home Owners Association (HOA) Board of Directors has reviewed your recent proposal dated December 6, 2010 and after carful considerations of all point on both sides have unanimously agreed that they are not interested in the offer proposed for the back entrance.

The Board of directors also openly discussed this issue at a recent open board meeting in which the general consensus was opposed to the back entrance.

We appreciate the consideration and thought that has been taken regarding this issue. Any further communication or questions regarding this issue should be directed to my office at 706-4763 or by email at jaziel.estate@hotmail.com.

Respectfully,

Jaziel Green
Association Manager

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THE ESTATE AT WESTBURY
A CONDOMINIUM

Present:
Louise Haaker – President
Aldo Roccisano-Treasurer
Jaziel Green - Association Manager

Absent:
Jose Fuentez – Vice President

- **Meeting Called to order 12/11/2010 at 2:00 PM-Louise Haaker**

- **President Haaker opened the meeting.**

Budget: Reserve funds are secured with CD's invested locally.
Regime fees have been increased minimally and that was unavoidable due to unit foreclosures, tardy payments, inflationary cost of supplies and unanticipated shortfalls in revenues. Budgeted contracts are reviewed annually to ascertain the best prices.
No special assessments are anticipated at this time.
HOA Property Manager Jaziel Green was commended for her six years of continuous service.
Owners were encouraged to make their management company and/or tenants aware of the regulations applied to the property and enforced by the property manager.

Updates presented by Association Manager:

- **Utility Billing Information Requested by Board President**

A review of our costly third-party water billing service resulted in the HOA taking over the billing service. This will be implemented in the first quarter 2011. Owners were informed of this change in a separate notice which went out with 2011 budgetary information. It was noted that water/sewer costs and to whom the bill is sent (tenant or owner) will not be changed. Elimination of the 3rd party billing service will omit their related inspection charges which will be done in-house by HOA employees and we should be able to pass that savings on. **The Hoa office will notify all owners when any changes are to happen, until then water bills should be paid as usual to UBS until further notice.** Regardless of how or to whom the bill is sent, ultimately it is the responsibility of the unit owner for the cost of water/sewer service.

- **Proposed Back Gate Entrance**

Westbury Record on Appeal 0477

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Westbury Community has approached the Estates at Westbury to consider their offer to construct a back entrance and gate to the Estates, citing their perceived benefits to our community. The board noted the negative aspects far outweighed any benefits.

1. We presently have a positive selling/renting point to enter the Estate community through a private, peaceful, attractive residential neighborhood. We are the "Hidden Jewel of Bluffton" because we are hidden from the main highway and aligned with a quiet residential neighborhood. A back gate will not enhance this.
2. A back gate may attract unwanted pedestrian visitors to the community from other properties that have a high incidence of crime in the Bluffton area from Simmonsville Road, substantiated by police reports.
3. Estate will experience increased community through-traffic generated from the Westbury Community seeking a fast approach to Highway 278. As it is now, we have cars backing out from unit parking spaces onto the community roadway.
4. Units directly at the back gate will suffer loss of tranquility, privacy, vehicle noise and possible reduction in property values.
5. Additional reliance on maintenance and upkeep of a new gate based on our historical insufficient management of the current gates.
6. Continued payments to Westbury Community to enter through the present Kensington Blvd. for which we pay $89,000+ annually even with construction of a new gate.

The matter has not been resolved and at the suggestion of the Beaufort County Planning Commission, talks are ongoing. Homeowners will be included in any final decision.

- **Southern State Management (SSM)**

As a result of the day-to-day monitoring of the in-house rental management company (SSM) by the HOA manager, the board was made aware of complaints from owners regarding their performance and management of the units under their rental control. SSM was given notice to correct the matter which could impact renewal of their annual contract. SSM advised the Board in all earnest of their efforts to address concerns. The Board and Association manager will monitor their services and is open to comments from owners using SSM services. Comments or concerns should be addressed to Jaziel Green at jaziel@theestateatwestbury.com The matter was tabled.

- **Exterior repairs of certain building.**

In accordance with our attorney, contracts have been made with an architect and staff engineer to assess the construction damages due to poor workmanship of the original developer. Additional information will be provided as the matter develops. In the interim all buildings are stable.

Respectfully submitted,

Jaziel Green

3/10 RB Launch 6511

WC

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK

This Amendment to Declaration of Covenants, Conditions, Restrictions and Easements is effective as of the 1st day of November 2005 (the "Effective Date") by and between Plantation Properties, L.L.C., a South Carolina limited liability company ("Declarant"), and Montecito Westbury, LLC ("Owner"), and amends that certain Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (the "Declaration") dated November 10, 1998 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Book 1106 at Page 1225, as follows:

1. The following sentence shall be inserted at the end of Section 5.01: "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership or use of the Property for condominiums."

2. The following sentence shall be inserted at the end of Section 5.02(a): "Notwithstanding the foregoing, nothing herein shall be interpreted or applied to prohibit or limit the conversion of the Property to the condominium form of ownership."

3. The following shall be inserted as new Section 7.02(f): "Owner, its successors and assigns, Owner's tenants, all guests and invitees of such tenants/owners shall not have use rights or easement access to the Westbury Park Residential Area amenities, including parks, swimming pools and pool houses.

4. The first two sentences of Section 8.01 shall be deleted and, the following sentences shall be inserted at the beginning of Section 8.01. "The Owner, its successors or assigns, by accepting a Deed to the Property is deemed to covenant and agree to pay an assessment ("Assessment") to Declarant, or its assigns on a monthly basis in the amount of $7,200 as its share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area. This assessment shall become due and payable on the 15th day of each month, and if not paid shall bear interest at the rate of ten percent (10%) per annum until paid. In the event the Owner converts the Property to the condominium form of ownership, the resulting condominium association shall have the obligation to collect adequate funds from the individual unit owners and pay the Assessment directly to the Declarant."

5. Section 8.02 shall be deleted and the following sentence shall be inserted at the beginning of Section 8.02. "The Assessment as set forth hereinabove shall commence on January 1, 2006, and shall be adjusted annually to reflect changes in the Consumer Price Index for all urban Consumers, All Items (base year 1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics, all city average. Under no circumstance will the Annual Assessment fall below the minimum of $86,400.00 per year."

BEAUFORT COUNTY SC- ROD
BK 02269 PGS 1997-1999
DATE: 11/16/2005 10:36:01 AM
INST # 2005097730 RCPT# 376572

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6. The following is added as a new Section 8.04: "For the calendar year in which the Property is converted to the condominium form of ownership ("Conversion"), the Owner shall be responsible for the Assessment prorated to, but not including, the date of Conversion. In the calendar year in which the Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, such proration being in accordance with The Horizontal Property Act of South Carolina, applicable from and including the date of Conversion to the remainder of such calendar year. Subsequent to the calendar year in which Conversion occurs, the owner of each condominium unit shall only be responsible for its prorata share of the Assessment, in accordance with The Horizontal Property Act of South Carolina. Otherwise, the provisions of Article VIII of the Declaration shall apply."

7. Declarant warrants and represents to Owner that Declarant has not assigned any of its rights of enforcement or modification under the Declaration.

8. All terms not defined herein shall have their assigned meaning in the Declaration.

In all other respects, the Declaration is hereby ratified and confirmed.

IN WITNESS WHEREOF, Declarant and Owner have caused this instrument to be executed as of the Effective Date.

WITNESS:

Nora Aguilar

WITNESS:

Name: JANET A. SMITH

DECLARANT:

PLANTATION PROPERTIES, L.L.C.

By:

Name: James N. Richardson, Jr.
Title: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named PLANTATION PROPERTIES, L.L.C., by its appropriate member, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

JANET A. SMITH

SWORN TO before me this 27 day of October, 2005

Notary Public for South Carolina
My Commission Expires: 8-8-2011

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OWNER:

WITNESS:

MONTECITO WESTBURY, LLC, a Delaware limited liability company

Name: Julie L. Douglass

By: James B. Porter

Name: James B. Porter

Title: Vice President

Carolyn K. Cloud

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath; says that s/he saw the within named MONTECITO WESTBURY, LLC by the appropriate officer of its appropriate partner, sign and seal the within written instrument, and as its act and deed deliver the same, and that s/he with the other witness, whose signature appears above, witnessed the execution thereof.

Julie L. Douglass

Carolyn K. Cloud

SWORN TO before me this 1st day of November, 2005

Julie L. Douglass

Notary Public for Florida

My Commission Expires: _____

JULIE L. DOUGLASS
Notary Public - State of Florida
My Commission Expires Sep 4, 2006
Commission # DD 147746

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BEAUFORT COUNTY SC - ROD
BK 3709 Pgs 3041-3047
FILE NUM 2018057667
10/23/2018 04:34:22 PM
RCPT# 909791
RECORDING FEES 13.00

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Prepared By and Without Benefit of Title Examination:
FINGER, MELNICK & BROOKS, P.A.
Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-7000

STATE OF SOUTH CAROLINA	)	NOTICE OF EXTENSION OF THE
	)	DECLARATION OF COVENANTS,
	)	CONDITIONS, RESTRICTIONS, AND
	)	EASEMENTS FOR PALMETTO LAKES
	)	APARTMENTS AT WESTBURY PARK
	)	(Record Book 1106 at Page 1225)
COUNTY OF BEAUFORT	)	(Record Book 2269 at Page 1997)

THIS NOTICE OF EXTENSION OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALMETTO LAKES APARTMENTS AT WESTBURY PARK (herein, the "***Notice***") is made this 23rd day of October, 2018, by WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation (herein, the "***Association***").

WITNESSETH

WHEREAS, on November 10, 1998, Plantation Properties, LLC (herein, the "***Declarant***") made and executed that *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, which was recorded on November 12, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1106 at Page 1225, as amended by that certain *Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments as Westbury Park*, dated November 1, 2005, which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2269 at Page 1997; (herein collectively, the "***Declaration***"); and,

WHEREAS, according to Section 8.01 of the Declaration, the fee owner of the Property identified in Exhibit A to the Declaration is obligated to pay the Declarant, or its successors and assigns, an annual assessment for "[the Owner's] share of the costs for maintenance of the Required Streets and landscaping along the Required Streets and around and within parks within the Westbury Park Residential Area and the Westbury Park Commercial Area"; and,

WHEREAS, according to Section 9.01 of the Declaration, "[t]his Declaration, every provision hereof and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from and after the date of recording, provided that the rights and easements which are stated herein to have a longer duration shall have such longer duration"; and,

WHEREAS, Section 9.01 of the Declaration states that "[t]his Declaration may be renewed for an unlimited number of successive ten (10) year periods by the Declarant, its successors or assigns filing a notice of extension with the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, prior to the expiration of any term"; and,

WHEREAS, by virtue of that certain *Estate Payment Division Agreement and Assignment* entered into between the Declarant, the Association and the Westbury Park Commercial Center Property Owners' Association, Inc., a true and correct copy of which is attached hereto as Exhibit "A" (the "***Estate's Declaration Assignment***"), the Declarant assigned its declarant rights under the Declaration to the Association in accordance with Section 9.03 of the Declaration; and,

WHEREAS, the Association, as successor-in-interest to the Declarant, desires to renew the term of the Declaration for another ten (10) years pursuant to Section 9.01 of the Declaration; and,

WHEREAS, this *Notice of Extension* is being executed and recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, by the Association to reflect the Association's decision to renew the Declaration for an additional ten (10) years.

NOW, THEREFORE, pursuant to Section 9.01 of that certain *Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park*, as amended from time to time, Westbury Park Residential Association, Inc., as successor in interest to Plantation Properties, LLC, hereby gives notice that it is exercising its right to renew the term of the aforesaid Declaration, as amended, for an additional ten (10) year period and that upon the recording hereof, the term of the aforesaid Declaration, as amended, shall be renewed for an additional ten (10) year period.

{*Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.*}

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SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____ (L.S.)
Name: Josh Hemmann
Title: Vice President

STATE OF PENNSYLVANIA)
)
COUNTY OF Lebanon)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 11th day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared JOSH HEMMANN as VICE PRESIDENT for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____(SEAL)
Second Witness/Notary Public for Pennsylvania
Notary Printed Name: Shelley L Derr
My Commission Expires: October 29, 2018

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SHELLEY L. DERR, Notary Public
North Cornwall Twp., Lebanon County
My Commission Expires October 29, 2018

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SIGNED, SEALED and DELIVERED as of the first date above set forth.

WITNESSES:

First Witness

Second Witness / Notary Public

ASSOCIATION:
WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation

Attest: _____ (L.S.)
Name: Stacey Sawyer
Title: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 22 day of October, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared STACEY SAWYER as SECRETARY for WESTBURY PARK RESIDENTIAL ASSOCIATION, INC., a South Carolina nonprofit corporation, known or satisfactorily proven to me to be the persons whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

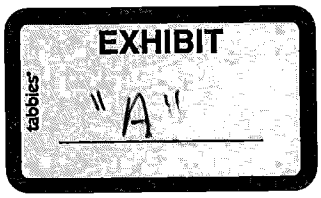
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

TASHA ARD
NOTARY PUBLIC
State of South Carolina
My Commission Expires May 22, 2023

_____(SEAL)
Second Witness/Notary Public for South Carolina
Notary Printed Name: TASHA ARD
My Commission Expires: May 22, 2023

f:\client\v - z\westbury park res. association, inc\agreements\estates at westbury\notice of extension (erl.2).docx

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT

THIS ESTATE PAYMENT DIVISION AGREEMENT AND ASSIGNMENT is made and entered into this ____ day of _____, 2015, among Plantation Properties, LLC (hereinafter "PPLLC"), Westbury Park Residential Association, Inc. (hereinafter "ROA") and Westbury Park Commercial Center Property Owners' Association, Inc. (hereinafter "COA").

AGREEMENT

WHEREAS, on November 1, 2005, PPLLC entered into an "Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park" with Montecito Westbury, LLC, pursuant to which certain assessment funds are paid to PPLLC on a monthly basis in connection with the Estate at Westbury Park condominiums (the "Estate Funds"), which is incorporated herein by reference and referred to as the "Estate Agreement;" and,

WHEREAS, PPLLC does agree that beginning on August 1, 2015 to relinquish any rights that it may have to the Estate Funds and assign such Estate Funds to the ROA and COA; and,

WHEREAS, the COA agrees not to pursue, by lawsuit or other means, PPLLC for any Estate Funds paid to PPLLC prior to August 1, 2015; and,

WHEREAS, the ROA and COA have entered into an agreement as to the division of the Estate Funds between them, whereby beginning on August 1, 2015 the Estate Funds are to be divided 80% to the ROA and 20% to the COA; and,

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) paid in hand by the ROA and COA to PPLLC, the receipt and sufficiency whereof is hereby acknowledged, PPLLC does, hereby assign, set over, transfer and convey to the ROA and COA, and their respective successors and assigns: a) all of PPLLC's rights, title and interest in and to the Estate Agreement; and b) all of PPLLC's rights, title and interest in and to the Estate Funds.

The ROA and the COA agree that the Estate Funds will be divided between them as follows: ROA: eighty percent (80%); COA: twenty percent (20%). The Estate Funds will be paid to the ROA which will remit the COA's portion of the funds within twenty (20) days of receipt of the same. The ROA shall not charge any administration fee for its collection and handling of the Estate Funds; provided, however, if legal action is necessary to collect the Estate Funds, the costs of collection shall be prorated and deducted from the Estate Funds. The ROA and COA agree to cooperate with each other in any required collection efforts regarding the Estate Funds.

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

WITNESSES:

WITNESSES:

PLANTATION PROPERTIES, LLC

By: _____
James N. Richardson, Jr.
Managing Member

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By: _____
Pete Popovich
President

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Richard L. Boeke
President

ELECTRONICALLY FILED - 2020 Sep 15 9:35 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

IN WITNESS WHEREOF, the undersigned have executed this document as of the day and year first above written.

WITNESSES:

PLANTATION PROPERTIES, LLC

By:_____
James N. Richardson, Jr.
Managing Member

WITNESSES:

WESTBURY PARK RESIDENTIAL ASSOCIATION, INC.

By:_____
Pete Popovich
President

WITNESSES:

Brooke Boeke

Stephanie Metts

WESTBURY PARK COMMERCIAL CENTER PROPERTY OWNERS' ASSOCIATION, INC.

By: Richard L Boeke
Richard L. Boeke
President

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ELECTRONICALLY FILED - 2020 Sep 15 9:35 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

October 15, 2018

John P. Qualey, Jr.,
as Registered Agent for
Plantation Properties, LLC
PO Box 1290
181 Bluffton Road, Suite F102
Magnolia Village Business Park
Bluffton, SC 29910

James N. Richardson, Jr.
as Registered Agent for
Westbury Park Commercial Center Property Owners Association, Inc.
c/o The Richardson Group
3 Harbour Passage
Hilton Head Island, SC 29926

Westbury Park Residential Property Owners Association, Inc.
IMC Resort Services, Inc.
2 Corpus Christi #302
Hilton Head Island, SC 29928

Dear Sir or Madame:

We serve as counsel to the Estate at Westbury Owner's Association, Inc. ("EWOA"), and we are contacting you on its behalf.

The purpose of this letter is to inform you that, beginning on November 12, 2018, EWOA will no longer pay any monthly assessment, purportedly for maintenance and landscaping of the streets, Westbury Park Way and Kensington Boulevard. Furthermore, EWOA hereby requests an accounting of the use of its assessment payments for the past twenty (20) years.

The basis for the above statements may be found in the history of the property:

On November 12, 1998, Plantation Properties, LLC ("Declarant"), recorded its Declaration of Covenants, Restrictions, and Easements for Palmetto Lakes Apartments at Westbury Park ("Declaration.") Palmetto Lakes Apartments at Westbury Park ("the Property") was a predecessor in title to EWOA. The Declaration contains a covenant by the Owner of the Property to pay to the Declarant an annual Assessment in the amount of $17,500, which covenant is found in Section 8.01. This Assessment is specifically

designated as being for the Owner's "share of the costs for maintenance of the Required Streets and landscaping along the Required Streets...." Section 2.03(d) defines "Required Streets" as Westbury Park Way and Kensington Boulevard. Although Section 8.01 specifies that the Assessment shall be paid to the Declarant, it notes that the reasonable care and maintenance of the streets and landscaping is the responsibility of Westbury Park Commercial Center Property Owners Association, Inc. and Westbury Park Residential Property Owners Association, Inc.

Thereafter, and also on November 12, 1998, Plantation Properties conveyed the Property to an entity called Westbury Park Apartments, Ltd. This entity subsequently conveyed the Property to Montecito Westbury, LLC ("Montecito") by a deed recorded on November 2, 2005.

Shortly after Montecito acquired title to the Property, Plantation Properties—as Declarant—recorded an Amendment to the Declaration ("Amendment"). The Amendment was signed by Montecito as the Owner of the Property, which signature was required pursuant to the Declaration, Section 9.02; the Amendment was recorded on November 11, 2005.

The Amendment had two purposes that are relevant to the parties herein. It altered Article V of the original Declaration to allow the Property to be converted into the condominium form of ownership, and it amended the covenant in Section 8.01 so as to require the Owner of the Property to pay a monthly Assessment in the amount of $7,200 (to be adjusted annually). This amended Assessment was also specifically designated as being for the Property's "share of the cost for maintenance [of streets and landscaping.]" The amended Assessment contemplated that, if Montecito transformed the property into the condominium form of ownership, "the resulting condominium association shall have the obligation to collect adequate funds....and pay the Assessment directly to" Palmetto Properties.

The Amendment warranted that Plantation Properties had not assigned any of its rights under the 1998 Declaration. It concluded with the statement that "[i]n all other respects, the Declaration is hereby ratified and confirmed."

On January 26, 2006, as contemplated by the Amendment, Montecito converted the Property to a condominium form of ownership. The Master Deed for the Estate at Westbury Horizontal Property Regime names Montecito as Declarant. The Master Deed does not specifically reference the Assessment, nor the 2005 Amendment obligating the condominium association to pay the monthly assessment to Plantation Properties. On or about February 15, 2006, Montecito began conveying the condominium units to individual owners. Those owners are members of the undersigned EWOA. Pursuant to the Declaration and to the Amendment, EWOA has been duly paying a monthly Assessment.

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Particularly pertinent to the above history is Article IX of the 1998 Declaration. Article IX contains provisions for the term, termination, modification, and assignments of Declarant's rights and duties. **By the provisions of Article IX, the Declaration—and all of its covenants—is limited in force and effect to a period of twenty (20) years from November 12, 1998.**

Article IX delineates that the Declaration's covenants may only be extended "by the Owner and Declarant jointly." The Declaration has not been so extended. **Therefore, the Property Owner's covenant to pay the Assessment terminates on November 12, 2018.**

Furthermore, it is EWOA's contention that Plantation Properties (as Declarant under the 1998 Declaration and its Amendment) owes a fiduciary duty to the Property and to the EWOA. This fiduciary duty requires, among other things, that Plantation Properties act with good faith and fair dealing toward the Property and its Owner.

In addition to its fiduciary duty, Plantation Properties also undertook the specific contractual duty to use the Assessment for the maintenance of the streets and landscaping as set forth in Article 8.01.

EWOA therefore has a right to an accounting from Plantation Properties as to the use of the Assessment. Similarly, Plantation Properties has a duty to render such an accounting, demonstrating that there has been no misallocation of the funds entrusted to it, and surrendering any amount which has not been used in accordance with the Declaration and its Amendment.

EWOA therefore demands an accounting that sets forth the use of the Assessment, since 1998. It further demands that this accounting would be rendered no later than thirty (30) days from the date of this letter.

Very truly yours,

Ian S. Ford

Cc: Joseph Ables *(via email)*

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FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

TERRY A. FINGER ▪
TYLER A. MELNICK □
THOMAS L. BROOKS
BENJAMIN T. SHELTON
E. RICHARDSON LaBRUCE

Of Counsel:
ANNE C. MARSCHER *□
ARTHUR F. ANDREWS†□

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Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-8802 Facsimile
(843) 681-7000 Telephone
bshelton@fingerlaw.com

Also admitted in:
* Georgia
† New York

□ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

June 20, 2019

VIA EMAIL: Ian.ford@fordwallace.com
AND U.S. MAIL, FIRST CLASS

Estate at Westbury Owner's Association, Inc.
c/o Ian S. Ford, Esq.
Ford Wallace Thomson LLC
715 King St.
Charleston, SC 29403

Re: Estate at Westbury — Notice of Default

Dear Ian,

I hope this correspondence finds you well. As you know, this Firm serves as general counsel to Westbury Park Residential Association, Inc. ("WPRA"). On December 27, 2018, WPRA notified the Estate at Westbury Owner's Association, Inc. ("E@W") of its default on payments owed to WPRA under the easement agreement arising from the Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park, dated November 10, 1998 and its Amendment dated November 1, 2005 (herein, collectively, the "Declaration"). This letter renews, restates and updates the December 27, 2018 Notice of Default.

Since sending the December 27, 2018 Notice of Default, WPRA has endeavored to resolve the delinquency in good faith by meeting with the E@W, sharing confidential material with the E@W, and extending offers to the E@W to meet again in effort to resolve the default by way of joint agreement. During this same time period, WPRA has suffered damages to the gates used by the E@W by agents and residents of the E@W. In response to these events, WPRA sought payment from and the assistance of the E@W to identify and remedy these breaches and damages.

Despite these efforts, WPRA has received no further communication from the E@W relative to the default, has received no payment from the E@W under the easement agreement, and has received no assistance or remedy from the E@W relative to the gate breaches in question.

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NOTICE OF DEFAULT OF EASEMENT AGREEMENT

Please take notice that the Estates at Westbury is delinquent for payments past owed and due for the upkeep and maintenance of the required streets as defined under the Declaration. A current statement of the account is enclosed as **Exhibit A**. Further, WPRA has incurred significant legal fees associated with the collection of these past due assessments.

WPRA demands immediate payment of the full amount contained in **Exhibit A**.

NOTICE OF DAMAGES FOR GATE BREACHES AND VIOLATIONS

As referenced above, agents and residents of the E@W have repeatedly breached the gates, incurred violations to WPRA Rules and Regulations, and damaged the gates of WPRA. WPRA has made demands to the E@W to pay for the damages done to the gates, to seek payment from the responsible parties, to assist in identifying the responsible and otherwise cease from and prevent further acts of property damage. (**Exhibit B**, Notice Letter from WPRA).

To date, E@W has made no effort to pay for the damage and fines its agents and residents have caused and/or incurred, or shared any information with WPRA relative to the violations and property damage caused by E@W's agents and residents.

WPRA trusts that the Estate at Westbury Owner's Association, Inc. understands the gravity of the matters contained in this correspondence. Failure to meaningfully and immediately responding to this correspondence by meeting the demands contained herein and engaging in meaningful attempts to resolve the issues raised by this correspondence will result in WPRA and other effected entities fully and appropriately enforcing their rights at law and in equity.

With regards, I am

Very truly yours,

FINGER, MELNICK & BROOKS, P.A.

Benjamin T. Shelton

BTS/js
cc: client (via e-mail)
F:\client\V - Z\Westbury Park Res. Association, Inc\Estate at Westbury Accounting Demand\Correspondence\Letter to Ian 6-20-19.doc

Westbury Record on Appeal 0493

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Westbury Park, ROA
c/o IMC Resort Services, Inc
2 Corpus Christi, Suite #302
Hilton Head Island, SC 29928

Phone: 843-785-4775

Account Number:	Statement Date
45719	6/14/2019
Due Date	**Amount Due:**
	76,512.92

Make checks payable to your association



Send payment To:

at Westbury The Estates
85 Kensington Blvd.
Bluffton, SC 29910

Westbury Park, ROA
c/o IMC Resort Services, Inc
P.O. Box 95187
Las Vegas, NV 89193-5187

DATE	TRANSACTION	AMOUNT	BALANCE	Check #
	Balance Forward:		0.00	
8/31/2018	Start Up Balance - Prior Manag	15,045.72	15,045.72	
9/1/2018	Easement Assessment	7,522.00	22,567.72	
9/16/2018	Late Fee	62.43	22,630.15	
10/1/2018	Easement Assessment	7,522.00	30,152.15	
10/16/2018	Late Fee	62.43	30,214.58	
10/17/2018	Payment	-15,046.00	15,168.58	11027
11/1/2018	Easement Assessment	7,522.00	22,690.58	
11/16/2018	Late Fee	62.43	22,753.01	
12/1/2018	Easement Assessment	7,522.00	30,275.01	
12/7/2018	Payment	-30.00	30,245.01	1555
12/16/2018	Late Fee	62.43	30,307.44	
1/1/2019	Regime Fee	404.50	30,711.94	
1/1/2019	Easement Assessment	7,643.00	38,354.94	
1/16/2019	Late Fee	63.44	38,418.38	
2/1/2019	Late Fee	25.00	38,443.38	
2/1/2019	Easement Assessment	7,643.00	46,086.38	
2/16/2019	Late Fee	63.44	46,149.82	
2/25/2019	Credit Waive late fees	-25.00	46,124.82	
2/25/2019	Credit Assessment	-374.22	45,750.60	
3/1/2019	Easement Assessment	7,643.00	53,393.60	
3/16/2019	Late Fee	63.44	53,457.04	
4/1/2019	Easement Assessment	7,643.00	61,100.04	

FOLD ON PERFORATIONS, DETACH COUPON, AND RETURN IT WITH YOUR PAYMENT

Date Paid: _____

Check #: _____

at Westbury The Estates
85 Kensington Blvd.
Bluffton, SC 29910

Account Number:	Payment Due By:
45719	
Amount Due:	**Amount Enclosed:**
76,512.92	

Make checks payable to your association
Detach and return this portion with your remittance

Property: 85 KENSINGTON BLVD
Bluffton, SC 29910

Westbury Park, ROA
c/o IMC Resort Services, Inc
P.O. Box 95187
Las Vegas, NV 89193-5187

In accordance with the rules of the National Automated Clearing House, information from the check sent with this payment may be used to create an electronic debit to your account. The electronic debit on your statement is valid as proof of payment.

0000 003408 0000000000045719 1 00000 00000 0

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Westbury Park, ROA
c/o IMC Resort Services, Inc
2 Corpus Christi, Suite #302
Hilton Head Island, SC 29928

Phone: 843-785-4775

Account Number:	Statement Date
45719	6/14/2019
Due Date	**Amount Due:**
	76,512.92

Make checks payable to your association

Send payment To:

at Westbury The Estates
85 Kensington Blvd.
Bluffton, SC 29910

Westbury Park, ROA
c/o IMC Resort Services, Inc
P.O. Box 95187
Las Vegas, NV 89193-5187

DATE	TRANSACTION	AMOUNT	BALANCE	Check #
4/16/2019	Late Fee	63.44	61,163.48	
5/1/2019	Easement Assessment	7,643.00	68,806.48	
5/16/2019	Late Fee	63.44	68,869.92	
6/1/2019	Easement Assessment	7,643.00	76,512.92	

Pay This Amount: $76,512.92

Please send all correspondence or any inquiries on your invoice to:
IMC Resort Services, Inc
2 Corpus Christi, Suite #302
Hilton Head Island, SC 29928

FOLD ON PERFORATIONS, DETACH COUPON, AND RETURN IT WITH YOUR PAYMENT

Date Paid: _____

Check #: _____

at Westbury The Estates
85 Kensington Blvd.
Bluffton, SC 29910

Account Number:	Payment Due By:
45719	
Amount Due:	**Amount Enclosed:**
76,512.92	

Property: 85 KENSINGTON BLVD
Bluffton, SC 29910

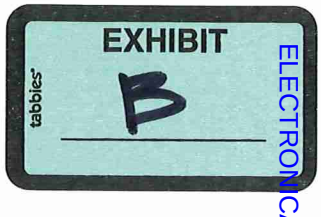
Make checks payable to your association
Detach and return this portion with your remittance

Westbury Park, ROA
c/o IMC Resort Services, Inc
P.O. Box 95187
Las Vegas, NV 89193-5187

In accordance with the rules of the National Automated Clearing House, information from the check sent with this payment may be used to create an electronic debit to your account. The electronic debit on your statement is valid as proof of payment.

0000 003408 0000000000045719 THEESTATES0 000212 0





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Board of Directors
Stacey Sawyer, President
Karen G. Parks, Treasurer
Phil Mateo, Secretary
Derek Jones, Member
Westbury Park Residential Association, Inc.
c/o IMC Resort Services
2 Corpus Christie Suite #302
Hilton Head Island, SC 29928

May 17, 2019

Ms. Jeannette Prinsen, Community Manager
Estate At Westbury Owner's Association, Inc.
85 Kensington Blvd.
Bluffton SC 29910

Ms. Noreen McMullen
Coastal Security Services, Inc.
14 Palmetto Business Park Road
Hilton Head Island, SC 29928

RE: **NOTICE TO CEASE & DESIST AND NOTICE OF VIOLATION – UNAUTHORIZED USE & ENTRY TO PROPERTY OF WESTBURY PARK RESIDENTIAL ASSOCIATION VIA THE CONTROLLED ACCESS GATE SYSTEM ("Main Gate")**

Dear Ms. Prinsen and Ms. McMullen:

Please allow this letter to provide notice to the Estate at Westbury Owner's Association, Inc. (E@W) that Coastal Security Services, Inc. (Coastal Security) as the E@W's security agent, has repeatedly physically forced entry through the vehicular gates of Westbury Park Residential Association, Inc. ("WPRA"). Take notice that E@W and its agent, Coastal Security shall immediately cease and desist forcible entry into and/or any other unauthorized methods of entry into Westbury Park via the vehicular gates of WPRA or otherwise.

This letter also serves as a NOTICE OF VIOLATION of improper gate entry, which carries a fine of $250.00 *per occurrence*. Per the policy of WPRA, the fine amount doubles for *each subsequent additional violation* (e.g. 2nd occurrence is $500.00, 3rd occurrence is $1,000.00, etc.). Attached is a record of each of the violations by Coastal Security that WPRA has knowledge of as of the date of this letter. Also included are dates, times and photographic or video images of each gate breach by staff and vehicles of Coastal Security.

The gate breaches by Coastal Security employees and vehicles are inexcusable. Until recently, Coastal Security was the security vendor for WPRA and as such, the services WPRA contracted them for included providing security patrols and camera image viewing to deter or detect unauthorized individuals from

attempting to breach the gates of our community as well as improper gate breaches by residents or guests. Their role also included investigating and issuing written reports when this type of inappropriate behavior occurred in order to allow WPRA to track down and issue Notice of Violations. Coastal Security is knowingly violating these rules and intentionally doing damage to WPRA property.

On the morning of Friday, May 10, 2019, WPRA's community manager notified Ms. McMullen of Coastal Security via telephone about the need for these gate breaches to cease immediately. Instead, breaches continued to occur as the attached material shows. This behavior must stop immediately and costs for all of the documented violations which have occurred must be paid.

Further, E@W and its agent and vendor, Coastal Security, must immediately coordinate and arrange with IMC to purchase an appropriately reasonable number of properly authorized and registered access devices (e.g. access cards or fobs) which are to be used at all times – *no exceptions allowed* – by the personnel of Coastal Security to enter the gates at Westbury Park for the sole purpose of performing whatever contracted services E@W has engaged them to perform.

Coastal Security is to immediately cease and desist from allowing anyone without a duly registered and authorized access device to enter the gates at Westbury Park. Any further breaches may result in a report of trespass and/or malicious injury to property damage to be made to the Beaufort County Sheriff's Office.

WPRA also requests that E@W and Coastal Security, including Beaufort County's Sheriff's Office as necessary, conduct an investigation of the specific breach which occurred on May 5, 2019 at approximately 20:58. In this instance, Coastal Security's Patrol Officer is clearly shown breaching the gate to first allow an unidentified and unknown individual entry to Westbury Park and then following this action with his own unauthorized entry. We are specifically looking to have you provide us with the identity of the as yet unknown individual including name, address and contact information.

Finally, please know that Westbury Park is coordinating and completing an inspection and evaluation for any damage to the gate systems and equipment as a result of these multiple breaches. Once known, WPRA will seek payment for the damage from the appropriate parties.

Please respond as soon as possible as indicated. Please contact Dave Lewellen at IMC to arrange for a conference call with us should you have any questions.

Very Truly Yours,

Board of Directors
Westbury Park Residential Association, Inc.

Encl.
cc: Dave Lewellen, Community Manager of WPRA through IMC Resort Service

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FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

TERRY A. FINGER ▪
THOMAS L. BROOKS
TYLER A. MELNICK▪
BENJAMIN T. SHELTON
E. RICHARDSON LaBRUCE

Of Counsel:
ANNE C. MARSCHER *▫
ARTHUR F. ANDREWS†▫

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Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-8802 Facsimile
(843) 681-7000 Telephone
bshelton@fingerlaw.com

Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

April 8, 2020

VIA EMAIL ONLY

Mr. Ian Ford, Esq.
ian.ford@fordwallace.com

Ms. Ainsley Fisher Tillman, Esq.
Ainsley.tillman@fordwallace.com

Mr. Evan Bromley, Esq.
evan@bromleylawfirm.com

Re: TRESPASS NOTICE
DEMAND TO CEASE AND DESIST

Your Client: Estate at Westbury Owners Association
Our Client: Westbury Park Residential Association, Inc.

Dear Ian, Ainsley, and Evan,

First, I hope you and your families are safe and healthy. This letter is to bring several matters regarding Estate at Westbury Owners Association, Inc. (the "Estate") to your attention that demand immediate action.

In the last several weeks, the use of Westbury Park Residential Association, Inc.'s (WPRA) streets and parks by residents and guests at the Estate has spiked. Estate at Westbury residents are using the WPRA's community playground, fishing in WPRA's parks, exercising in common areas, bringing coolers and lounge chairs to these areas and congregating at increase rates. Dangerous conduct has

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occurred, with Estate residents harassing (even getting within a few feet of and taking "selfies" with) the large resident alligator. (See enclosed picture. The arrow on the ground in the attached picture is the tail of a large alligator. The lady next to it is a resident at the Estates. The alligator and the individual are on WPRA community property.)

Meanwhile, an Estate resident recently instigated a confrontation with a WPRA security guard requiring a response by Sheriff's deputies on WPRA property (report enclosed). In another recent incident, Estate residents or guests rode motorcycles around the gates to gain access to the community. The Estate's Board and Management continue to fail to meaningfully cooperate in WPRA's efforts to safeguard and protect the community and enforce their own rules.

By this correspondence, WPRA demands that the Estate notify its residents that, per the terms of the Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (Book 02269/ Pages 1997-1999), Estate owners, tenants, guests and invitees do not have use rights or easement access to WPRA amenities, including parks, swimming pools or pool houses and take reasonable action to prevent the same.

WPRA demands that the Estate notify its residents that the streets used for vehicular and pedestrian access to the Estate are for ingress and egress only, and not for recreation by Estate residents, guests or invitees.

Further, WPRA demands that the Estate reasonably enforce its own Covenants, and Rules and Regulations. Please take notice, the Estate will be a party to any claim of damage or injury to WPRA property or injury occurring on WPRA property arising from the Estate's failure to enforce its own rules.

Finally, please advise the Estate that individuals trespassing on WPRA common property will be deemed trespassers by WPRA security, and county law enforcement will be contacted, as appropriate, in every instance of trespass after notice by Estate residents, guests, or invitees.

My client regrets the necessity of this correspondence. Despite pending litigation intended to end the conduct described above, it is getting worse, not better.

My clients are willing to maintain an open dialogue in cooperation with the Estate to assist it with the enforcement of their Rules (as contemplated by their own Rules, enclosed), and to work together to ensure each respective community is safe during these trying times, and into the future.

Of course, nothing in this correspondence shall constitute or be construed to constitute an admission, waiver, or release of any claims or positions maintained in the pending litigation. This correspondence is sent as an emergency notice, warning and plea for the Estate to compel its residents to comply with existing Covenants, Rules, and Orders of civil authority. I trust you will immediately forward a copy of this correspondence to your client and request the same.

With regards, I am

Respectfully yours,

FINGER, MELNICK & BROOKS, PA.

s/Benjamin T. Shelton

Benjamin T. Shelton

cc: Client

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State of South Carolina	)	Court of Common Pleas
	)	14th Judicial Circuit
County of Beaufort	)	No. 2020-CP-07-00158
Westbury Park Residential Association, Inc.,	)	
Plaintiff,	)	
vs.	)	HEARING
	)	September 16, 2020
Estate at Westbury Owners Association, Inc.,	)	
Defendant,	)	

Hearing reported by Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina; said hearing held before Honorable Marvin H. Dukes, III, Beaufort County Master in Equity and Special Circuit Court Judge in accordance with the South Carolina Rules of Civil Procedure, at the Beaufort County Courthouse, 102 Ribaut Road, Room 212, Beaufort, South Carolina on September 16th, 2020, at the hour of 10:08 a.m.

Deborah S. Thomas, CVRM
80 Plymouth Lane
Bluffton, South Carolina 29909
(803) 206-7390

2

Appearances

Representing the Plaintiff:

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This hearing is conducted in accordance with the South Carolina Rules of Civil Procedure.

JUDGE DUKES: All right. Good morning, then. We're here in 2020-CP-07-00158. This is Westbury Park Residential Association versus Estate at Westbury Owners Association. We're here for two different things. This would be plaintiff's motion for injunction -- temporary injunction and defendant's motion for a partial summary judgment. I understand the parties have discussed an order.

The Plaintiff is going to go first.

But before we do that, in going through the exhibits last night, I noticed the name Wes Jones as executed on a couple of at least one or two of the documents, proposed Exhibits 1 and 2. And I think he was perhaps a representative of one of the declarants at some point in the past. It looked like 1998. Wes Jones is my mother's brother, making him my uncle in the third degree of sanguinity. So before we went on the record, I discussed that with counsel or informed counsel, at least, of that fact.

I'm now going to leave the courtroom for a few moments and let counsel discuss that. And when I return, I'll be happy to hear from counsel. So, we'll be off the record for just a second.

(BREAK TAKEN)

JUDGE DUKES: Back of the record, then. I guess this needs a hole in it.

(OFF RECORD DISCUSSION)

JUDGE DUKES: Okay. Pursuant to rules, I left the courtroom. Counsel had an

opportunity to discuss the Wes Jones issue I had brought up earlier. I'm happy to hear from counsel on that.

MR. SHELTON: Your Honor, for Park, we have no objection to -- if there's any potential conflict there, we waive any conflict. We have no objection of you hearing this hearing even if it comes to the light that Mr. Jones will later be a witness in the case.

JUDGE DUKES: All right. Thank you.

MR. FORD: Same for the Estate. We have no objection and don't foresee it being a problem in any event.

JUDGE DUKES: All right. Great. Thank you so much. Well then, I'm happy to hear from the Plaintiff.

MR. SHELTON: Thank you, Your Honor. May it please the court. First it's good to see you be in the presence of other great lawyers. I always

like to start off a hearing with commending of the

lawyers and their collegiality. This has been a case that is obviously hard fought, but we are, I think, working well together as we're supposed to. So I'd like to say thank you for the opposing side for that.

This is a matter between Park and Estate. And for purposes of the record, I'll say Westbury Park Residential Association and Estate of Westbury Owners Association. I represent Westbury Park Residential Association. The Park, as we'll call it today.

Your Honor may be familiar with this from being a resident of Beaufort County for your entire life. But this is a residential neighborhood in southern Beaufort County between the corner of Buck Island Road and 278, for all intents and purposes. It's tucked behind there. It's behind Plantation Park. Originally, Plantation Properties, LLC was a declarant of both Westbury Park, also -- or Park and the Estate.

The estate is a 20-acre parcel of approximately 320 units that is tucked behind and within and in the northeast corner of the Park. The Park is an over 120-parcel. I believe 127 acres.

But over all, I know it's over a 120-acre parcel with approximately 350 residential units. The vast majority of those units are single-family. All of the units are single-family dwellings. They're are some townhouses. However, the vast majority are free-standing, single-family dwellings.

Presently, the only way to access the Estate is through the Park. There are two means of vehicular and pedestrian access to both properties. One is -- and they both spill out, if you will, onto a road called Kensington Boulevard. Kensington -- and for the matters of -- purpose of the record is K-E-N-S-I-N-G-T-O-N Boulevard.

One entrance comes from the direction of 278. We'll call that the 278 entrance. The other entrance comes from the direction of Buck Island Road. We'll call that the Buck Island entrance.

The 278 entrance is a bit easily -- more easily accessible in that -- to a certain degree because it has a farther backup to it of interior roadways off of the major roadways. The Buck Island entrance is situated in such a way that there's only

one lot that separates the gate from Buck Island Road. Therefore, if any -- there is no keypad dialing, for example, on the Buck Island Road

entrance. There's only keypad dialing on the Estate entrance.

Both entrances have gates that are supposed to be, at all times, operational. Both of them are entrance and exit gates. They are lift-arm gates. The lift-arm gates are operated by a key fob or a clicker fob system. That's how they're designed to be operated.

Their one gate from 278 is also operated by keypad through an app on -- that one can download on their phone or otherwise where you dial the keypad. You get a notification that someone wants to get in if you're an owner or resident. And you can touch it and allow the gate to raise.

And I do not mean to be getting into the testimonial evidence here. I'm just trying to provide this for background. I think it would be

beneficial for all parties. Now, I do not believe any of these facts are disputed either.

Since 1998, these two different communities have existed. In 1998, what is now known as the Estate was known as Palmetto Lakes Apartments. It was originally developed as an apartment complex with a single owner. All units were rental units.

In 1998 in November, we'll reference the date and the filings as Exhibit 1 to the plaintiff's memorandum in support and opposition, support of the temporary injunction, opposition to the summary judgment motion. In that Exhibit 1, you will see that it was filed in November of 1998.

In that agreement where Plantation Properties, LLC is the declarant, it grants a right-of-way, is the term it uses, for ingress and egress for residents of Palmetto Lakes Apartments to access their property through Kensington Boulevard. That section is in Section 7 -- or Article 7 of that declaration.

Along with it came payment terms for the maintenance and use of the right-of-way or, and/or easement, however we want to fashion the term. The initial payment terms, if I remember correctly without referencing my documents, were around $17,000 a year. I think they're $17,500 a year if I'm not incorrect. That is an important notation.

Section 9.01 and 9.02 of the declaration of Palmetto Lakes Apartments governs its length, governance the renewal provisions of the declaration, which I believe is largely at issue today in the motion for summary judgment. It also

governs the modification, quote/unquote, extension of the documents, alteration of the documents and termination of the documents.

There are two separate sections there which the briefs go into great detail about, particularly the Plaintiff's brief which I'm representing, of course, the Park. It is the Plaintiff's position that -- and we believe that the

documents expressly show that 9.01 and 9.02 are discernible, separate provisions. Understanding that these documents are read as one, reading them as one shows that they are intended to be separate provisions.

In 9.01, it states that the declaration shall have a 20-year term except for those terms in the declaration, and I'm paraphrasing here, that otherwise state, i.e., perpetual, and we would submit to that and understand that's the Defendant's position.

It also says, however, that the declarant, its successors or assigns may, by filing a notice, may renew, renew the declaration for successive ten-year terms. Not change it. Not modify it. In no way alter it. But, renew it for successive ten-year terms by filing a notice of extension with

-- and I apologize. I always butcher this name. I'll say mesne conveyance or mesne conveyance. How ever you're supposed to say it. I'm a formal -- former classical voice major, so it's hard for me to

anglicize any word like that even though I'll butcher the French.

But in any event, that is -- the next section, 9.02, is the Defendant's position. And I don't want pointed to as the division's position I don't want to state the position for them, but I want to be clear to the court. It's the Defendant's position that it governs any type of extension whatsoever of the document, even an extension within 9.01. Our position is that's clearly not the case because the two different provisions contained materially different terms.

For example, 9.02 specifically references an execution and acknowledgment that must be filed jointly between the parties in order to make any of the subject matter therein effective. 9.01 does not have those requirements, does not reference an acknowledgment. We believe acknowledgment is a term of arts, a legal term. It does not reference an execution. It simply says that the declarant, its successors or assigns may file a notice of renewal,

may renew the document -- excuse me -- by filing a notice of extension.

Now, I'm going to backtrack here and backup. We were in 1998 when this document was filed. The next month, the declaration of covenants for west -- for the Park was filed with the register of deeds. And that declaration is still in existence today without any significant alterations or modifications.

In 2005, after a couple of subsequent purchases of the Palmetto Lakes Apartments, now known as The Estate, the apartments were converted to condominium units by the declarant. Well, excuse me. I shouldn't say by the declarant because that's not accurate. It's by the developer of the apartments at the time, the owner of the apartments.

Now, under the initial declaration for the apartments, that is not allowed. They could not be subdivided. In 2005, an amendment to the declaration of covenants, conditions, restrictions and easements for Palmetto Lakes Apartments at Westbury Park was signed by both parties, both the owner of the apartments and by the declarant, Plantation Properties, LLC.

Now, that is significant because it

clearly -- the amendment clearly altered the original terms of the declaration. Those terms specified what the rights of use and easement access to the owners/tenants of the apartments was to be, strictly for ingress and egress. Not for use of the amenities of the Park.

Our position is the amenities of the Park clearly mean all common elements of the Park whether it be lakes, lagoons, common park areas, roadways, sidewalks, playgrounds, et cetera that are not along what is defined by the document as the required streets which is that Kensington Boulevard. The vast majority of it being Kensington Boulevard which I spoke of earlier.

It also, and this is important, changed the payment terms under the easement documents -- excuse me -- under the declaration.

JUDGE DUKES: What exhibit -- let's see.

MR. SHELTON: That is Exhibit 3 to

plaintiff's memorandum, Your Honor.

JUDGE DUKES: Okay.

MR. SHELTON: Excuse me. No. I believe it's exhibit -- I changed my exhibits. I believe it's Exhibit 4. I apologize. Exhibit 4 of

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plaintiff's memorandum.

JUDGE DUKES: I got it.

MR. SHELTON: And the operable sections are included in the memorandum cut-and-paste as well. And it, again -- and the changes were to 7.02 and 8.01 of the declaration for, let's call it, the Apartments, if you will. Or we can still use the word estate, but this was before the Estate was created.

Now, it changed under Section 4 of this amendment in 2005. It states that the assessment from the owner, which is the owner of the Apartments or its successors and assigns, which is now the Estate, shall pay a monthly -- shall have an assessment for a monthly basis in the amount of

$7,200 as its share of the cost for maintenance of the required streets and landscaping along the required streets and around and within parks within the Westbury Park residential area and the Westbury Park commercial area.

This assessment shall become due and payable on the 15th of each month. And if not paid, shall bear interest at the rate of ten percent per annum until paid.

Under Section 5, it specifies that the

assessment shall automatically increase pursuant to the consumer price index adjusted each year. And it states that under no circumstance will the annual assessment fall below the minimum of $86,400 per year.

I beg the court to look at those two provisions and we will -- and our brief sets forth that there are no provisions that require an accounting. There are no provisions that grant inspection rights. There are no provisions that call for reconciliation or a refund or any type of

recuperation of those amounts. It simply states that this is the assessment as the share and at no time shall it fall under $86,400 per year.

Now, we can always speculate as to what -- why that amount was changed. However, the condominium units clearly gave value to the owner. And that is what the document states. So I believe we must rely upon the document for the intent of the document.

Now, if we reference back to the declaration for the Apartments, which, this is an amendment of that I'm just referencing. In the Apartment declaration, it states that it lasts 20 years. Those 20 years -- I do not believe the

20 year term there's a dispute that it came to a natural conclusion without any further act in November of 2018.

The dispute between the parties, at from the Plaintiff's dispute and it's filings, focus on the fact that the Estate failed to pay the Park any

sums after the Park as the assignee and/or successor of declarant rights as to the assessment after November of 2018. Excuse me. It was actually after, I believe October of 2018. This is despite the fact that the Park filed a notice of extension and thereby renewed the declaration for Section 9.01 of the declaration for a successive ten-year term precisely by doing what the declaration says to do in 9.01.

And at that time in October of 2018, the Plaintiff, the Park, along with other entities received a demand or a notice of an accounting for prior payments for 20 years of the assessments.

We have no information in the record that there was ever any type of protest, any type of objection or any type of letter contesting any of those payments by the Apartments or the Estate for the 20 years prior to that.

So the partial summary judgment is

multifold from the Defendants. I bring that factual background which, of course, the crux of this is

going to be from the Plaintiff's position whether the declaration was it extended which we clearly was. We did exactly what the declaration told us to do?

JUDGE DUKES: Is that an exhibit?

MR. SHELTON: It is. It is Exhibit, I believe, Number 5, Your Honor. And in that exhibit, it also includes which is filed at that time the Estate payment and division agreement. One thing I did not touch on in this long colloquy which I admit is already long.

MR. FORD: It's kind of an argument, not opening statement.

MR. SHELTON: It is. It is. It is. And I understand.

MR. FORD: I'm not trying to be that guy but --

MR. SHELTON: No. And I appreciate that.

JUDGE DUKES: Luckily we have plenty of time.

(Undiscernible. Several people talking.)

MR. SHELTON: I understand that.

MR. FORD: We were doing so -- we were so efficient.

MR. SHELTON: We were doing so well. But it is very --

MS. TILLMAN: This is --

MR. SHELTON: There's lots of background here. And I'm trying to provide the background without also compromising a position if that makes any sense.

JUDGE DUKES: Sure. Go ahead.

MR. SHELTON: In 2015, I'll just state that the declarant rights -- and there's a dispute over whether they were properly assigned or what was assigned. And I'll admit that dispute exists. Were assigned to the Park, to the Plaintiff. That's background the court would need to understand and understanding how the Plaintiff asserts that it has declarant rights.

Now, I will -- that will be my opening statement as to the background and as to the declarant's position on motion for summary judgment. The opening statement as to the temporary

restraining, I will be much more concise.

The temporary injunction motion is what the Plaintiff believes is a request, which the

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Plaintiff also will understand and acknowledge that it is a bit unusual, but these are unusual facts and unusual circumstances. There's a request the court to fashion a -- to fashion a restraint order or fashion a mandatory injunction for the Estate to take observable actions and quantified actions to find a way to work with Westbury Park and its administration of the right-of-way and the gates. The issue being that all of the traffic goes along Kensington Boulevard to the Estate.

And again, I do not want to -- it's hard for me not to argue, and I apologize.

JUDGE DUKES: Let -- can I interrupt?

MR. SHELTON: Yeah.

JUDGE DUKES: I apologize for continuing to interrupt.

MR. SHELTON: No. No. No.

JUDGE DUKES: Is there a -- I'm

trying to visualize this because you referenced --

MR. FORD: I've got it visually, Your Honor.

JUDGE DUKES: Is that -- is there a small version of that's -- a file one.

MR. FORD: It's in our memo.

JUDGE DUKES: Okay. All right.

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Let's see if I can find it while I'm -- I'm just trying to visualize --

MR. FORD: Yeah, Ainsley's got one. It's pretty helpful to lay eyes on it.

JUDGE DUKES: Okay. You have a small version that I can --

MS. TILLMAN: I believe I do. I am (inaudible).

MR. FORD: I'm not sure if that's your paper, but if you want to hold it and show that to the court.

(OFF RECORD DISCUSSION)

JUDGE DUKES: If you don't mind, I'll

just refer to that. I'll just --

MS. TILLMAN: So sorry.

JUDGE DUKES: -- refer to that. Thank you very much.

MR. SHELTON: Thank you. So -- and we have -- if you look to the far left of this document, Your Honor, you see Buck Island Road, the T there. That's Buck Island Road.

JUDGE DUKES: That's on the west side.

MR. SHELTON: On the west side. 278 is on the north side. It'll be running -- there's

not a visual of the -- above, but it'll be running approximately where the top line is. Thank you.

MS. TILLMAN: This corresponds -- sorry to interrupt you --

MR. SHELTON: No. No. No. No.

MS. TILLMAN: -- be Vanna White. This map is up except this has the -- sorry -- commercial --

MR. SHELTON: Commercial.

MS. TILLMAN: -- and then you can see the roads on it.

MR. SHELTON: Correct. Thank you.

JUDGE DUKES: Okay.

MR. SHELTON: And so the red line that is drawn on this is the -- was defined by the declaration for the Apartments, the Estate, now as a required streets. And there is a gate at the T of -- just in from the T of the Buck Island Road that I reference. There's also a gate just past those two houses that you see on the top, on the north side of the document where the red line indicating the right-of-way or easement head north.

All the traffic to the Estate which is to the far right corner of this document, all that traffic runs along that road, that corridor. And

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all of the residents, vendors, owners, et cetera come through those gates to get to the -- to get to their residence or to do their work.

And the temporary injunction, just stating

what it's about, is about finding a way to regulate the traffic, regulate regular gate intrusions, I'll call them, breaches, if you want to call them that, pushing open the gates, damaging gates, entering through the exit ways of the streets, speeding along the streets, trespassing upon common property by Estate members, Estate residents, Estate guests, Estate invitees. We have as a Defendant admittedly the association. We did not name all 320 owners.

However, we believe that the association by all those owners -- again, I don't want to get into arguments. I just want to fashion misuse here. That -- we believe that the association comprised of those owners which all subject themselves to the governing documents, their governing documents -- and I will get into the arguments I -- later. While I also think there governing documents also touch on their subjecting themselves to the regulation of our documents.

And also, they're clearly going across our common property. Ours being the Park, the

Plaintiffs. We are seeking an order to find a way to better, quote/unquote, police the regular violations of the Westbury Park's rules and regulations entering the property and traversing the property or trespassing upon the property. Is that fair?

And our thought is that we really have two motions before you. One is the motion on the merits of the Defendant's causes of action counterclaims and on the merits causes of actions claims.

Also, we have a separate which is really -- the injunction motion is more of a fact driven motion that also dovetails some with the documents as about the use of that -- of the property.

So, with that long opening statement, I think I've touched on all the background and maybe more from our my perspective. So thank you, Your Honor.

JUDGE DUKES: Thank you so much. Yes, sir.

MR. FORD: Thank you, Ben. Thank you, Your Honor. May it please the court. Ian Ford and Ainsley Tillman on behalf of the Estate of Westbury. And, Your Honor, we have handed up this

map of Westbury. It says Westbury Park, but it's both. Does it make sense to Your Honor? This whole thing is the original parcel.

And the developer, in 1998, went with the evolution that my friend Mr. Shelton described, set it up so the Estate is subsumed entirely within the other property. This is how it was set up. It was designed that way. Everybody knew it. And everybody bought in with notice or constructive notice since 1998 that this was the deal.

And for years -- for 20 years, the Estate paid -- overpaid for an assessment which is different from the easement. The assessment is different from the easement. When I refer to the required streets, that's what they were paying the assessment for. It has no bearing on the easement. And we'll get into that in a bit, but I want to make that vernacular very clear.

For more than -- for 20 years the Estate paid this assessment for -- to help maintain the

required street. And it was $1.3 million, Your Honor, is what they paid in total. The last ten years -- last eight years, at least, they were paying $90,000 a year for maintenance on the required streets.

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And the required street are just that red line. It's a straight shot. They're not allowed to use the parks. They're not allowed to use the sidewalks except to go in and out on that one street. They're not allowed to use anything at Westbury Park except drive along that street to exit and enter and walk along it. And for that they paid $1.3 million as an assessment over 20 years. And that was the deal. It wasn't fair from their point of view, but they did it and it expired and they were happy about that because they still have the right go.

Unfortunately, since the outset it -- and Mr. -- we'll enter as evidence, but the Park's president has testified since -- in deposition. Since the beginning the Park's never really been

happy with this situation. They don't really like having the Apartments where they're situated. But that's the way the developer set it up. Everybody knew that. And we'll put in testimony from Mr. Matteo, the president, that when he moved in he looked into it. He had heard bad things that he realizes was a separate neighborhood. So no one's surprised by the situation.

Okay. Moving on. Unfortunately, where we

are today, Your Honor, is it's developed into a bitter grudge by the Park -- certain people in the Park against the Estates. And this is no reflection whatsoever on Mr. Shelton who's been a gentleman and scholar throughout this situation. But -- and he's dealing with what I perceive to be a difficult time at times.

But what's happened, unfortunately, is that their beef is really with the developer who sets this up the way it is. We have -- we, Estate, have no other way in and out. It was always

intended that way. That's the way it was done. And we paid for it -- the assessment for 20 years.

So the money we paid was supposed to be used solely for maintaining the required street, putting it aside. We can show you how much it cost. It needs to be replaced every 20 to 25 years. And we got the numbers from their own assessments. We overpaid this for two decades. Which is fine. That was the deal. It wasn't fair in our view, but that was the deal. What's not fair, Your Honor, is they now want to change it.

But moving on from that, they tried to extend the assessment. And that's, I think, the heart of one of the -- of this dispute is that they

say under 9.01 they can unilaterally extend it. And we say you can't because 9.02 and property law and contract law requires both sides to agree to accident. It's crystal clear. And that's how everything was always done in the past.

We have found no instance where anything was changed without both sides' consent. And I

think that is the legal kernel at the heart of much of this dispute is they say they can extend it and keep charging us $90,000 a year. And we say you can't do that under the documents. And Your Honor is going to, hopefully, tell us who's right about that.

The bitter grudge -- and it's unfortunate because they're neighbors. And they're always going to be neighbors. This is not going to change that they're right side-by-side because it was set up like that. All right? It's kind of the developer saw this as mixed-use development and set it up this way so that it would mixed-use development. You know, apartments, condos, you know, that's a thing now. And that's how this was set up. And that's sort of what everyone bought into.

Getting to Mr. Shelton's point about the gates and so on. The gates are on the Park

property. We don't control of the gates. We don't even want the gates. They don't add anything in our

view to the safety. It's just a plastic arm that comes down. There's a sidewalk. Anyone can walk in. It's fine. It's just a plastic arm.

It's actually a breakaway arm. It doesn't keep anyone with any determination from doing anything. And it kind of -- it's a pain in everyone's neck. But some people of Westbury Park really love a gate. And a lot of people at Westbury don't. And people at the Estate, it's no never mind to them. But it is something they have to deal with.

But we agree on one thing. Mr. Shelton and I agree on -- and my client agrees on. Nobody should be messing with the gates regardless if they're a pain in the neck. Whatever. No one should be destroying them. No one should be doing any kind of unlawful action regarding the gates.

And Mr. Shelton is going to show some examples of that. And we frankly don't disagree that people behave badly from time-to-time. And we support enforcing the law. We support enforcing the rules. This is the problem that we have. They want us to enforce their rules.

We're Westbury Estate. It's not on our property. And we'll go through the evidence on that. But once we step outside of the Estate of Westbury, we can't follow out members around. But we fully support and we'll provide information and so on to help identify people.

Again, we're not allowed to use the parks. We're not allowed to use any of their amenities. All we're allowed to do is drive on that red strip in and out. And Mr. Matteo and others have made a hobby of telling our residents that. And we have many examples of that if we need to show that, Mr. Matteo being less than a gentleman and others being less than a gentleman. A small group. What most Westbury Park people, like humans everywhere, are good descent people. But some people don't always behave ideally.

Moving on to the motion to the motion for preliminary injunction then I'm going to sit down. This is but an introduction to that. As Your Honor knows, a motion for preliminary injunction is and extreme remedy. And is meant, and this is important, to maintain the status quo. The law is

crystal clear on that. It's to maintain the status quo.

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The status quo is what it is today. It's what it's been since 1998. What, my friend Mr. Shelton is asking, Your Honor, and I appreciate it because I wasn't really sure what they're asking if you look at their memo or their motion. What they're asking is Your Honor to craft something new before we've gone through discovery. And Your Honor to craft a plan and Your Honor to inflict that on the people. That something new. That is not maintaining the status quo. So we think under Rule 65 and the ocean of law on preliminary injunction, this is just the wrong motion at this time.

They want to win their case upfront. And we think under Rule 65 this -- even Mr. Shelton said this is how it's been since 1998, so that's how it should remain during the case. This motion was filed in January. And because of reasons outside of all the parties' control, it's -- we're now -- where

are we? September? Things are working. Right? This isn't an extraordinary fire drill that needs Your Honor to create out of whole cloth some sort of remedy for the situation that was set up by the developer.

Second point is there's no irreparable harm. And Your Honor knows that's a second legal

prong of Rule 65. Nothing here can't be fixed with money should Park prevail. And that kills the Rule 65 motion in its infancy. If the gates are damaged, that money can be taken. If the parks are used by children that Mr. Matteo doesn't like in his park, using Westbury Park parks, then those -- whatever. They can -- the swing-sets can be wiped done or it can be repainted. Whatever it is that Mr. Matteo.

MR. SHELTON: I'm going to -- just like you, what's good for the goose is good for the gander.

MR. FORD: Fair enough.

MR. SHELTON: (Inaudible) we're doing lots of arguments, some --

MR. FORD: We are.

MR. SHELTON: -- (inaudible).

MR. FORD: We are.

MR. SHELTON: And I love my clients by the way.

MR. FORD: I know.

MR. SHELTON: So (inaudible).

MR. FORD: And I apologize. But I -- I'm going to sit down for this, Your Honor.

Their beef is with the developer. The developer who set up this structure and who put

everyone in this boat. And everyone bought into the property knowing it. It's improper for Rule 65 motion and my smarter colleague, Ms. Tillman, is going to deal with the covenants and so on which is -- you really have to have a deep understanding. Your Honor I'm sure does but one has to have a deep understanding of.

But this is not a Rule 65 situation. It instead is a strictly legal issue on interpretations

of the covenants and the governing documents as to can it be extended? Can it be done under these circumstances? And we just don't see eye-to-eye on that. We're going to need Your Honor, does the summary judgment motion, to tell this is what the law is and what the documents are on that. And that will drive a lot of what goes forward on this.

And we appreciate your indulgence, Your Honor.

JUDGE DUKES: Thank you so much. Yes, sir.

MR. FORD: Thank you, Your Honor. If -- I think the temporary injunction motion was filed first. So if it pleases the court, we'll go ahead and move forward on that.

JUDGE DUKES: All right.

MR. FORD: Okay. Thank you. Plaintiff calls Mr. Phil Matteo.

I apologize. Can we take a brief break off the record if possible?

JUDGE DUKES: Yeah. We'll be off the

record.

(BREAK TAKEN)

JUDGE DUKES: Back on the record in 2020-CP-07-00158. And we took about a ten-minute break to see if we could work through some technology issues. And happy to hear from you, sir.

MR. SHELTON: Thank you, Your Honor. The Plaintiff calls Mr. Phil Matteo.

JUDGE DUKES: All right. What did we decide? We're going to put the witness where? A chair over there somewhere?

MR. SHELTON: The chair right here.

JUDGE DUKES: I can't see the chair, but that'll work. Okay. All right. Can I get you to hold your right hand up for me please.

Do you swear or affirm to tell the truth, the whole and nothing but the truth so help you God?

THE WITNESS: I do.

JUDGE DUKES: All right. Have a seat please. State your whole name loudly for the

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record. And also, I don't think the mics are working, so just to keep your voice up if you could.

THE WITNESS: Sure. Phillip Francis Matteo, Junior.

JUDGE DUKES: Thank you, sir. Please answer any questions your counsel may have.

MR. SHELTON: Thank you, Your Honor. May it please the court.

WHEREUPON:

PHILLIP F. MATTEO, JUNIOR, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. SHELTON:

Q. Mr. Matteo, where do you live?

A. 4 Barrington Avenue in Bluffton.

Q. And where is that? What --

(Undiscernible voices.)

JUDGE DUKES: Kind of direct your voice --

THE WITNESS: Okay.

JUDGE DUKES: I know it's going to be hard because he's there and we're here.

THE WITNESS: I'm fine. I'll listen

with one ear and fact this way if that's okay.

COURT REPORTER: I did not get that address.

THE WITNESS: 4 Barrington, B-a-r-r-i-n-g-t-o-n, Avenue, Bluffton, South Carolina 29910.

BY MR. SHELTON:

Q. Thank you. And what neighborhood is that located in?

A. Westbury Park. Sorry. Westbury Park.

Q. And when you drive into Westbury Park, describe how you get to your house.

A. Depending on which gate you come in, you get on Kensington Boulevard and you head east. I am on the last street before the lake which is just before the entrance to the Estate of Westbury. Correction, to the Estate. So you would turn -- you turn right onto Barrington and I'm the second house in.

Q. When you're sitting on your front porch, what do you see?

A. When I look out from my front porch, there's a lake that's known as Lake Forest. Slightly to the left and further on is the entrance to the Estate. If I look directly to my left, I see

in front of me is Barrington. To the left is Kensington and approach into and out of the Estate.

Q. What is your role with Westbury -- excuse me -- the Park, if any?

A. I am the president of the board.

Q. How long have you been president of the board?

A. A little over -- I'd say roughly 14, 15 months.

Q. And how long have you lived in Westbury Park?

A. I'd say slightly over four years.

Q. If you will, tell us if you have any specific role with the board other than being president.

A. When, I originally joined the board, we

had set up what's known as a champion model where certain board members take primary responsibility for certain areas, such as the ARC compliance, such as landscaping. I had gates and security when I came on the board. I still retain that as I became president.

Q. And what is your role as president? What do you do within that role?

A. I do whatever the primary function

according to the CCRs are as a the board president. I see to it that we are following our process and procedures. I see to it that the other champions are doing what they need to do, contract compliance, financials, budgets and just generally making sure that the tone and the process is being followed for the community. That we're doing what our -- what our community members are asking us to do.

Q. Now, with your role as -- within the champion model -- first, what is the champion model? Do you have any other outside information on that or what for the court's edification.

A. So champion is just and expression. It's a business term where somebody champions something. So it basically means you are assigned responsibility to drive an initiative.

So in the business world you may have somebody who's driving a new product introduction and that individual's job is to drive it through from the beginning to the end. It's the primary -- it's the person with the primary responsibility to see something happen.

We found that there was two more -- too much work to be done by our property manager. And they weren't getting everything done. So each of

the board members take a section of the contracts or of the work that needs to be done. And they will spend the day-to-day working with that contractor or whoever it is to make sure that the things are getting done that need to be done.

So again, ARC is a committee, the architectural review committee. So anybody wants to

make changes to their property, they have to submit an application. The ARC reviews it, works with the homeowner to explain to them what they can and can't do and then eventually signs off it.

The landscaping champion handles the contract for landscaping. And that's all the landscaping of the common areas, that's tree removal, that is anything dealing with that.

We have a champion who sort of does what I'll civil works. So he looks at things like streets and roads and storm water runoff and our ponds. Things like that.

We have six members of the board. When we get the seventh, that seventh one will probably take the social committee and pool pavilion area as a -- area champion.

Q. And tell us what you do as the security, quote/unquote, champion.

A. Well, the role originally started was just interfacing with the security company. We have two halves of that. One is the gate equipment and

camera services. The other one would be the patrol services. So in that role, I was working with them to establish what needs to be done. So it kind of has evolved from originally being just working with them to a more direct role.

Currently where I will spend time would be when an incident occurs. I'll be the one that goes and looks at the cameras, grabs the video and then contacts whoever needs to be contacted for whatever it is.

Q. You say incident occurs. What do you mean by that?

A. It could be anything. We have had -- there was one event where an Estate member who apparently has dementia or something, disappeared and the police were looking for him. I looked at the cameras and confirmed that they did not leave the community.

It could be that we get a breach of the gate where somebody has intentionally pushed open the gate or struck it with their vehicle popping the gate open. That will send me an e-mail with three

pictures of the event. And then we've got to research and figure out who did it, try to get a license plate picture, things like that.

If somebody calls and says, hey, somebody snuck into the neighborhood by tailgating. They will try to find out who they are and where they went. Occasionally, I will get calls on incidences where our security team has to be called in to investigate or to respond to some sort of incident.

So basically, anything dealing with the security of the gates, security of the roads and streets, anything that you would quasi-call, you know, law enforcement, rule enforcement type stuff.

Q. You referenced that you give some type of notification that there's been an incident, as you said, from the gate. How do you access that information?

A. In that particular case, there's an automatic -- and I'm not an IT person. But the way it's been explained to me from our security company is that when the -- when the gate is popped open, a switch is switched that automatically takes -- causes the cameras to take three still photos. And

then takes those three photos, puts them into an e-mail and e-mails myself, e-mails our property

manager, e-mails our security people and e-mails the camera security people.

Q. You said popped open. Is that -- you get an e-mail every time the gate opens?

A. Well, let me step back. So, at one time the decision was made, due to cost, to replace the static up/down arm with a breakaway arm. And the idea of that was -- is to stop the damage to the whole system. That if somebody hits it with their vehicle or, now what was happening was, people push it open. Instead of just going up and down, it can pivot in. So it's much like a breakaway door, emergency door in a building. It will pop open. And in that case, you'd have an alarm going off.

Well, in our case, it sends the two -- it sends the three photos to the group that needs to do it. So we call that a breakaway arm. It can be reset, but it does have a switch built into it. And the purpose for doing that is is in the past if you

hit that gate with your vehicle, you don't just break the gate arm. You break the whole gate mechanisms because the internals get all spun around, twisted and snapped off. So the decision was made to put the breakaway at the 278 entrance gate. And that's what would -- when we -- when we

say breakaway, that's what we're talking about.

Q. So it's only when it breaks away that you get the videos is what I'm trying to clarify.

A. Correct. It automatically gets sent out only for that. Nothing comes unless they have caused that switch to open.

Q. Where to view those videos?

A. So the three that would be sent to me would come via e-mail. If I need to go and research it and get the rest of the information as to what happens, the other camera, there is a -- in the cloud -- I have an application that's been loaded on my computer. It's an application that's managed and owned by or written by the camera security company.

Their name is TSC. TS, something security of Charleston, also known as iPoint. I have iPoint software on my computer. I could then, basically, open it up, dial into it, go to the cameras, choose the -- that if I wanted to look at back video, I'd select which one of the four servers is the back video. I would select the timeframe and then it would pop up on the screen and I could forward and back and look at what has happened. And then I can start going backwards from the event to find out what happened.

Q. Is there a way for you to try to follow it, or for lack of a better term, a vehicle that has -- that has notified the system by video? By the -- by a breakaway gate?

A. Well, we have cameras along Kensington from the beginning of the Kensington to the west at Buck Island all the way to the entrance of the Estate. So there are -- there's four areas along Kensington. And so what you can do is if you wanted to see if somebody did or did not go into the

Estate, you could just simply go to the first camera after the gate. The next intersection, the next intersection and then the entrance to the -- to the Estate.

Q. How long have you been the one who has been monitoring this video system?

A. Shortly after I joined the board in the beginning of, I guess, it was January of 2019, we had a couple of incidences where the security company, a roving patrol company wasn't getting the video. And damage was done to our system. And we had no recourse because we couldn't find out who did it. So at that point, we requested access to be able to do this ourself. And it's worked out pretty well because, quite frankly, there's a lot of times

spent doing this. And someone's got to do it. And the contract didn't allow for our property manager to do it. It doesn't allow for the security company to do it all the time.

And the folks that were looking at it,

basically, didn't have enough time because of the large number of events. So we had damages and we couldn't find who did it. So I asked permission to gain access to that.

Q. And again, tell me when did you first start doing that. I apologize if you already said it.

A. I'm going to guess. It wasn't in the very beginning. So I'd say probably maybe March or April of 2019. But I don't know exactly.

Q. Do you have any idea of how many incidents that you have documented of the gates being broken open?

A. So since I got on the board, I can't tell you how many events have occurred. I can only tell what I can go and look up in document. And so I think it's very important if you're going to investigate something, you get the proof.

I've got -- I take all the pictures and I put them in a subdirectory. And I have -- well, now

probably close to 145 incidences documented of

breaches.

Q. And what do you -- you say breaches. What -- tell the court what you define as a breach.

A. Well, from my military time, you know, a breach of security means somebody who comes into your perimeter unauthorized. So in this particular case, they can gain access. And again, this is just vehicles. We -- so if a vehicle hits the gate with their hood and pops it open, if an individual walks up and pushed that gate open. If somebody tailgates somebody into the community. And if somebody goes in the exit, that's a breach. If a motorcycle drives around the gate. If a moped or a ATV drives around the gate, that's all considered a breach.

Q. Have you been able -- out of that, how many did you say? Over 140 that you have document?

A. About 145 now.

Q. And when you say documented, could there have been more than that or is that all that there have been?

A. Absolutely. You know, I -- when someone tells me to look at something, I look at something. Otherwise, I really have no way to know that it occurred. There are occasions where if I'm coming

in the community and I see somebody do this in front of me or if I'm out walking the dogs and I see somebody do it, I will then go ahead and get the proof of what occurred. And then once you get the proof, you know, you try to find out who they were and what you can do about it.

Q. So of the over 140, how many of those have you documented in Westbury Park, that's called the Park -- excuse me -- residence?

MR. FORD: Objection. If you could set the foundation for how he knows.

MR. SHELTON: Well -- thank you.

Q. So earlier you testified as to being able to monitor the roadway through other camera systems, correct?

A. Correct.

Q. So if you watch someone enter in to the Park, if you're able to watch that video after the fact, how do you know whether someone goes into the Estate or not?

A. It's fairly simple. You simply watch the

cameras from the gate to the next intersection to the next intersection to the next intersection. And then there is one camera that faces towards the Estate, and you can watch them drive right into the

Estate.

So I will capture a screen capture of each of those -- you know, of where they are in this process. And if they're going into the Estate, then we assume that it's an Estate person. If I can't say that it's an Estate person or someone visiting the Estates, then I have to assume it's a Westbury Park issue.

Q. What do you do if you find that it's a Westbury Park issue? If it's a Westbury Park resident or guest?

A. So they are violating our gate rules. And there is a -- a notice of violation gets sent to the individual. And they receive, for the first event, a $250 fine. If they did a second time, which has not ever occurred since I've been on the board, it would be a $500 fine. And then after that $1,000,

and subsequently $1,000 fine per event.

Q. And back to the question, the times that you have been able to, for lack of a better term, track or follow the vehicle to the Estates, how many times out of the 140, approximately, if you have that number, has that occurred?

A. I have at last count where I actually counted them 137 events.

Q. That is events of what?

A. Of where somebody breached the gate and drove into the Estate.

Q. How many do you have where someone breached the gate and remained in the Park?

A. There's been three that I've been able to show is a Westbury Park person by tracking their license plate and then issuing them a fine.

Q. Have you ever had someone who has been issued a fine, breached the gate a second time?

A. No. Not of our community, no. No, none at all.

Q. How does the Estate of Westbury residents -- how do they access their property?

A. Each time?

Q. Correct.

A. They would use a swipe card. Well, what is supposed to happen is they would use a swipe card, a computer key much like you probably use here in the courtroom to enter a doorway. You swipe -- called the swipe card. You would swipe it against at the kiosk and the gate would go up and you would drive in.

If somebody is a resident, they can use what's known as the owners gate which is Buck Island

or they could use the main gate which is 278. All visitors entering would have to go through the 278 gate.

The 278 gate which is, again, the primary gate has a system for visitors where if somebody gets up to that gate and they're visiting somebody in either community, they find their name on the display. They hit a button. It dials that

individual. Well, they hit a button, then a four-digit code. It will call the resident who's registering there. It will call them on their phone. They pick up the phone. They listen to who it is. They hit the number nine and the gate would open, the visitor would come in.

What is supposed to happen is everybody who's a resident of either community's to use the swipe card. That is the quickest way to get in the community without backing up traffic.

We do have an issue where there's a lot of folks from the Estates have, are using the visitor log in system to enter the community because they don't have a swipe card. And that creates issues with traffic backing up out into the commercial area.

Q. Have you visually observed that

personally?

A. Yes, I have many, many, many times.

Q. Lets -- it's the same question but as to

the Park, how do residents of the Park access the property?

A. Same ways.

Q. And what happens if they are a resident and use -- can they use the dialing system if they're a resident?

A. They are not supposed to and I can't guarantee that nobody ever does. But the swipe card is just so quick and easy that there's no reason for anyone to want to use the dial-in visitor system.

Q. And what mechanism do you have, if any, as an association to ensure that someone who moves into Westbury Park or the Park -- apologies -- receives a swipe card?

A. Anybody who's going to use that access gate is a resident of either the Estate or at -- or the Park has to register with the property manager. And as part of that process, you go into share information and what kind of vehicle you have. What's the license plate, the make and model number. You can buy a -- you know however many swipe cards you need.

For our community, some of the swipe cards also allow you access to the pool. So it's more or less a dual use card. We also have cards that are just used for vehicle access through the gate. So when you register as a new resident in the community with IMC, you go in there. You get your welcome packet. Your get -- you register your vehicle. You register, obviously, your family who's living there who's authorized to be there. And then the IMC who's the property manager can then enter it in to the database, so to speak, that's used to control access to the gates. And as far as I know it happens instantly as soon as I put the number in and save then that card is active.

Q. Has it been your experience that all of the Estate of Westbury residents have a swipe card?

A. No. They definitely don't. What's been relayed to me; although, I can't say for sure. But what I hear --

MR. FORD: I'm going to object to the hearsay. If he doesn't know, he doesn't know.

JUDGE DUKES: Sustained.

BY MR. SHELTON:

Q. I would say you're -- I'm asking from your

experience. Have you -- do you -- from your

experience, do people -- let me ask it this way. Do more people from the Estates use the (inaudible) system or more people from the -- Westbury Park use the (inaudible) system?

MR. FORD: Objection. I'd like foundation. I think this is a second way to get at just his unknown impressions.

THE WITNESS: Now, my known impressions of what I have observed --

MR. FORD: Let the judge rule on the objection.

JUDGE DUKES: Yeah, I mean, he's going to -- it sounds like he's going to fix it himself. But --

MR. FORD: Go ahead.

JUDGE DUKES: Yeah. Don't testify as to what you -- others have told you. But your --

MR. FORD: My concern is all this is he doesn't know. He's just doing sort of this is my

general gestalt.

JUDGE DUKES: Right.

MR. FORD: And that's what I'm trying to get out without interrupting the flow. I would ask he only testify as to actual, personal knowledge, what he knows himself.

JUDGE DUKES: Thank you. And, yes, exactly that. So it sounded like that's where you were going. But please stick to that, what you have personally observed and what you know, not you -- not what you know from others telling you.

THE WITNESS: I have sat at the front gate with our security people watching the flow through the gates. Our security person Joel O'Quinn of Intercept Security. And while we sat there observing, when he first came on board, we wanted to ensure that he understood what was going on and how the community works, et cetera, et cetera. And he and I sat there and observed vehicles coming in.

And you could see where folks that are using the swipe card would easily move in and there

might be one or two cars backed up. Then there would get a vehicle there that was starting to use a visitor access. And they had an Estate parking pass in their window. So we know they're an Estate person.

And they would start using the key. So Joel O'Quinn would go over and ask them if they were a member --

Q. Let me interrupt you. You said they have a parking pass. How do you -- what do you mean a

parking pass?

A. So the Estate uses a six -- a sticker with six digit, purple, I believe is an owner. Yellow means it's a resident. And it's got a code on it, QR code I think they're called. And so whoever does security at the east gate can quickly just scan it and see that, yes, their vehicle is registered and is active in the community. So that goes on their front window, driver side, down by -- down by the bottom corner of the four window.

Q. So you're observing these parking passes on the vehicles that are dialing in.

A. Correct. And then Joel O'Quinn was asking people if you --

Q. Again, don't testify to what other people testified to, what other people said. Just --

A. I was standing there as he said -- as he asked them.

Q. You can -- you can --

A. And I heard answers.

Q. But after listening to those conversations, what was your mental understanding?

A. My understanding was that in two different events where I was doing this, half of the people were using -- half of the Estate people were using a

visitor call-in access system, not a swipe card.

Q. You said earlier that when you're sitting on your front porch, you could see the Estates; is that correct?

A. Correct.

Q. See the entrance at least?

A. Correct.

Q. Is it your -- have you reviewed the governing documents? And I understand you're not a lawyer, but have you reviewed the governing documents of both associations?

A. Yes.

Q. What is your understanding as to the road that you live on, Barrington, whether that is, quote/unquote, a required street per the governing documents?

A. It is not.

Q. Do you have an understanding as to whether Estate residents are supposed to be, without invitation, on that passage? On that roadway?

A. I do know.

Q. What is it?

A. They're not allowed to.

Q. Have you ever had the occasion to personally witness individuals from the Estate using

the common areas of Westbury Park?

A. Yes.

Q. Can you described that?

A. If I sit on my from porch in the morning to have coffee or in the afternoon after work, I will easily observe within an hour period, three, four, five different individuals coming out of the Estate and turning up either into Barrington -- turning into Barrington in front of my house. So that means they're off the easement and they're in our -- in our common areas.

Q. How often does that happen?

A. Well, every day. Any time I'm out on the porch I see it happen.

Q. And what do they do?

A. Some of them are exercising. Some of them are riding bicycles. Some of them are walking stroller with a child. Some of them are walking their dogs.

Q. And why does -- you're the president of Westbury Park Residential Association, correct?

A. Correct.

Q. Why does that bother you?

A. It's about property rights. It's about what is fair. We pay a premium to live in our

community and pay a premium to have those amenities. And no different than any other community, if you're not a resident of that community, you don't get to enjoy the benefits of that community without paying for it or without being invited in. And when these individuals are coming into our community without permission, they're trespassing. And that isn't fair to the folks in our community that's paid for this.

We have very nicely landscaped walking sidewalks that are set back away from the road. They're not right against the road. There's actually a buffer of grass. And then there's a nice wide sidewalk. We do that to encourage the people to walk through the neighborhood. The tree -- the roads are all tree-lined. It's one of the unique communities in Bluffton that are that way.

Those amenities are paid for by our community. Not by others. And so if you come in and you're not part of our community and using our amenities, it's just not fair. It's not -- it violates our property rights, but it's just not

fair.

Q. And have you ever seen any dangerous behavior by Estate residents on your common areas?

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A. I've seen a number of different things. Yes, I have.

Q. Okay. Describe that. Any single incidence.

A. Well, the one that really brought this to a head was an individual from the Estate, an African-American woman came into the community, turned right in front of my -- turned left in front of my house, walked around the community, came back. She's along side the pond. And we have a large -- a very, very large, old gator living in that pond. And it likes to sun itself up on the bank. And she proceeded to walk down and start trying to take a selfie of herself with the gator, probably to this chair here away from herself, with her camera taking a picture of herself. Anything that happens in our community in those common areas is on us. It's our

community. It's privately owned land. And if something was to happen, that's a huge liability for us. Besides the fact it's extremely dangerous for the individual.

Os at that point is when we went to the law firm -- to your law firm and asked to send a letter to the Estate saying please don't do this.

Q. Thank you. How -- now, I have the video

screen up. I'm going to ask has there ever been an incident where the gate is actually damage, not just broken open, whether that damages the gate or not. I'm not going to ask you that question. I'm asking you whether the gate was physically damaged?

A. Yes.

Q. How recently has that been? The most recent time to the best of your recollection?

A. Oh, probably four or five months ago.

Q. And can you describe that incident?

A. Yes. I got a --

Q. Well, first, let me ask you how do you have knowledge of that incident? I'm assuming it's

from watching the video.

A. I have knowledge of this because I got the e-mail stating that there -- showing me the three pictures that the gate was broken open.

Q. And did you look into that incident?

A. Yeah. First thing I did was go out to see -- to assess the gate damage first off. If it's open, I need to see what's going on. Was anybody hurt? That kind of thing. Our security luckily was on board time at the same. And our security, Joel O'Quinn, saw the individual also in the neighborhood, so we both met at the gate. He called

me. Said, hey, I'm closing the gate. We went and found that a restraining device was snapped off by a contractor's vehicle belonging to a resident of the Estate.

We were able -- Joel was able to find the resident vehicle in the Estate, talked to the owner of the vehicle and she acknowledged that, yes, that's her vehicle. It's her cousin, I believe,

that was driving it. They were a little worried because he does not have a driver's license. And so we provided all that information to the Estate and to that woman.

Q. But you were able to determine that the individual was either a resident or visitor of the Estate?

A. That the -- that the driver was a visitor, but the vehicle was belonging to a resident in the Estate.

Q. And did that damage -- was that damage something that Westbury Park had to pay for?

A. Yes.

Q. And did you notify the Estate management of that incident?

A. I believe I did. I copy them on everything that comes up. I don't remember that one

exactly.

Q. And did you receive any money from that individual who caused it or anything from the Estate of Westbury as to paying for that damage?

A. This is the only one where anybody has paid for it. The resident paid for the damage.

Q. And the resident, did they pay you directly? Not you personally, but --

A. They went into the property manager's office and made payment.

Q. And how were they notified of their responsibility?

A. In this case, the resident -- and I'm trying to recall how this occurred. She spoke with our security person and told them what was going to happen. And I believe she reached out to us since we had her information and talked to us about what she needed to do to make it right.

Q. So in that scenario, the resident made it right for Westbury Park?

A. Correct.

Q. Is that fair to say? Tell me about an incident on June 13th, 2019, of the -- that's the Ramirez incident. But fair enough.

A. So a resident of the Estate, last name

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Ramirez, came in. And I don't remember the exact time unless you have the pictures there. But he came into the 278 entrance gate. And for some reason instead of driving through the opening which is the roadway, he drifted to the left and hit the bollard which bounced him off that and into the gate and completely destroyed the entrance gate.

Q. How much did that cost, if you know, to repair?

A. I don't recall. I believe that that was probably between 10 and 15,000.

Q. You don't know an exact amount?

A. I don't recall the exact amount.

Q. And did you notify the Estate of Westbury as to that incident?

A. Yes.

Q. If that had been a Westbury Park resident, what procedure would have been in place? What would you have done as a board?

A. In that case, if they have insurance, we'd let their insurance -- we would file a claim with their insurance company, their automobile insurance company to make that payment. But the individual would also get a fine for breaching the gate by

destroying it.

Q. Would that come from the association, that fine?

A. Correct. It's managed by the property manager. But it in effect comes from the board.

Q. Do you know whether there was any action taken, by personal knowledge of your own through the interaction of the management, of the -- of the Estate? Whether there was action taken by the Estate as to that resident?

A. I do not believe there was anything done by the Estate in this matter.

Q. I'm going to show you a picture. And this is -- this is just for identification. This will the court as well. Do you recognize this, Mr. Matteo?

A. That used to be our entrance gate at 278.

Q. And I'm going to note for the record this is labeled as 20191 -- excuse me -- 20190113_095604.jpeg for the record. And do you know when this photograph was taken?

A. That would have been on -- based on the date/time stamp, January 13th of 2019.

Q. And you -- so is this -- you said this was the gate?

A. This was the gate. It had to be replaced.

Q. And this is from the -- what we call the Mr. -- the incident with Mr. Ramirez?

A. Correct.

Q. How long was the gate of service after this incident?

A. About two and a half months. I believe two and a half months.

Q. And during that timeframe, what was the security protocol for anyone getting in and out of Westbury Park?

A. It was free and open.

Q. Have you received any -- as the president of the board, I'm not asking you what the complaints were, but did you receive any input from Association members as to it being open?

A. I received plenty.
Q. And what -- and I'll just ask you what was the general understanding as to the thought process of the Park as to that gate being open?
A. The Park?
Q. Westbury Park.
A. Well, since we are a private gated community, I kept being reminded from our residents that this is supposed to be a gated community. When is this gate going to be put up? You know, when is

it going to be replaced? And I had to keep explaining that for some reason it just took forever to get the equipment. But they were not happy with the fact that, you know, 25 percent of our -- of our gate were free and open.
Q. I'm showing you another incident from -- this is labeled 5-20-2019 and -- under the file. And I'm going to reference a specific file of 20190520_162118. What do you see there Mr. Matteo?
A. I see parts of a gate arm on the ground.
Q. And do you know who took this photograph?

A. That would be me.

Q. And do you know what incident -- let me show you another picture. This is 20190520_162127 for the record. What do you see in that picture?

A. That is the 278 exit gate arm that's bent.

Q. Do you know what caused this damage by observing the video system?

A. I took these photos first because I found that that gate was bent. I looked at the cameras and found that a person did not wait for the gate to fully open before she drove her -- I believe it was, a van straight through the gate arm bending it all the way back. They left for about 20 minutes, I think, and then came back, drove up to the entrance,

and she and another younger man came out and tried to bend it back into -- back into place. However, since it's plastic, you can't really -- you could see that in that bend the plastic is cut. So that gate arm had to be replaced.

Q. Do you know how much that cost?

A. Gate arms are roughly $600 if they're just a standard lift arm like that.

Q. I'll show you this is 20190520_162133.

A. Yup. There you go.

Q. Is that the same --

A. That's the same picture, yup.

Q. It's a different picture, same gate, same time?

A. Correct.

Q. And this is 2000 -- excuse me. This one is labeled gate destruction 05202009_08586. I know this is -- I'll try to zoom in on this. Is that what you were describing? Was someone pushing the gate back together?

A. Correct.

Q. Were you able to determine who was responsible for that gate damage?

A. We got the license plate and turned it to the Estate. I think there was a picture someplace

of the license plate. But as they exited, right before she hit it, we were able to get a license

plate off the vehicle.

Q. And were you able to determine who it was through your communications with the Estate?

A. Yes.

Q. And did you receive any payment for that damage?

A. No.

Q. Do you know whether the Estate took any action whatsoever towards that resident for that damage?

A. None that was shared with me.

Q. What would you have done if this had been a Park resident creating this damage?

A. So, per our rules, which apply to everybody who drives on our property, they would have to make good on the damages. And then they would get a $250 fine.

Q. This is in a folder called 09.12.2019 van damage. I'm going to play a video. I'm going to ask as this video is playing, to describe it to the court. What do you see here, Mr. Matteo?

A. That is one of our security cameras facing out. That van that just drove through there is

driving out the exit gate at 278.

Q. Were you able to determine who owned that van?

A. Yes.

Q. Who owned that van?

A. I don't recall the name of that contractor. It's a contractor who was doing work in the Estate. So we turned -- once we found that -- this case, we turned it into Beaufort County Sheriff. And they were able to track down the individual.

MR. FORD: Need you to set the foundation for how he determined who that person was.

BY MR. SHELTON:

Q. And how did you -- how did you come to that determination as to who owned it?

A. License plate and the markings on the vehicle were shared with BCSO who then investigated.

Q. And how did you determine that they were coming from the Estate?

A. Cameras going back to the Estate.

Q. And did you notify the Estate of this incident?

A. I believe so.

Q. Do you know whether the Estate made any -- did anything to investigate or otherwise do anything to help pay for this damage?

A. None that was shared with me.

Q. I'm going to show you now what's labeled under a folder 09.29.19 entrance through exit. You just describe what the label entrance through exit means.

A. This would be where somebody instead of driving down the entrance into the committee on the right side, obviously, of the -- of the center median, came in the exit gate, so, against traffic.

Q. And I'm going to pull up for the record 20190929_171348. That's the file number. You were describing license plates earlier. Is that a picture of a license plate?

A. Yes.

Q. Where does this picture come from?

A. That came from my cell phone.
Q. And how did you find this license plate?
A. As I mentioned earlier, sometimes when I'm driving by the gate, I will see an event. And in this particular time, I was coming down Kensington from the Buck Island gate and looked to my left and saw this person drive in the exit gate.

Q. Is this another picture from your cell phone?
A. No. That's from the security camera.
Q. And what does it show?
A. It shows a vehicle going in the exit.
Q. Where is this picture taken?
A. It is from the camera at the -- at the entrance. It is just a part of the -- of the picture.
Q. I'm sorry. For the court, which entrance is this?
A. 278 entrance.
Q. So, it's the entrance on the north side of

the exhibit that the court -- or the picture that the court is looking at. So, what -- go ahead. Thank you. I'm sorry. So what do you see here?

A. I see a car driving in the exit. I see a car -- a Jeep further on that had to stop.

Q. And were you able to determine where this car was headed?

A. Yes. It drove -- I --

Q. Wait. Wait. How did -- how did -- how were you able to determine that?

A. I observed it myself drive down into the Estate.

Q. Did you notify the Estate of this incident?

A. I believe so.

Q. Do you always notify the Estate after an incident where you located or observed through the video system or personally an Estate resident, for lack of a better term, breaching the gate, entering in without authority and that you were able to determine it was an Estate resident or it had gone

to the Estates?

A. Yes. If I'm -- if I'm home or if I have access to do the documentation, I will then send copies of the pictures and what information I know to the property -- to the community manager at the Estate.

Q. Are you always able to identify the individual?

A. No.

Q. Through that process?

A. No.

Q. To your knowledge, has the Estate ever sent any fine or anything else to any of their residents for a violation of these -- of these rules? I say the rules of the Park.

A. As far as I know, no.

Q. You've never seen any?

A. No.

Q. Are these the only incidents that you've documented?

A. No.

Q. I'm going to show one more for the court. This is 05.19.20 MC, as in motorcycle passing truck and truck back up. Is that act of the motorcycle passing the gate arm without using the gate? Is that a violation of Westbury Park's -- excuse me -- the Parks rules and regulations?

A. Yes.

Q. And what does it appear to you, being a resident there, that the truck is doing in that picture, that still frame?

A. The truck appeared to be sitting, waiting for a gate open. Because of the length of the time, I assume that they were calling to somebody to have them hit the button and open the gate. If it's a swipe card, they drive up and just pause for just a second, hit the swipe, gate goes up, they drive in.

Q. And is this the area that you were referencing where you experience backups as an association, traffic backups?

A. Yes. So, in those times where I have

actually -- as I mentioned earlier where I watched it, I was standing on the sidewalk over to the right side along with Joel O'Quinn watching the traffic backup. The driveway that you see in the upper left corner is not our property. That's the commercial property. And there's office in there. So, when the traffic backs up at our gate, it stops them from being able to get in and out of there work area. So it's an issue for us.

Q. Was -- I'm sorry.

MR. SHELTON: Court's indulgence just one second. I have a folder here that will -- a flash drive. It says 69.2.20. You had depositions of September 2nd, 2020. Is that your recollection?

A. Correct.

Q. Since then, have you observed any unauthorized gate access at the Park?

A. Yes.

Q. And have you been able to determine through the processes who was responsible for that as far as where they were going? Who was responsible for that rising gate access?

A. Yes.

Q. And is that by using the same procedure as you were discussing earlier as following the

individual through the camera systems?

A. Correct. Usually somebody tells me. I look at the cameras. And I get still copies of each of the photos and share.

Q. I'm going to pick one. It's called -- dated 952020. It says breach 952020_11146 blue Versa 1. Which gate is this?

A. This is the 278 entrance.

Q. And did you review the video in reference to this incident?

A. Yes.

Q. And what did you see?

A. This blue Versa, AAA -- in front of this blue Versa as you see, the gate is open now. It looks like it's starting to come down. You can tell that because the red light in the upper left. That blue Versa, what I found on the tape is you can't see it, but in front of it is a Pizza Hut delivery vehicle that drove to the Estate.

What they did is they drove and they park

in front of that gate until such time as somebody behind them gets frustrated and lets them in. So the blue Versa let them in. And then the blue Versa got stuck.

So a -- two vehicles behind, who was a

resident of the Estate, got out of his vehicle, walked up and used his swipe card to let all three in; himself and the two people in front of him. And then they proceeded down -- you can't see it, but there a left turn. They turned left and they drove to the Estate.

Q. You testified earlier that you've only been a resident for approximately four years; is that correct?

A. Roughly. I don't recall the date when we bought.

Q. And do you have an understanding from being the president of the board as to how long the gates have been there? Not these specific gates but a gate into Westbury Park or the Park, rather.

A. From the inception, 1998 or so. But I

don't exactly. But it's been there the whole time.

Q. Is it your understanding that the gates have always been there?

A. That is what I'm told, yes.

Q. Just for the record 09052020_1146, that's Honda 1. I'm going to pull this up. Is that the other -- one of the other vehicles you were referencing?

A. That is the vehicle that swiped in the

other people in front of him.

Q. You mentioned that the -- there's an -- the Estate have a parking decal. You have something red written on this image. Something red circled on this image with an arrow. What is that?

A. That is their parking decal.

Q. So you said they swiped and let two people in in front of them?

A. Correct.

Q. What do you mean by that?

A. So the way the swipe card works is you can

swipe in. You can use it as often as you need. So he apparently parked, walked up, swiped in the first vehicle, went through, swiped in the second vehicle and they got in, his vehicle came up, swiped himself in.

Q. And if someone did this for -- as I Park resident, what would you do?

A. They would get a violation -- notation of violation for that. It's unauthorized access. We don't know who those people are. And they're not using the correct process to get in. The -- using the swipe card means that you are authorized to be in the community. If people are bypassing that, we have no way to know whether they're authorized to be

in the community or not.

Q. Is this problem, in your experience, been getting better or worse?

A. I can't say that it's gotten better. I can't say that it's gotten worse. The general of people swiping other people in?

Q. Well, just in general folks accessing the

property without authority or improperly accessing the property and going to the Estate.

A. It still happens all the time. So the question might be is how many, you know, is allowable versus isn't allowable. I would say that since we found a different way to secure that gate so it doesn't easily pop open, the number of folks coming in has -- coming in unauthorized has been reduced. We still have people tailgating other folks. We still have people going in the exit.

Q. The -- I'm going to hold this up just out of an abundance of caution. You see this flash drive here?

A. Correct.

Q. Did you score your initials into the flash drive earlier?

A. Yes, PFM.

Q. And did you review all the videos, at

least briefly, on that flash drive before the hearing?

A. Yes.

Q. And those are true and accurate copies of the videos that you provided through the course of this litigation?

A. Yes.

Q. And still shots -- pictures, I should say?

A. Yes.

Q. I'm showing you a picture of the image that's labeled 09072020_17301.jpeg. Which entrance is this?

A. This is the road to the right where the white and black truck is is the Buck Island exit. The bluish van to the left corner is the Buck Island entrance lane.

Q. And that cone you're seeing -- you see there, why is that there?

A. The Buck Island exit gate went through its life cycle much quicker than expected, and it failed. It had a hydraulic leak, and the gate became unreliable. The gate arm wasn't working correctly. So we had to take the gate arm off out of an abundance of caution so that the gate arm wouldn't hit somebody, a pedestrian or a person in a

vehicle. That left that gate open.

Those cones are there to tell people that they can't come in that entrance and then do a quick loop around and come in through the exits. So there are two cones there with a sign that says exit.

Q. It's the same number 09072020_17302. Is that the same van. Do you know why that van is looping back? I shouldn't ask that. I'll just -- I'll strike that.

The next image in again 17303. What do you see in this image?

A. I see the blue van bypassing the cones, driving right past them and turning into -- turning right into the exit lane and driving into the community against traffic.

Q. And this occurred on September 7th, 2020?

A. September 7th, 2020, correct.

Q. Describe for me, and as you're entering the Buck Island gate, as soon as you enter into the gate, what is on -- when you're moving into the neighborhood, what is on the left and what is on the right?

A. Beginning of the stretch of homes. That

section is a street and has homes on both the left and the right as you enter.

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Q. Are there children that live in Westbury Park and the Park?

A. Absolute, yes.

Q. Do they play in those front yards?

A. Yes. The house to the direct left which would be where this lane is, there is a young girl there who's probably nine years old who lives there, rides her bicycle.

Q. And this ends in four, this same number. As I show them going -- I assume that shows them going in the exit?

A. Correct.

Q. Did you -- excuse me. What do you see in this image?

A. I see that same blue van driving into the Estate.

Q. Okay. So where is this camera located?

A. Just at the borderline with the Estate.

Q. Is that Kensington Boulevard?
A. Correct.
Q. Did you notify the Estate manager about this incident?
A. Yes.
Q. And did you receive a response?
A. Yes.

Q. What was that? After receiving the response, were you able to determine who that was?
A. The Estate did not know who it was. They had a temporary paper tag. And I could not read the temporary paper tag number. So they were not able to tell me who it was.
Q. Was there any other effort, to your knowledge, undertaken by the Estate or to determine who it was and to notify them of the violation?
A. She asked me if I could get a better picture of the plate. I said I could not. And as far as I know, it ended there. I didn't receive anymore notifications.
Q. But clearly you see the van, correct?

A. Correct.
Q. In these images?
A. Yes.
MR. SHELTON: Beg the court's indulgence.
JUDGE DUKES: Take your time.
BY MR. SHELTON:
Q. If someone has a gate card, are these incidents -- would these incidents happen in general?
MR. FORD: Object to form. I'm

sorry.
BY MR. SHELTON:
Q. If someone has a gate card, is there a reason for them to enter in the exit?
A. No.
Q. Why?
A. They would not need to. It would take them longer to do it. And it's more dangerous for them. So if they have swipe card and it's active,

there is no -- I do not see any reason why anybody would try to go in the exit if they have the active gate card. It doesn't make sense to me.

Q. What about violating the gate policies by pushing open a gate? Is there any reason for someone to do that if they have a gate card?

A. No.

Q. Is there any reason for someone to piggy-back in with -- when they have a gate card?

A. No.

Q. Is there any reason for anyone to break open the gate because they're piggy-backing in and the gate closes on them too quickly if they have a gate card?

A. No.

Q. Have you attempted to obtain a roster of

current residents at the Estate in order to ensure that they all properly have gate cards?

A. Yes.

Q. What was the result of that?

A. We were denied.

Q. What do you mean you were denied?

A. The background for this is we need a new kiosk, a new system. Our system is out of date. It uses a hard drive. And if that hard drive -- if somebody hits that kiosk, we lose complete access for everybody. So we -- last year -- more than a year ago, we went through and authorized a replacement system where the databases for the gates would be in the cloud; i.e., you can't destroy that.

We did a roster push within our community. We required everybody to tell us what vehicles you had, what were your swipe cards, what access devices you had, serial numbers, all that information. We then asked the Estate to do the same thing. They refused to provide it to us. So that project basically is still in limbo. We still have a system that's subject to fail without any prior planning. And when it does fail, we will end up not having access to the gates.

Q. And you -- so to be clear, you've

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requested a roster of individuals that reside at the Estate in to help grant them access, and you were denied by the Estates from receiving that information?

A. Correct. We explained to them what we needed. We gave an example of the log sheet that we used and the individual sign-up sheet. We provided that to the Estate?

Q. When you -- do you ever report a, quote/unquote, trespasser on Westbury Park property or Park property to the sheriff's office?

A. I have attempted to. Yes, I have called. They have come to the house. And they've told me that unless they have damaged the gate, that them coming in and trespassing -- are you talking about gate --

Q. No. I'm sorry.

A. -- trespassing or just general?

Q. I'm not asking for -- I'm asking for individuals that are off the required streets.

A. I asked a deputy sheriff one time. I don't recall the individual. And he said that --

MR. FORD: Object to the form.

BY MR. SHELTON:

Q. I asked if you've -- have you ever asked?

Have you ever asked someone from the sheriff's office whether --

A. Yes.

Q. And was it your -- after having that conversation, what is your understanding as to whether there's any enforcement possibility there?

A. The sheriff's not going to get into the middle of this.

Q. Did -- now, you are speaking as to the gate policy. You -- have you had a conversation with the sheriff's office or anyone from law enforcement about folks pushing open or unlawful act or unregulated access into the property? Have you spoken with anyone from law enforcement about that? Please answer yes or no.

A. Yes.

Q. Okay. Now, as to that instance, after having that conversation, what is your understanding as to whether there's any enforcement opportunity there through the sheriff's office?

A. What I've been told is, unless there's

damage done to the gate, there's nothing they can do. They can enforce trespassing. And they can enforce criminal damage, I believe is what it's called.

Q. Right.

A. But short of having any damage, there's nothing they're going to do.

Q. So if someone is entering the gate in violation of your rules and regulations, you don't know who they are, they're on your property, you call the sheriff, the sheriff can't do anything or is not going to do anything.

A. Correct.

Q. Briefly, and I'm almost finished, I believe. Do you ever observe any traffic violations on Kensington Boulevard?

A. Yes.

Q. Describe those. I'm talking about your personal observations.

A. As I sit outside having coffee in the

morning, I can see the Barrington intersection with Kensington which is a three-way -- is a three-way stop. And every morning people are coming out of the Estate.

There is a speed bump, a speed hump for the stop. They will slow slightly to go over the speed hump, and they just drive straight through the intersection without stopping. I would say that probably happens one in every three vehicles, maybe

one in every four vehicles doesn't bother to stop. They just drive right through the intersection.

Q. And where are these individuals going?

A. I don't know where they're going, but they're looking to be leaving the neighborhood. Since they've come out of the Estate and are going down Kensington, I can only assume they're going to work in the morning. But I don't know.

Q. I apologize. I should ask what direction they're going.

A. They're going westbound towards one of the two gates.

Q. Thank you. And they're leaving from the Estate?

A. Correct.

Q. Do you have security on premises?

A. We have a contracted security company that gives us three hours a day of service.

Q. Why don't you have them there all day every day?

A. It's just not financially possible. We just don't have the funds for that.

MR. SHELTON: I believe that's all the questions I have for now. Please answer any questions of Mr. Ford.

JUDGE DUKES: All right.

MR. FORD: Do you need a break, Judge?

MR. SHELTON: Yeah. I was about to say --

JUDGE DUKES: I'm good. I'm going to let the witness or our court reporter or anybody

else --

MR. FORD: Bailiff?

JUDGE DUKES: You all want to take five minutes? Is that --

Q. It's up to you all?

JUDGE DUKES: Okay. Sir, don't discuss your testimony with anyone during the break. Okay? So why don't we just take five minutes, and then we'll come back and do cross.

(BREAK TAKEN)

JUDGE DUKES: Back on the record. Go ahead, please.

BY MR. FORD:

Q. Good afternoon, Mr. Matteo. We never met in person. It's nice to see you in person. I'm trying to figure out first which house you live in. I just want to put an X on it, so I can figure out where he's -- where he's having coffee. Can you

look at this and just tell me which one you are? And do you have a pen you can mark it? I have a pen, but I don't know if you want to touch it or

not.

JUDGE DUKES: They have tiny little numbers on them.

MR. FORD: I know. But -- good. Mr. Matteo's going to mark which house he's at just so we have some context. Thank you. Got you. Your Honor, you want to at least see so we can -- I won't get to close, but you can -- it's just a little helpful to me.

JUDGE DUKES: I think I have an idea from the testimony, but I'll just copy what's on that one. Okay. The second house on the right. Got it. As you make the right turn from --

MR. FORD: If you're going towards the Estate, it's on Kensington.

JUDGE DUKES: Yeah. Kensington. You make a right on Barrington. It's the second house on the right.

BY MR. FORD:

Q. Okay. So that's where you sit having coffee that you've mentioned several times. Is that correct, sir?

A. Correct.

Q. Okay. So, you pretty much have a view of the entrance to the Estates or at least that portion of Kensington.

A. Correct.

Q. Okay. But you don't have a view of those other turns before that Westbury Parkway and Norse Avenue and the alley and all those streets to the other side, right? That's just -- your view is of the Estate of Westbury.

A. From my front porch --

Q. Right.

A. -- correct.

Q. So all this stuff you're talking about, it makes sense you would see any violations of the Estate of Westbury because that's what you're looking at, right?

A. It's the way I face, yes.

Q. Right. You're not seeing whatever's going on in the rest of the community during your morning coffee, right?

A. Correct.

Q. And anything could be happening. You're

just not seeing it, right?

A. Correct.

Q. Okay. I'm going to read this in, one thing, and then I'm going to get into just sort of the basics. You testified a minute ago that you -- did you ask for a list of residents from the Estate or did somebody else for the Park? You said you asked and it was denied.

A. I don't recall whether we sent it or if IMC sent it.

Q. Okay. Would it surprise you if their memory is that you sort of stormed in there and demanded a list of residents?

MR. SHELTON: Objection, verbal --

BY MR. FORD:

Q. Did that happen?

MR. FORD: -- foundation.

THE WITNESS: No, it definitely did not happen.

BY MR. FORD:

Q. Okay. You deny that?

A. Correct.
Q. And do you deny the Estate of Westbury offered -- didn't want to give you a list, but they offered to look at your list and cross off whoever it was who shouldn't be coming in?
A. I do not know --

Q. Did that happen?
A. -- that one.
Q. Huh?
A. I do not recall that one.
Q. Okay. But you don't deny that they offered to try to work with you and you just wanted the list and weren't going to have it any other way. That's the question.
A. I deny that.
Q. Okay. We'll get to that later. Okay. How many -- if you know, how many homes or units are in Westbury Park?
A. Three hundred fifty homes.
Q. Thank you. Do you know how many are in

the Estate of Westbury?

A. Three hundred and twenty.

Q. So, if I do my math, I've got 670 total. You've got an engineering background, right?

A. No. I'm a chemist.

Q. All right. Well, my read is there are 670 homes or units, however we'd describe, total. Is it fair to say that hundreds of people are going through those gates every day.

A. Yes.

Q. Okay. So if we looked at a sample of 20,

hypothetically, that would be a microcosm of what happened, not only on a given day, but in a given month or a given year, correct?

A. Correct.

Q. Okay. You lived at Westbury for about four years, correct?

A. I believe so.

Q. And you've been the president for a little over a year, right?

A. Correct.

Q. All right. And you do not have a long history with the association, correct?

A. Only up to the time we moved in.

Q. Okay. You remember I took your deposition?

MR. FORD: We did take some depositions, Judge. And I asked if you have a long history in the association. And he said no.

BY MR. FORD:

Q. Does that sound right?

A. Four years isn't that long. Now, on the board, it's been a short time. It's been less than two years on the board. And the two years before that would have been just visiting, you know, going to the monthly meeting or the quarterly meetings.

Q. Okay. I thought this was the easy part. Did you testify, I don't have a lot of long history with the association, in your deposition under oath at Page 13, Lines 1 and 2?

A. If you say I said that, then I said that.

Q. Okay. This is the easy part. Okay? And you're not a lawyer, you don't have any legal expertise, correct?

A. Correct.

Q. You do not have any firsthand knowledge of the long history between the Estate of Westbury and Westbury Park, correct?

A. Correct.

Q. So you're not claiming that you yourself can interpret the covenants and declaration, correct?

A. I can interpret them. I just wasn't there when they were created.

Q. Okay. But can you offer legal interpretation of those documents?

A. Not legal interpretation. I'm not a lawyer.

Q. And it's your understanding that the Park, the Estate and the commercial properties was part of a planned development out of a single parcel of land

originally, correct?

A. I believe so.

Q. Okay. Well, that's what you testified. And you moved into Park knowing that the Estates was there and was a separate neighborhood, correct?

A. Correct.

Q. Okay. And before you bought, you had heard that there were some -- there's some problems with crime in the area generally, correct?

A. Correct.

Q. And then you looked into it and you decided that the problem was with the Estate and not with the Park. And you were comfortable enough then to move into the Park. Is that a fair summary?

A. Fair.

Q. Okay. So it's no surprise to you that the Estate is there, correct?

A. Correct.

Q. And it's no surprise to you when you bought in that there was a separate community there with it's own thing going on, correct?

A. Correct.

Q. Okay. And Estate of Westbury is very clearly marked as another separate community within Westbury Park. It's marked as a separate community.

A. Correct.

Q. Okay. And there are signs that say that Estate of Westbury people can only use the easement for ingress and egress, correct?

A. Correct.

Q. And that those are on sidewalks on both sides of Kensington Boulevard, correct?

A. Correct.

Q. Okay. So anyone who comes in and is paying any attention who buys in is going to understand that there's a separate community within and there's -- one community is coming through the other to get in and out, correct?

A. I can only speak to what I know.

Q. Does it seem obvious to you?

A. I would not say that. I don't know what other people know. I know that when I buy a house, I do probably more research than somebody else would.

Q. My question, sir, was did it seem obvious to you?

A. No. It did not seem obvious.
Q. But you did your research and you figured it out.
A. Correct.

Q. Okay. And you have had conversations with people who you think are not -- or sort of going off the required streets and using the facilities that are Westbury Park. You kind of talked about that earlier, correct?
A. Correct.
Q. And you have from time-to-time videoed those people, correct?
A. Correct.
Q. And you've told me that you're a guy who videos things because in this day and age you have to video people to almost -- to show what happened, correct?
A. Correct.
Q. There are 25 cameras in the Park community?
A. I think there's 24.

Q. I thought you told me 25, but that's fine.
A. Maybe it's 25. I could count them, but I don't recall off the top of my head.
Q. And going back, you have on several occasions talked to Estate people who have -- about how they need to not be on Park property and need to be off the property, correct?
A. Correct.

Q. And your experiences in general, they understand that and head back to the Estate, correct?
A. I don't know what they understand. We have a conversation where I explain that they are not supposed to be in there. Generally, they head back to the Estate. Sometimes they continue walking.
Q. All right. Let's go to your testimony. And remember in your deposition you told the truth. Do you remember telling the truth?
A. Yes.

Q. And this is the truth, right? And it hasn't changed, right, since --

A. Correct.

Q. Okay. Did you testify, but generally they're not happy. But they understand it and they head back to the Estate. Do you deny testifying that?

A. If it's there, I said it.

Q. The Park, it your understanding about 24 percent are tenants, correct. They're landlords owned, correct?

A. The last time I did numbers, yes.

Q. Okay. The -- your understanding is that

the problems between the Estate and the Park go back to at least 2003, correct?

A. Correct.

Q. Okay. So this is nothing new, this tension that -- that's going on, correct?

A. Correct.

Q. And the Park has been unhappy with the fact that there's an easement been there for the

full time that easement has been in place, correct?

A. They have been unhappy with the situation, yes.

Q. Okay. For the full time the easement ha been in place.

A. Yes.

Q. Is Jeanette the manager at the Estate?

A. As far as I understand.

Q. Okay. And that's kind of your current contact with the Estate person, correct?

A. Correct.

Q. Okay. So when I say Jeanette, we understand that's the person that you sometimes communicate with at Estate of Westbury.

A. Correct.

Q. Okay. You believe that Jeanette has been good at trying to correct things regarding your

concerns at the Estate, correct?

A. I believe she's done some good work?

Q. Okay. But you believe she's been very

good at trying to correct that.

A. Yeah. I think she's been trying to.

Q. Do you believe that Jeanette has been very good at trying to correct things, but things still occur. Is that accurate?

A. Yes.

Q. Okay. Thanks. And when you communicate with Jeanette, she is helpful?

A. Sometimes.

Q. Question, when you communicate with Jeanette in that way, is she helpful? Answer, yeah. Is that a true statement?

A. Yes.

Q. Okay. Thank you. And is it your understanding that the Estate, if you know, has Parking Boss which -- for people who have parked in the Estate?

A. That's what I'm told.

Q. Right. And that's a system to register visitors and so on. And is it true that Jeanette uses that to try to help identify people when you come to her with these concerns that you've talk

about? She goes to the database. She tries to identify people if she can.

A. I don't know what system she uses. I know Parking Boss is used for overnight guests. If it's the same system she uses every day then yes.

Q. Okay. She goes to some system and tries to help if she can?

A. Correct.

Q. Okay. Thanks. And you have no reason not to trust Jeanette, correct?

A. I don't know of any reason not to trust her.

Q. Jeanette answers all of your e-mails even if she doesn't have the information, correct?

A. Well, that's not necessarily true. However, you can look at that, but we went back. I looked -- after that question, I looked further into it to make sure that I had the documentation correct.

Q. I don't understand your answer.

A. That question was asked in deposition. I then went back and researched e-mails.

Q. Uh-huh. And so what are you saying? What did you find?

A. So the 65 breaches that I communicated to

Jeanette about, she was able to help give us a name on ten of those 65 out of the 140-some that we set. Twenty-four of them she said she did not know. So that's -- that is a total of 34 out of 65 where she was helpful. That means that there is half of them she did not respond.

Q. Okay. That, however --

A. But I did not know that at the time of the deposition.

Q. Again, under oath, you testified, you were asked, does she generally answer all of your e-mails even if she doesn't have the information? Your answer, I would say anymore, absolutely. Is that what you believed at the time you testified under oath?

A. At the time I --

Q. Okay.

A. -- testified, yes.

Q. And you also testified, if I sent her

something, she'll absolutely, if she has it, she will give it to us now. I do believe that. Was that the truth when you testified?

A. At that time, yes.

Q. And you knew you were having your deposition taken that day, right?

A. Correct.

Q. You were not prepared. And you understand you were oath, right?

A. I understood.

Q. And you told the truth that day.

A. Yes, I did.

Q. Okay. The motorcycle guy, I think --

MR. FORD: Did you refer to the motorcycle guy today?

MR. SHELTON: No.

MR. FORD: No? Okay.

BY MR. FORD:

Q. There was a guy on a motorcycle who was -- who was doing violations at some point. He is from Estate of Westbury, right?

A. Correct.
Q. Okay. And Jeanette gave you the information and you issued him a ticket for a fine or a notice for a fine, right?
A. Correct.
Q. And you did that -- you were to able to do that Jeanette identified him for you?
A. Correct.
Q. Westbury Park has no control over Park residents once they go into the Estate, correct?

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A. I'm not sure what you're asking.
Q. The Park, does it have control over Park residents once they leave the Park and go into the Estate?
A. I'm not sure what you mean by control of them.
Q. Okay. Let's go to your --
A. There are rules in place, absolutely.
Q. Okay. Did you testify under oath at Page 105 -- Page 20. I'm happy to show it to you.

Quote, I have no control over people going over to the Estates and doing something. That's what you said. Is that the truth?

A. If it's in there, that's what I said.

Q. Okay. And you also believe that on Estate property it's up to Estate people to enforce their rules, correct?

A. Correct.

Q. Okay. It's not up to Park people to enforce Estate rules on Estate property, correct?

A. Correct. We have no agreement with them.

Q. Right. And the gates are entirely on Park property, correct?

A. Correct.

Q. And the Estate has no control, no say over

the gates, correct?

A. Correct.

Q. And you don't know one way or the other whether the Estate has enforcement power over Estate residents once they leave the Estate.

A. They do have some.

Q. Okay. Did you testify at Page 107, Line 15, you say that Westbury. What enforcement power do they have over the residents within your residential association community? Answer, I'm not sure. Was that the truth?

A. Yes. It was --

Q. Was that the truth?

A. -- at the time.

Q. Is that the truth today?

A. No. It's not the truth today.

Q. So the truth has changed?

A. Yes. I have more information than I had at that time.

Q. Okay. Let's talk about the breach?

MR. SHELTON: Let him answer the question and then (inaudible) --

MR. FORD: (Inaudible) I --

MR. SHELTON: -- changed. And then he elaborated he had more information at that time.

I ask that he fully answer the question.

MR. FORD: Go ahead.

THE WITNESS: So at that time, that is to the best of my knowledge I answered that question. I then went and looked at the Estate rules, and there's a section in the rules that states about noise on our property, that they are not allowed to have loud noises when they drive through our community.

So to answer your question, they do have some authority over what their people do in our community in their own rules.

BY MR. FORD:

Q. Let's talk about those breaches that you testified about earlier. When you talked about breaches of the gates, that did not necessarily mean that damage was done to the gates; is that correct?

A. Correct.

Q. Okay. Sometimes it can be somebody pushed the gate open, correct?

A. Correct.

Q. Okay. Sometimes it could mean someone went around the gates, correct?

A. Correct.

Q. Okay. It can be a technical violation of

Westbury Park rules without any property damage whatsoever, correct?

A. Correct.

Q. Okay. Are Estate people or anyone with the swipe card allowed to let other people in?

A. No.

Q. Nobody else?

A. No.

Q. Then how do they -- if they have someone coming, how do they let them in?

A. They use a visitor kiosk access system.

Q. Okay. So the Westbury Park's rule is that if someone goes in -- Ben goes in, he's got someone behind him, he can use his swipe card but his friend behind him has to then call him and use the access code?

A. That's the way it should be. Yes.

Q. Is that the way it is in the rules?

A. Yeah. Each individual comes through has to use a correct device to get in.

Q. What is the Park's property management company for the gates? Is it IMC?

A. IMC is our property manager.
Q. Then who controls the gates, which company?

A. TSC.
Q. TSC. So is it accurate to say that -- tell me and the Judge the relationship between IMC and the property management company and TSC, the gate company. Does IMC control TSC?
A. They manage the contract on behalf of the board as they do any other contract. TSC's just another vendor who does work for us.
Q. Got you. IMC is responsible for the gate process though, correct?
A. They handle the administration of the adding of folks to that database.
Q. Got you. And IMC started in September 2018, correct?
A. Correct.
Q. Okay. And it's a breakaway gate meaning if someone forces it -- is it still like this if

someone pushes it it will open? Is it still that way?

A. No. There's a restraining device on it now that keeps somebody from pushing it open.

Q. Yeah. I saw a lot of videos of people just pushing it open and it was going. Was that before the restraining device came along?

A. Correct.

Q. And when did you all put the new device on?

A. Boy, we started probably six to eight -- six to nine months ago. I don't recall. Don't remember the exact date.

Q. I thought I ask ed you in deposition if it was a breakaway gate, and you said yes. But you're telling us now that there's some new system in the last six months or so.

A. No. There's a restraining device on the breakaway gate.

Q. Okay. But anyone can just walk in on the sidewalk. There's no restriction of any sort on

that.

A. Correct.

Q. So really the entirety of the security as far as the gate is this plastic arm that goes up and down.

A. Correct.

Q. Okay. For the Estate, when someone buys at the Estate, they have to go to Jeanette who has them fill out a form and then gives it to IMC, correct?

A. Correct.

Q. Okay. And Estate people aren't allowed to

have the fobs or clicker, are they?

A. Correct.

Q. Okay. Why is that?

A. I do not know.

Q. Okay. So Park people are allowed -- Park people can have a clicker. Or they can have -- is there a little scanner thing that they can come up and it scans them automatically?

A. There is some legacy RFID, but it's not a bar --

Q. What is it?

A. -- bar code scanner. Like if you go out to Hilton Head, it's not one of those. It's just an RFID.

Q. Okay. So Park people can use the fob or they can use a scanner or they can use their card or they can use their code, correct?

A. Correct.

Q. Okay. I'm sorry. Park people can use those four ways, correct?

A. Correct.

Q. Okay. Estate people aren't allowed to use the fob and aren't allowed to use the -- whatever the scanner thing is, correct?

A. If they have it, they are allowed to use

it. We're just not selling any them moving forward.

Q. Okay. Estate people fill out the same form that Park people do in order to get access to the gate, correct?

A. Yes.

Q. Okay.

A. As far as I know.

Q. And all of those forms are all given to IMC, correct?

A. I assume so.

Q. I mean, that's how they get their pass code, correct?

A. Correct.

Q. They go to Jeanette. Jeanette has them fill out the form. The form then goes to IMC. And it's the exact same form as Park people do. It's just got different letterhead on it, correct?

A. Well --

Q. So your --

A. Yes.

Q. So your vendor, IMC, has a list of everyone and their information, their codes -- I'm sorry -- their license plates, their addresses, everyone that fills out the form and who is issued a code, IMC has all that information.

A. They have the information. They don't have a list.

Q. What's the difference?

A. A list is a list. The information is in a computer software database.

Q. IMC has -- my understanding is a binder with the information of all the Estate people in it who are supposed to have access. And it has their name and the license plates and all that. They have all those forms?

A. That's not correct.

Q. Okay. Tell me what's correct.

A. They would only have what they received when they started the contract. As I understand it, the only thing they would have is anything that started from the day that IMC started managing the gate access software.

Q. So IMC started in -- September 2018, right?

A. Uh-huh.

Q. Who -- yes?

A. Yes.

Q. I'm sorry. I apologize.

A. Sorry.

Q. That's alright. So who did it before

that? Who managed it before that?
A. Century was the property management company.
Q. So -- and they worked for Westbury Park?
A. Yes.
Q. Okay. So when they left, Westbury Park got them to give it all the information that they had because they were the vendor, right?
A. That's not accurate.
Q. All right. What happened?
A. I was not part of that transition. There was a big argument about computer, about who owned the computer and all the forms and files and everything else was in there. Beyond that, I don't know. I just know we did not get everything.
Q. Okay.
A. What we did get or didn't get, I don't know.
Q. Okay.
A. It was before I got on the board.

Q. Sorry. I didn't mean to interrupt. Are you done? So, you all are sort of starting fresh from September 2018 on knowledge about who is filling out these forms; is that accurate?

A. That would be accurate.

Q. Because you all didn't get the historical information from your own vendor.

A. What I said was I don't know what we got. I don't think we did.

Q. Okay. So that would be a problem for you all, right?

A. In that date, yes, it is.

Q. But the way it works at Estate of Westbury is they have someone fill out the exact same form the Park people do. That is provided to your vendor and your vendor has that information just like they do for Westbury Park people.

A. From the people -- not the same way as Westbury Park, no.

Q. Just tell me --

A. Because we did a roster run through the community where we had everybody come and give us all the information they had so we could develop this new database to load on the new kiosk. So we had everybody. And we collected it in a massive spreadsheet, a list, so-to-speak. We have that for our people. We do not have it for the Estate people.

In the database that IMC took over, at one count, there was ten times as many people in there

as there are residents. And so our issue is people were being added to the database, but nobody was being removed from the database. So we have a lot of active cards. And we don't know who they have -- who they are. Where they're at, et cetera, et cetera.

Q. And Jeanette offered, if you would give her the list that you have, to tell you who the active people were and you could exclude the rest. She offered that to you, right?

A. The problem --

Q. Did she offer that to you? And then you can go on.

A. Yes.

Q. Okay. Thank you. Go ahead.

A. I am not a database expert. But there was no way to export the database from that system into a spreadsheet. So, to be able to give her a spreadsheet and says just delete the people that are on there, technically, doesn't work. Hence the reason why we needed a fresh roster. Take our roster that we did plus the roster the Estate did. Put them two together and upload them into the database. In other words, override it with new information because there's no easy way to go

through and find anybody who does not belong -- is -- does not belong on the list. In other words, anybody who's no longer a resident.

Q. So, is this largely a data entry problem?

A. Yes.

Q. Okay.

A. It's a software limitation problem under the existing system. The new system would give us that capability to upload, download, backup and restore system all the database for all the access. We don't have that with this system. Hence the reason why we're trying to upgrade.

Q. Okay. So a couple of things. First, IMC, Westbury -- the Estate of Westbury provides IMC with forms with all the information. It's just on a form. It's not in the electronic format, correct?

A. From 2018 -- from October 2018.

Q. Fair enough. Westbury Park just for some reason didn't get it's vendor stuff in an incomplete form, correct?

A. I don't know. I heard that they didn't. But I --

Q. You're the president.

A. -- can't say for sure.

Q. What do you say?

A. I can tell you I don't know for sure.

Q. You're the champion, right? On the

(inaudible), right? If you don't know, who knows?

A. I don't know.

Q. And -- okay. So, let's take a step back. This problem with the -- is it pass card? Is that what we're calling it? Swipe card?

A. We call it a swipe card just --

Q. Fair enough.

A. -- convenience.

Q. The way it works is that the Estate of Westbury person has to fill out the form. Jeanette confirms it. Then they have to take it over to IMC who then gives them a pass code, correct?

A. No.

Q. Okay, tell me.

A. They go in there and they register their vehicle and turn in their form and that information is used. They can then buy a swipe card and they can get assigned a visitor access code.

Q. Okay. But when they take the form in, the process you just described, they get an access code, correct?

A. A visitor access code.

Q. And why don't Westbury Park just require

them to buy a pass card when they do that?

A. Well, good question. And we have in our rules that they have to do that. But how do we enforce the Estate person -- how can we force them to buy something?

Q. You don't give them a pass code until they buy it. And the board of the Estate would fully support that, correct?

A. Well, I don't know that.

Q. I'm telling you they would. Why don't you all have your vendor require them to buy a pass code? You've got full control over that. Estate has no control over IMC. Why don't you all do that?

A. Because we don't control their folks.

Q. You control IMC.

A. We don't deny them the access because we don't want to get sued. We do the best that we can with what we're allowed to do.

Q. Okay. The Estate would fully support requiring people -- IMC not to issue a pass code until people get the -- get the card.

MR. SHELTON: Objection. It's

testimony.

JUDGE DUKES: Yeah.

MR. FORD: All right.

BY MR. FORD:

Q. Is it accurate to say the Estate has no control as to whether or not Westbury Park has gates at the entrance? That is entirely controlled by the Park.

A. The decision-making on the gates is definitely controlled by Westbury Park.

Q. And I think we established this, but the gates are on Park property only.

A. Correct.

Q. Westbury Park, the Park, has a security company. And I deposed the very nice leader of that -- of Mr. O'Quinn, right?

A. Correct.

Q. Okay. And that security company is blue lights, they're SLED authorization, they can issue traffic tickets on Kensington Boulevard, correct?

A. Correct.

Q. They have full authority to do that.
A. Correct.
Q. The sidewalks, you haven't said anything about the sidewalks. Did you tell me at the deposition that a problem with the sidewalks being -- needing repair is largely tree roots? That's what you told me at the deposition.

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A. The general failure point for sidewalks is tree roots growing up underneath them causing the sidewalks to split and become uneven, yes.
Q. Got you. As we go along Kensington Boulevard towards the Estate of Westbury, there's only one park along there, right?
A. There is one park. And then there is the lake park.
Q. Okay. You told me that there was one park along Kensington Boulevard.
A. There's one formal park.
Q. Okay. And Estate of Westbury people are not allowed to use that, correct?

A. Correct.

Q. Westbury Park people use the commercial properties portion of Westbury Parkway. So, Westbury Parkway continues well beyond the required streets, correct?

A. Correct.

Q. Okay. And then it eventually goes into the commercial properties that are kind of a part of Westbury, the Westbury thing, correct?

A. As I understand they are now owned and maintained by Beaufort County. But they were part of the original --

Q. Right.

A. -- development.

Q. And when Park people -- when it was controlled by commercial properties, Park people used those as well, correct?

A. I can't say because that was before my time.

Q. You don't know --

A. I would assume to drive in and out, yes.

Q. And when they did, they didn't have to pay for use of that section of the commercial property of Westbury Park, did they?

A. I don't know of any payments for their rights to drive up and down that road. No. I don't know of anything.

MR. FORD: Can I have just a minute, Your Honor?

JUDGE DUKES: Sure.

MR. FORD: That's all I have at this moment, Your Honor. Thank you, sir.

JUDGE DUKES: Any redirect?

MR. SHELTON: Briefly.

BY MR. SHELTON:

Q. We were talking about all the gates. Has anyone from the Estate ever request to you as

president or have you ever heard of anyone from the gate requesting that the gate -- from the Estate requesting the gates be removed?

A. No.

Q. Do you know whether Jeanette, the manager at the Estate, has all of the information on ever single resident of the Estate?

A. I do not know. I'm not sure that she does.

Q. How about every vehicle that parks at the Estate?

MR. FORD: Only his personal knowledge.

THE WITNESS: I do not know.

BY MR. SHELTON:

Q. Do you know?

JUDGE DUKES: My understanding is the question is does he know if Jeanette knows?

MR. SHELTON: Right.

JUDGE DUKES: So --

MR. SHELTON: Correct.

BY MR. SHELTON:

Q. Do you know whether Jeanette has information on every vehicle at the Estate?

A. I do not know.

Q. Now, these gates, they are on the common area of Westbury Park, correct? When you --

A. Correct.

Q. Are they a lawn? How -- are they covered? The right-of-way or alleged easement?

A. I'm sorry. Rephrase it.

Q. Do they actually -- are the gates across the actually street?

A. Correct.

MR. SHELTON: Okay. Those are all the follow-up questions. Thanks.

All right. Thank you so much. So would you all like to take about 20 or 30 minutes, try to eat something.

(BREAK TAKEN)

JUDGE DUKES: Back on the record in 2158. Call your next witness, please.

MR. SHELTON: Thank you, Your Honor. The Plaintiff calls Ms. Karen Parks.

JUDGE DUKES: Come on around in the chair I can't see, but I know it to be right there somewhere, please. Can I get you to hold your right hand up, please. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

JUDGE DUKES: All right. Have a seat, please. State your whole name for the record.

THE WITNESS: Karen G. Parks.

MR. SHELTON: Thank you, Your Honor. May it please the court.

JUDGE DUKES: Go ahead. Please answer any questions counsel may have.

WHEREUPON:

Karen G. Parks, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. SHELTON:

Q. Ms. Parks, please -- you already given your full name? Give your full name for the record, please.

A. Karen G. Parks.

Q. Thank you. And where do you live?

A. At 67 Westbury Parkway in Bluffton?

Q. Is that in the neighborhood of Westbury Park?

A. It is.

Q. For the purposes of this hearing, can we call it the Park?

A. Yes.

Q. Okay. How long have you lived there or had a residence there?

A. Eleven years.

Q. And how long have you lived there full-time?

A. Almost three years, now.

Q. And do you have any role as to the association?

A. Yes. I'm currently the treasurer of the board.

Q. And how long have you been in that role?

A. A year and a half. And before that I was an assistant treasurer and not on the board, just a volunteer assistant treasurer.

Q. And how long did you fulfill that role?

A. About two years.
Q. Were you a member of Westbury Park during the transition from West -- from declarant control to board control?
A. Yes. I was the chairperson of that committee that was formed.
Q. And when did that happen?
A. That happened -- we were seated as a committee in September of '12, I believe.

Q. And do you know when the transition actually occurred? When it was finalized?
A. Yes. In October of 2015.
Q. Thank you. Now, you've been a resident there for 11 years, you stated, correct?
A. Yes.
Q. Has a gate all -- a gate of one form or the other always been in Westbury Park during that time period?
A. Yes.
Q. In both locations on the Buck Island

entrance and also 278 entrance?

A. Yes.

Q. What is your understanding as to whether the length of time a gate of some form or the other has been at the neighborhood?

A. It was -- gates were always present from the initial development of the community and which started in circa 1998.

Q. And have -- during your time at Westbury Park and as a member of the board, have you ever seen any document, any demand, any request of any form whatsoever from the Estate to remove the gates?

A. No.

MR. SHELTON: Beg the court

indulgence. Could I have a sidebar?

JUDGE DUKES: Yeah.

(OFF RECORD DISCUSSION)

MR. SHELTON: And I'll -- back on the record, please, Your Honor. For the court's edification, I just -- Ms. Parks has information available as to how money was split between

declarant and the association prior to the transition. And I think it may be -- I was just speaking with Mr. Ford. I was going to ask her a few questions about that which isn't necessarily directly on point with the injunction motion, but it may save time for the court later.

JUDGE DUKES: Go ahead.

BY MR. SHELTON:

Q. Ms. Parks, you're the treasury, correct?

A. Yes.

Q. Would -- has Westbury Park -- you heard the number 1.3 referenced earlier in the hearing; is that correct?

A. Yes.

Q. 1.3 million?

A. Yeah.

Q. Did Westbury Park Residential Association receive $1.3 million from the Estate of Westbury?

A. No, it did not.

Q. Who received the money initially?

A. From the beginning, the first payment, according to the records and my understanding, records we found, it was January of 1999. And all payments up until, I believe, November or December of 2015. So from that period of commencement through the extreme end of 2015, Plantation Park, LLC was the recipient of all the money paid.

Q. Park Plantation Properties, was that --

A. Yeah.

Q. Okay.

A. Yeah. PPLC --

Q. Okay.

A. -- LLC is how we always --

Q. Thank you.

A. -- refer to it.

Q. And did the -- did the -- to your knowledge, did the residential association, the Park, receive any of those funds prior to the separation from declarant's rights?

A. We did get, over the years, varying amounts provided to us from the developer. The amounts varied. We have, as part of the transition, work and research that we undertook. We had

developed -- I actually had developed a spreadsheet of the flow of money, what was paid. We have some invoices from the Estate at -- or the Estate, some accounting records that we had access to for some reason. And so we have -- so we have some numbers that are spot-on. And we have some numbers that we needed to say, well, we don't know that they implemented the CPI this year. So we kept it, like, whatever it was because every year the CPI didn't com into play. So we have a very, I think -- you know, very solid estimate of what was the money that was paid.

Q. At what point did the residential association beginning receiving all of the money per the assessment from the Estate?

A. Again, that goes back to very late in 2015 after all of the settlement and transition documents were signed and we were able to notify the Estate that -- of the transition and provide them a copy of the -- that we were now the assignee of that agreement.

Q. And did you have any rights as to enforcement of that assessment prior to 2015?

A. No.

Q. Now, after 2015, between 2015 and October

of 2018, did you ever receive any notice or demand from the Estate for an accounting?

A. No.

Q. Did you receive any notice or demand from the Estate for any type of reconciliation at the end of the year of the funds?

A. No.

Q. Did you receive any notice or demand to see your budget?

A. No.

Q. Past treasurer -- I not going to -- I don't want to get into the how much, but does it cost money to maintain the required streets?

A. Yes, it does.

Q. Does it cost money to maintain the gates?

A. Yes, it does.

Q. Does it cost money to provide security in all of -- and pay third parties for their monitoring

of the gate and the required streets?

A. Yes, it does.

Q. Do you have any idea how much it would cost to pay someone to monitor the camera system the way that Mr. Matteo does?

A. I don't know how to put a figure on that.

Q. And you heard earlier Mr. Matteo give that

information to the Estate, correct? The information that he --

A. Yes. I've actually been copied on some of the -- at least a number of the e-mails to Ms. Prinsen.

Q. Thank you. Now, you're a resident of Westbury Park, correct?

A. Yes.

Q. Is it important for you that it's a gated community?

A. Yes.

Q. Please elaborate on that.

A. When shopping for real estate in the community -- in the area, the region, I looked at --

I think on my first real estate tour, I looked at 26 properties. And I'd say at least in ten different communities. And speaking with realtors, doing research myself, I determined that because I was still going to be working and maintaining a home in the northeast while I was employed, I wanted a place that I felt was very secure with gates so that I wouldn't have to necessarily do a robust security system on the home myself.

Q. Has the gate that's located -- the gates rather that are located at Westbury Park -- excuse

me -- the Park now, have they been the same gates that have been there since you resided there or purchased your home there?

A. No. No. As part of the research during -- for the transition and the eventual settlement, we were able to look at documents and really get underneath some of the expenses of the Park. And one of the things I noted was that the gates were essentially leased. It's kind of leasing an

automobile instead of buying them. And that was a very expensive way to go.

And so we undertook a study and we purchased -- and the gates were old. They had started to reach their -- end of their life cycle. And so we decided to do a competitive bid and have security companies provide us with quotes for new gates, new technology, including the latest surveillance camera. And actually, the municipal buildings here in Beaufort were one of ones that we identified as the best of breed at the time. And those were the cameras we bought.

Q. And what year was that?

A. That was in 2014 that study was undertaken. And by early 2015, we had board approval. We had all of the logistics. We had a

number of data lines, T1 lines we had to run because data now -- we have a new -- for the new equipment, the better cameras required more robust data network support as well as electrical.

Q. Does Westbury Park, or the Park, have

capital reserves?

A. Yes, we do.

Q. And do you have a budget for how much you put in those capital reserves each year?

A. Yes, we do. Yeah, I do.

Q. Do you have any idea what that figure is in your capital reserve budget per year now?

A. Right now it's $132,000, I believe, 132-133,000 a year. It's down from what it was.

Q. How much was it before?

A. We were always putting more in the range of 170 to 175 until the easement payments ceased.

MR. SHELTON: I believe those are all the questions I have. Thank you so much.

(OFF RECORD DISCUSSION)

BY MR. FORD:

Q. Ms. Parks, we've met before. It's nice to meet you in person. I just -- since your testimony is relatively limited, I'm going to try to just stick to that. Kensington Boulevard has always been

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as far as you know the only way in and out of the Estate of Westbury, correct?

A. Correct.

Q. Okay. And this gate is pretty much just like a physical arm. Were you here? Did you see the videos?

A. Well, I heard all the bits and pieces. But, yes, it is a lift-arm.

Q. It's just and arm and anyone can walk in and out because there's sidewalk, right?

A. It doesn't prevent pedestrians. It's intended to be a vehicular control.

Q. And the gates are on Westbury Park property, correct?

A. Correct.

Q. And Westbury Park, the Park, makes all decisions about the gates now the turnover has happened, right?

A. Yes. Although, there have been times when we've consulted with the community manager at the Estate.

Q. You may have talked to them, but the Park makes all the decisions and has the sole authority to make the decision about the gates, correct?

A. Correct. Ultimately, yes.

Q. And the gates have evolved over time. You mentioned that just a minute ago. You need to say out loud for the record.

A. Yes.

Q. And they used to be open all day and just closed at night, correct?

A. That was -- there were very few periods of time when that occurred.

Q. Okay. But that did occur. You testified to that at your deposition it used to be open all day and just closed at night, right?

A. During my deposition, I recall that I testified what I knew to be the truth which is when the community was being developed, there were four, five -- four phases with that each had an A and B. During the time that there was heavy construction vehicles and all sorts of contractors coming in and out, building 350 homes, not to mentioned 320 apartments, the gates would be open during the weekday from early morning until a certain point, 7:00 o'clock or something at night. I can't testify

exactly to what the time was. I recall 7:00 at that time. The only other time when the gates have been open has been when there has been damage to them, they were waiting for parts, in my history.

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Q. You testified in your deposition that the Estate of Westbury is not involved in decisions about changing the gates. Is that the truth?

A. That's correct.

Q. Okay. And you testified at your deposition Estate of Westbury has no authority or control over the gates. Question, is that the truth?

A. Authority?

Q. No authority or control over the gates.

A. I'm not sure I understand your question regarding authority. They have no control over the gates. I don't know what you're inferring by the term authority.

Q. In your deposition I asked you, does Estate at Westbury have any authority or control

over the gates. Your answer was, I don't believe so. Question, is that the truth?

A. That's my statement. However, I think now you've -- getting to know you a little bit, I think when you say the word authority, we've already clarified that Jeanette Prinsen authorizes people from the Estate to have access.

Q. Well, that's not true, is it?

A. Well, that is -- that is --

Q. Okay. IMC --

A. -- the policy and the practice.

Q. IMC controls the gates, right?

A. They do.

Q. Okay. And IMC works for Westbury Park.

A. Correct.

Q. Okay. And Jeanette and the Estate of Westbury has no authority whatsoever to issue gate passes or cards, correct?

A. No, she authorizes residents.

Q. She authorizes residents who then go to IMC.

A. Correct. Yeah.
Q. And the Estate of Westbury has no control whatsoever over IMC, correct?
A. That's correct.
Q. Okay. IMC does not work for Estate at Westbury, works entirely for Westbury Park, correct?
A. Correct.
Q. And IMC alone issues codes for the gates, correct?
A. Correct.
Q. Okay. And IMC could require people to purchase a swipe card when they issue the codes, correct?

A. Correct.
Q. But they don't, correct.
A. It appears they have not.
Q. Okay. And as we've said, Westbury Park controls what IMC does, right?
A. Correct.
Q. I'm sorry?

A. Correct.

MR. SHELTON: I'm going to object. I think it's a little bit beyond the scope. But we're -- I give some latitude, but let's reign it in.

BY MR. FORD:

Q. I think you testified that it is your understanding that the Estate of Westbury, over time, paid 1.265 million towards the required streets. Over time, that's what they paid.

A. Yes.

Q. Okay. And I understand what you just said. It didn't always go to Estate -- to Westbury Park?

A. Correct.

Q. But, at least going to 2010, they were paying roughly $90,000 a year, right?

A. Yes. Just under 90,000, I believe, yes.

Q. Right. And have you seen the letter from

Westbury Park, in December 2010, sort of summarizing that at that -- at least as early as 2010, Westbury Park -- Westbury Estate -- I apologize. I'm going

to start over. At least as early as 2010, Estate was paying about $90,000 towards the required streets. Does that sound accurate to you?

A. Yes.

Q. Okay. And one of the things that Westbury Park used that money for was lawn care for its -- all of its residents, correct?

A. That's incorrect.

Q. Tell me.

A. Your statement was that part of that money was used to pay for the front lawn care of all residents. That's incorrect.

Q. Tell me what the truth is.

A. The truth is that at that point in time, 2010, front lawn maintenance, mow, blow and edge, as it's known, was provided for homes that opted for it. And there are 40 homes along the required streets. So those 40 homes had, obviously, a need to have their front lawns maintained.

Q. Did there ever come a time where Westbury Park was having all the front lawns -- when everyone in Westbury Park mowed, blown -- what did you say?

A. I have no -- I have no knowledge if that was ever the correct statement. There was the option for people to have that. For instance, my home has never been maintained by anyone else other than myself or my private contractor.

Q. Okay. You've seen the memo from Westbury Park dated March 17th, 2020. I'll show you that. Have you seen this?

JUDGE DUKES: Is that something in the file, yet?

MR. FORD: I don't remember.

MR. SHELTON: I believe it's -- I believe it's one of the exhibits. Perhaps Exhibit Number 4 to the defendant's motion in opposition to temporary injunction if I remember correctly.

MR. FORD: Ben knows my file better than I do. Do you want me to hand it up --

MR. SHELTON: Three, four or five. It's one of the exhibits.

JUDGE DUKES: Let's see. Yeah, four is an amendment of this --

MR. SHELTON: To the -- to the opposition, the defendant's opposition.

JUDGE DUKES: Oh, okay. Hold on. I'm looking at the wrong thing then.

THE WITNESS: I think the --
MR. FORD: Hold on. Just hold on.
JUDGE DUKES: It's just easier if I look at -- did you say -- did you have an extra copy?
MR. SHELTON: I do.
JUDGE DUKES: Thank you very much. So this is already in the file as exhibit something, right? This exhibit -- this would be a motion for a -- is it a partial summary judgment?
MR. FORD: I believe --
MR. SHELTON: It is in the record. I know I proffered it.
MR. FORD: Yeah. I believe it's an exhibit -- one of the exhibits to defendant's motion in opposition of -- to the temporary injunction. Yes, Your Honor.
MR. SHELTON: I know it's in.
JUDGE DUKES: You're not saying --

MR. SHELTON: I just don't know --
JUDGE DUKES: It might be used for one.
MR. FORD: It may be Number 1. There's Number 1.
JUDGE DUKES: Yeah, there it is.

It's Exhibit 1 to (inaudible) in opposition.
MR. SHELTON: Just for the transcript, it's Westbury Park (inaudible) Board of Directors.
BY MR. SHELTON:
Q. And, Ms. Parks, your name is at the top, right?
A. Correct.
Q. Okay. And it's dated March 17th, 2020?
A. Yes.
Q. And you've seen this before?
A. Yes, I have.
Q. Okay. And it says, among other things, a major change is that all mowing, trimming and leaf

removal for the front yards of all single-family and townhome lawns will no longer be a service provided under the new contract. Effective immediately, all residents will be individually responsible for the maintenance of all areas of their yards. While this decision was a difficult one, it was necessary for the following reasons.

Westbury Park R.A. continues to experience operational challenges due to the loss of income from the easement agreement with the Estate of Westbury. It goes on, but I'm going to pause there.

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Question, is that the truth?

A. Yes.

Q. Okay. There came a time when Westbury Park tried to extend the assessment obligation and says that they did extend it, correct? You know what I'm talking about?

A. Yes.

Q. Okay.

A. In October of '18?

Q. That's right.

A. Yes.

Q. I have a single question. To your knowledge, did the Estate of Westbury ever consent to that?

A. No.

Q. It's accurate that Estate of Westbury people are not allowed to use any of the parks at Westbury Park, correct?

A. That is correct per the agreement.

Q. And Estate of Westbury is not allowed to use any sidewalks at Westbury Park except along Kensington Boulevard to come in and out, correct?

A. Along the required street --

MR. FORD: Object. I just believe this is beyond the scope of direct. And I

understand the court gives latitude, but these issues have already been covered.

JUDGE DUKES: Okay.

MR. SHELTON: I may be done.

JUDGE DUKES: Okay.

MR. SHELTON: Sorry.

JUDGE DUKES: No. Go ahead.

MR. SHELTON: All right. Then that's all I've got. Thank you then.

MR. FORD: Brief redirect. Very briefly.

BY MR. FORD:

Q. The exhibit that you're holding, Ms. Parks, as to all single-family and townhome lawns will be no longer service provided. This doesn't mean -- let me back track. It's your testimony that that was never a service provided to all homes.

A. It was a service available to all homes, but there was a significant number of owners, like myself, who opted not have that service done.

Q. Okay. So it was a service available to all owners. Did the owners have to pay for that service?

A. No. It -- well, if it -- of course you pay for it under your assessments.

Q. Okay.

A. It's part of what was included under your homeowners dues.

Q. And all homes along the boulevard, along Kensington Boulevard were provided that service.

A. They had the ability to have that service. But again, some proportion of them did not avail themselves of that.

MR. FORD: Okay. Thank you. Those all the questions I have.

THE WITNESS: Okay.

JUDGE DUKES: All right. Anything specifically with regard to that question?

MR. SHELTON: Nothing no, Your Honor?

JUDGE DUKES: All right. Any questions? Thank you so much. You can have a seat. Any objection if she leaves us?

MR. SHELTON: No. She may want to stick around, but she -- maybe you want to switch out.

JUDGE DUKES: All right. Anything else?

MR. SHELTON: Can I consult with --

JUDGE DUKES: Yeah. You all take your time. We'll be off the record for a second.

(BREAK TAKEN)

JUDGE DUKES: Back on. Yeah. Sorry.

MR. SHELTON: I believe that -- I'm not going to make him motion for him, but there's -- we were discussing whether a directed verdict motion would be appropriate at this time. I -- if -- I would like to place Ms. Prinsen's deposition testimony into the record in lieu of calling her today, if that's without objection.

MR. FORD: No objection.

MR. SHELTON: This is an original.

JUDGE DUKES: All right.

MR. SHELTON: Or do you want me to e-mail a transcript to --

JUDGE DUKES: The -- let's go ahead and put it in if you want it in. There's no objection. But is you would e-mail me one, it would be easier to read it than --

MR. SHELTON: Right. Absolutely. I do not know if I have it on my -- I don't have it on my flash drive. But you would need it for the

directed verdict motion, I believe.

JUDGE DUKES: Right. I was thinking that.

MR. SHELTON: Yeah.

JUDGE DUKES: How long is the deposition?

MR. SHELTON: It is over -- it's -- I can't remember the exact number pages. But it's approximately 100 pages, I believe.

JUDGE DUKES: All right. So, I would need to read that, of course, before I ruled on --

MR. SHELTON: Right.

JUDGE DUKES: -- either the directed verdict --

MR. SHELTON: That's the question.

JUDGE DUKES: -- motion or --

MR. FORD: I don't want to wait. If you wanted to just put her on, we could do the whole thing.

MR. SHELTON: Right. I don't think I'm going to be -- I'm going to be --

MR. FORD: Hey, why don't we do this. Could we do this. You've put her on for what you want.

MR. SHELTON: Correct.

MR. FORD: And then if I can reserve the right --

MR. SHELTON: You can reserve the right to call her.

MR. FORD: Are you all right with that, Judge?

JUDGE DUKES: I'm okay with that.

MR. FORD: Okay. Let's do that.

MR. SHELTON: Thank you.

(OFF RECORD DISCUSSION)

JUDGE DUKES: Hold your hand up for me, please. Do you swear or affirm to tell the truth, nothing but the truth so help you God?

THE WITNESS: Yes.

JUDGE DUKES: All right. Have a seat and state your whole name for the record, please.

THE WITNESS: Jeanette Prinsen.

MR. SHELTON: Thank you, Ms. Prinsen.

WHEREUPON:

Jeanette Prinsen, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. SHELTON:

Q. Thank you, Ms. Prinsen. How are you today?

A. I'm good. How are you.rent like ask you specifically's question.

Q. Will you please spell your full name for

the record.

A. J-e-a-n-n-e-t-t-e, P-r-i-n-s-e-n.

Q. And what is your role as to the Estate of Westbury?

A. I'm the community manager.

Q. Why do you call it the community manager?

A. I guess you could call it the association manager.

Q. Do you have a property manager's license?
A. I do.
Q. Okay. Is it current?
A. It is current. It is on an inactive status.
Q. Thank you. I would like to ask you specifically some questions about your residence status. Okay?
A. Okay.
Q. Do you maintain a database for all occupants of the Estate?
A. A database, no.
Q. What do you have?
A. We have a couple of different things. I have a software program. It's Pay HOA. And that is just for the owners. Then we have a parking system. And that would be for anybody who drives or parks on

the property. So residents come in and get a parking decal. Guests of residents would have to register their vehicle into the system so that they

don't get a warning or get towed off the property.

I keep an Excel spreadsheet of tenants of property managers and of owners. And that's just for my own quick if I need to e-mail everybody, it's real quick to get in and copy and paste off an Excel sheet. So those are the different ways. And then we have actual, physical, hardcopy folders of every resident.

Q. What is the procedure that you use in order -- when a new resident moves in -- I'm using the word resident as any resident, not an occupant versus an owner.

A. Anybody that lives there.

Q. Anybody that lives there. When a new resident moves in, what is the procedure you use in order to insure that you have the right information?

A. Okay. Boy, it's a little bit different for renters and owners. So owners, typically, if they're going to live there, usually they come straight in from the lawyer's office with their closing paperwork. I can verify everything right then. They give me their license, their proof of

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insurance, their registration. We go ahead and get their decal put on their car. I have them fill out a gate registration form. We verify that, yes, they are the owner. We scan it. We e-mail it over to IMC. They have to go to IMC to purchase their cards to get in. For owners.

Renters, the only real difference is the landlord has to provide their lease and a national background check to us to verify they're a tenant. As far as decals and cards, it's the same process.

Q. And how does renter go in and get a decal?

A. They would come into the office, presumably --

JUDGE DUKES: Parking decal?

MR. SHELTON: Parking decal.

(UNDISCERNIBLE/Everyone speaking at once.)

MR. SHELTON: Yeah, parking decal.

THE WITNESS: They either bring the lease and national background check with them or their landlord has already provided it. It can go either way. They fill out the same form. They provide driver's license, registration for the vehicle, proof of insurance and they pay $20 for a parking decal.

25 BY MR. SHELTON:

Q. And do -- does -- do you automatically then transmit that information to the Park? To Westbury Park?

A. For the parking decal, no. I put it into our parking system. They have to provide all of their vehicle information on their gate registration form to get gate access.

Q. And what is done with that gate access registration form?

A. We scan it in and e-mail it to IMC.

Q. And then what happens?

A. That person has to go to IMC to purchase their card. And usually Kathy at IMC will call us or e-mail us an access code to give to the person.

Q. So you take the paperwork, you scan it in, you send it to IMC. Is there any follow-up to insure they've gone to get a card?

A. Not on my end.

Q. And are you confident that you have all

drivers registered in your system?

A. All?

Q. Yes.

A. It would probably be fair to say probably not all.

Q. And have you been -- do you regularly -- I

want -- without using the word regularly, do you get e-mails from Phil Matteo regarding gate breaches or violations by someone who's gone through the Estate?

A. I do.

Q. How often does that happen?

A. It varies. Sometimes I might get three in one week. Sometimes I might go several weeks and not hear from Phil at all.

Q. And are you always able to identify the individual that has gone into the Estate?

A. No.

Q. Why not?

A. I couldn't identify every car that drives down my street. I mean, it could be somebody's visitor. I wouldn't know. We don't require every

person that drives in to stop in the office and give us their vehicle information.

Q. And do you -- when you receive a notification from Mr. Matteo as to an individual that you do identify, that you do know who they are, what do you do?

A. Typically, I -- well, first I give that information to Phil. I provided that to him. And a lot of times -- usually I'll send them an e-mail, a reminder. There was a specific incidence with a

motorcycle guy. Sent him a reminder. Just because you can go around the gates, you are not supposed to. Please use the property access. There was one gentleman that kept breaching the gate. We went so far as we had him sent a letter from our attorney.

Q. When was that?

A. I can't give you an exact date. Within the last several months.

Q. Did he stop?

A. As far as I know.

Q. Did you ever do that prior to the institution of this lawsuit?

A. I don't know the answer to that.

Q. Do -- have you provided either IMC or the Park with all the information you have as to all of your drivers?

A. I have provided them all of the gate access cards that have been returned to me by drivers.

Q. Do you provide them -- I asked you a different question. I asked you have you provided the Estate -- excuse me -- the Park with all the information that you have as to all the drivers that are registered with the Estate?

A. No.

Q. Why not?

A. Because their registered in our parking system. They would have to have access to that parking system to have that.

Q. So do they -- what mechanism do you have -- okay. Let me back up. When someone has a pass

code -- is that right, a pass code?

A. For the gate?

Q. For the gate.

A. Okay.

Q. That carries with them, correct? They can use any vehicle to get in or out whether they have a pass card or whether they have an emblem on the front of their vehicle or not with that pass code. Is that fair to say?

A. Correct. The code, yeah.

Q. I guess you could say the same thing for a card, but the card would read who's coming in and you would have knowledge as to who that card is registered to.

A. True. But with a code, you would know who that code is registered to as well.

Q. Okay. If you -- do you have knowledge of how the system works?

A. Do I?

Q. Yes.

A. I have basic knowledge of how you bring somebody in with a code.

Q. And do you take any measures whatsoever to see that your -- other than what you've just described, to see that your residents have a card?

A. I tell them when they come in that it is highly suggested you go purchase a card. Codes are for you letting guests in. Cards is for you, yourself to use.

Q. And you acknowledge that -- do you acknowledge that your rules and regulations, being you being the Estate, have a term that allows Westbury Park to regulate noise violations on their street?

A. There is a clause in the rules that addresses noise from the time you enter the gate into Westbury Park. Yes.

Q. And?

A. I don't know that that gives Westbury Park authorization. I would have to read it, again.

Q. And do you -- are you aware of a -- do you remember sending out some correspondence to your residents earlier this year as to your residents' requirement to abide by Westbury Park's rules and

regulations?

A. I sent out several of those e-mails, yes.

Q. And do you remember stating that we are bound by the rules and regulations of Westbury Park?

A. I can't tell you I remember stating that specifically.

Q. Do you dispute stating that?

A. That we are bound by their rules? I don't dispute that. You would be bound by their rules on their property. I don't dispute that. I would think I would actually say that. I just can't confirm it without seeing it.

Q. Thank you.

MR. SHELTON: Beg the court's indulgence.

JUDGE DUKES: Take your time. We're good.

BY MR. SHELTON:

Q. Do you as the manager believe that the entryway being a private, peaceful, attractive, residential neighborhood, whether that provides value to your residents?

A. Our entranceway or Westbury Park's entryway?
Q. The Park's entryway.

A. No.
Q. Do you believe that it provides a value for you to be hidden from the main highway and aligned with a quiet, residential neighborhood?
A. I'm not sure I understand the question. We're not only hidden behind their neighborhood. We're also hidden behind a business community. So either way, we're still hidden.
Q. Do you believe that that provides value to your neighborhood?
A. Possibly.
Q. They say at Westbury you call yourselves the hidden jewel of Bluffton.
A. We did.
Q. Are you familiar with the meeting minutes, the historical meeting minutes of the Estate as manager?

A. I'm familiar with some. I'm not familiar with minutes that took place before my arrival there.

Q. Are you familiar with the offer at one point for Westbury Park to build a second gate into Estate along with Beaufort County?

A. That the Estate made an offer to build? I'm not aware --

Q. No. I'm sorry. The Park made an offer to build.

A. I'm not aware of that.

Q. Have your reviewed the meeting minutes in preparation for this hearing or for prior to your deposition?

A. I have not.

Q. Have you reviewed the meeting minutes of the Estate of Westbury during your tenure as the community manager?

A. I -- a lot of the minutes I typed up and made during my time as community manager. So, yes.

Q. And how about the historical meeting

minutes. For example, minutes from ten years ago, eleven years ago.

A. No. I've not had the opportunity to do so.

MR. SHELTON: I'm going to reference Exhibit 2 to the plaintiffs memorandum in opposition to summary judgment and, also, memorandum in support of the temporary injunction. And I'm going to hand this -- is it okay for me to hand this to the witness, Your Honor?

JUDGE DUKES: Yeah. Tell me what's -- list it, again.

MR. SHELTON: It is Exhibit 2 to the plaintiff's memorandum, supplemental memorandum and opposition to summary judgment and --

MR. FORD: I don't know what he's going to ask. I'd just like to reserve an objection. She said she hadn't read it. But go ahead.

MR. SHELTON: Correct.

JUDGE DUKES: So tell me that, again. So, memo in --

MR. SHELTON: It's Exhibit 2. It is a -- of the plaintiff's memo in opposition to summary judgment and in support of the temporary restraining order. It's exhibit --

JUDGE DUKES: Was that the one e-mailed?

MR. SHELTON: It's -- it has -- it's the one that start off -- looks like this at the beginning, Your Honor. And the second exhibit is this.

JUDGE DUKES: Okay. Let me see.

MR. SHELTON: The first exhibit was the apartment covenants.

JUDGE DUKES: I think -- I think I have it. Anyway, go ahead.

BY MR. SHELTON:

Q. Does this look like the Estate of Westbury letterhead?

A. It does.

Q. Is that the same letterhead you use today, more or less?

A. I believe so.

Q. And if you go down to proposed back gate entrance on the bottom this first page, do you see that, this Exhibit Number 2, the plaintiff's memorandum in -- supplemental memorandum in opposition to summary judgment and in support of temporary injunction?

A. I see it.

Q. Do you see that it states Westbury community has approached the Estates of Westbury to consider their offer to construct a back entrance and gate to the Estate citing the perceived benefits to our community. The board noted the negative effects far out way any benefits. And the Number 1, the Estates would presently have a positive selling/renting point to enter the Estate community through a private, peaceful, attractive residential neighborhood. We are the hidden jewel of Bluffton because we are hidden from the main highway and

aligned with a quiet residential neighborhood. A back gate will not enhance this.

Do you see that?

A. I see it.

Q. Do you agree with that statement from the board back in 2011?

A. Obviously, my opinion differs from theirs.

Q. Excuse me. 2010. I don't want to misquote. This is from 12/11/2010. I apologize.

A. I'm of a different opinion than they are?

Q. Did this -- your opinion's not the board opinion, correct?

A. I can only give you my opinion.

Q. Okay. But you're the manager. You're not part of the board, correct?

A. That is correct.

Q. Okay. Thank you. It also references on Number 3, the Estate will experience increased community through traffic generated from the Westbury community seeking a fast approach to Highway 278. Do you see that?

A. I see it.

Q. Even if it's directly at the back gate, will suffer loss of tranquility, privacy, vehicle

noise and possible reduction in property values.

That's Number 4. Do you see that?

A. I see it.

Q. Do you know any of the individuals on Page 1, whether they are still a -- residents of the Estate?

A. Yes. Aldo Rocasano is still a resident.

Q. Out of the Estate permanent -- or full time residents, how many are renters versus owners?

A. I can't give you an exact figure because it's been probably a month or so since I did -- I can give you pretty close. It's 116 owner/occupied and 204 renters, I believe. That's real close to accurate.

Q. And you rely on the landlords to do the background checks; is that correct?

A. They have to provide us the results of the national background checks, yes.

Q. And do they do that for all occupants or simply for the applicant?

A. All occupants over 18 years old that are

owners.

Q. And do you have a mechanism of monitoring those occupants to determine whether they're actually the occupants over time?

A. I don't have an answer for you. Do we

have a mechanism? We're very observant on the property. I keep an eye out. We follow traffic violations or traffic warnings. So if a car gets a warning, it triggers me to look at the license plate number. So I know somebody's parking there that's not registered. I also check in parking logs regularly, see if people are utilizing guest parking a lot. So there's several different way, yes, that we verify everybody's on the up and up.

Q. Is there anything that would prevent you from providing all of your drivers' information, all of it, including license plate, registration, et cetera, to the Park?

A. Anything that would prevent it? I mean, no, other than the daunting task of it.

Q. Explain that for me, please.

A. And you're asking me to go through every folder and pull out every single person's registration and driver's license and bio and form they filled out. And then it changes regularly. I mean, if we did it as they moved in, it wouldn't be a big deal. But it would be tough to go back and redo unless you -- they have access to our parking system.

Q. What do you mean it changes?

A. Well, if somebody moves out late or somebody gets a new car or if they get a new plate, I mean, things like that change all the time.

Q. So, you're --

A. They let us know because they have to to keep their decals current.

Q. Do you not provide that information to the Park when it changes, when someone gets a new car or when someone gets a new license plate or registration?

A. They have to -- they were told to notify

IMC. Once we send the initial form, they're -- they deal with IMC. We verify this is a resident here. Now you're IMC's.

Q. So, if I move into the Estate in 2005 and I provide my registration form to you and then it goes to IMC, I purchase three vehicles since that time, different vehicles, IMC is not going to have any of that new information if I didn't go bring it to them myself.

A. If you renew your lease, they will because --

Q. Why?

A. -- you're going to have to fill out a new form when you fill out -- when you renew your lease.

Q. Okay. Thank you.

A. Maybe not at the time you reregister your car. But at the time your lease expires, at least you would fill out a new form.

Q. And if I'm single, I have a girlfriend comes in, what about her?

A. She would register in the parking system on -- you get online and you register your vehicle. You register it for up to three days.

Q. And would she -- would her information be provided to IMC?

A. If she didn't provide it, it wouldn't be.

Q. So it would be up to her to provide it.

A. No. It would be up to -- if she was going to ask for a gate registration, but we can't monitor every time somebody let's a guest in with a code. That's why they have a code is so they can let their own guests in. I can't monitor every single time somebody drives onto the property.

Q. What if she's living with me?

A. If she's living there, then we would have her vehicle information. And she would have to provide that on the form that we give to IMC because the form asks for everybody in the unit.

Q. So you -- if you have updated database of

everyone in your system, is there anything that prevents you to giving that to IMC for -- on behalf

of the Park?

A. And as long as there wasn't any --

Q. Excuse me. Let me rephrase that. To IMC for the Park, I should say.

A. Yeah. As long as there wasn't any confidentiality issues, I don't -- I don't mind giving them that information.

Q. Okay.

A. We actually do give them that information on the forms that the people fill out.

Q. But that information may change over time and may be stale. Do you agree with that?

A. And it can be, yes.

MR. SHELTON: Thank you. Those are all the questions I have.

MR. FORD: And if we could just reserve the right to call her if we go forward. Can I ask her just one quick question without jeopardizing that?

MR. SHELTON: I not going to (inaudible) that.

BY MR. FORD:

Q. Ms. Prinsen, did there come a time when

Mr. Matteo came in and asked you for a list of Estate residents? And just tell the judge about that conversation, what you offered and how it went down, please.

A. He came in. I believe it was either -- I'm sorry. I believe it was either the second or the third time he came into the clubhouse. And he and I met. And he demanded I give him a list of all of our residents. And I said I don't think I can do that. Just because as a board member, I just don't think it's proper for me to give you that information.

And he said, well, people get put into the system, but the old people don't get taken out of the system. So we need the current people so we know who should be there and shouldn't be there.

And I said, well, as a board member, him being a board member, not I, I don't feel comfortable giving you that.

And he said, well, you'll give it to the management company and they'll give it to me.

And I said, no. Why don't you have the

management company give me all of the people that are in the database, and I'll take off all the ones that aren't here because I don't feel comfort giving

that to a board member.

And he didn't like that answer. The meeting ended very abruptly.

MR. FORD: That's all I have for the moment on that. (Inaudible) and so on.

JUDGE DUKES: Anything else?

MR. SHELTON: No, Your Honor. Thank you.

JUDGE DUKES: All right. Thank you.

MR. FORD: -- you may not leave the premises.

THE WITNESS: Okay. Do I give these back to you?

MR. FORD: Yeah. Sure. Thank you. Thank you so much.

JUDGE DUKES: All right. Anything else from the Plaintiff?

MR. SHELTON: No, Your Honor. We'll

rest as to the temporary injunction motion.

JUDGE DUKES: All right.

MR. FORD: Your Honor --

JUDGE DUKES: -- hear any motions.

MR. FORD: -- at this point, I know directed verdict is not the right term. But the gist of it, I have witnesses I can put on and

they're ready to go. But I would respectfully suggest, having heard the Plaintiff's best case, putting aside the issue of success on the merits which is one of the elements of a Rule 65 motion. There are two points, critical points they have not met. And those are the two I think I alluded at the outset.

One, there is no immediate harm. What they're asking Your Honor to do -- and it's a vague question. They're asking Your Honor craft a solution for what has been the status quo since 1998. That is not immediate harm in any way of -- or Rule 65 preliminary injunction temporary

restraining order. They want you to change it. And that's just, respectfully, to my friend Mr. Shelton, not correct for a preliminary injunction.

Second thing, there's no irrepairable harm. And that is everything we've heard, damage to the gates, all this stuff can be fixed with money. The gates can be fixed. We heard how much they cost, about $600 for an arm and so on. That can all be repaired with money. And, in fact, that's how it's often gone down.

So putting aside the likelihood of success on the merits which I think is what Ben and I are

arguing about a lot, they fail in those two critical points. And I would respectfully suggest that their motion be denied and we move into the crux of it which is interpretation of the governing documents. It's just -- what are there as parties' rights under the easement. And that's kind of my motion at this moment.

JUDGE DUKES: All right. Thank you. I'm happy to hear from you, sir.

MR. SHELTON: Thank you, Your Honor. Of course, we oppose this motion and ask the court to grant our motion or, at least, move to the next state of it, if you will, if that's appropriate.

We -- we're not asking the court to create anything that doesn't already exist. We're asking the court -- first of all, if you look at our -- the plaintiff's memorandum in support, if you look at Page 3, we cite 2.01 of the declaration of the apartments, establishment of restrictions. This is the section of the declaration, understanding that the headings don't necessarily have meaning, but I think they at least give us some guidance as to what the intent is. Establish the restrictions of the purpose -- and the purpose of restrictions of the apartment declaration.

And it states, establishment of restrictions. Declarant, owner of the property whereby declares that the property is now held and shall forever be held, leased, hypothecated and --

excuse me. It's hard for me to speak with this mask on. And use subject to the restrictions set forth in this declaration.

And then if you go back -- and even -- and it goes on to -- let me paraphrase. Everyone who takes a part -- takes any property subject to this declaration, obviously, is agreeing to be adhered by it.

2.02, the purpose of these restrictions is to insure proper development and use of the property to be in keeping with the community-wide standards established for the Westbury Park community subdivision and the Westbury Park residential subdivision. The later of which is contiguous to the property.

So what are these community-wide standards. The community-wide standards which I believe is recognized by Ms. Prinsen stating that their residents are bound by Westbury Park's rules and regulations. The community-wide standards are to respect each others respective rights.

Now, injunctions are absolutely appropriately. Historical, our case law goes back a very long time referencing a continual trespass as being something that when otherwise it would be subject to a civil action. It is something that's appropriate for a court to enjoin.

We have cited several cases to that point. Some of those cases have to do with water trespassing and it being released from a spillway. But other trespasses are a little league game constantly being played out, noise pollution in the event -- and the violation people's peace and sanctity because of this little league game. The citation for that case is contained in our brief on Page 5 -- if I talk slowly enough, I'll get there. 14th Carter v. Lake City Baseball Club 218 SC 255.

And indeed, I believe that the language in that case from 1950 South Carolina Supreme Court is very instructive. While it is undoubtedly the correct rule that a court of equity will not interfere by injunction in cases of nuisances, trespasses and like injuries to property when the parties can have complete redress in a court of law. Still it appears that irreparable mischief will be done by withholding the process or where the damages

that will result through the complainants are incapable of being adequately measured or where the mischief is such from its continuous and permanent character that must occasion constantly occurring grievances which cannot be other prevented.

A court of equity ought to interfere by injunction to stay the wrong and protect the complainants property and personal rights from hurt or destruction. In this situation, we have Mr. Matteo who has testified that in this instance that they tried with the sheriff's office. They tried reaching out to the community manager. They tried everything that's within their power. They have gone after individuals. But the damage to the gates keeps happening.

The trespasses, when you push open a gate of someone elses property, we've established it's Westbury Park's property, that's a trespass. And it happens all the time. And how many times does it happen? It happens over 140 times that have been at

least documented by video evidence pursuant to Mr. Matteo's testimony since only the end of 2018.

And out of those documented instances, over -- I'll refer to the record for the precise number, but I believe it's over 130 where Estate

residents, only three were Westbury Park residents. Westbury Park residents do not do it a second time. Why? Because they get fined. The rules and regulations are enforced and it's taken care of.

So, what are we asking for? I believe that this is a property conduct to be restrained. I think it's proper to restrain a continual trespass on someone's property that happens every day whether it being walking on sidewalks, walking on parks.

JUDGE DUKES: But who am I restraining?

MR. SHELTON: Exactly. Who are you restraining. Are you restraining the association? Are you restraining the individuals? And therein lies the issue. And I will absolutely under the court's issue. We'll -- I'll call it a conundrum

with that because the parties have the same conundrum.

Who are you restraining? We believe that the Estate by having -- if they have an easement, which they state that they do, a right-of-way through the property, they do have certain obligations to restrain their conduct on that right-of-way to ensure that their conduct that they're using that flows -- again, by these

documents to their individual members, and those members and invitees, flows to them individually.

So, what can they do? I believe that it's within the court's power to state that, first of all, they should enforce their own rules and regulations and documents. And those rules and regulations and documents require them to, I believe, cooperate with Westbury Park.

They may say they're already doing this. And we will submit that it is getting better. It is getting better. However, the cooperation is but the

conduct is not getting better. Even since September 2nd, there have been multiple incidences of people running through the side gate because they see that the arm's knocked down. This is a very dangerous situation that absolutely does call for the -- of the potential and likelihood of irreparable harm. We're talking about kids that are on this street.

So, what are we asking? And quite frankly, this is about something that would be much better if the parties can figure a way to work it out themselves and consent to it. I would be the first one to admit to that. We're asking for a ruling, Your Honor, and I have a proposed consent order here for Your Honor's edification to look at

it if you'd like. We're asking for a ruling that forces the parties to provide -- share information. Both sides, not just one side? Both sides.

If they want our database, they get our database. If they -- we're entitled to get their information for who's driving through streets every single day. A requirement that if we have a

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violation they'll recognize that if it happens on our property, we have a right to regulate our property. And we have a right to send them a violation. And then their residents have a -- have a responsibility to pay it.

If you look at the Harbor Island case, which I know Your Honor is familiar with, that case is -- the facts are a little different here, but a gate was placed on the easement. The subservient estate was available to put a fee on that -- put a fee as to each person that comes through that gate because while they had an easement, and for the edification, the easement was in place in that case, I believe, after -- placed after the declaration for the subservient estate. So the facts are little bit different here. I don't want to misquote the case.

However -- but it was clear in that case that the -- that the subservient estate had the

right to very much regulate its -- anyone's conduct over its streets. And maybe we don't have a

disagreement there. I believe we do, but maybe we don't have a disagreement there.

The issues is that what their asking us to do is to have full-time security where we police the streets constantly, where every single time someone blows a stop sign, well, the right thing to do would be issue them a ticket. Well, that costs a lot of money. That has -- that is a huge burden on our property. We don't have those issues with our residents because we're able to send them a fine. We're able to send them a violation. The Estates have already established a precedent for working with Westbury Park in its -- and its enforcement of it's rules and regulations by stating within its rules that when there's a noise ordinance violation on that street, Westbury Park may send the Estate a notice of violation. And then their residents may be fined.

We're asking for the court to fashion procedure here out of necessity because there's nothing -- we have tried everything. And I believe we have to date to remedy the situation. That's why we're here today. It's really sad. These are two

neighborhoods that are right next to each other. But -- and we're asking the court to fashion something that is difficult for a court to do. However, I believe the testimony today and the evidence that's set forth plus precedent as to this continual trespass would be in place.

Now, another thing the court could consider is for a ruling, the Estate, that any Estate resident that is on Westbury Park property, that is a trespass. And Westbury Park would be able to then enforce that much more effectively whether it be through law enforcement, notices of trespasses being served on individuals to prescribe that conduct much better than they are today.

Similarly, you've heard testimony that presently when a -- when an Estate resident or guest pushes a gate, right now law enforcement is determining it is (inaudible) which is apt -- no offense to law enforcement. I love law enforcement. But oftentimes they don't want to get involved in what they can see is a civil -- is a potential civil dispute. They say, well, the gates there. They're an Estate resident. We're not going to do anything

with them even though they've bumped open the gates because they might have a right to be through -- go

through there.

If we had a ruling that simple stated that no one is allowed to bump open the gate. The Estate residents are restrained from pushing into the gates, period. Then that would allow us to go to the law enforcement, which is what, I believe, in their briefs, the Defendants have requested and have suggested we do to be able to help prescribe this conduct.

The Plaintiffs are happy to submit a supplemental brief as to proposed remedies. But those are the remedies that I am proposing on behalf of the Estate. And I also have a proposed consent order that really goes -- sets forth a procedure for how we believe the -- this could be fashioned. At least a starting point.

JUDGE DUKES: Well, of course, the consent order requires a consent to --

MR. SHELTON: I absolutely -- it's a consent order. However -- but it is a -- I'll just strike out consent and say proposed order, Your Honor.

JUDGE DUKES: Okay.

MR. FORD: And they did send that to us. And we made a counteroffer which involved

sharing all the information and cooperating. But they we -- they wanted more. So that's what that --

MR. SHELTON: Yeah. Yeah.

JUDGE DUKES: Okay.

MR. FORD: I'm sorry, Ben.

MR. SHELTON: Oh, no. That's fine. I believe we're done. I'll just believe that this -- the conduct that's described here certainly falls within the court's discretion and the intent of a temporary injunction order per our previous case law as to trespass.

We believe that every single time the gate is bumped into, particular -- especially every time the gate is broken, it is a trespass. Every single

time there's a resident on our common property that's not allowed to be there, it's a trespass. This happens as a continuous matter. And it was within the court's power to restrain. The question is how do we fashion a remedy. And I believe that is perhaps a separate issue.

JUDGE DUKES: Thank you so much. Yes.

MR. FORD: Just briefly. I wrote down because one of the questions Ms. Tillman and I have had since they filed this in January is what do

they want out of this motion because it doesn't look like anything I've ever seen. I've argued a lot of TROs and this is not that. And I finally found out they want Your Honor to order them to find a better way to police things. I respectfully submit that that is not a Rule 65 motion. They want Your Honor to create something.

We have a lot of disputes as to the underlying obligations. And what I heard most

powerfully from Ben was his summary judgment argument. But Your Honor asked the right question. And what we've been asking ourselves is their problem is with a few lawbreakers. And we don't disagree with that. But their lawsuit is against the board. And we don't control the lawbreakers. Especially when they're not on our property.

So, I -- what I didn't hear was irreparable harm. And what I didn't hear was immediate harm because -- which is an unusual thing meaning this has been happening for a long time. And I think Mr. Matteo says, is it getting worse? No. Is it getting better? No.

So, there's no Rule 65 urgency here. And I would discourage Your Honor from writing a solution to this when I really believe this won't be

solved until we get -- we get a common understanding of the easements and of the required streets and what the declarations mean.

And I would respectfully submit that the Rule 65 motion is inappropriate. Summary judgment

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motion is entirely appropriate and really is the underlying premise that really should be decided before anything else is done.

Thank you, Your Honor.

JUDGE DUKES: Thank you all very much. So, with regard to the motion. I mean, I've heard enough to understand why it was brought. I mean, there's clearly a problem. But -- and the Plaintiff had to do something. But I find it hard to disagree with the logic of the Defendant that this is not a case where I can issue an order of the type requested by the Plaintiff.

I mean, this is not a status quo situation. The status quo is not what you want to preserve. You know, you want to -- you want to change. And so I think I'm going to deny the temporary injunction. I think a lot of this -- I mean, I think I heard agreements that neither of you were even aware were available just in the testimony today as far as shared databases, as far as

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agreements on, you know, the boundaries of the easement and that sort of thing.

So, have you all picked a mediator, yet?

MR. SHELTON: We've been to mediation long ago.

MR. FORD: I don't know that it was a mediation. It was a lawyer's conference without a third-party neutral. And it was more just a brief discussion. I don't know --

JUDGE DUKES: Okay.

MR. SHELTON: And the frustration of it was, if we could just all speak openly, the primary discussion was what Westbury Park wants us to create a whole new entrance. And that -- and we just couldn't get -- I don't want to go into it too much.

But -- you said that in your papers. What they really want, and that's the 800-pound whatever is 800 pounds. They want us to create a separate entrance and do that and not come through and close this off. That's what we couldn't get them off of. So that's why we need to understand both sides' rights under the easements. And we just have a common disagreement, legally as to what those are. And so we started out with a mediation or a

whatever.

JUDGE DUKES: Because, I mean, a lot of persons share databases and some agreement. You know, and, again, I don't know about this other easement issue or access issue.

MR. SHELTON: They want us out. That's what they want.

JUDGE DUKES: Well --

MR. FORD: They had the opportunity -- they -- I think theres lots of -- lots of old frustrations with the fact that there could have been a remedy fashioned about ten years ago that was essentially free. And this is something that, why can't that happen again is a understanding that our folks have a very hard time coming off of which I believe is understandable particularly when you hear the testimony today of the ongoing issues. We see this as -- we see this as the only discernable long-term solution for the peace and quiet of both neighborhoods, quite frankly. There's a disagreement there.

But if you look at the Estate of Westbury's memorandum as to -- or their board notes as to why they rejected the offer of essentially a free entrance and a free gate, maintaining the other

gate, it is all the reasons -- it's everything that Westbury Park deals with on a daily basis from Estate traffic.

So that's background. It's not really argument. I don't --

MR. SHELTON: I've got more to say, but let's --

MR. FORD: Yeah. Yeah.

MR. SHELTON: -- not.

MR. FORD: All right. Go ahead.

JUDGE DUKES: Okay. That's why you haven't been able to come together.

MR. FORD: Correct.

MR. SHELTON: Right. They want us to get a whole new entrance and we have things to say about that that I won't. That's that.

JUDGE DUKES: But again, I think I'm going to grant the, for want of a better term, directed verdict motion on the temporary injunction and just ask you all to continue to try to work together toward some solution because I heard a whole lot of good stuff on ways to bring some of these problems to a conclusion. I mean, nobody wants -- I don't think the Defendant was ever arguing that it's okay to knock the gate over or to

push the gate up, to go around the gate, to make noise. I mean, there's consensus on all this. It's just a matter of enforcing it and prevention.

MR. FORD: And obviously, presently at issue is the cooperation side of this and then the burden of that administration which is on their property, the burden of it completely falls on my client. And as well as -- and the assessment is not being paid, not only for that burden but also for the use and also the maintenance thereof.

JUDGE DUKES: Right.

MR. FORD: Any assessment. Nothing.

Period. For over -- almost two years now. So, actually, two years next month. So, that is -- that is --

JUDGE DUKES: It is a problem --

MR. FORD: -- also a major issue.

JUDGE DUKES: -- I grant you. I'm guessing there are reasons that --

MR. SHELTON: We have a response to that.

JUDGE DUKES: Yeah. But -- okay. All right then. Do you all want to break before we launch into the partial summary judgment?

MR. FORD: I'm going to turn that

over to Ms. Tillman.

JUDGE DUKES: Okay.

MR. FORD: She's the easement guru.

JUDGE DUKES: Well, let's take a ten-minute break or so, fifteen, and we'll launch into that. Thank you.

(BREAK TAKEN)

JUDGE DUKES: We're back on the record in 2020-CP-07-00158, Westbury Park versus the Estate at Westbury. And we have now come to the part of today's hearing where we're going to hear the Defendant's motion for partial summary judgment. And I'm happy to hear from you.

MS. TILLMAN: Yes, Your Honor. May it please the court. I'm Ainsley Tillman, and I represent the Defendant, the Estate of Westbury. And we have brought a motion for partial summary judgment.

Your Honor has heard some testimony this morning about the different parties' opinion about the nature of the relationship between the communities. And respectfully, Your Honor, the relationship between the communities was contractually determined more than 20 years ago by the developer of the Westbury Park development.

And so, the rest of our argument today is we're seeking a ruling from this court that will give direction and definition in this lawsuit going

forward as to the various causes of action, some counterclaims as well as the Plaintiff's causes of action that can be determined by Your Honor without any question of disputed facts because they involve the interpretation of contracts. And the interpretation of recorded instruments, covenants, conditions and restrictions that run with the land which are in the nature of contracts and which are questions of the law for this court, also, deeds. Again, questions of law for this court as to the interpretation of them.

And so it is only as to those causes of action that we are seeking a judgment from Your Honor today.

And you've heard a little bit about the background already this morning. But I wanted to go into more detail on it. In the 1990s, the developer of this -- well, a developer called Plantation Property, LLC purchased a large tract of property in the Bluffton area. And the developer had a vision for that land tract. And it (inaudible) hold a commercial component, a single-family residential

component and a multi-family residential component.

And as developers do, the developer implemented his plan first by creating a master plan for the development. And that's Exhibit 1 to our memorandum in support of motion summary judgment. It is also the piece of paper that I passed up to you earlier. That is it. Yes, Your Honor.

And this master plan indicates the developers intent. You can see all this shaded area in the master plan is the property that was owned by the developer of Plantation Properties. And you can -- if you're looking at the -- if you're looking at it with Westbury Park, the writing, written in the upper right-hand corner and you look in the upper left-hand corner, you can see the commercial component.

And then the rest of the tract sort of is single-family residential component. But then in the middle is -- and the single-family residential component (inaudible) is the Plaintiff in this lawsuit.

And then the multi-family residential component is the Defendant in the lawsuit, the

Estate of Westbury.

And one thing needs -- immediately becomes

apparent in looking at this master plan by the developer is that the multi-family residential component is landlocked. It is in the midsts of the single-family residential property. It is bound on the other side by a business park that's owned by someone else. And behind it is marshland. And I'll get to that later.

But -- so the developer had this large tract of land and he imposed on it, as he was developing it, various declarations of covenant conditions, restriction and easements that went along with the different components.

So the commercial tract, before he conveyed it, he subjected it to covenants and conditions. And then -- and that was actually the first component of his development.

The second component was what was then referred to as Palmetto Lake Apartment. And that is the Defendant. The Estate at Westbury's predecessor

in title. And the Palmetto Lake Apartment was his second component of his development. And so while he still owned the rest of the property, he created a declaration that would run with the apartment parcel. This is how it was referred to. And that is Exhibit 2 to our memorandum in support of our

motion for partial summary judgment which is the declaration of covenants, conditions, restrictions and easements for Palmetto Lakes Apartments at Westbury Park.

And I've thought about how to go through this argument which is sort of long and clunky. And I think the best way to do it is cause of action by cause of action.

And our first counterclaim on which we are seeking judgment for this court -- from this court is our counterclaim for declaratory judgment that the Defendant, the Estate of Westbury, has a -- an appurtenant easement over the streets that are the subject of this litigation.

And so as to that particular counterclaim, the way that you would discern or if Your Honor would determine that the nature of the easement would be with reference to the easement grant.

And in this case, the easement grant was from the developer who was the owner of the entire tract to the Defendant's predecessor in title. And it's contained on Page 7 of that declaration of covenants for Palmetto Lake Apartments which is Exhibit 2 to our memorandum.

And, Your Honor, I will read it to you

because we're going to look at the grant. And then we're going to look to see whether it meets the elements for an appurtenant easement. And we're going to determine the intent of the grantor from those words.

And so, what the developer granted --

COURT REPORTER: Judge, I need her to speak up a little bit.

JUDGE DUKES: Yeah. Could you speak --

MS. TILLMAN: I know. I'm so sorry. It's the mask.

JUDGE DUKES: That's all right. I know. They're horrible.

MS. TILLMAN: And if you need me -- if you have any questions or you need me to repeat anything, please let me know because this dense material to go through.

But the -- so, the easement grants are contained within Section 7.02 of the declaration which is Exhibit 2 to our memorandum in support. And I should rewind a little and say that the terms that are being used as they're (inaudible) they're defined within the declaration.

And one of the terms that's used in the

easement grant is owner. And the owner is defined in the early part of the declaration as the owner of the interest in the property.

And the property is defined as what is now the Defendant condominium regime parcel, the

predecessor in title. The -- and if you look at the master plan, it is the -- I'm not sure how to describe it without pointing to it. But this is the property. And there's a property description as well at the end. It's the 20-acre parcel that is the predecessor in title to -- I can't say the Defendant, but to the Defendant's individual members who are all owners of individual condominium interests.

And if you have a question about that, I can -- I'd be glad to clarify. But for the purpose of this argument, the owner is the predecessor in title to the Defendant in this instance.

And so the easement grants stated that subject to the provisions hereof and the restrictions contained in Subparagraph 7.02(a), and the restrictions pertain actually to the commercial property so there are nine relevant now, the owner, its successors and assigns, owner's tenants, all guests and invitees of the tenants and owners, all

employees, contractors, its suppliers, vendors and

representatives of the owner and all other persons who reasonably need, on owner's behalf, access to the property shall have a right in easement of use of this certain easement as hereinafter more fully described.

And then you turn to the next page where the hereinafter and more fully described which is Subparagraph 8. And I won't read the whole thing. But it -- the first sentence of it says that the grant is a perpetual, non-exclusive right for vehicular and pedestrian access over and across Westbury Park Way from its intersection with U.S. Highway 278 and its intersection with Kensington Boulevard.

And then the second easement grant are the recurrent concern with here today is Subparagraph (b). A perpetual non-exclusive right for vehicular/pedestrian access over and across Kensington Boulevard from its intersection with Buck Island Road to its intersection with the property. And those were the streets that are the subject of this litigation.

In order to discern the intent of the grant, I'm able to see whether it meets the elements

of an appurtenant easement. And we know from South Carolina Law that an appurtenant easement adheres in the land. It runs with the land. It is necessary for the use and enjoy of the property. It has a terminus on the land that the party that is claiming it.

And those are the elements of an appurtenant easement. And the declaration which contains the grant, at the very beginning of it, it talks about how it's intended to run with the land. And so we know that it is -- it concerns the premises. It is adheres with the land. And we know that it has a terminus in the land of the party claiming it because it runs to a landlocked parcel. That's where it ends. Those street -- goes to the Defendant's property and it ends there. It has a terminus.

And then we know that it is essentially necessary for the enjoyment of that property because it is clear from the developer's master plan that the property would otherwise be landlocked and the

residents of the apartment parcel would have no access to their property.

And so we're asking the court, first -- Your Honor, first to find that the clear language of

the apartment declaration conveys an appurtenant easement over the streets that are the subject of this litigation. And that's the -- not only the clear language of the granting language, but, also, there's an additional reason that we -- the Defendant has an appurtenant easement, and that's just the common law in South Carolina which says that any owner who purchases with reference to a plat and the plat depicts easements, that person acquires every interest that's depicted on the plat.

And the successors in title to the owner -- and I guess I should go a little bit just real quick into the chain of title. The owner under the apartment declaration then conveyed it to another entity who conveyed it to another entity who developed it into condominiums. And we'll hear a little bit about that later.

Once the property was developed into condominiums, there was a master deed that was created. And then, as you know, every purchaser of a condominium unit acquired a fee simple interest and they sort of sliced up the property. And so the individual unitholder were owners within the Defendant condominium (inaudible) were already successors in title to the owner.

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And so each of those -- and, also, the Defendant is a successor in title to the owner because the Defendant owns the common area that is within the condominium regime. So it also has standing here to make this argument.

And that is that as each of these individual unit holders and the Defendant acquired their title to their property, there was a property description in their deed. And the deed references a plat. And the plat is Exhibit 7 to our memorandum in support for our motion for partial summary judgment.

And this one, Your Honor, if you have the capability to blow it up on your computer, it has language within the plat that references that the access for the property which is otherwise landlocked is by Westbury Parkway, Kensington Boulevard and another street called Arly Way that is not the subject of this litigation. And that is under -- it's within the notes. And it also shows the street, Kensington Parkway. But it also specifically says in the plat what the intended access road parcel is.

And so every owner who purchased with reference to this plat, which is part of the

property description from the inception of this property, would have acquired every interest on that plat. And that's the Blue Ridge case and the Carolina Land case and that slew of cases that's long-standing property law. And so alternatively or in addition, we're asking for a ruling from Your Honor that (inaudible) owner including the Defendant has an appurtenant easement over the streets that

the subject of this litigation, Westbury Parkway and Kensington Boulevard.

And then alternatively, also, we're asking for declaratory judgment from this court that in addition to the plain language of the -- this grant easement grant and the plat, if Your Honor is still not convinced, we would believe we meet every element of an easement by necessity, if it comes to that. And the elements of an easement by necessity would be that there was unity of title, there is severance of title and the way is essentially necessary to the enjoyment of the separate tract.

And in this instance, we know that the developer once owned all of this property. There was unity in title and that he severed -- or it, more correctly, severed the apartment tract which is the predecessor to the Defendant. And if he did so,

without creating an access, which he did, but if this court needs additional convincing then it -- by severing that tract from the larger tract he --

there would be by necessity an easement created for access to that tract.

And so those are sort of the easement causes of action on which we're seeking a judgment from -- a declaratory judgment from Your Honor. And that they -- there is -- there is easement already been dovetailed with the Plaintiff's causes of action that correspond to the easement. And that the Plaintiff has asked for a ruling from this court that no easement exists. And our argument is that, yes, the plain language of the documents and the master plan and just the common law of South Carolina make it clear that an easement does exist and it's an appurtenant -- it's a perpetual easement.

So that's the Plaintiff's burden, cause of action and we're asking Your Honor to rule in our favor in summary judgment on that. And that concerns -- that third cause of action also has a component asking this court to require that alternate access be found, that Your Honor -- or we contend that that's not necessary because there is

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access. The access is the planned access by the developer over Kensington Boulevard and Westbury Parkway.

And the Plaintiff's fourth cause of action is for a ruling from this court that the easement is in gross. And my understanding that the Plaintiff's argument on that cause of action is that it goes to necessity. And that because the Plaintiff contends that this access isn't necessary, then it would only be in gross.

And for all the reasons that I just stated but, also, by the obvious depictions on the plats, including our Exhibit 7 which showed the property as landlocked and with property owned by others and marsh behind it and it is clear from the recorded instruments that, indeed, the easement is necessary for access.

And the Plaintiff has talked about an alternative access that was proposed by the Plaintiff in 2010 and involved getting permission from the county and doing all kinds of -- maybe from the Army Corp of Engineers and it was never a concrete other access. It was an idea.

And for purposes of this court's

25 determination of whether the easement that the

1 Defendant holds is appurtenant or in gross, it would
2 look to the time and place that the easement was
3 conveyed. And that was in 1998 when the developer
4 conveyed it. And at that time, it was necessary.
5 And hypothetical other access in 2010, 12 years
6 later, wouldn't go to the question of whether the
7 easement was appurtenant or in gross.
8 And so, we're asking Your Honor to grant
9 us summary judgment as to the Plaintiff's fourth
10 cause of action as to the easement is appurtenant
11 and not in gross.
12 And then similarly -- well, the Plaintiff
13 has asked -- or has a cause of action invoking the
14 equitable doctrines of hardship or change in
15 conditions. And we're asking for summary judgment
16 in our favor as to that cause of action which is the
17 Plaintiff's seventh cause of action.
18 And the reason for that is if you
19 carefully read the Plaintiff's complaint on that

cause of action, it becomes readily apparent that it there is any hardship on the Plaintiff or if there is -- there is -- if this easement is a burden on the Plaintiff, which is what the Plaintiff contends, that is not the Defendant's problem.

The Plaintiff's real complaint lies with

the developer. The developer was the architect of this community. It designed the access as over Kensington Boulevard. And the Plaintiff and every single one of its voters within that single-family residential component of the subdivision took title (inaudible) with knowledge of that easement's location. And with knowledge of the terms of the Plaintiff's own declarations which was imposed by the same developer.

And that is Exhibit 4 to our memorandum in support of our motion for partial summary judgment. And that's the Plaintiff's declaration. And the Plaintiff's declaration which run with title to all the lots in the Plaintiff's subdivision is very clear about what the developer's plan for the

community was. In fact, the master plan, which is Exhibit 1, was -- is attached. If you scroll to the very end of the very lengthy Plaintiff's declaration, the master plan is an exhibit to the Plaintiff's own declaration. And the master plan is referenced throughout the Plaintiff's own declaration, frequently.

Then, not only is the master plan referenced throughout the Plaintiff's declaration, and in my memorandum, I've quoted certain excerpts

from the Plaintiff's own declaration. But the developer's vision for the property is reverberated throughout the Plaintiff's declaration.

And I may be a little stalling for time until I can find the sections that I have. This is a lot of paper, Your Honor. Forgive me.

The Plaintiff's declaration references the apartment parcel which is the Defendant property. And it talks about -- it specifically splits the apartment parcel from the confines of the

Plaintiff's declaration.

And it then goes on to define the required streets. And required streets is a term that's found in the Defendant's declaration and in the Plaintiff's declaration. And it's specifically defined as the streets that are required for the access to the Defendant parcel. Kensington Boulevard and Westbury Parkway and the Plaintiff's own declaration gives notice to every owner who buys a lot within the Plaintiff subdivision that the required streets are within the maintenance area of common responsibility of the Plaintiff.

And that this was the developer's plan. It's Section 7.2. I quote it on Page 27 of my memorandum.

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I don't know how many different things Your Honor has in front you, but 7.2 of Exhibit 4, section, says that the association, and this refers to the Plaintiff, subject to the rights of the owners, shall manage and control the common area and all improvements thereon and shall keep it in good,

clean, attractive and sanitary conditions, order and repair, which shall include, but need not be limited to, (a), all the landscaping and other floral, parks, lakes, signs, structures, improvements and bike and pedestrian pathways; and, (b), all streets, specifically including the required streets within the property and all street lights and signage.

And so the Plaintiffs and all of their members took title to their property with, at least, constructive notice that one of their responsibilities in owning property within that Westbury Park subdivision was going to be to maintain the required streets.

And that was the developer's plan all along. The developer, also, within the apartment declaration, which is Exhibit 2, discussed this vision for the maintenance of the required streets. And that is, if you'll look, at Section 8.01. It goes to the assessment which we will talk about in a

minute. But importantly, the last sentence within

Section 8.01 is the developer talking about its plan for maintenance.

And it says the reasonable care and replacement of the required street and landscaping within the Westbury Park residential area shall remain the responsibility of the Westbury Park Residential Association. And a reasonable -- well, then the second part says the maintenance of the streets with the commercial area remains the responsibility of the commercial association, which is not a party to this litigation.

But, Your Honor, the Plaintiff simply cannot contend that there is any relative hardship in maintaining streets that it has always known that it was its responsibility to maintain. And the doctrine of relative hardship is also an equitable remedy. And equitable remedies are not available when the parties are -- remedies are set forth in a contract. And in this instance the rights and obligations of the Plaintiff and the Defendant are very clearly set forth by the developer in these covenants that run with the land.

One of those obligations was the obligation on the part of the Defendant to pay and

assessment for 20 years that added up to a total of $1.3 million. And the purpose of that was for its share of the maintenance of those streets. And so, therefore, there is a remedy. And there is a recourse to the hardship the Plaintiff claims. And that is the assessment was paid. It's been paid. That money has been paid to the developer and also, ultimately, to the Plaintiff. And I will get into that in my discussion of the next cause of action. But just because the Plaintiffs have knowledge of their responsibility when they took title to their property, we're asking Your Honor to find in our favor on that -- the Plaintiff's seventh clause of action for a change of condition or relative hardship.

Sorry. One last on that -- on that particular cause of action because, again, many of the Plaintiff's causes of action seek to deprive the members of Defendant of access to their property. The design of this lawsuit is to, if the Plaintiff had its way, to require the Defendant to find other access to their property. They don't like our

people coming down their road.

And so the final reason that this court should not find that there's been any relative

hardship or change in condition that would require the Defendant to seek other access is that the Plaintiff has only sued the horizontal property regime. And this court can't divest our 320 individual property owners of their property interest in access to their property in the way that this lawsuit is designed. Those property owners are not -- are not named parties in this case. And they all have a property interest in that easement which can't -- cannot be divested without due process of law. So that's just one more reason that this court should find in the Defendant's favor as to the seventh cause of action brought by the Plaintiff.

So this is sort of the easement increments or causes of action on which the Defendant is seeking summary judgment from Your Honor. We also have causes of action that there are to be

assessments. And this is a question for Your Honor because there's -- they are different -- they deal with different parts of the declaration in terms of the declaration. And so I don't know whether it's easier for Your Honor to have the Plaintiff address arguments, just me, as to the --

JUDGE DUKES: Let me -- let me ask the Plaintiff. Do you want to address the issues

one at a time, the easement first and then we'll get into it?

MR. SHELTON: I think that they kind of created this kind of dovetail, this cascading waterfall of -- the way that the Plaintiffs and Plaintiff's design is somewhat in the alternative, in the alternative, in the alternative, in the alternative to a certain extent, I believe that the issues that -- with the assessment dovetail with the issues with the easement whether it may be terminated by breach or otherwise. So I'd rather them compete their argument and then --

JUDGE DUKES: Okay.

MR. SHELTON: Tell me if that's okay.
JUDGE DUKES: Yeah. Why don't we -- we'll do it that way.
MS. TILLMAN: Yes.
JUDGE DUKES: Do you need a break before you go on to the next one or are you good?
MS. TILLMAN: Oh, no. I will keep going.
MR. FORD: She loves this stuff.
JUDGE DUKES: All right. Go ahead.
MS. TILLMAN: Well, I will say that Ian is often mocking me about how much I love

property law as if it is wizardry or witchcraft or some strange thing. But property law is really contract law with teeth that are embedded in the land. But it has -- it's not gotten serious. And the basis for interpretation is the same. Its just rather than going to the individual signatories of the contract, it goes with the land which is kind of fun.

MR. FORD: Is that fun?

MS. TILLMAN: It is fun. So, at any rate, Your Honor, so that -- the other argument that the Plaintiff has -- so we're seeking a ruling in our favor, in Defendant's favor, is as to the question of whether the apartment declaration was ever renewed. And this gets a little more complicated. It involves even more pieces of paper. But in the end, the answer is found within the four corners of the governing documents, the documents that govern the parties. And so it is right for determination by this court. It is a question of law.

And the -- so, with that, Exhibit 2 which was the declaration of covenants, conditions, restrictions and easements for the apartment parcel, the Palmetto Lake Apartment. And this is a document

that was drafted by the declarant, the developer of the property, and governs the relationship between the developer and the owner of the apartment parcel, who's the Defendant's predecessor in title. And it

had been a lengthy document. And toward the end of it, it has two provisions that are important in this lawsuit.

And one of them is Section 8.02 -- 8.01. And this is the assessment. And what Section 8.01 says is it puts an obligation on the owner of the property. It says the owner, by accepting a deed to the property, is deemed to covenant and agree to pay an assessment to the declarant or its assigns, on an annual basis, the sum of $17,500 as its, that's the owners, share of the cost of maintenance of the required streets and landscaping along the required streets and around and within the parks within Westbury Park residential and commericial area.

And it talks about how the assessment is payable and all those sorts of thing. And then it reiterates at the end the passage that I just read that despite the assessment payment, the reasonable care and replacement of the required street remains the responsibility of the Westbury Park residential area, which is the point.

So this is a covenant and an obligation on behalf of the owner to pay an assessment which it dutifully did for years and years and years. And in fact, in 2005, this is -- well, there's another piece of paper. In 2005, a new owner acquired the apartment parcel. And the new owner was Montecito Westbury.

And Montecito Westbury wanted to transform the apartment parcel into a condominium regime. And so it new that this declaration existed because it ran with its title. So it, we can only presume, called up the developer, Plantation Properties, and it said, hey, I see that I can't have a condominium regime under the terms of your declaration. But I'd like to talk about that possibility. And the two entities came to a deal. And that's the 2005 amendment to the apartment declaration which is Exhibit 3 to our memorandum in support of our motion for summary judgment.

And Exhibit 3 is an agreement you'll see if you flip to the end. There's an agreement between the declarant or the developer under the apartment parcel and the owner, Montecito Westbury, to increase the amount of the assessment payment.

25 And the amendment, specifically, in Paragraph 4,

1 replaces the first two sections of Section 8.01, the
2 assessment obligation.
3 And it says those two sentences, which
4 have to do with the amount of the assessment, shall
5 be deleted. And the following sentences shall be
6 inserted. The owner, its successors or assigns by
7 accepting a deed to the property is deemed to
8 covenant, agree to pay an assessment to the
9 declarant, that's Plantation Properties, or its
10 assigns on a monthly basis in the amount of $7,200.
11 That's the base. Then it talks -- well, and -- for
12 its share of the cost of maintenance of the required
13 streets and landscaping along the required streets
14 within the residential area.
15 And then it talks about the terms of the
16 (inaudible) and how it will the increase by ten
17 percent per annum. And it -- at the end of the day,
18 that is -- that is the amendment. That's the
19 amended agreement on the assessment pages.
20 And then if you flip to Paragraph 8 --

well, if you flip to Paragraph 8, the amendment -- forgive me. If you flip to right under Paragraph 8, I don't know whether it actually is Paragraph, it says in all other respects, the declaration is hereby ratified and confirmed. So the amendment to

the apartment declaration increased the amount of the assessment obligation. And it permitted the new owner to convert the property into a condominium regime, bringing all other -- in all other aspects, it remained the same.

Every other part of this original declaration was unchanged. And that is important because if you look to the way that the -- this original declaration as it was originally written can be modified or extended or terminated.

It is -- there are two paragraphs that go to that. And it is the Article 9 of the declaration which is found -- it's Exhibit 2 to our memo. And it is Page 9. And the first part, 9.01, is -- says in clear and unambiguous terms that the declaration

and every provision hereof and every covenant -- and remember the assessment payment is a covenant to pay. Every covenant, condition and restriction contained hereon -- herein shall continue in full force and effect for a period of 20 years.

Now, that -- again, the assessment payment was a covenant. In this sense, it would continue for a period of 20 years. And then it says provided the rights and easements which are stated herein to have a longer duration shall have a longer duration.

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And if you remember, we read the grant and language of the easements in Section 7.01, which specifically nominates them as perpetually. That's what this sentence -- this clause is referring to is the easements that are perpetual, they are perpetual. They have a longer duration.

Then we come the sentence that the Plaintiff makes much of. And that is, it says in Section 9.01 that this declaration may be renewed for an unlimited number of successive 10-year periods by the declarant, its successors or assigns,

filing a notice of extension with the office of the register of mean conveys -- I'll say it because I'm not a classics mayor -- major -- for Beaufort County, South Carolina prior to the expiration of any term.

And the Plaintiff contends that that clause gave it the right to extend the declaration. But in that argument, the Plaintiff would like this court to entirely disregard the rest of the language in Article 9 of the declaration. And this court needs to continue reading to Section 9.02 which talks about, specifically, how this declaration can be extended.

And it says very clearly -- Section 9.02,

termination and modification. This declaration or any provision hereof or any covenant, condition or restriction contained herein may only be terminated, extended, modified or amended as to the whole of the property by the declarant and the owner jointly. And within that Section 9.02, which I will not read

in its entirety, it uses the word extension three times. And it requires that any extension be done jointly by the owner and the declarant.

And that's, in fact, as to the modification of the declaration, that's what was done. Exhibit 3, the amendment to the declaration was created and signed by the declarant and the owner, jointly. That's how they -- that's how they increased the assessment payment that is also the subject of this litigation. And they did that because it was -- that was the contractual framework for extending this declaration. And there is no instance where the declarant unilaterally extended the declaration except for the Plaintiff's claim that it unilaterally extended the declaration in 2018 on the eve of its expiration. And for three separate reasons, that unilateral extension was invalid.

And the first is the language that I just

read to you. The plain language of the contract, which determines the rights and obligation of the

parties, is clear that the declaration can only be extended jointly and properly. If in 2018 this declaration were to be extended, it would have to be done by the declarant, who is, arguably, Plantation Properties, and the owner -- and this is the important part -- the owner jointly. And the owner at this moment are 320 individual unit holders within the (inaudible).

And so the plain language of the contract requires joint agreement in order the terms, like assessment payment, to be extended. And that dovetails, we can only assume, that the drafter of this declaration put that language in there because it's the law in South Carolina. It is property law and contract law. Both require agreement of a party that rights are going to be affected before those rights can be changed.

And so property law first -- we know that the declaration is a covenant that runs with the land. And when it was recorded, it attached and the -- and the property was subjected to it. Every owner who took title (inaudible) property interest in these terms of this declaration.

And so whoever owns Unit 302, the Defendant -- the Defendant property regime has a property interest in the easements but also had -- up until 2018 when the 20-year term expired, had a property obligation as to the assessment payment. And those are vested interests. And the law in South Carolina is in -- as to servitudes in particular, which this is servitude, that they can't be modified by one property owner without the consent of the other party to the servitude.

And there I've cited that law or (inaudible) in my memorandum, it is the Corbin case which -- and also if Your Honor wants to look at it, there's another case called Ralph v. McLaughlin which goes into great detail. It's a recent decision by the Court of Appeals which goes into the great -- into great detail about how servitudes can be altered unilaterally by one party. And so we know that this language in the declaration was drafted to comply with that property law. It requires the consent of an owner before its servitude is altered.

And that's also true because this declaration is in the nature of a contract as well. And contract law, also, in South Carolina is there

that the -- that the material terms of a contract and a $90,000 a year assessment payment sure would be a material term. They can't be modified without the given consent of one of the signatories to this. They can't be unilaterally modified by one party of the contract. It required the consent of both parties.

And so, what we have here with this declaration is -- was a contract. It's a covenant in the nature of a contract that determines the rights and obligations of all the owners. And one of their rights and obligations was to pay an assessment. And if you read a contract, in the fine print of the contract, there's (inaudible) owner who purchased property did, it was very clear that that obligation, that covenant lasted for a term of 20 years. That's an express provision of the declaration. And that was the understanding of

every unitholder and every owner, independence horizontal property regime.

But that's what they were signing up for. That's what they were buying into was a 20-year obligation of payment assessment beginning in 1998 when the declaration was recorded and running until 20 years thereafter which was in November 2018. And

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those owners also understood that if that assessment period were going to be changed in any way, as it was in 2005, that it would require their consent. And so, they never gave that consent, Your Honor. And the Plaintiffs attempted unilateral extension.

We're asking for a ruling from this court was in that -- it was void under the law. It was void under the contract. And that is the -- determining back at which cause of action that is by the Plaintiff. That's part of the Plaintiff's third cause of action for alleged termination by breach. They're claiming that the Defendants breached the declaration by failing to continue to pay

assessments after that 20-year term expired. And therefore, they should be able to terminate the easement access.

And that's incorrect as a matter of law because you can't just terminate a perpetual easement. But also, it's incorrect under the terms of the contract itself, which assigns the penalty for failure to pay an assessment. And that is it -- a lien on the property, not the termination of perpetual easements.

Sorry. And that is also the Plaintiff's second cause of action. And we're also seeking --

the Defendant is seeking judgment in its favor as to the Plaintiff's second cause of action which is that the apartment declaration -- the apartment declaration was renewed. And our argument as I just said is that it could not have been renewed. Any purported unilateral renewal was invalid under the terms of the contract, contract law and property law.

All right. I'm still going, Your Honor,

unless you want a break because --

JUDGE DUKES: No. I'm good.

Deborah, you need a break? Okay. We're all good.

MS. TILLMAN: All right. This is scintillating, and you all are wide awake, I know.

So, the Defendant is also seeking judgment as to the Plaintiff's cause of action for unjust enrichment. Just reading the Plaintiff's cause of action, it is very apparent that the Plaintiff's real complaint lies with the developer rather than with the Defendant. In fact, the Plaintiff complains that the scheme of creating a single access to the Defendant Estates through Westbury Park was created by a developer for the benefit of the developer and to the detriment of the communities and residents that will otherwise suffer

the burden of the scheme after the developer derived inequitable benefits from the scheme.

That's not a cause of action against the Defendant. That's a potential cause of action

against the developer. But again, the developer is not a party to this lawsuit. And the Plaintiff contends that it's not fair that the Plaintiff has to maintain these required streets.

But the Defendant's understanding is that it was paying for 20 years, $1.3 million for the maintenance of those required streets. It paid not to the Plaintiff but to the developer who -- and this goes into our -- one of our counterclaims for accounting. But the developer, as the Defendant paid that money over the course of years, had a fiduciary duty to be using that money for the maintenance of the required streets. That's what it says in the declaration.

That was our understanding as we made those payment, that they were -- and if you look at Section 8.02, Exhibit 2, which is the apartment declaration, those payments were for the Defendant's share of the maintenance of the required streets. And the developer had a fiduciary duty to use it for that. And maintenance of streets is actually all

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that expensive.

And the developer -- who knows what the developer should have, could have, would have been doing. But it should have been saving that money to use for maintenance as it became necessary over the course of the 20-year life of the asphalt or whatever it was. But what happened, in fact, to that money, we don't know. I think we heard testimony earlier that at some point the developer starting paying some of that money to the Plaintiff.

And then we also have the Plaintiffs -- has produced -- and we have attached it as Exhibit 5 to our memorandum in support of our motion for summary judgment. This is actually an agreement between the developer, Plantation Lakes -- I'm sorry -- Plantation Properties, LLC and the Plaintiff. And also the commercial property owners' association which is not a party to this action. It's an agreement for what they're going to do with that assessment money, which was hitherto-fore going straight to the developer.

And we don't know the background to how this agreement came about. But what we know from this agreement is that the developer agreed to -- that the Plaintiff could then -- starting in 2015

when this agreement was made, could start receiving the assessment payments, which at that point were $90,000 a year. And so -- and it wasn't just the Plaintiff. It was also the commercial association. The Plaintiff was to receive 80 percent of those assessment payments. And the commercial association was to receive 20 percent of those assessment payments.

And this payment division and agreement specifically references the apartment declaration and the assessment payment. And actually, it specifically -- let me correct that. It specifically references the amendment to the apartment declaration which was the 2005 agreement, jointly between Montecito Westbury and Plantation Properties, which increased the assessment amount, giving all of the respects, didn't change the apartment declaration.

But this agreement, we know, allowed the Plaintiff to start receiving $90,000 a year from the

Defendant. And whatever the back story is, the Plaintiff inherited that right from the developer and proceeded to collect that money until the term expired in 2018.

And so, again, this is -- this evidence is

that if the Plaintiff has any complaint, it would be with the developer. The developer -- the developer also devised this plan with the Plaintiff -- with the Plaintiff for the payment of those assessments which the Plaintiff now contends were unjustly enriching the developer.

And the Defendant is an innocent party. And all of -- and all the Defendant was doing as far as it was concerned was paying its money as it was obligated to do for 20 years under the declaration as it ran with his property. And it did that. And the term expired. It paid a total of $1.3 million which should, arguably, have been put into a reserve fund for the -- as it says, for the Defendant's share of the maintenance of the required streets and the landscaping.

And so that is also our sixth cause of action or -- against the (inaudible) Defendant's counterclaim for an accounting. But it's also the Plaintiff's sixth cause of action for unjustly -- unjust enrichment. The two dovetail with one another.

First we're asking for a ruling from this court that the Plaintiff's cause of action for unjust enrichment must fail because the -- as a

matter of equity. The Plaintiffs -- again, as I said earlier, equitable remedies are only available when there is no contractual remedy. In this instance, the contractual terms are clear that the assessment was paid.

Therein lies the Plaintiff's rights that they're clear under the terms of the contract, which is Exhibit 5, as well as Exhibit 3 and Exhibit 1. There's three contracts. The amended apartment declaration, the original apartment declaration and the Estate payment division agreement make it clear

that the Plaintiff does have contractual remedies and has no need to seek equity from this court -- an equitable remedy.

And then also because the Plaintiff's true complaint as to unjust enrichment, as it's drafted in its complaint, lies with the developer and not with the Defendant.

And let me make sure that I'm getting through all of this paper adequately. Bear with me, Your Honor.

JUDGE DUKES: No. We're good.

MS. TILLMAN: (Inaudible). So, our final cause of action in which we're seeking a judgment from this court in our favor is as to our

counterclaim for an accounting. And I talked a moment ago about terms in Exhibit 1 in the assessment provision that required that the assessment be used, originally, by the developer for the Defendants or the Defendants' predecessor in title. But now the Defendants share of the maintenance of the required streets and landscaping.

And I talked about earlier that was a fiduciary duty on the part of the developer to use that money for that purpose. It's a promise within the declaration that that's how it would be used.

And then we know in 2015, from Exhibit 5, which is, again, the Estate payment division improvement, that the developer assigned the right to collect that assessment to the Plaintiff. And by assigning that right to collect the money, it also assigned the obligation to use that money for the Defendant's share of the required street. That's what that money was for. That was the purpose of the assessment. It was not to mow people's lawns. It -- within the -- within the Plaintiff's development. It was to be shored up and saved for the purpose of maintaining those streets.

And so our -- the Defendants have brought a counterclaim for an accounting against the

Plaintiff, asking -- because they have a right to know since the Plaintiff owes it from a fiduciary

duty to use the money for that purpose. Asking to see how that money has indeed been used. And we're asking Your Honor for a ruling in our favor as to that cause of action.

And that concludes my soliloquy at this time. And if Your Honor has any questions, I would be glad to answer them. It's a lot of material.

JUDGE DUKES: You know what? I think I'll hold any questions and hear from counsel first. But thank you so much.

MR. SHELTON: Thank you, Your Honor. Mr. and Ms. Tillman, may it please the court.

I believe that in reality, the Defendant's counsel and I agree on much of the theories involved, but we absolutely defer on the result. The law's the law. The contracts are the contracts. I want to start off kind of in retrograde, if you will, from the Defendant's arguments. And start with the question as to the renewal of the declaration by my client which is the successor in interest and the assignee of declarant rights as to the assessment payments.

This, Your Honor, is Section 9.01 that was

referenced. And if Your Honor has -- I have a copy of mine. I don't know I'm allowed to hand it up, but I do have a copy of the memorandum if you don't already have it in front of you.

JUDGE DUKES: I've got it. I was on Exhibit 2, right now, 9.01. Is that the case?

MR. SHELTON: Yes. Thank you. And if you look the 9.01, Exhibit Number 2. For example, as to the law and the theories of the matter. We absolutely understand and agree that owners gave -- can give consent and understand and take their property subject to the declarations and covenants that are in place. Each of the owners of the Estate took their ownership rights, their interest subject to the apartment declaration, the one you're looking at right there. And each of them took it subject to 9.01.

Now, a lot -- we've heard a lot and the Defendant's brief has a lot about how you cannot modify an agreement. You cannot alter an agreement without consents of both parties. We don't dispute that. We agree with that. That's the reason that the amendment required two signatures.

However, each of the owners, when they took their property subject to this declaration,

took it subject to 9.01. By filing a renewal, nothing was modified in this agreement. Nothing was changed. Nothing was changed to the amendment. Indeed, the renewal is contemplated when the parties first signed the agreement in 1998 that ran with the land as the Defendants are arguing. And each of them took it subject to those provisions.

If you accept the Defendant -- if one is to accept the Defendant's arguments that 9.02 bars the declarant or successors and assigns from filing a renewal unilaterally, then you have to completely ignore much of the language in 9.01 that is different from 9.02.

Ms. Tillman referenced part of that. For example, in 9.02, it would -- if you -- if you interpret the two as all as being absolutely meaning to apply through a renewal by the declarant, it would be impossible for a successor or assign to

renew the declaration because in 9.02.

Your Honor, it states that the declarant -- that the -- this declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may only be terminated, extended, modified or amended as to the whole of said property or any portion thereof by the declarant and owner

jointly. It doesn't say anything about the assigns or successors. It says the declarant and the owner jointly.

Further, it states that no determination -- such termination, extension, modification or amendment shall be effective until the proper instrument in writing has been executed and acknowledged and recorded in the office of register of mesne conveyance -- mesne conveyance for Beaufort County, South Carolina.

No such termination, extension, modification or amendment shall be in violation of county requirements and/or ordinances. Now, compare that with 9.01. And 9.01 references term. This

declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of 20 years from and after the date of recording of this declaration provided that rights and easements which are stated herein to have a longer duration shall have such longer duration.

This declaration may be renewed for an unlimited number of successive 10-year periods by the declarant, its successors or assigns, filing a notice of extension with the office of the register

of mesne conveyance for Beaufort County, South Carolina prior to the expiration of any term.

There is no requirement for renewal to be signed on to by a separate party. This is because it was never intended to be that way. The renewal does not change anything in the declaration except its length. That it does not modify any term, whatsoever. It does not alter any term, whatsoever. Just as a lease that states that a tenant by

providing notice three months before the end of the lease may renew the lease by filing a notice with the landlord that it be renewed without the landlords consent. That's in contracts all the time.

The same rules of construction and the rules of contract would apply to this. It was contemplated and decided upon when the declaration was first drafted. And every single property owner who took their property subject to this declaration assented to it when they took title.

So, subsequently, in 2018, my client, Westbury Park, did file a notice of extension by renewing -- and thereby renewing the declaration, specifically by the terms contained within the declaration. However, the Estate has not made any

payment whatsoever since that time.

We believe that it's clear by it's terms that the renewal provision does not require a signatory from the Estate, or at the time the apartments. It's clear from this language.

Otherwise, the language has no meaning. There's language in this document that has no meaning. Why is successors and assigns there. Why does the 9.02 require the document to be acknowledged. And why does it specify it's only by the declarant and the owner, not the owner and the successor and assigns and not the declarant. Why does it state -- say that it must be executed and acknowledged where in 9.01 none of that language is contained in that section.

So, we believe that it's clear that they must read together. But it's clear that they have two separate meanings. We would state that it is unclear that in -- that breeds ambiguity. And unfortunately for everyone's clarity, it would require further discovery to attend what -- to determine what is the intent of the parties. But we do not believe that's so. We believe that it is right for summary judgment as to our client. But we did not file that since we were waiting to hear on

summary judgment from the Defendant as to that issue.

Now, this -- as I said, this kind of -- all these this/that section and that crux, if you will, then flows into the Plaintiff's other causes of action. For example, termination by a breach. That's a drastic remedy. We understand that. However, the Defendants unilaterally informed the Plaintiff that it was not going to abide by the declaration anymore. Unilaterally told the Plaintiff that we're not going to pay you anymore. They unilaterally breached the contract by not recognizing the extension.

The extension was filed per the terms of the declaration. Multiple notices and demands were sent to pay the back amounts over years. Not a dime has been paid. Not even an undisputed amount. Not even the amount that they would be subject to pay under the common law rule that a dominant estate has responsibility to maintain the easement. Nothing.

That is a breach that is beyond a normal breach where you seek back payments. That is something that requires a drastic remedy. We believe that because it was extended properly, the termination by breach cause of action should at

least go forward past summary judgment stage.

Alleged term of the Plaintiff's fourth cause of action is alleged declaratory judgment that any easement conveyed was an easement in gross. This is a residential easement. This is an easement that applies to property, residential properties, particularly when it was converted to an HP owner, a horizon property regime. This easement is for the benefit of each individual owner thereof.

Now, that's different under the case law than a commercial easement. Typically, an easement is granted in gross unless it's specifically states otherwise. Even -- it said it's perpetual. And we acknowledge that. However, this property has changed hands multiple times. And we do not believe that it shouldn't exist in perpetuity. And believe that particularly after the breach of the covenant that it may be -- that it can be considered an easement in gross.

Now, let's talk about -- I'm going to jump around a little bit. And let's talk about the

landlock provision, the arguments here. What is not shown on this map that you have in front of you is that Plantation Parkway was extended. Now, if you drive onto Sheridan -- I believe it's Sheridan Road

or Sheridan Parkway in Bluffton, there's a back entrance that drives -- that comes around and connects with Westbury Parkway, all the way through Plantation Business Park.

It was that development by the County in 2008, 2009 that spurred the conversation and the possibility of the separate entrance. Also, the documents appear to contemplate a second entrance. If you look at the declaration, and if you look at the term contained within 7.02(a) of the declaration, it actually states within the body of that paragraph that -- referring to the right-of-way that heads towards Highway 278, it states that this right-of-way is relocatable by declarant and/or Buck Island, LLC provided such relocated easement affords the property adequate and proper access to and from

U.S. Highways 278.

On that, I'm going to move past that. But I believe that it's just an early state. We've taken a few depositions and it -- if we had not -- if the language is deemed to be ambiguous, then there's a lot more discovery to be done in this case to determine the issues between the parties.

Plaintiff's fourth cause of action, alleged declaratory judgment that -- excuse me.

Plaintiff's fifth cause of action alleged alternative declaratory judgment that no easement exists and requiring Defendant to construct alternative access to the property. This argument rests on the fact that the original declaration -- and this isn't an alternative. The original declaration contains no acknowledgment.

The acknowledgment -- the acknowledgments acts wasn't in force and effect in 1998. So is the requirement that any document that affects real property must be acknowledged or otherwise approved by the notary per Section -- I don't want to cite a

section because I can't remember it precisely. But I believe it's 23-30 et seq. -- 10 et seq. But I could be mistaken. I believe the court is familiar with that act I was speaking of -- speaking on.

It was not acknowledged. There's no acknowledgment in the document. It was recorded, of course. Don't know why it was recorded, but it was recorded. So there is a question of the legal effect -- permanent legal effect as to the easement document, as to the declaration itself. That's what that cause of action is mostly premised in.

Now, moving on to the Plaintiff's sixth cause of action, alleged unjust enrichment. That

language is in the Plaintiff's sixth cause of action. If that isn't in the court's file, we can always -- we could amend the complaint. However, the cause of action contains other paragraphs alleging that it's unjust for the Defendant to derive a benefit from the easement when they're the dominant estate.

The common law requires the dominant estate to pay its portion of the share of the maintenance and costs of the easement while the Plaintiff has to bear all of that cost. Notwithstanding what's in the Plaintiff's -- it doesn't matter what's in the Plaintiff's covenants as to that point. Of course, it matters what's in the Plaintiff's covenants. But it doesn't matter as to the Plaintiff's covenants what's to that point. They have an obligation to maintain their common areas. Of course, they do.

But if someone else is using their common area for their benefit as a dominant estate does, then there's a common law, equitable right to obtain a benefit that -- to be paid for that.

Further, if the Defendant is right, if the Plaintiff loses its arguments on the renewal of a declaration, which we say we don't. But if that

happens, then what are we left with in this declaration? What is left? There's nothing there that has any specific term in the declaration other

than the perpetual right-of-way, the perpetual easement. If everything else falls apart except for that for my client, which we state it should not. We adamantly state that should not happen. But if it were to happen, then we're entitled to a cause of action for unjust enrichment for every other benefit that is not specifically prescribed by the easement language.

For example, the gates, the security, beautification, the things that the Estate of Westbury has articulated all the way back to 2010. There's a benefit to them. In their minutes that we heard earlier today in testimony these things that are a benefit to them, the beautiful access to their -- to their premises. All these things are a benefit to the Estate that my client unjust bears. That is the crux of the unjust enrichment cause of action which is in the alternative.

In Plaintiff's seventh cause of action, alleged termination via changed conditions. We do not believe that it was ever, ever contemplated by the documents that there'd be a situation where the

residential association is required to provide all the security, the gate access, the maintenance of the streets, the beautification of the streets, the beautification of the corridor, all of these things, when -- and be stuck leaving that -- hold that bag, so-to-speak, with absolutely no contribution whatsoever or any type of help from the Estate.

We do not believe that would bear out ever in common law. Even if it would -- if this case boils down to nothing but an easement by necessity, we do not believe that that would bear out under any circumstance. That is a changed condition as to what we believe that the documents state. And we are in a changed condition circumstance now with this material breach. We simply do not have any payment for the work, for the monies, for the maintenance or to put into the additional reserve fund for this -- for the burden that the easement creates for my client.

I think I've covered the -- our causes of action as to the summary judgment motions on each of those items. Moving to the Defendant's counterclaims.

Defendant's fourth counterclaim for declaratory judgment for express appurtenant

easement. Now, I -- we again -- we agree on the law. We agree on the theory. We do not agree that it's and express appurtenant easement. We believe that this is a resident -- easement of residential character. We believe that there is absolutely another means of access that was contemplated from the beginning, even within the documents, that now there is Plantation Parkway that exists. There is a possibly -- there is a absolute possibility. Not just possibility. There is an ability to access the Estate from a different direction. We do not believe that that express appurtenant easement exists.

JUDGE DUKES: Can't we have an express appurtenant easement subject to the condition though in the covenants that say that when you come up with a better way or another way that goes to 278, then you can substitute that? I mean, can't you just --

MR. SHELTON: I don't --

JUDGE DUKES: Can't you just --

MR. SHELTON: I don't disagree with that. I don't disagree with that. We'd concede that. We concede that. And we absolutely concede that, Your Honor.

We believe that is absolutely possible. But we also believe that this is -- if you look at -- express appurtenant is -- must follow every single requirement of law to be created. And this also goes back to the fact that the acknowledgment not existing on the declaration.

But -- and so, I would submit to the court that as to the Defendant's summary judgment motions, of all the motions, the one that may be in any way subject to that, either it's now or later, is that cause of -- that is the fourth counterclaim, as an officer of the court.

Defendant's fifth counterclaim, alternative for easement by necessity. We simply

believe that that must fail because there is an alternative access. There could have been an alternative access. This actually happened in practicality. There was almost an alternative access. It was offered and it was declined. It could have happened. It could happen today.

And then Defendant's eighth counterclaim for an accounting. Your Honor, I have looked in the documents for this promise that is being asserted as to what these -- what this payment was specifically for. We understand that it states for declarants

and assigns on a monthly basis to pay for the -- excuse me. The owner, its successor and assigns to pay the declarant for its assigns on a monthly basis in the amount of $7,200 as its share of the cost for maintenance of the required streets and landscaping.

The issue with that, with the accounting and also the issue with any other, which is not specifically -- I address in my brief it's not specifically requested, but I do think that it dovetails in with other causes of actions of the

Defendant is that Section 8.02 has a floor to what it could be. The floor is $86,400 per year.

We do not believe that -- and then this also goes to the fact that they never raised this issue for 20 years. In 2018, they raised the issue for the first time, the very first time requesting an accounting. And what is there to call back? What is there to use? They had to pay that amount every single year as it was.

We do not believe that the language allows -- creates any type of fiduciary duty. We do not -- we have to look at the language of the contract. Understanding the common law, we do not believe the language of this -- of this contract creates any fiduciary duty as to my client or even Plantation

Properties over those amounts. And again, it went on for 20 years and it was never requested.

We believe that moving for summary judgment on that issue now is not ripe, first of all. And, secondly, should not be granted at any

time. It simply was not what it was contemplated to be for.

Also, it's -- I think it's also interesting to look at the language of Section 4 of the amendment which states that that amount is not only for landscaping along the required streets. It's also for around and within parks within Westbury Park Residential Association and the Westbury Park Commercial Area.

Your Honor, we just do not believe there's an accounting cause of action to be had based on the language of the contract. And I would circle back to this section -- the sections of the declaration 9.01 and 9.02. And offer to the court that those two sections truly are the crux of the dispute between the parties. That is what has lead to this dispute and us being here today, we believe. And we believe, from the Plaintiff's point of view, that it's absolutely clear that 9.01 has a different intent and it's for a different purpose than 9.02.

If, again -- and my brief sets forth this

in detail if the court has had an opportunity to review it or not. I'm sorry I sent it to you so late last night. But it sets forth in detail what those differences are. And what would be -- and should the court or should one accept the Defendant's arguments that it may not be renewed unilaterally, there is language in the agreement that has no meaning. We must assume that the language that is contained in the agreement has meaning, that the words have meaning.

And I understand the Defendants state that the agreement may not be extended with joint agreement. But that is not what -- not what 9.01 does. There's a notice of extension where the agreement is being renewed. The agreement is being renewed for successive 10-year terms.

A notice of extension is filed. That's the mechanism for renewing the agreement. But the agreement is not being broadened as far as it's substance or form. The declaration is not being broadened as to the additional acreage or additional units or anything along those lines. It's not being extended as to those terms.

The declaration is remaining exactly the

same. Nothing is being altered. And I keep saying these -- this over and over, again. But I believe it's very important. And it's the crux of the Plaintiff's case. Nothing is being changed. And 9.01 states that you may renew it unilaterally.

Again, this declaration may be renewed for an unlimited number of successive 10-year periods by the declarant, its successors or assigns filing a notice of extension with the office of the register of mesne conveyance for Beaufort County, South Carolina prior to the expiration of any term. That was done. And it was renewed. And that is what our declaratory judgment action is asking for, a court's order stating that. We are not at summary judgment. We're not -- we did not file for summary judgment on that issue. But we believe that that -- summary judgment on that issue should certainly be denied from the Defendant's motion, that is.

JUDGE DUKES: All right.

MR. SHELTON: Thank you, Your Honor.

JUDGE DUKES: Thank you so much.

We've still got a few more minutes. So, anything else from anybody?

MS. TILLMAN: Yes, Your Honor, if I could briefly address just Ben's arguments. And I

agree with Ben that the crux of this case is it's a question of whether this declaration was a validly renewed or extended. And Plaintiff's entire hat in this regard hangs on that one provision in 9.01.

But this court -- it is within the jurisdiction of this court to interpret contracts based on their four corners. And the four corners of this contract are very clear that the word extensions, as used, are -- has meaning. That's, in fact, what the Plaintiff did.

Exhibit 6 is a notice of extension that the Plaintiff unilaterally filed seeking to extend the term of this declaration. And for -- if that term is used, the term extension, then this court should resort to the language of 9.02 which uses the word extension within that paragraph three times to say that the declaration can only be extended by the

declarant and the owner jointly. No such extension shall be effective until a property instrument in writing has been executed and acknowledged and recorded. No such extension shall be in violation of County requirements or ordinances.

So, Section 9.02 is the paragraph to look to for this court to discern whether the declaration was properly extended. And again, we argue that it

wasn't because the extension must be done by the declarant and the owner jointly.

And also in our memorandum, I didn't touch on this earlier. But -- all right. I'll address the Plaintiff's argument that it somehow has the right under the declaration to extend it in the first place which is -- we contend that it doesn't, that Plaintiff argues that by that Estate agreement, which is Exhibit 5 that it inherited the declarant rights that would entitle it to extend the declaration.

And the Exhibit 5 is an unrecorded

instrument that -- it's a contractual agreement between the developer, Plantation Properties, and the Plaintiff and then a third party, which isn't a party to this lawsuit, the commercial association. And this contract is very, very specific that what it deals with is the money, the assessment money.

And in this contract, unrecorded contract, the developer gave the Plaintiff the right to collect that assessment money. And -- but not just the Plaintiff. Another entity. And you'll see this all throughout the agreement. It refers to the (inaudible). That's the Plaintiff. And the COA. That's the commercial association.

And so, first, we contend that this document doesn't assign declarant rights. It just assigns an ability to collect the money. But, secondly, even if it does assign declarant rights, it assigns them jointly with another entity. The Plaintiff doesn't hold this declarant rights, if they exist, if this contract assigns them, which it doesn't, but it doesn't assign anything to the

Plaintiff alone. It assigns them jointly to the Plaintiff and another entity.

And then we can only assume that if they pulled them together, then they would have to act together to extend the declaration, if they have that right.

And the notice of extension which is Exhibit 6 was, again, unilateral by the Plaintiff, by the residential owners association. The commercial association is not a signatory to the (inaudible). And so, again, for that reason, we contend, in addition to the fact that contracts can't be materially altered. And servitudes can't be materially changed unilaterally. But in addition to that, we contend that the Plaintiff didn't have any right to extend the declaration. And the Plaintiff argues that it's just renewal. And

nothing's changed.

What has changed is the difference between paying $1.3 million in assessments over the course

of 20 years and extending that obligation, a significant change. Because if that obligation were extended for 20 years, that would be $90,000 and counting per year. And I'm not great with math, but that is millions of dollars. That is a significant alteration in the agreement and understanding of the party which would require a consent of the owner.

And the owner is specifically defined -- Ben touched on this a little bit, the owner is a defined term in the declaration. It includes every single one, it's the titleholder of the property. It includes every single one of the Defendants, every single one of them as a matter of law would need to be a signatory to any extension or any modification of their rights under that original declaration.

And the other thing that I will address is Ben's argument that other access was contemplated from the beginning. And Ben points to Section 7.02(a) of the declaration in making that argument. And that argument fails for two reasons. The easement grants by the developer -- there wasn't

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just one easement grant. The developer granted an easement over Kensington Boulevard, which is separate subsection, Subsection (b).

And then in Subsection 7.02(a), it then talks about that's the access through the commercial property. And if you look in the -- if you look at the apartment declaration, Exhibit 2 to our memorandum, you'll see where the end of the commercial -- the owner of the commercial property, and this is Buck Island, LLC, joined in the declaration for the sole purpose of confirming the easements granted in Paragraph 7.02(a). And the reason for that is because Buck Island, LLC owned Westbury Park Way. It owned that section of the road at the time that this declaration was drafted.

And so, therefore, it had to -- it had to agree to that grant. And -- however, 7.02(a) with its language saying that it could be relocated only goes to that part that goes over the commercial road -- the commercial property. It goes to Westbury Park Way. And Buck Island, LLC as one of the signatories to the declaration could perhaps have come up with some different route. So -- through it's shopping center or whatever. That's what that

language in 7.02(a) means.

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It does not -- it is separate and distinct from the perpetual easement grant in 7.02(b) over Kensington Boulevard. And there's no limiting or limited language or opportunity to alter that access which was always contemplated as we know from the master plan and from the words on the page.

And then also in -- now I'm starting to lose my memory of what Ben said. But Ben talked about how, you know, that there would be nothing left in this declaration if it were not renewed or whatever. And that's incorrect because we know from the scheme of this development that, actually, the only thing that really is meant to be left are the easements because if you look at the amendment that happened in 2005 when the property -- and that's Exhibit 3.

And when the property -- the Defendants, predecessor in titled, converted the property to a horizontal property regime. It was understood that

the horizontal property regime would take over the declarant duties for the parcel. That provision against clotheslines and the provisions against what color the property could be painted and all those sorts of things that are contained within the apartment declarations were meant to become obsolete

by the master deed to the condominium regime which then set forth in much more detail the nitty gritty of how the property was to be developed.

And so it makes sense that this apartment declaration terminated. Because, it wasn't intended to last forever. It was intended to last for the time the developer was involved in this property. This was the developers business. It was the development of this property. The assessment payments were how it perhaps lined its pockets. It was developing the property.

So the developer knew that it wouldn't be involved in this property. And that ultimately in the end of the day, it would have conveyed all of its land. And that would have been a successful

development. And that's what it did. And that is why, Your Honor, the term was intended to expire after 20 years.

And so, just looking at the four corners of the document, and also with the recorded instruments that are in the Plaintiff's and Defendant's chain of title, this court can construe the intent of that declaration to grant perpetual appurtenant easements over the streets that are the subject of this litigation to have a limited term of

20 years that could not be extended without the consent of every owner and declarant together. And to use all the money from the assessment that was collected over those 20 years for the purpose of shoring up a reserve for the maintenance of the required streets on behalf of the Defendant.

And it is for those reasons as well as the ones that are set forth in our memorandum that we are asking the court to give us guidance and direction as this lawsuit proceeds. We're asking

for summary judgment, I think, on eight different causes of action, but there are many more within this lawsuit. This is a very large lawsuit.

And the parties are looking for judgment on this issue that are strictly contractual, that don't require any further discovery or fact finding so that going forward on the causes of action that do, the parties can have direction. And that is the purpose of our motion for summary judgment. And we're asking, Your Honor, to grant it. Thank you.

JUDGE DUKES: Thank you so much. One quick question.

MR. SHELTON: Certainly.

JUDGE DUKES: Something that maybe you all have talked about all day, but somehow I

just caught when it was mentioned a moment ago. How is the Plaintiff the declarant, the successor and interest to the declarant at this point?

MR. SHELTON: The Estate payment division agreement and assignment, first of all, they're now -- they run the association. They run

Westbury Park Residential Association. But as to the Estate, the Estate payment division agreement, Exhibit A that is attached to Plaintiff's Exhibit Number 5 --

JUDGE DUKES: Plaintiff's 5 to the summons and complaint? No.

MR. SHELTON: No. No. No. I apologize. The Plaintiff's -- it may be Plaintiff's 5 in the summons and complaint. And I have that in front of me. It's Plaintiff's Exhibit 5 to its memorandum which is the -- which is a part of the notice of extension, the renewal agreement.

JUDGE DUKES: Okay. I see it.

MS. TILLMAN: And (inaudible) is the Defendant's Exhibit 5, I think.

MR. SHELTON: I made it Exhibit 5 as well.

MS. TILLMAN: Perfect.

MR. SHELTON: Sorry. But thank you,

though. So either the Plaintiff's or Defendant's

Exhibit 5. But it's Exhibit A to -- on the -- on the Plaintiff's filing of Exhibit 5 is -- we have included the notice of extension of the declaration of covenants. In that -- within the notice of extension, it is filed with the register of deeds as Exhibit A. And Exhibit A is the Estate payment division agreement and assignment.

And it states, agreement. Whereas, on November 1st, 2005, Plantation -- excuse me. Plantation Park, LLC entered into a amendment to the declaration of covenants, conditions and restrictions and easements for Palmetto Lakes Apartments at Westbury Park with Montecito Westbury, LLC, pursuant to which certain assessment funds, paid to PPLLC on a monthly basis in connection with the Estate of Westbury Park Condominiums which is incorporated herein by reference and referred to as the Estate agreement.

It goes on to a now therefore clause. For and in consideration of a lump sum of $10 paid in hand by the ROA and COA to PPLLC, which is the declarant, their sufficiency whereof is hereby acknowledged. PPLLC does hereby assign, set over, transfer and convey to the ROA and COA and their

respective successors and assigns, pay all of PPLLC's rights, title and interest in and to the Estate agreement.

And that was signed by Plantation Properties, LLC, not Plantation Park. I apologize. Westbury Park Residential Association and also Westbury Park Commercial Center Association. Further -- so that is the document that grants the assign and makes its succession under the easement agreement possible to Westbury Park Residential Association.

JUDGE DUKES: Okay.

MR. SHELTON: Did you find it, Your Honor?

JUDGE DUKES: I did. So, I mean, it's assigning all the right, title and interest to the Estate agreement.

MR. SHELTON: Correct. And the Estate agreement, it references as covenants, conditions, restrictions and easements for Palmetto Lakes Apartments at Westbury Park. And that agreement is the amendment -- is the amendment --

amended amendments to declaration of covenants, condition, restrictions and easements for Palmetto Lakes Apartments at Westbury Park.

JUDGE DUKES: Okay. All right. Thank --

MR. SHELTON: That incorporates the declaration therein.

JUDGE DUKES: Did you have anything else you wanted to add. I'm sorry I interrupted you.

MR. SHELTON: Well, no. It's okay because that was actually one of the points I wanted to add. You didn't interrupt me at all, Your Honor. Thank you.

I'd like to point out again that, first of all, unjust enrichment is not a contractual cause of action which they're seeking summary judgment on. But also, the only place you find the word renew in the declaration is in 9.01. And again, the word -- that word has meaning, significance. And it is

different from what is -- what the contemplated actions require under 9.02.

JUDGE DUKES: I'll have to read some of this. And let's see what my schedule is. Maybe we can do a conference call so to keep the fire lit under me. Let's see. We can go off the record for a second.

(OFF RECORD DISCUSSION)

JUDGE DUKES: While we were off the record, we scheduled a follow-up conference call just to keep the fire under me on figuring this stuff out for Monday the 21st at 2:30 using our free conference call .com number. And so that's what we'll do. We'll talk then and see if either I've got any follow-up questions or I can at least discuss what my thinking is at that point.

So anything else for today's record, then?

MR. SHELTON: No, Your Honor. Thank you. We appreciate you holding this in person. It's been quite a long day. And it was good to see everyone. And it's nice to be back in court.

JUDGE DUKES: It's good to see everybody. Thank you all so much.

(Whereupon, the hearing was concluded at 4:50 p.m.)

(MARKED PLAINTIFF'S EXHIBIT NO. 1)

Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of 2020-CP-07-00158, Westbury Park Residential Association, Inc. v. Estate at Westbury Owners Association, Inc., on the 16th day of September, 2020; and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed

by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Ainsley Fisher Tillman, Ford Wallace Thomson, LLC, 715 King Street, Charleston, South Carolina 29403.

In witness whereof, I set my hand and sealed this 27th day of December, 2020.

_____
Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
expires 2/7/28