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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

APPELLATE COURT CASE NO. 2019-000928
COMMON PLEAS CASE NO. 2017-CP-07-00851

RECEIVED
JAN 16 2020
SC Court of Appeals

River City Developers, LLC Appellant,

v.

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

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENTS

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	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
River City Developers, LLC,	)	CASE NO. 2017-CP-07-00851
	)	
Plaintiff(s),	)	
	)	
v.	)	
	)	
	)	ORDER
The Marshes at Lady's Island	)	
Homeowners' Association, Bundy	)	
Appraisal & Management, First Green,	)	
LLC, Tige Howie & Stephen Scott,	)	
Defendant(s),	)	
	)	

THIS MATTER came before the court on October 16, 2018 on Defendants' motion for summary judgment/declaratory judgment and Plaintiff's motion for summary judgment. Appearing on behalf of Defendants were Kevin W. Mims, Esq., Michael A. Timbes, Esq., and J. Barnwell Fishburne, Jr., Esq. Appearing for Plaintiff was Mills L. Morrison, Jr., Esq. For the reasons discussed below, the court answers Defendants' declaratory judgment in the affirmative, finds the subject lots are encumbered by the Declaration of Covenants, Conditions, and Restrictions ("CCRs" or "Declarations") for the development, grants Defendants' motion for summary judgment as to all adverse claims, respectfully denies Plaintiff's motion for summary judgment, and awards attorney's fees and costs to Defendants pursuant to the terms of the CCRs.

BACKGROUND

This is a property dispute case occurring at The Marshes at Lady's Island community in Beaufort County, South Carolina. The CCRs for the development were filed by NP Blue Gray Development, LLC in Book 02301 Pages 0662-0742 on January 10, 2006 in the Beaufort County Register of Deeds. Land initially submitted to the CCRs is described in Exhibit A to the CCRs. Land subject to annexation is described in Exhibit B to the CCRs.

According to Plaintiff's Complaint, Plaintiff was the owner of present day lots 16, 55, 56, 57, and 58 ("subject lots") within the community at the time this case was filed. Plaintiff's first cause of action seeks a determination that the subject lots are not encumbered with the rights and obligations of the CCRs under a theory that the lots merely existed as "future development" (as opposed to finally platted lots) at the time the CCRs were recorded. Plaintiff's remaining tortious causes of action relate to allegations the owners' association ("HOA"), or its agents, wrongfully attempted to collect HOA assessments from Plaintiff and have likewise breached a fiduciary duty owed to Plaintiff by not filing a Supplemental Declaration so as to subject Plaintiff's lots to the CCRs. Outstanding HOA assessments on lots currently owned by Plaintiff total \$5,851.15.

Defendants argue the subject lots are encumbered by CCRs (and at all relevant times have been) because the plain language of the Declarations contemplates encumbering certain platted lots as well as other identified areas that existed as "future development" at the time the CCRs were filed in 2006. In an effort to enforce the terms of the CCRs as against Plaintiff, Defendants filed a declaratory judgment action seeking, among other things, a determination that Plaintiff's lots are subject to the terms of the CCRs, including fees and assessment obligations.

ANALYSIS

The construction, interpretation, and legal effectiveness of a restrictive covenant is a question of law for the court. Am. Jur. 2d Covenants § 282 (2015). Restrictive covenants are also contractual in nature, so the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985). When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be

enforced according to their obvious meaning.” Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992). “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” Taylor v. Lindsey, 332 S.C. 1, 5 498 S.E.2d 862, 864 (1998) (citation and quotation marks omitted). However, this rule of strict construction “should not be applied so as to defeat the plain and obvious purpose of the instrument.” S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). Likewise, in construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009) (citations and quotation marks omitted).

Exhibit A & “Properties”

In Cullen v. McNeal, 390 S.C. 470, 485, 702 S.E.2d 378, 386 (Ct. App. 2010), the court of appeals was presented with a substantially similar question of law. One of the issues on appeal in that case was whether undeveloped land identified as “future development” was subject to a development's original Declarations. In Cullen, as in this case, the Declarations define encumbered property as property described in Exhibit A. The Cullen court examined the Declarations in their entirety and made two cogent findings: (1) that “property,” as defined in the Declarations, includes all of the land described in Exhibit A, and (2) that a plat referenced in Exhibit A includes “future development.” The court of appeals ultimately held the circuit court did not err in determining that encumbered property included “future development.”

Here, according to Section 1.2 of the CCRs, “all property described in Exhibit A shall be owned, conveyed, and used subject to all of the provisions of this Declaration, **which shall run with the title to such property.**” (emphasis added). The word “property” is a defined term, and according to Page 5 of the CCRs, “properties” or “The Marshes at Lady’s Island” is defined as “the real property described in Exhibit A.”

The CCRs define “unit” as:

a portion of The Marshes at Lady’s Island, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit. **A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel.** Thereafter, the subdivided portion shall contain the number of Units shown on the plat. Any portion not subdivided shall continue to be a single Unit. (emphasis added).

According to the plat referenced in Exhibit A to the CCRs, the real estate that composes the subject lots existed as “future development” (or a “unit” in light of the above-referenced definition) at the time the CCRs were recorded in 2006. Plaintiff’s counsel acknowledged as much at the hearing, but nevertheless argued the subject lots are not encumbered because they did not exist as platted lots in 2006. This argument fails because a reading of the CCRs as a whole plainly shows the declarant intended to encumber more real estate than simply certain platted lots. “Future development” is expressly referenced in Exhibit A, and moreover, the real estate that composes Plaintiff’s present day lots falls “within the boundary lines of the parcel depicted in Plat Book 111, Page 17,” critical language describing encumbered property referenced in Paragraph 6 to Exhibit A; specifically, it reads that “Said property also includes all roads, common areas, **future development tracts**, marsh, wetlands, **and any other**

undeveloped property included within the boundary lines of the parcel.” (emphasis added).

This position is supported by the affidavit of the learned Curtis L. Coltrane, which the court finds persuasive, in Paragraphs 5, 14, and 16. Further, Plaintiff does not dispute the land which is now the lots in question are contained within the lands described in Exhibit A.

Also of significance, the legal description in Plaintiff’s deeds refers to the subject lots as part of The Marshes at Lady’s Island, Phase I” (a phrase defined by the CCRs as real property described in Exhibit A). Plaintiff’s deeds likewise make reference to a plat recorded at Plat Book 118 at Page 131. This plat is also titled “Phase I, The Marshes at Lady’s Island,” and a handwritten note on the plat states the plat depicts a portion of TMS # 200-018-000-076A—a TMS # expressly referenced in Exhibit A-1 to the CCRs. Plaintiff argues in its motion for summary judgment that “Exhibit A-1 has a list of the initial lots and does not include the lot subject to this action.” However, as supported by the supplemental affidavit of Mr. Coltrane, because the subject lots were subdivided from the parcel bearing TMS # 200-018-000-076A, and because this very same TMS # is referenced in Exhibit A-1 to the CCRs, the subject lots are encumbered. And the court so finds that Plaintiff’s lots 16, 55, 56, 57, and 58 are, and at all relevant times have been, subject to the applicable CCRs.

Attorney’s Fees and Costs

Attorney’s fees are not recoverable unless authorized by contract or statute. Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993). According to CCR Section 7.4(a), “in any action to enforce the governing documents, if the Association prevails, it shall be entitled to recover costs, including, without limitation, attorneys’ fees and court costs, reasonably incurred in such action.” Defendants requested an award of attorney’s fees at the hearing; and, having

determined that the Association is the prevailing party in its action to enforce the CCRs, the court finds an award of attorney's fees and court costs is appropriate.

Counsel for Defendants is therefore requested to submit an affidavit(s) of attorney's fees and costs. The court will thereafter enter a supplemental order addressing the following six factors: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 240, 616 S.E.2d 431, 434-35 (Ct. App. 2005).

Based upon the foregoing, it is hereby,

ORDERED, ADJUDGED, AND DECREED that the subject lots are encumbered by terms of the CCRs; it is further,

ORDERED, ADJUDGED, AND DECREED that Defendants' motion for summary judgment is **GRANTED** as to all adverse claims, with all claims of Plaintiff against all Defendants being dismissed with prejudice, and **GRANTED** as to all affirmative claims; it is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiff's lots 16, 55, 56, 57, and 58 are included in Exhibit A and are subject to the CCRs without the need for any Supplemental Declaration; it is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiff shall pay an award and judgment of outstanding HOA fees/assessments totaling **\$5,851.15** to Defendant The Marshes at Lady's Island HOA, and all fees/assessments paid to date under protest are found to be due, owing and appropriately paid, it is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiff's motion for summary judgment is respectfully **DENIED**; it is finally,

ORDERED, ADJUDGED, AND DECREED that Defendants are entitled to an award of attorney's fees and costs as the prevailing party pursuant to CCR Section 7.4(a) and shall file an affidavit(s) of attorney's fees and costs to support the award. The court will issue a separate award for attorney's fees and cost to the Association or reconvene for a separate hearing if necessary to determine the total amount of attorney's fees and costs to be awarded.

IT IS SO ORDERED.

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

This _____ day of _____, 2018.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-07-00851

RIVER CITY DEVELOPERS, LLC

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kevin W. Mims, SC Bar No. 69418

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Defendants are entitled to an award of attorney's and costs as the prevailing party pursuant to CCR Section 7.4(a) and shall file an affidavit(s) of attorney's fees and costs to support the award. The court will issue a separate award for attorney's fees and cost to the Association or reconvene for a separate hearing if necessary to determine the total amount of attorney's fees and costs to be awarded.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Marshes at Lady's Island Homeowners' Association	Plaintiff	\$5,851.15

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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

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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**(Instructions for Information Only-Not to be filed with Form 4C)**

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: River City Developers Llc , plaintiff, et al VS Marshes At Ladys
Island Homeowners Association The , defendant, et al
Case Number: 2017CP0700851
Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-01-03 10:16:28 page 13 of 13

ELECTRONICALLY FILED - 2019 Jan 03 2:17 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
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Plaintiff(s),	)	
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The Marshes at Lady's Island	)	
Homeowners' Association, Bundy	)	
Appraisal & Management, First Green,	)	
LLC, Tige Howie & Stephen Scott,	)	
Defendant(s),	)	
	)	

**THE PLAINTIFF'S MOTION FOR RECONSIDERATION HAVING BEEN GRANTED
IN PART, THIS ORDER SHALL REPLACE THAT CERTAIN ORDER FILED
JANUARY 3RD, 2019**

THIS MATTER came before the court on October 16, 2018 on Defendants' motion for summary judgment/declaratory judgment and Plaintiff's motion for summary judgment. Appearing on behalf of Defendants were Kevin W. Mims, Esq., Michael A. Timbes, Esq., and J. Barnwell Fishburne, Jr., Esq. Appearing for Plaintiff was Mills L. Morrison, Jr., Esq. For the reasons discussed below, the court answers Defendants' declaratory judgment in the affirmative, finds the subject lots are encumbered by the Declaration of Covenants, Conditions, and Restrictions ("CCRs" or "Declarations") for the development, grants Defendants' motion for summary judgment as to all adverse claims, respectfully denies Plaintiff's motion for summary judgment, and reserves the issue of attorney's fees and costs as set forth hereinbelow.

BACKGROUND

This is a property dispute case occurring at The Marshes at Lady's Island community in Beaufort County, South Carolina. The CCRs for the development were filed by NP Blue Gray

Development, LLC in Book 02301 Pages 0662-0742 on January 10, 2006 in the Beaufort County Register of Deeds. Land initially submitted to the CCRs is described in Exhibit A to the CCRs. Land subject to annexation is described in Exhibit B to the CCRs.

According to Plaintiff's Complaint, Plaintiff was the owner of present day lots 16, 55, 56, 57, and 58 ("subject lots") within the community at the time this case was filed. Plaintiff's first cause of action seeks a determination that the subject lots are not encumbered with the rights and obligations of the CCRs under a theory that the lots merely existed as "future development" (as opposed to finally platted lots) at the time the CCRs were recorded. Plaintiff's remaining tortious causes of action relate to allegations the owners' association ("HOA"), or its agents, wrongfully attempted to collect HOA assessments from Plaintiff and have likewise breached a fiduciary duty owed to Plaintiff by not filing a Supplemental Declaration so as to subject Plaintiff's lots to the CCRs. Outstanding HOA assessments on lots currently owned by Plaintiff total \$5,851.15.

Defendants argue the subject lots are encumbered by CCRs (and at all relevant times have been) because the plain language of the Declarations contemplates encumbering certain platted lots as well as other identified areas that existed as "future development" at the time the CCRs were filed in 2006. In an effort to enforce the terms of the CCRs as against Plaintiff, Defendants filed a declaratory judgment action seeking, among other things, a determination that Plaintiff's lots are subject to the terms of the CCRs, including fees and assessment obligations.

ANALYSIS

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the intent of the parties as determined from the whole document. Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985). When “the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning.” Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992). “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” Taylor v. Lindsey, 332 S.C. 1, 5 498 S.E.2d 862, 864 (1998) (citation and quotation marks omitted). However, this rule of strict construction “should not be applied so as to defeat the plain and obvious purpose of the instrument.” S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). Likewise, in construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009) (citations and quotation marks omitted).

Exhibit A & “Properties”

In Cullen v. McNeal, 390 S.C. 470, 485, 702 S.E.2d 378, 386 (Ct. App. 2010), the court of appeals was presented with a substantially similar question of law. One of the issues on appeal in that case was whether undeveloped land identified as “future development” was subject to a development's original Declarations. In Cullen, as in this case, the Declarations define encumbered property as property described in Exhibit A. The Cullen court examined the Declarations in their entirety and made two cogent findings: (1) that “property,” as defined in the

Declarations, includes all of the land described in Exhibit A, and (2) that a plat referenced in Exhibit A includes “future development.” The court of appeals ultimately held the circuit court did not err in determining that encumbered property included “future development.”

Here, according to Section 1.2 of the CCRs, “all property described in Exhibit A shall be owned, conveyed, and used subject to all of the provisions of this Declaration, **which shall run with the title to such property.**” (emphasis added). The word “property” is a defined term, and according to Page 5 of the CCRs, “properties” or “The Marshes at Lady’s Island” is defined as “the real property described in Exhibit A.”

The CCRs define “unit” as:

a portion of The Marshes at Lady’s Island, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit. **A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel.** Thereafter, the subdivided portion shall contain the number of Units shown on the plat. Any portion not subdivided shall continue to be a single Unit. (emphasis added).

According to the plat referenced in Exhibit A to the CCRs, the real estate that composes the subject lots existed as “future development” (or a “unit” in light of the above-referenced definition) at the time the CCRs were recorded in 2006. Plaintiff’s counsel acknowledged as much at the hearing, but nevertheless argued the subject lots are not encumbered because they did not exist as platted lots in 2006. This argument fails because a reading of the CCRs as a whole plainly shows the declarant intended to encumber more real estate than simply certain platted lots. “Future development” is expressly referenced in Exhibit A, and moreover, the real estate that composes Plaintiff’s present day lots falls “within the boundary lines of the parcel

depicted in Plat Book 111, Page 17,” critical language describing encumbered property referenced in Paragraph 6 to Exhibit A; specifically, it reads that “Said property also includes all roads, common areas, **future development tracts**, marsh, wetlands, **and any other undeveloped property included within the boundary lines of the parcel.**” (emphasis added). This position is supported by the affidavit of the learned Curtis L. Coltrane, which the court finds persuasive, in Paragraphs 5, 14, and 16. Further, Plaintiff does not dispute the land which is now the lots in question are contained within the lands described in Exhibit A.

Also of significance, the legal description in Plaintiff’s deeds refers to the subject lots as part of The Marshes at Lady’s Island, Phase I” (a phrase defined by the CCRs as real property described in Exhibit A). Plaintiff’s deeds likewise make reference to a plat recorded at Plat Book 118 at Page 131. This plat is also titled “Phase I, The Marshes at Lady’s Island,” and a handwritten note on the plat states the plat depicts a portion of TMS # 200-018-000-076A—a TMS # expressly referenced in Exhibit A-1 to the CCRs. Plaintiff argues in its motion for summary judgment that “Exhibit A-1 has a list of the initial lots and does not include the lot subject to this action.” However, as supported by the supplemental affidavit of Mr. Coltrane, because the subject lots were subdivided from the parcel bearing TMS # 200-018-000-076A, and because this very same TMS # is referenced in Exhibit A-1 to the CCRs, the subject lots are encumbered. And the court so finds that Plaintiff’s lots 16, 55, 56, 57, and 58 are, and at all relevant times have been, subject to the applicable CCRs.

Based upon the foregoing, it is hereby,

ORDERED, ADJUDGED, AND DECREED that the subject lots are encumbered by terms of the CCRs; it is further,

ORDERED, ADJUDGED, AND DECREED that Defendants' motion for summary judgment is **GRANTED** as to all adverse claims, with all claims of Plaintiff against all Defendants being dismissed with prejudice, and **GRANTED** as to all affirmative claims; it is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiff's lots 16, 55, 56, 57, and 58 are included in Exhibit A and are subject to the CCRs without the need for any Supplemental Declaration; it is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiff's motion for summary judgment is respectfully **DENIED**; it is further,

ORDERED, ADJUDGED, AND DECREED that the court will reconvene for a separate hearing to determine the availability of and amount of attorney's fees and costs to the Association, if any.

IT IS SO ORDERED.

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

April 24, 2019

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-0851

River City Developers, LLC; et al.

Marshes at Lady's Island Homeowners Association, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRC; ☐ Rule 41(a), SCRC (Vol. Nonsuit); ☐ Rule 43(k), SCRC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

The Plaintiff's Motion for Reconsideration having been granted in part, this Order shall replace that certain Order filed January 3rd, 2019.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

order:

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

Circuit Court Judge	3069	Date
---------------------	------	------

For Clerk of Court Office Use Only

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

Mills L. Morrison, Jr.

Darrell T. Johnson, Jr.

Russell P. Patterson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Whidbee S. Perrin

Kevin W. Mims

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Deborah S. Thomas



Beaufort Common Pleas

Case Caption: River City Developers Llc , plaintiff, et al VS Marshes At Ladys
Island Homeowners Association The , defendant, et al
Case Number: 2017CP0700851
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-05-02 14:36:49 page 9 of 9

ELECTRONICALLY FILED - 2019 May 02 4:38 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-

River City Developers, LLC,
Plaintiff,

v.

SUMMONS

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

(Declaratory Judgment/Tortious Interference
with Contractual Relations/Breach of
Fiduciary Duty)

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer, in writing, the allegations of the Plaintiff's Complaint, a copy of which is hereby served upon you, and to serve a copy of your answer on the Plaintiff's attorney shown below within 30 days after service hereof, excluding the date of service, and if you fail to do so, then you will be deemed to have admitted the allegations of the Plaintiff's Complaint and the Plaintiff will apply to the Court for the relief requested in the Complaint.

Respectfully submitted.

Law Offices of Darrell Thomas Johnson, Jr., LLC

Dated: May 2, 2017
Hardeeville, South Carolina

s/ Mills L. Morrison, Jr.
Mills L. Morrison, Jr.
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-

River City Developers, LLC,
Plaintiff,

v.

COMPLAINT

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

(Declaratory Judgment/Tortious Interference
with Contractual Relations/Breach of
Fiduciary Duty)

TO THE DEFENDANTS ABOVE NAMED:

River City Developers, LLC ("RCD"), complaining of the Defendants, submits this Complaint and respectfully shows unto the Court the following:

1. RCD is a South Carolina limited liability company duly existing and doing business and owning property in Beaufort County and is subject to the jurisdiction of this Court.
2. RCD is the owner of Lots 16, 55, 56, 57 & 58 of the Marshes at Lady's Island and has standing to bring this action.
3. The Marshes at Lady's Island, Homeowners' Association ("Marshes") is a duly organized and existing South Carolina non-profit corporation doing business in Beaufort County, South Carolina, and is subject to the jurisdiction of this Court.
4. Bundy Appraisal & Management, Inc. ("Bundy") is a duly organized and existing South Carolina corporation doing business in Beaufort County, South Carolina, and subject to the jurisdiction of this Court.

5. First Green, LLC ("First Green"), is a duly organized and existing South Carolina limited liability company doing business in Beaufort County, South Carolina, and is subject to the jurisdiction of this Court.
6. Tige Howie is a resident of South Carolina and subject to the jurisdiction of this Court.
7. Stephen Scott is a resident of South Carolina and subject to the jurisdiction of this Court.
8. This action arises out of that certain subdivision in Beaufort County known as the Marshes at Lady's Island.
9. The parties and the subject matter hereto are subject to the jurisdiction of this Court and venue is proper in Beaufort County.
10. With regard to this action, the Marshes is the homeowners' association, First Green is the declarant, Tige Howie and Stephen Scott are officers of the Marshes and (upon information and belief) First Green and Bundy is the management company managing the development and acting for itself and as agent for the other Defendants.

FOR A FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

11. The allegations of the preceding paragraphs are incorporated by reference as if fully laid out herein.
12. The Marshes at Lady's Island began in 2006 with the recording of the Declaration of Covenants, Conditions and Restrictions for the Marshes at Lady's Island ("Restrictive Covenants") in the Office of the Register of Deeds for Beaufort County in Book 2301 at Page 662.
13. The land initially submitted to the Restrictive Covenants does not include the lot subject to this action. The Table of Exhibits on Page 4 of the Restrictive Covenants states that the land shown in Exhibit A describes the land *initially submitted* to the Restrictive Covenants

and that the land shown in Exhibit B describes the land *subject to annexation*. Exhibit A of the Restrictive Covenants refers to Plat Book 111 at Page 17 and some lots surveyed and numbered on other recorded plats. None of the lots subject to this action are among these lots. To the contrary, where the lots subject to this action is located, there is a blank larger tract shown as "Future Development." Exhibit A-1 has a list of the initial lots and does not include the lot subject to this action. Exhibit B references Plat Book 75 at Page 874 which is a boundary survey of 86.03 acres.

14. The lots subject to this action simply did not exist when the Restrictive Covenants were recorded and, thus, were not subject to the voting rights and assessment obligations of the Restrictive Covenants. The area where the lot in question is located is, however, subject to annexation.
15. The method to effect an annexation is spelled out in Article IX of the Restrictive Covenants (entitled "Expansion"). Section 9.1 states "Declarant may, from time to time, subject to the provisions of this Declaration all of any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the property being subjected." Section 9.4 states "A Supplemental Declaration shall be effective upon Recording unless otherwise specified. Any property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration."
16. As a lot owner and concerned citizen in the Marshes at Lady's Island, RCD has an interest in seeing that a Supplemental Declaration is filed and that all lots currently in existence in the Marshes at Lady's Island are brought under the rights and obligations of the Restrictive Covenants.

17. RCD is entitled to a declaratory judgment that RCD's lots are not subject to the Restrictive Covenants, that none of the lots in the Marshes at Lady's Island are subject to the Restrictive Covenants and that none of the lots at the Marshes at Lady's Island will be subject to the Restrictive Covenants until an appropriate Supplemental Declaration is recorded.
18. RCD has requested and demanded to the Defendants, via Bundy Management and their attorneys, that a Supplemental Declaration be filed and the Defendants' unexplained refusal has necessitated this action.

FOR A SECOND CAUSE OF ACTION –
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(Collection of Assessments)

19. The allegations in the foregoing paragraphs are incorporated by reference as if fully laid out herein.
20. Until a Supplemental Declaration is filed, RCD's lots are not subject to the rights and obligations of the Restrictive Covenants and not subject to assessment and dues obligations.
21. Despite this reality, Bundy, on behalf of itself and the other Defendants, have claimed RCD owes assessments and have interfered with closings in which RCD was a party until such assessments were paid.
22. The Defendants, through Bundy, have collected and continue to attempt to collect assessments from RCD.
23. In addition to assessments, Bundy has certified attorney's fees due and other miscellaneous amounts, some of which RCD has been forced to pay.

24. RCD objected to paying these amounts and paid all amounts under protest, reserving RCD's rights, but the Defendants gave RCD no choice.
25. RCD has pointed out that the Restrictive Covenants do not apply to RCD's lots until a Supplemental Declaration is filed and Bundy and the other Defendants have persisted in holding up closings and demanding money for assessments and other amounts.
26. The Defendants have no contractual or other kind of relation to RCD to justify collecting assessments from RCD and RCD has pointed this fact out on multiple occasions.
27. The Defendants' repeated collections of money from RCD under duress constitutes a tortious interference with contract. Specifically, the Defendants have interfered with RCD's contractual relations with RCD's buyers, sellers and attorneys and RCD has been monetarily damaged thereby.
28. RCD is entitled to a refund of monies paid plus treble damages from the Defendants, jointly and severally, for tortious interference with contract.
29. The Defendants should be required to file a Supplemental Declaration and make all new platted lots subject to the rights and obligations of the Restrictive Covenants.

FOR A THIRD CAUSE OF ACTION –
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(Investors and Lenders)

30. The allegations of the preceding paragraphs are incorporated by reference as if fully laid out herein.
31. In addition to collecting undue monies at closings, the Defendants' interference with RCD and the Defendants' unexplained refusal to record a Supplemental Declaration has cost RCD its relations with investors and lenders.

32. RCD relations with RCD's investors and lenders have been damaged as a direct and proximate result of the Defendants' actions and inactions and RCD has been damaged monetarily and financially thereby.
33. RCD is entitled to damages for tortious interference with contract in an amount found reasonable by this Court.

FOR A FOURTH CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

34. The allegations of the preceding paragraphs are incorporated by reference as if fully laid out herein.
35. As the homeowners' association, the declarant, and as officers and agents of the homeowners' association and the declarant, the Defendants have undertaken a fiduciary duty toward the lot owners of the Marshes at Lady's Island to manage the homeowners' association properly.
36. Through negligence at first and negligence and possibly intent later, the Defendants have failed to fulfill their fiduciary obligation to file a Supplemental Declaration and bring all current lots of the Marshes at Lady's Island under the Restrictive Covenants.
37. RCD's lots are worth less than they would be if a Supplemental Declaration had been properly filed and all current lots in the Marshes at Lady's Island were properly subjected to the rights and obligations of the Restrictive Covenants.
38. Specifically and for example, the homeowners' association has no way to prevent substandard housing or mobile homes from being placed in the Marshes at Lady's Island without there being enforceable Restrictive Covenants.

39. RCD, the Defendants and all lot owners of the Marshes at Lady's Island would be better off if the Defendants would file a Supplemental Declaration and subject the current lots to the Restrictive Covenants.

40. RCD and, indeed, all lot owners in the Marshes at Lady's Island have been damaged by the Defendants' unexplained refusal to record a Supplemental Declaration.

WHEREFORE, having fully laid out its Complaint, RCD prays that the Court inquire into the matter and issue its relief as follows:

- a. That RCD is entitled to a declaratory judgment that RCD's lots are not subject to the Restrictive Covenants, that none of the lots in the Marshes at Lady's Island are subject to the Restrictive Covenants and that none of the lots at the Marshes at Lady's Island will be subject to the Restrictive Covenants until such time as an appropriate Supplemental Declaration is recorded.
- b. The Defendants should be required to file an appropriate Supplemental Declaration and make all new platted lots subject to the rights and obligations of the Restrictive Covenants.
- c. That RCD have judgment against the Defendants, jointly and severally, for tortious interference with contractual relations for the collection of assessments and other amounts at closings.
- d. That RCD have judgment against the Defendants, jointly and severally, for tortious interference with contractual relations for interfering with RCD's relations with investors and lenders.
- e. That RCD have judgment against the Defendants, jointly and severally, for breach of fiduciary duty for the failure to file a Supplemental Declaration.
- f. That the Court grant such other and further relief as may be just and proper.

Respectfully submitted.

Dated: May 2, 2017
Hardeeville, South Carolina

Law Offices of Darrell Thomas Johnson, Jr., LLC

s/ Mills L. Morrison, Jr.
Mills L. Morrison, Jr.
SC Bar No. 68546
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142
Attorney for River City Developers, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
River City Developers, LLC,	)	CASE NO. 2017-CP-07-00851
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER OF THE DEFENDANTS THE
	)	MARSHES AT LADY'S ISLAND
	)	HOMEOWNERS' ASSOCIATION, BUNDY
The Marshes at Lady's Island	)	APPRAISAL & MANAGEMENT, FIRST
Homeowners' Association, Bundy	)	GREEN, LLC, TIGE HOWIE AND
Appraisal & Management, First Green,	)	STEPHEN SCOTT TO PLAINTIFF'S
LLC, Tige Howie and Stephen Scott,	)	COMPLAINT AND COUNTERCLAIM
	)	
Defendants.	)	(JURY TRIAL DEMANDED)
	)	

Defendants, The Marshes at Lady's Island Homeowners' Association, Bundy Appraisal & Management, First Green, LLC, Tige Howie and Stephen Scott, (hereinafter collectively "Defendants"), by and through undersigned counsel, hereby answer Plaintiff's Complaint as follows:

1. Each and every allegation not specifically admitted or modified below is hereby denied.
2. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraphs 1 and 2 of Plaintiff's Complaint, and therefore, must deny same.
3. Defendants admit Paragraphs 3 through 7 of Plaintiff's Complaint.
4. Paragraphs 8 through 10 of Plaintiff's Complaint contains conclusions of law to which no response is required. To the extent a response is required, Paragraphs 8 through 10 of Plaintiff's Complaint are denied.

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment)

5. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 11 of Plaintiff's Complaint.

6. Paragraphs 12 and 18 of Plaintiff's Complaint are denied. Further responding, Defendants crave reference to the documents and instruments referred to therein, which speak for themselves and are the best evidence of their terms, content, and meaning.

AS TO THE SECOND CAUSE OF ACTION
(Tortious Interference with Contractual Relations – Collection of Assessments)

7. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 19 of Plaintiff's Complaint.

8. Paragraphs 20 through 29 of Plaintiff's Complaint are denied

AS TO THE THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relations – Investors and Lenders)

9. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 30 of Plaintiff's Complaint.

10. Paragraphs 31 through 33 of Plaintiff's Complaint are denied.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

11. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 34 of Plaintiff's Complaint.

12. Paragraphs 35 through 40 of Plaintiff's Complaint are denied.

13. The Wherefore Paragraph of Plaintiff's Complaint is denied, including all subparts.

FOR A FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

14. One or more causes of action of the Plaintiff's Complaint fails to state any claim and/or sufficient facts upon which relief can be granted as to the Defendants, and the Plaintiff's Complaint or particulars causes of action should, therefore, be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

15. That some or all of the claims asserted against the Defendants are barred by the applicable statute of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

16. Defendants allege that any alleged conduct or omissions by Defendants were not the cause in fact or proximate cause of any injury alleged by Plaintiffs.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)

17. Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Good Faith and Reasonable)

18. The Defendants acted in good faith and in a reasonable manner at all relevant times which acts as a complete defense to this action.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

19. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

20. Plaintiff had an obligation to mitigate its damages but has failed to do so.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

(Setoff)

21. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff has received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

22. That to the extent Plaintiff was negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained, Plaintiff comes to Court with unclean hands and such inequitable conduct on the part of Plaintiff constitutes a bar to any equitable claims for relief.

FOR A TENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

23. Plaintiff lacks standing to bring these causes of action against Defendants as these Defendants owe no legal duty to Plaintiff. Therefore, this action must fail and should be dismissed as to these Defendants.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

24. In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action. *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164,180, 760 S.E.2d 121, 129-30 (Ct.App.2014).

FOR A TWELFTH AFFIRMATIVE DEFENSE

(First to Breach Contract)

25. "Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." *Willms Trucking Co.*,

Inc. v. JW Constr. Co., Inc., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994); *see also Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). Plaintiff breached the original contract by and through its failure to perform pursuant to the terms of the alleged contract and as otherwise may be proven at trial. As a result, Plaintiff is responsible for all liability from any subsequent nonperformance and the Defendants are discharged of any further obligation to perform.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to Join Necessary Parties)

26. Plaintiffs have failed to join as parties to this action one or more necessary parties, the absence of which precludes full and proper adjudication of the matters raised in Plaintiff's Complaint.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Additional Defense)

27. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend this Answer to assert any such defenses.

FOR A FIFTEENTH DEFENSE AND BY WAY OF COUNTER-CLAIM
(Declaratory Judgment)

28. The Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein

29. The Defendants bring this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 et seq.

30. There exists a justiciable controversy between Plaintiff and Defendants.

31. The Defendants seek a declaration as follows:

- a. The Declaration of Covenants, Conditions and Restrictions for the Marshes at Lady's Island (hereinafter referred to as "DCCR") filed in 2006 determines what parcels of land are subject to its terms through its property description.
- b. The DCCR property description includes Plaintiff's lots.
- c. The Plaintiff's lots are encumbered by the DCCR and are therefore subject to its terms and conditions including but not limited to fees and assessments.
- d. Further, the Defendant Marshes at Lady's Island Homeowner's Association prays that upon the Court finding Plaintiff's lots are subject to the applicable covenants and restrictions in question, this Court will find that Plaintiff is therefore liable for any and all due and unpaid assessments charged to Plaintiff as a member of the Association as provided for in said governing documents
- e. In the alternative, should the Court find Plaintiff's lots are not subject to the DCCR as alleged, the Court should also find that Defendants owe no fiduciary duty to Plaintiff, and Defendants cannot be compelled to record a Supplemental Declaration relating to Plaintiff's lots.

WHEREFORE, Defendants, The Marshes at Lady's Island Homeowners' Association, Bundy Appraisal & Management, First Green, LLC, Tige Howie and Stephen Scott, pray that this Court dismiss all claims against them with prejudice, grant the Defendants declaratory relief as sought in their counter-claim, grant them reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Defendants demand a trial by jury.

LUZURIAGA MIMS, LLP

By: s/Kevin W. Mims

Kevin W. Mims

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mtimbess@tktlawyers.com

Attorneys for the Defendants

Charleston, South Carolina

July 10, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 2017-CP-07-851
River City Developers, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S NOTICE OF MOTION AND
	)	MOTION FOR SUMMARY JUDGMENT
The Marshes at Lady's Island	)	(Declaratory Judgment/Tortious Interference
Homeowners' Association, Bundy	)	with Contractual Relations/Breach of
Appraisal & Management	)	Fiduciary Duty)
First Green, LLC, Tige Howie &	)	
Stephen Scott,	)	
	)	
Defendants,	)	
	)	

TO KEVIN MIMS, ESQUIRE, ATTORNEY FOR THE DEFENDANTS ABOVE NAMED:

YOU WILL TAKE NOTICE that River City Developers, LLC ("RCD") will move before the Court in 10 days after the filing of this Motion or as soon thereafter as counsel may be heard for an Order granting summary judgment in RCD's favor on its claim for declaratory judgment. RCD shows that there is no genuine dispute as to any material fact on the declaratory judgment claims and that RCD is entitled to judgment as a matter of law, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. With regard to the issues addressed by this motion, there is not a single issue of material fact and the matter is simply the interpretation of restrictive covenants and applicable law. RCD relies upon the record in this case along with supporting exhibits attached hereto and respectfully shows unto the Court the following:

1. The crux of the matter in this case is whether or not lots owned by RCD in the Marshes at Lady's Island subdivision are subject to the restrictive covenants for said subdivision. The Marshes at Lady's Island began in 2006 with the recording of the Declaration of Covenants,

Conditions and Restrictions for the Marshes at Lady's Island ("Restrictive Covenants") in the Office of the Register of Deeds for Beaufort County in Book 2301 at Page 662. The Restrictive Covenants along with the referenced recorded plats are attached hereto as Exhibit A to this motion, in pertinent part. The entire Restrictive Covenants and recorded plats are already a public record and they are voluminous and much is not relevant to the question presented here.

2. The land initially submitted to the Restrictive Covenants does not include the lot subject to this action. The Table of Exhibits on Page 4 of the Restrictive Covenants states that the land shown in Exhibit A describes the land *initially submitted* to the Restrictive Covenants and that the land shown in Exhibit B describes the land *subject to annexation*. Exhibit A of the Restrictive Covenants refers to Plat Book 111 at Page 17 and some lots surveyed and numbered on other recorded plats. The lot subject to this action is not one of these lots. To the contrary, where the lot subject to this action is located, there is a blank larger tract shown as "Future Development." Exhibit A-1 has a list of the initial lots and does not include the lot subject to this action. Exhibit B shows Plat Book 75 at Page 874 which is a boundary survey of 86.03 acres.
3. The lot subject to this action simply did not exist when the Restrictive Covenants were recorded and, thus, were not subject to the voting rights and assessment obligations of the Restrictive Covenants. The area where the lot in question is located is, however, subject to annexation.
4. The method to effect an annexation is spelled out in Article IX of the Restrictive Covenants (entitled "Expansion"). Section 9.1 states "Declarant may, from time to time, subject to the provisions of this Declaration all of any portion of the property described in Exhibit

“B” by Recording a Supplemental Declaration describing the property being subjected.” Section 9.4 states “A Supplemental Declaration shall be effective upon Recording unless otherwise specified. Any property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.”

5. In Constitutional law, this type of language is called a “granting clause,” because it grants the Declarant the authority to do an act, but does not accomplish that act. Plaintiff seems to take the position that, since the property was “subject to annexation,” it is automatically annexed when lots are plotted out. This is simply not the case. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. See eg. Hardy vs. Aiken, 369 S.C. 160, 631 S.E.2d 539 (S.C., 2006) In order for the subject lot to be annexed and become subject to voting and assessment obligations, a supplemental declaration must be filed.
6. Local attorneys Tom Mikell (Exhibit B) and Ray Williams (Exhibit C) have both reviewed the situation and relevant covenants and offered their opinions which support RCD. Even though the Judge is the expert on the law, these opinions are helpful. It is worthy of note that agents of Defendant acknowledged to Ray Williams that a Supplemental Declaration needed to be filed and, yet, Defendant still refuses to simply file a Supplemental Declaration.
7. For these reasons, the Plaintiff is entitled to an Order of this Court granting summary judgment in its favor to the effect that Plaintiff's lots are not subject to the Restrictive

Covenants and will not be subject to such Restrictive Covenants until an appropriate Supplemental Declaration is recorded.

Respectfully submitted.

Dated: June 21, 2018, 2018
Hardeeville, South Carolina

Law Offices of Darrell Thomas Johnson, Jr., LLC

s/ Mills L. Morrison, Jr.

Mills L. Morrison, Jr

S. C. Bar No. 68546

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Attorney for River City Developers, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
River City Developers, LLC,	)	CASE NO. 2017-CP-07-00851
	)	
Plaintiff,	)	
	)	
v.	)	THE MARSHES AT LADY'S ISLAND
	)	HOMEOWNERS' ASSOCIATION'S
	)	NOTICE OF MOTION AND MOTION
The Marshes at Lady's Island	)	FOR SUMMARY JUDGMENT /
Homeowners' Association, Bundy	)	DECLARATORY JUDGMENT
Appraisal & Management, First Green,	)	
LLC, Tige Howie & Stephen Scott,	)	
	)	
Defendants.	)	
	)	

**TO: THE PRESIDING JUDGE FOR THE FOURTEENTH JUDICIAL CIRCUIT;
COUNSEL OF RECORD**

PLEASE TAKE NOTICE that Defendant The Marshes at Lady's Island Homeowners' Association ("MLHOA"), by and through the undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court and counsel, for an Order pursuant to Rule 56, SCRCF, granting summary judgment as to the relevant claims and answering the Declaratory Judgment question in the affirmative.

QUESTION PRESENTED FOR DECLARATORY JUDGMENT

I. Whether lots 16, 55, 56, 57, and 58 ("subject lots") of the MLHOA subdivision are encumbered by the Declaration of Covenants, Conditions, and Restrictions ("CCRs") recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Official Record Book 2301 at Page 662.

RELEVANT FACTUAL SUMMARY

This is an owners' association fee dispute case that arose at The Marshes at Lady's Island community in Beaufort County, South Carolina. The original CCRs for the development were filed by NP Blue Gray Development, LLC in Book 02301 Pages 0662-0742 on January 10, 2006 in the Beaufort County Register of Deeds. Part of the development plan was the creation of the MLHOA, an association comprised of all owners of real property in The Marshes at Lady's Island development, to own, operate, and/or maintain various common areas and community improvements as well as to administer and enforce the CCRs and other governing documents. The current MLHOA board, comprised of Tige Howe and Stephen Scott, contracted with Bundy Appraisal and Management, Inc. ("BAM") to manage the MLHOA on October 7, 2009. This agreement is a typical property management contract requiring collection of dues, fees, and assessments. The annual MLHOA dues per lot are \$500.00, and its primary expense is landscape and grounds maintenance. As the attached affidavit of Mr. Curtis L. Coltrane explains in detail, the subject lots underwent a series of conveyances subsequent to the recording of the original CCRs. Plaintiff River City Developers, LLC ("RCD") took title to Lot 16 on July 24, 2014 and likewise took title to Lots 55, 56, 57, and 58 on July 16, 2014. RCD was the owner of the subject lots at the time this lawsuit was filed, and part of Plaintiff's Complaint seeks a determination that the subject lots are not encumbered with the rights and obligations of the CCRs under a theory that the lots merely existed as "future development" (as opposed to finally platted lots) at the time the CCRs were originally recorded. Defendant MLHOA filed an Answer denying all adverse claims and counterclaimed for a declaratory judgment that RCD's lots are subject to the terms of the CCRs because the plain language of the documents contemplates

encumbering certain platted lots as well as what existed as "future development" at the time the CCRs were filed in 2006.

LEGAL STANDARD

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998). Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c), SCRPC; SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999).

ARGUMENT

I. THE PLAIN LANGUAGE OF THE CCRs ENCOMPASSES THE SUBJECT LOTS.

Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985). When "the language imposing restrictions upon the use of property is

unambiguous, the restrictions will be enforced according to their obvious meaning.” Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992). “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” Taylor v. Lindsey, 332 S.C. 1, 5 498 S.E.2d 862, 864 (1998) (citation and quotation marks omitted). However, this rule of strict construction “should not be applied so as to defeat the plain and obvious purpose of the instrument.” S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). Likewise, in construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed. Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009) (citations and quotation marks omitted).

Here, as the Coltrane affidavit explains, the development's CCRs, deeds, and plats clearly and unambiguously show the Developers' intent to include the subject lots within the community and encumber the subject lots with the rights and obligations of the CCRs. It is undisputed that the property described in Exhibit A (attached to the CCRs) shall be owned, conveyed, and used subject to all of the provisions of the Declaration, which shall run with the title to such property. Exhibit A's legal description contains critical language including an opening paragraph which reads as follows:

All those certain, **lots, tracts, or parcels** of land situate, lying, being in Beaufort County, South Carolina on Gibbes Island, and shown as the “MARSHES AT LADY'S ISLAND, PHASE I” on that plat entitled “Marshes at Lady's Island, Phase I, Blue-Grey

Estates Residential Tract”, prepared by David E. Gasque, R.L.S. No10506, dated December 14, 2005 and recorded in Plat Book 111, Page 17, Beaufort County, South Carolina, RMC Office. (Emphasis added).

The next four (4) paragraphs of the legal description further describe certain property subject to the CCRs already designated as specific lots. The sixth paragraph reads as follows: “Said property also includes all roads, common areas, **future development tracts**, marsh, wetlands, and **any other undeveloped property included within the boundary lines of the parcel**” – signifying an unmistakable intention to **not** restrict the Declaration’s reach to merely platted building lots. This position is supported by the Coltrane affidavit in Paragraphs 5, 14, and 16. Moreover, Plaintiff’s deeds for the subject lots plainly state that the conveyance is made subject to all applicable covenants and restrictions of record and the legal descriptions within the deeds describe Plaintiff’s lots as part of **The Marshes at Lady’s Island, Phase I.**” (emphasis added). See Kinard v. Richardson, 407 S.C. 247, 260 (Ct. App. 2014) (where the court looked to (1) the language in the deeds that referred to the restrictive covenants and (2) language that contained the subdivision’s name as supporting evidence that lots were indeed subject to CCRs). It is settled law in South Carolina that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property. But, as stated above, this rule of strict construction should not be applied to defeat the plain and obvious purpose of the instrument. The developer of The Marshes at Lady’s Island, in plain language, expressed an intent to impose CCR restrictions on the subject lots by specifically including language in Exhibit A’s legal description (and corresponding plat) that references **future development**. No ambiguity exists. Should the court rule Plaintiff’s lots are not subject to the CCRs, the court would effectively be striking language found in paragraph one and six to Exhibit A and therefore

violate the “paramount rule” of construction—to ascertain and give effect to the intent of the parties as determined from the whole document.

CONCLUSION

For the reasons stated in the Coltrane affidavit, the analysis set forth herein, and because the subject lots are plainly situated within the boundaries of the plat referenced in Exhibit A to the CCRs, Defendants respectfully request this court enter an order granting summary judgment as to the relevant claims and answering the Declaratory Judgment question in the affirmative. Counsel further reserves the right to rely upon any and all documents produced in discovery, any forthcoming affidavits, oral arguments of counsel and the common and statutory law of South Carolina in support of its motion.

Respectfully submitted,

LUZURIAGA MIMS, LLP

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*Attorneys for the Defendant The Marshes at Lady's
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Charleston, South Carolina

June 19, 2018

ELECTRONICALLY FILED - 2018 Jun 19 2:02 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-851

River City Developers, LLC,)
Plaintiff,)

v.)

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

PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 59

TO KEVIN MIMS, ESQUIRE, ATTORNEY FOR THE DEFENDANTS ABOVE NAMED:

YOU WILL TAKE NOTICE that River City Developers, LLC ("Plaintiff") will move before the Court in 10 days after the filing of this Motion or as soon thereafter as counsel may be heard for an Order pursuant to Rule 59 of the South Carolina Rules of Civil Procedure with regard to the Court's Order of January 3, 2019. Plaintiff submits that the Court should vacate its Order granting summary judgment in the Defendants' favor and enter summary judgment in the Plaintiff's favor. Plaintiff submits that the Court's Order overlooks arguments made by Plaintiff and overlooks other pertinent aspects of the record and ramifications of the Court's Order. Plaintiff relies upon the entire record in this case and specifically the memoranda and exhibits filed in connection with the cross motions for summary judgment. Plaintiff further relies upon such memoranda which may be filed up to the time of hearing or which may be requested or permitted by the Court.

1. The crux of the matter in this case is whether or not lots owned by Plaintiff in the Marshes at Lady's Island subdivision are subject to the restrictive covenants for said subdivision. The Marshes at Lady's Island began in 2006 with the recording of the Declaration of Covenants, Conditions and Restrictions for the Marshes at Lady's Island ("Restrictive Covenants") in the Office of the Register of Deeds for Beaufort County in Book 2301 at Page 662. The Restrictive Covenants along with the referenced recorded plats are attached hereto as Exhibit A to this motion, in pertinent part. The entire Restrictive Covenants and recorded plats are already a public record and they are voluminous and much is not relevant to the question presented here.
2. The land initially submitted to the Restrictive Covenants does not include the lot subject to this action. The Table of Exhibits on Page 4 of the Restrictive Covenants states that the land shown in Exhibit A describes the land *initially submitted* to the Restrictive Covenants and that the land shown in Exhibit B describes the land *subject to annexation*. Exhibit A of the Restrictive Covenants refers to Plat Book 111 at Page 17 and some lots surveyed and numbered on other recorded plats. The lot subject to this action is not one of these lots. To the contrary, where the lot subject to this action is located, there is a blank larger tract shown as "Future Development." Exhibit A-1 has a list of the initial lots and does not include the lots subject to this action. Exhibit B shows Plat Book 75 at Page 874 which is a boundary survey of 86.03 acres.
3. The lots subject to this action simply did not exist when the Restrictive Covenants were recorded and, thus, were not subject to the voting rights and assessment obligations of the Restrictive Covenants. The area where the lot in question is located is, however, subject to annexation.

4. The method to effect an annexation is spelled out in Article IX of the Restrictive Covenants (entitled "Expansion"). Section 9.1 states "Declarant may, from time to time, subject to the provisions of this Declaration all of any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the property being subjected." Section 9.4 states "A Supplemental Declaration shall be effective upon Recording unless otherwise specified. Any property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration."
5. In Constitutional law, this type of language is called a "granting clause," because it grants the Declarant the authority to do an act, but does not accomplish that act. Plaintiff seems to take the position that, since the property was "subject to annexation," it is automatically annexed when lots are plotted out. This is simply not the case. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. See eg. Hardy vs. Aiken, 369 S.C. 160, 631 S.E.2d 539 (S.C., 2006) In order for the subject lot to be annexed and become subject to voting and assessment obligations, a supplemental declaration must be filed.
6. Local attorneys Tom Mikell and Ray Williams have both reviewed the situation and relevant covenants and offered their opinions which support Plaintiff. Even though the Judge is the expert on the law, these opinions are helpful. It is worthy of note that agents of Defendant acknowledged to Ray Williams that a Supplemental Declaration needed to be filed and, yet, Defendant still refuses to simply file a Supplemental Declaration.

7. Defendants have tried to characterize this lawsuit as a simple dispute over the payment of HOA dues. That is simply not the case. If it were, the Defendants would be the Plaintiff in the case and the Plaintiff would be the Defendant. This case is about Plaintiff protecting its interest and the interest of similarly situated lot owners in the Marshes and the Defendants' refusal to assure the applicability of restrictive covenants by filing a proper supplemental declaration. Plaintiff has invested substantial amounts of Plaintiff's money and money of Plaintiff's investors in building upscale houses in the Marshes subdivision. The record in the case pretty well speaks for itself, but Plaintiff will summarize the timeline. The Marshes restrictive covenants are filed referencing the original plat. The original plat does not reference Plaintiff's lots, among other lots. A new plat is subsequently filed which totally reconfigures the subdivision, creating new lots out of future development tracts and open space. The two plats speak for themselves. Plaintiff acquires lots in the Marshes. Plaintiff then becomes aware of the fact that the new plat and new lots were not accompanied by a supplemental declaration and there is a problem with the applicability of the covenants. Plaintiff obtains opinions from Tom Mikell and Ray Williams, two of the most highly respected real estate attorneys in Beaufort County affirming the problems. Defendants chose to ignore Plaintiff's repeated requests and then demands to just file a supplemental declaration and Plaintiff is forced to file this lawsuit.
8. The Defendants cited the case of Cullen vs. McNeal 390 S.C. 470, 702 S.E.2d 378 (Ct. App. 2010). In that case, like the present case, the Developer submitted lots and undeveloped land to the covenants initially and the question arose whether lots created out of the undeveloped land "initially submitted" were subject to the covenants. An examination of the public records of Beaufort County reveal that a Supplemental

Declaration was filed in the *Cullen* case. Defendants also misinterpret Plaintiff's argument. Although the 17 acre "future development" tract may have been described in Exhibit A of the Marshes Covenants, the lots at issue in this case are neither described or identified in the Covenants or original plat. The Supplemental Declaration in the *Cullen* case is a public record of Beaufort County and a copy is part of the record. The 17 acre "future development" may have submitted, but the individual lots subsequently carved out of the "future development" were not initially submitted, and, in order to make these new lots subject to dues and assessment obligations, a supplemental declaration should be filed describing these new lots, much like the *Cullen* case.

9. Defendants argued that the land "subject to annexation" included land outside of the development which was not shown in Exhibit A to the covenants. Therefore, Defendants argue, the land "subject to annexation" must have meant the land outside of the development. Defendants concede, however, that the land initially submitted was also included in the land "subject to annexation." Plaintiff's submit that the land initially submitted was included in Exhibit B in the event land in Exhibit A was subdivided or rearranged to create different or new parcels which are not shown in Exhibit A. It makes no sense, otherwise, that the land in Exhibit A was included in Exhibit B.
10. This case is important from a public policy perspective as well. If Defendants are right, a developer could file a boundary survey with covenants similar to those in this case and never have to file an amendment to the covenants in order to restructure lots, common areas and dues liability and voting rights. Developers could file subdivision plats and amended subdivision plats to their heart's delight and never document the changes further.

Certainly, this state should require some level of formality to document and effect such changes.

11. The award for past due assessments does not make sense. Plaintiff now owns two lots and dues are \$500 per lot. Defendants should check their math as to how they reached \$5,000 or adjust the amount accordingly.
12. The Court states it will consider awarding attorneys' fees to Defendants as the prevailing party under the covenants. Plaintiff submits this case is different. Plaintiff had and has good reason to believe there are serious problems with the covenants which Defendants have failed to acknowledge, and Plaintiff brought this action to resolve said problems when Defendants refused to cooperate. The opinions of Tom Mikell and Ray Williams far predate the filing of the suit. Beyond that, Plaintiff reserves the right to submit additional argument on this issue until a later date. Plaintiff has not seen any affidavit of attorneys' fees and reserves argument until such time as the claim for attorneys' fees is made and supporting documentation provided. Plaintiff requests a reasonable period of time to respond.

For these reasons and for all of the reasons previously stated in the record and which may be stated later, Plaintiff respectfully requests that the Court vacate its Order granting summary judgment in favor of the Defendants and enter summary judgment in favor of the Plaintiff.

Respectfully submitted.

[signature on pg. 7]

LAW OFFICE OF
DARRELL T. JOHNSON, JR., LLC

s/ Mills L. Morrison, Jr.

Mills L. Morrison, Jr

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Attorney for River City Developers, LLC

January 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-00851
River City Developers, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	SUPPORT OF ITS MOTION FOR
The Marshes at Lady's Island Homeowners'	)	RECONSIDERATION AND IN
Association, Bundy Appraisal &	)	OPPOSITION TO DEFENDANTS'
Management, First Green, LLC, Tige Howie	)	REQUEST FOR ATTORNEY'S FEES
& Stephen Scott,	)	
	)	
Defendants.	)	
	)	

This Court issued its Order in this matter on January 3, 2019 ("Order"). The Plaintiff timely filed a Motion for Reconsideration under Rule 59 SCRPC on January 9, 2019. Thereafter, counsel for the Defendants filed separately affidavits in support of their request for attorney's fees totaling over \$42,500+ (Michael A. Timbes - \$4,201; Kevin W. Mims - \$38,373) in an action seeking the collection of only \$5,851.15 of outstanding HOA fees due (Page 6 of Order). The issues of the Plaintiff's request for a reconsideration of the Order and the award of attorney's fees is addressed separately below.

I. The Court's reliance on *Cullen* is misplaced and the Court should have determined the recording of a supplemental declaration is required.

A. Plaintiff's Platted Lots Not Listed on Exhibit A

Under § 1.1 of the Covenants, Exhibit A lists the specific properties that were initially subject to the Covenants. Exhibit A refers to Plat Book 111 at Page 17 (Ex. 1). The five (5) lots owned by the Plaintiff (Lots 16, 55, 56, 57, and 58) are not shown on said plat. Said lots were

created after the recordation of the Covenants on January 10, 2006 by the recordation of a subsequent plat at Plat Book 118 P 131 (Ex. 2).

It is the Plaintiff's position that for these newly created lots to be subject to the Covenants, the provisions of Article 9 must be met. This Article simply requires the recording of a Supplemental Declaration, which has never taken place.

Without following this required procedure, the Association will have no way to know what group of owners comprise its membership, who to assess, who has voting rights, etc. The Court is obligated to follow the intent of the drafter of the Covenants, which clearly intended a supplemental declaration be filed under these circumstances.

The case of *Davey v. Artistic Building, Inc.*, 263 S.C. 431, 211 S.E.2d 235 (1975) is helpful as to the current dispute. The Court first re-stated the long-standing principles in South Carolina that restrictions on the use of land are disfavored and strictly construed, stating at page 277 as follows:

It is a settled rule of law in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327; *Maxwell v. Smith*, 228 S.C. 182, 89 S.E.2d 280; *Cothran v. Stroman*, 246 S.C. 42, 142 S.E.2d 368; *Baltz, Inc. v. R. V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441; *Edwards v. Surratt*, 228 S.C. 512, 90 S.E.2d 906.

In *Davey*, since the covenant in question was ambiguous as to whether a parcel between already existing platted lots were included in the legal description, the Court applied the above rules and found the parcel was not subject to the covenants.

In this case, it is unclear and ambiguous if the newly platted five (5) lots of the Plaintiff were originally intended to be subject to the Covenants, thus this Court should require a

supplemental declaration to eliminate this ambiguity. Certainly this ambiguity exists if two (2) prominent, experienced real estate attorneys (Tom Mikell, Ray Williams) have opined the covenants do not apply.

Another reason there is ambiguity as to whether Plaintiff's platted five (5) lots were originally subject to the Covenants is a close review of the properties listed on Exhibits A and B. It makes no sense that all of the land on Exhibit A, including Plaintiff's unplatted lots, were to be subject to the Covenants and at the same time show the same parcels on Exhibit B of land to be annexed.

While *Cullen v. McNeal*, 390 SC 470, 702 S.E.2d 378 (2014) on the surface would appear to support the Court's ruling that no supplemental declaration is required, the Court in *Cullen* did not address the myriad issues associated with identifying the actual members of the Association, assessments, voting rights, etc. When these issues are taken into consideration, the simple, inexpensive requirement of filing a Supplemental Declaration is appropriate to protect the current and future property owners of the Association and provide a mechanism for the day-to-day operations of the Association to be implemented.

In addition, in *Cullen* the developer in fact filed a supplemental declaration, recorded at DB 2533 at Page 260, a copy of which is attached to Plaintiff's Reply to Defendants' Motion for Summary Judgment, dated April 7, 2018. No such supplemental declaration was filed in this case.

Finally, from a public policy perspective, the decision of the Court will negatively impact property owners in other developments. A developer can now freely subdivide "Future Development" or other similar designated parcels at will by simply recording a new plat, never having to file a supplemental declaration. This will cause confusion with the applicable associations as to assignments, voting, etc.

II. There is no Evidentiary Support for a Finding \$5,851.51 is Owed in Association Fees

On page six (6) of the Order the Court finds the Plaintiff owes the Association \$5,851.15 in outstanding HOA fees and assessments. No evidence was presented to the Court on the cross Motions for Summary Judgment as to any specific monies due by the Plaintiff. Said finding and conclusion should thus be removed from said Order.

III. The Defendants are not entitled to any attorney's fees, or in the alternative, a substantial lower amount than the \$42,500 sought.

It is well understood in South Carolina that attorney's fees are not recoverable unless authorized by contract or by statute. *Baron Data Sys. Inc. v. Lotes*, 297 S.C. 382, 77 S.E.2d 246 (1989). In the instant case, the only applicable agreement by the parties is found under Section 7.4(a) of the Covenants, a copy of which is attached as Ex. 3. Said provision reads as follows:

"In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, **reasonably** incurred in such action." (emphasis added)

It is clear that this language does not support the basis of an award of any attorney's fees and costs in this matter, and certainly not the \$43,000+ requested, for the following reasons.

A. Not an "Action to Enforce the Governing Covenants"

The Plaintiff, the property owner, initiated this action by filing a Summons and Complaint on May 2, 2017, asserting four (4) separate causes of action as follows:

1. A Declaratory Judgment claim requesting the Court to determine if its five (5) lots are subject to the Covenants and whether a supplemental declaration is required under the Covenants;
2. A Tortious Interference with Contractual Relations claim as to the collection of assessments;

3. A Tortious Interference with Contractual Relations claim as to damages to investors and lenders of the Plaintiff; and
4. A Breach of Fiduciary Duty claim.

In addition to the Association, four (4) individual Defendants were named in this action (Bundy Appraisal & Management; First Green, LLC; Tige Howie; and Stephen Scott) (collectively "Individual Defendants").

The Defendants, through their counsel, Kevin Mims ("Mims") and Michael Timbes ("Timbes"), filed an Answer and Counterclaim on July 10, 2017. The sole Counterclaim filed was based upon the Declaratory Judgment Act (§ 15- 53-10) seeking a determination as to whether the Covenants were applicable to the Plaintiff's five lots. The Association at no time ever filed an action to seek the payment of any unpaid assessments, assert any liens for unpaid assessments, or seek any action to foreclose or collect same under the applicable Covenants.

Based upon the pleadings of the parties, it is clear that there was no "action to enforce the Governing Documents" to trigger any award of recovery of attorney's fees under § 7.4 of the Covenants. The primary dispute between the parties was a declaratory judgment action seeking the Court's guidance and opinion on a resolution of an outstanding issue – did the Covenants apply to the five (5) lots owned by the Plaintiff and was it necessary for the Association to file a supplementary declaration. This was clearly a legitimate issue, as supported by Tom Mikell and Ray Williams, two local real estate closing attorneys. Simply put, these issues cannot possibly be construed to be an "action to enforce" the Covenants. The Declaratory Judgment Act itself does not provide a statutory right to recover attorney fees, only costs under § 15- 53-100. This leads to the simple conclusion that each side must bear their own attorney fees and costs.

B. No Attorney's Fees Incurred on Behalf of the Individual Defendants Can be Recovered

Section 7.4(a) of the Covenants is clearly limited to the recovery of attorney's fees incurred by the Association, not the four (4) Individual Defendants, if said provision even applies to the issued tried in this litigation.

It appears that Kevin Mims was representing at least four (4) parties, including the Association, as well as Bundy Appraisal & Management ("Bundy"), First Green, LLC ("First Green") and Stephen Scott ("Scott"). The attorney's fees associated with defending Bundy, First Green and Scott clearly are not recoverable under the Covenants. It would thus appear a substantial portion of the claimed fees by Mr. Mims relate to the tort claims asserted against these parties and should not be imposed against the Plaintiff.

A cursory review of the legal statements provided by Mr. Timbes' office reveals that he was doing work for the remaining individual Defendant, Tige Howie. All of his legal bills were directed to said Mr. Howie at his Columbia, SC address. Under South Carolina law, the Plaintiff has no obligation for attorney's fees incurred by Mr. Howie, or any of the other Individual Defendants.

C. Legal Fees Attributed to Defense of Tort Claims Not Recoverable

There were four (4) tort Causes of Action filed by the Plaintiff against all Defendants (tortious interference of contract (2 claims) breach of fiduciary duty) that clearly do not relate to actions "enforce the Governing Documents". Under the same language cited above, no attorney's fees can be awarded as to these claims. In addition, the attorney's fees can only be recovered by the Association – not any attorney fees necessarily incurred by the four Individual Defendants.

As reflected on Ex. A to Michael A. Mims' Affidavit in Support of Attorney's Fees, dated February 11, 2019, the Association tendered all of the claims asserted by the Plaintiff in its Complaint (Declaratory Judgment Action, two (2) causes of action for Tortious Interference of Contract, Breach of Fiduciary Duty) to its general liability carrier, Auto Owners Insurance Company ("Carrier"). As reflected in the November 3, 2017 letter from the Carrier (Ex. A to said Affidavit), the Carrier undertook the defense of all of said claims. All of the legal bills submitted by Mr. Mims, totaling approximately \$38,373, were billed to and paid by the Carrier – not the Association. A general liability policy does not cover a typical action to "enforce the Governing Documents". Mr. Mims' work was thus primary related in defending the various Defendants from the tort causes of action. As the defense of the tort causes of action do not come within the required language of Section 7.4(a) of the Covenants, these fees and costs are not recoverable under South Carolina law.

D. Attorney Fees of \$42,500 in Relation to \$5,851 in HOA Fees Due is Unreasonable

Finally, if the Court finds that the Defendants under existing South Carolina case law, and the language of the Covenants, are entitled to an award of attorney's fees in connection with this matter, the Defendants' claim of over \$42,500 in attorney's fees in relation to outstanding fees due to the Association of only \$5,851 is patently unreasonable. Section 7.4(a) of the Covenants only allows a reasonable attorney's fees and costs to be awarded, which is the same standard applied in attorney fee recovery cases in South Carolina for decades. The request for attorney's fees in this

matter is over seven (7) times greater than the outstanding fees. Such an award should be substantially reduced, taking consideration the amount of the outstanding fee in question.

Respectfully submitted,

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JOHNSON, JR, P.A.**

/s/ Mills L. Morrison, Jr.
Mills L. Morrison Jr.
Attorney for the Plaintiffs

February 22, 2019
Hilton Head Island, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
River City Developers, LLC,	)	CASE NO. 2017-CP-07-00851
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS' MEMORANDUM IN
The Marshes at Lady's Island	)	SUPPORT OF MOTION FOR SUMMARY
Homeowners' Association, Bundy	)	JUDGMENT/DECLARATORY
Appraisal & Management, First Green,	)	JUDGMENT
LLC, Tige Howie and Stephen Scott,	)	
	)	
Defendants.	)	
	)	

TO: THE HONORABLE JENNIFER B. McCOY; COUNSEL OF RECORD

Defendants The Marshes at Lady's Island Homeowners' Association, Bundy Appraisal & Management, First Green, LLC, Tige Howie & Stephen Scott (collectively, "Defendants") by and through the undersigned counsel, respectfully submit this Memorandum in Support of their Motion for Summary Judgment/Declaratory Judgment filed with the Beaufort County Court of Common Pleas on June 19, 2018 and request this court enter an order granting the Motion for the reasons set forth below.

QUESTION PRESENTED FOR DECLARATORY JUDGMENT

I. Whether lots 16, 55, 56, 57, and 58 ("subject lots") of The Marshes at Lady's Island ("MLHOA") subdivision are encumbered by the Declaration of Covenants, Conditions, and Restrictions ("CCRs") recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Official Record Book 2301 at Page 662.

ANSWER & DISCUSSION

Yes. A plain language reading of the governing documents compels a finding that the subject lots are encumbered with the rights and obligations of the CCRs. The subject property is clearly included within Exhibit A to the Declarations and therefore bound by the CCRs.

Exhibit A & "Properties"

In Cullen v. McNeal, 390 S.C. 470, 485, 702 S.E.2d 378, 386 (Ct. App. 2010), the court of appeals was presented with a substantially similar question of law. One of the issues on appeal in that case was whether undeveloped land identified as "future development" was subject to the Declarations. In Cullen, as in this case, the Declarations define encumbered property as property described in Exhibit A. The Cullen court examined the Declarations in their entirety and made two cogent findings: (1) that "property," as defined in the Declarations, includes all of the land described in Exhibit A, and (2) that a plat referenced in Exhibit A includes "future development." The court of appeals ultimately held that the circuit did not err in determining that encumbered property included "future development."

Here, according to Section 1.2 of the CCRs, "all property described in Exhibit A shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property." The word "property" is a term of art, and according to Page 5 of the CCRs, "properties" or "The Marshes at Lady's Island" is defined as "the real property described in Exhibit A."

The CCRs define "unit" as **"a portion of The Marshes at Lady's Island, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon."**

In the case of a structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit. **A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel.** Thereafter, the subdivided portion shall contain the number of Units shown on the plat. Any portion not subdivided shall continue to be a single Unit.” (emphasis added).

According to the plat referenced in Exhibit A, at the time the CCRs were recorded in 2006, the real estate that composes Plaintiff’s present day lots existed as “future development” (or a “unit” in light of the above-referenced definition). Plaintiff argues that because its present day lots did not exist as platted lots in 2006, the CCRs do not apply. This argument fails because a reading of the CCRs as a whole plainly shows the declarant intended to encumber more real estate than simply certain platted lots. “Future development” is expressly referenced in Exhibit A, and moreover, the real estate that composes Plaintiff’s present day lots falls “within the boundary lines of the parcel depicted in Plat Book 111, Page 17,” critical language describing encumbered property referenced in Paragraph 6 to Exhibit A. Specifically, it reads that “Said property also includes all roads, common areas, **future development tracts, marsh, wetlands, and any other undeveloped property included within the boundary lines of the parcel.**” This position is supported by the Coltrane Affidavit in Paragraphs 5, 14, and 16.

Use and Conduct & Owner’s Acknowledgement

According to Section 3.3, “all owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as amended, expanded, and otherwise modified from time to time. Each Owner, **by acceptance of a deed**, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time.

Also, according to Section 8.6, “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 the Governing Documents.”

Here, on July 24, 2014, Plaintiff River City Developers, LLC (“RCD”) took title to Lot 16, and on July 16, 2014, Plaintiff took title to Lots 55, 56, 57, and 58. While Plaintiff only owns lot 16 and 56 at this time, the deeds initially vesting RCD with title plainly state the conveyance is made subject to all applicable covenants and restrictions of record. Also of significance, the legal description in Plaintiff’s deeds refers to the subject lots as part of **The Marshes at Lady’s Island, Phase I**” (a phrase defined by the CCRs as real property described in Exhibit A). Plaintiff’s deeds likewise make reference to a plat recorded at Plat Book 118 at Page 131. This plat is also titled “Phase I, The Marshes at Lady’s Island,” and a handwritten note on the plat states the plat depicts a portion of TMS # 200-018-000-076A—a TMS # expressly referenced in Exhibit 1-A to the CCRs. Plaintiff argues in its motion for summary judgment at Paragraph 2 that “Exhibit A-1 has a list of the initial lots and does not include the lot subject to this action.” However, as the filed Supplemental Affidavit of Curtis Coltrane explains, because the subject lots were subdivided from the parcel bearing TMS # 200-018-000-076A, and because this very same TMS # is referenced in Exhibit A-1 to the CCRs, the same are encumbered by the CCRs.

Expansion of the Community

According to Section 9.1, the “Declarant may, from time to time, subject to the provisions of this Declaration all or any portion of the property described in Exhibit B by recording a Supplemental Declaration describing the property being subjected.” Exhibit B references a plat that is titled “Boundary Survey Secession Golf Club Residential Tract.” This

tract of land, which totals approximately 86 acres, appears to depict the entire development, including what is referred to as a "residual tract."

Plaintiff appears to argue that its lots are "subject to annexation" because the real estate that composes its lots falls within the boundary survey referenced in Exhibit B. This argument is illogical for the reasons stated in the Coltrane affidavits and because it fails to give effect to all language in Exhibit A. If Plaintiff prevails on this ground, then arguably the entire neighborhood and all lots are not subject to the Declarations under this reasoning as all of Exhibit A is encompassed within Exhibit B.

Failure to Follow Condition Precedent

According to Section 12.1, the CCRs outline a procedure requiring disputes related to the interpretation, application, or enforcement of the governing documents to be submitted to mediation prior to filing a lawsuit. If the claimant does not submit the claim to mediation, according to Section 12, the claimant shall be deemed to have waived the claim and respondent (here, the HOA) shall be relieved of any and all liability to the claimant on account of such claim.

Here, Plaintiffs failed to follow the dispute resolution procedures required by the CCRs. An unsuccessful mediation was conducted on June 28, 2018 after the filing of suit in contravention of Section 12. If the court finds that Plaintiff's lots are subject to the CCRs, Plaintiff would be a "bound party" as defined by Section 12, and Plaintiff's claims would necessarily be waived for failure to follow the ADR guidelines demanded by the CCRs.

Attorney's Fees

According to Section 7.4, "in any action to enforce the governing documents, if the Association prevails, it shall be entitled to recover costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action."

If the court rules in Defendants' favor, Defendants respectfully request an award of attorney's fees and court costs as provided by Section 7.4 and will provide an affidavit of attorney's fees at the appropriate time.

CONCLUSION

For the reasons stated above, and for the reasons stated in the Coltrane affidavits, Defendants respectfully request this court enter an order answering the Declaratory Judgment question in the affirmative and granting summary judgment as to all adverse claims as a result. Counsel further reserves the right to rely upon any and all documents produced in discovery, all previously filed affidavits, oral arguments of counsel, and the common and statutory law of South Carolina in support of its motion.

Attorney Signature Page to Follow

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Howie and Stephen Scott*

Charleston, South Carolina

July 24, 2018

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No.: 2017-CP-07-00851

3

4 RIVER CITY DEVELOPERS,)
 LLC,)

5)
 Plaintiff(s),)

6) HEARING
 vs.)

7) October 16th, 2018

8 THE MARSHES AT LADY'S)

9 ISLAND HOMEOWNERS')

ASSOCIATION; BUNDY)

10 APPRAISAL & MANAGEMENT;)

FIRST GREEN, LLC; TIGE)

HOWIE AND STEPHEN SCOTT,)

11 Defendant(s),)

12)

13 Hearing reported by Deborah S. Thomas,
 14 Certified Verbatim Reporter and Notary Public in and
 15 for the State of South Carolina; said hearing held
 16 before Honorable Marvin H. Dukes, III, Beaufort
 17 County Master in Equity and Special Circuit Court
 18 Judge in accordance with the South Carolina Rules of
 19 Civil Procedure, at the Beaufort County Courthouse,
 20 102 Ribaut Road, Room 212, Beaufort, South Carolina
 21 on October 16th, 2018, at the hour of 11:00 a.m.

22

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1 And my understanding is the parties have
2 discussed both of those and agree to waive any
3 conflict that exists.

4 MR. MORRISON: We waive -- we've
5 discussed that, Your Honor, and Plaintiff waives any
6 conflict.

7 MR. MIMS: That's correct, Your
8 Honor.

9 JUDGE DUKES: All right. Well, then
10 I understand we are here for some cross summary
11 judgments?

12 MR. MORRISON: Yes.

13 MR. MIMS: Yes, Your Honor. Kevin
14 Mims. Good morning, Your Honor. I represent the
15 Defendants in this case. I've got a motion for
16 summary judgment that's filed, I believe, first.
17 And then a cross motion for summary judgment has
18 been filed by Mr. Morrison on behalf of Plaintiffs.

19 And so I think it's fair to say that both
20 the parties believe that this is ripe for
21 determination, that it is a question of law
22 appropriate for Your Honor to decide pursuant to the
23 pleadings.

24 What we're really here about, Your Honor,
25 is a homeowners' association fee dispute. That is

1 the failure to pay certain dues and also that the
2 payment of certain dues subject to an objection.

3 There are a number of causes of action,
4 but really the central question before the Court, I
5 believe, is whether or not the Plaintiffs five lots
6 are a part of this homeowners' association or not.
7 Are they in or are they out.

8 And I think you'll find that that's the
9 subject of the declaratory judgment action filed by
10 both Plaintiff and the counterclaim declaratory
11 judgment action filed by the Defendant.

12 But I think if you play it out, that
13 determination will also decide all the other
14 remaining causes of action. For instance, there's a
15 cause of action for breach of fiduciary duty. Now,
16 either the lots are in the HOA and so there's been
17 no failure to file a supplemental declaration. So
18 there's been no breach of fiduciary duty. Or
19 they're out and there is no fiduciary duty.

20 Either way, I don't see how the Plaintiff
21 can prevail on that cause of action. That's the
22 only allegation of breach.

23 Likewise, the other causes of action are
24 for tortious interference of contractual relations.
25 Again, either they're in the HOA as we've contended

1 since the beginning and there's been no breach and
2 there's been no damages or they're out and there's
3 no duty and understanding to assert such a claim.

4 The only way that -- part of the
5 declaratory judgment action the Plaintiff has
6 brought is to compel its entry into the HOA. The
7 only way they have standing to make that claim is if
8 they're already in the HOA.

9 In other words, they want to file a
10 supplemental declaration to make the HOA file that
11 supplemental declaration. The only way they have
12 standing to compel us to do anything is if they're
13 in.

14 And so it seems sort of nonsensical in
15 that sense. In other words, you know, we contend
16 that they're in the HOA. They're asking to be put
17 into the HOA. And as far as we can tell, the only
18 people that say they're not part of the HOA at the
19 onset are the Plaintiffs themselves.

20 So they're the only obstacle here. And
21 all the other purported causes of action are really
22 secondary and to be determined by this central
23 issue. And, again, are they in or are they out.
24 And if we take a minute, we can go through that.
25 Your Honor has got a copy of our motion which

1 contains a memorandum,, supplemental memorandum
2 that's been filed as well as well as a reply
3 memorandum to the Plaintiff's affidavits, our expert
4 Curtis Coltrane with exhibit. There was a
5 supplemental affidavit filed as well from
6 Mr. Coltrane. And the affidavit of Michael Timbes
7 in reply to the Plaintiff's motion for summary
8 judgment.

9 So, you've got all that. If you don't,
10 I've got copies of it. But what I want to start
11 with really is the affidavit of Mr. Coltrane which
12 has all of the governing documents as exhibits.

13 JUDGE DUKES: All right.

14 MR. MIMS: For ease of reference,
15 I've got it all right here if you want it.

16 JUDGE DUKES: Okay. I know it's here
17 somewhere. Thank you. Mills, I assume you've got
18 this?

19 MR. MORRISON: Yes, I've seen it.

20 JUDGE DUKES: All right. Go ahead.

21 MR. MIMS: So, again, Your Honor,
22 it's like the Plaintiff wants to be part of this
23 HOA. It's demanding to be a part of it, but it
24 doesn't want to pay its dues and the costs
25 associated with the benefits of membership. Our

1 contention is and always has been is that these five
2 lots are bound by the declaration and covenants and
3 codes of restrictions.

4 I kind of follow along with the Coltrane
5 affidavit. We rely upon that, but also point you to
6 the documents. First relevant section being Section
7 1.2 of the declaration. It says all property
8 described in Exhibit A shall be owned, conveyed and
9 used subject to all provisions of this declaration
10 which shall run with the title to such property. So
11 clear and unambiguous. Not in dispute.

12 Everything in Exhibit A -- and I've got a
13 big blowup of it here of Exhibit A for you that's
14 attached to the declaration. Everything in Exhibit
15 A is a part of this HOA. And it runs with the title
16 of the property. Clear and unambiguous, not
17 disputed to my knowledge.

18 Next, the property, quote/unquote, and
19 the, quote, Marshes of Lady's Island, closed quote,
20 is found on Page 5 of the declaration as, quote, the
21 real property described in Exhibit A, closed quote.
22 So, again, the real property described in Exhibit A
23 which is before you in small form and also in this
24 big demonstrative exhibit are all a part of The
25 Marshes at Lady's Island.

1 Significantly, it doesn't say the lots.

2 It says the real property. That's what's in quotes,
3 the real property described in Exhibit A.

4 Now, the critical portion of Exhibit A, if
5 I could stand, in this legal description says said
6 property also includes all roads, common areas,
7 future development tracts, marshes, wetlands and any
8 other undeveloped property included within the
9 boundary lines of the parcel.

10 All right? So that's really what we're
11 here to talk about today. Interestingly, Exhibit A
12 doesn't say it's limited to the platted, buildable
13 lots. It says future development tracts, any other
14 undeveloped property included within the boundary
15 lines of the parcel. So all of the parcel in
16 Exhibit A is part of the HOA.

17 JUDGE DUKES: Let me ask a quick
18 question.

19 MR. MIMS: Sure.

20 JUDGE DUKES: That is an undisputed
21 fact that A contains all of the properties; is that
22 correct?

23 MR. MORRISON: Well, Exhibit A is
24 undisputed. I mean, it's somewhat confusingly
25 worded, but it -- you know, it says what it says.

1 JUDGE DUKES: Okay. But I guess I'm
2 making sure we don't have any scintillas out there
3 for summary judgment purposes. So the land that
4 your client owns is within this real estate
5 described in Exhibit A; is that --

6 MR. MORRISON: It's in the future
7 development.

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

10 MR. MIMS: What Plaintiff's counsel
11 just conceded is it's undisputed that this is a
12 future development site or any other undeveloped
13 property included within the boundary lines of the
14 parcel Exhibit A. And it is undisputed that Exhibit
15 A contains everything that is part of the HOA. This
16 is where it gets a little interesting. The CCR has
17 defined unit as, quote, a portion of The Marshes at
18 Lady's Island whether improved or unimproved which
19 may be independently owned and is intended for
20 development, use and occupancy as an attached or
21 detached residence for a single-family.

22 The term shall refer to the lands, if any,
23 which is part of the unit as well as any
24 improvements thereon. In the case of a structure
25 containing multiple dwellings for independent

1 ownership, each dwelling shall be deemed a separate
2 unit.

3 Here we go. A parcel shall be deemed to
4 be a single unit until such a time as a plat
5 subdivides all or a portion of that parcel.
6 Thereafter, the subdivided portion shall contain the
7 number of units shown on the plat. Any portion not
8 subdivided shall be -- shall continue to be a single
9 unit.

10 So, the CCR's themselves, the declaration,
11 contemplate the future subdivision of lots. We've
12 got Exhibit A which is future development tracts.
13 Any other development property within Exhibit A, all
14 part of the HOA. All right? So within that, it's
15 contemplated in the declaration, itself, that there
16 will be subdivided lots in the future and even talks
17 about how to deal with those. And at first the
18 entire future development of the unit and then the
19 individual, identified plottable lots are also to
20 become units themselves.

21 I mean, what do you have to do to do that?
22 All it says is until such a time as a plat
23 subdivides all or a portion of the parcel. All
24 right? So we'll come back to this one.

25 This is Exhibit A-1. It's got all the tax

1 numbers and I'll just point out to you along the way
2 this tax map number here, 17 acres Gibbes Island,
3 for the record, is R200-018-000-076A as in apple.
4 It's clearly part of Exhibit A. That is the tax
5 plat number for the future development seen here in
6 the next exhibit. It's also an exhibit in
7 Mr. Coltrane's affidavit.

8 These are the lots we're talking about
9 here. They're all contained within this future
10 development. Four of them are and there's a fifth
11 one down here, Lot 16. Also, all clearly within the
12 boundary line of Exhibit A. You'll remember future
13 development and all -- any other undeveloped
14 property included within the boundary lines of this
15 parcel. Clearly all of this.

16 If you take all of these three in concert
17 Exhibit A, A-1 and this plat corresponds to it. All
18 of these show clearly that these tracts -- these
19 future lots are contained within Exhibit A and,
20 therefore, subject to the declarations, part of the
21 HOA. Again, that's what we're here to decide today.

22 This section I just referred to of the
23 CCR's basically says that it's all in and that
24 tracts of land within can be subdivided in the
25 future into smaller lots. And this is how we're

1 going to deal with them. They're going to make them
2 each a unit. And all that has to be done to make
3 that happen is a filing of a subsequent plat.

4 So then I turn you to the next plat that
5 was filed. This is the plat -- creates the subject
6 units here, subject lots here that are in dispute.
7 These five. They are contained within the record.
8 They're Lot Number 16, 55, 56, 57 and 58. All part
9 of The Marshes of Lady's Island.

10 So, we've got all of the plots. We've got
11 all of the exhibits. Clearly this is all still
12 within the boundary of Exhibit A. Just as
13 contemplated as a future development tract for
14 undeveloped property within the boundary lines,
15 clearly all subject to the declarations and CCR.
16 CCRs -- I mean, I'm actually impressed because once
17 -- that it talks about will be divided into future
18 units, subdivided. That's all contemplated in the
19 original documents. All that has to be done is the
20 plat subsequently filed. Here it is. All part of
21 Coltrane's affidavit.

22 He follows the same analysis and reaches
23 the same conclusion that is undisputable, clear and
24 unambiguous that the intent of the parties was for
25 these lots to be bound by the declarations. And

1 they have been with that since the onset.

2 We did take it a step further just to
3 remove any doubt referring back to Exhibit A-1 and
4 the supplemental affidavit filed by Mr. Coltrane.
5 And you'll see it references the same tax plat
6 number I read into the record earlier
7 R200-018-000-076A, 17 acres, Gibbes Island. It says
8 that that is the same tax map number here zoned
9 future development, same tax map number highlighted
10 here for your convenience. So it's in.

11 The Plaintiff contends that just because
12 these were platted, buildable lots at the time of
13 this declaration that they're not in. And there had
14 to be a subsequent declaration filed. And that's
15 simply not true under these documents. Again, if
16 you read it within the boundary line it's clearly
17 future development tract or other undeveloped
18 property within the boundary lines.

19 Clearly, the same tax plat number is
20 referenced and included. And here you see the final
21 results as contemplated in the original
22 declarations. It has been subdivided, and we know
23 now to treat each one as an individual unit under
24 the declarations and the CCR's.

25 There is a case directly on point with

1 this analysis. It's called Cullen versus McNeal,
2 390 S.C. 470, 702 S.C.2nd 378 (Court of Appeals
3 2010). Judge Mullin was the trial judge at that
4 level. Court of Appeals affirmed her. And it
5 simply says Section C of that opinion shows that the
6 Court of Appeals reached its holding by construing
7 the language found within the declarations itself.

8 Opposing counsel will probably try to
9 point out to you that there was a supplemental
10 declaration filed in that case. Plaintiffs in that
11 case also raised that issue at the Court of Appeals
12 in Subsection C. They made their determination
13 based upon the original documents.

14 And those original documents, just like
15 here, property was defined as all land described in
16 Exhibit A. Same thing we've got here. Exhibit A in
17 Cullen showed future development, just like here.
18 Court of Appeals and Judge Mullin at the trial court
19 level found that that future development was bound
20 by these original governing documents, the original
21 declarations, the original CCR's.

22 And I don't even think they have this
23 subsequent language as far as how to deal with the
24 subdivided areas. I'm not certain. I didn't see
25 that in the opinion. But in any event, they

1 certainly didn't address even though it was raised
2 in the Court of Appeals the issue of a supplemental
3 declaration wasn't a part of their decision because
4 simply it's not necessary.

5 Even if you go to the deeds, which all are
6 exhibits to Coltrane's affidavit, the deeds
7 themselves make these lots subject to all applicable
8 covenants and restrictions of record. And the legal
9 descriptions within the deeds describes Plaintiff's
10 lots as, quote, The Marshes at Lady's Island, Phase
11 I, closed quote. And you'll see if you read all of
12 these plats, it's always referred to as The Marshes
13 of Lady's Island, Phase I.

14 Clearly, this is notice to the Plaintiff
15 that these are all a part of that. And that's
16 interesting because Kinard v. Richardson, 407 S.E.
17 247 (Court of Appeals 2014), that the court in that
18 case said we can look to the language in the deeds
19 that refer to the restrictive covenants. Again, the
20 deeds here say subject to all applicable restrictive
21 covenants.

22 Number 2, the court said in that case of
23 Kinard v. Richardson, language containing the
24 subdivision's name is supporting evidence that the
25 lots were indeed subject to the CCRs. So this isn't

1 a surprise to anyone at the time of closing when you
2 get these deeds they say The Marshes of Lady's
3 Island, Phase I which is exactly what these
4 documents refer to.

5 They also say subject to any restricted
6 covenants that are on record. All of these are on
7 record. And it's been that way since its creation.

8 A second thing that I think that the
9 Plaintiff may try to bring up is some -- what I
10 would actually consider to be potential settlement
11 negotiations between Mr. Timbes, as person counsel
12 for my clients, and some real estate lawyers.
13 Mr. Timbes filed an affidavit to refute those
14 allegations. Essentially, his position was in order
15 to compel entry into the HOA you've got to already
16 be a member to have standing to do that. In other
17 words, in order to compel a supplemental
18 declaration, we don't think it's necessary.

19 But if you want that, sure. Buckles and
20 suspenders, we'll do that. Sure. Why not. If
21 that'll -- it makes you feel better, if that's a
22 problem for you, but in order to make that standing
23 to make that assertion, you've got to already be a
24 member. The only people with standing to make that
25 assertion would be a current member. That's just

1 like the only people that would have fiduciary
2 duty -- the Board would have a fiduciary duty to
3 would be current members. And so that in and of
4 itself, I think, rules out that argument.

5 The next thing I think you're going to
6 hear is if you look through the CCR's in a little
7 bit more detail, it says that anything not within
8 the boundary lines, Exhibit A -- and I think it's
9 clearly shown there's a future development tract and
10 subsequent lots are either within the boundary lines
11 or future development contemplated today and are
12 part of the deal. But the CCRs and the declaration
13 provide for an ability to annex anything contained
14 within Exhibit B.

15 And exhibit B I'll show you is 86 acres.
16 It's the entire property. Okay? Now, it's
17 obviously nonsensical to think that Exhibit B undoes
18 everything in Exhibit A. The entire Exhibit A --
19 the entirety of Exhibit A holds the two plots side
20 by side is contained within Exhibit B.

21 All right. Exhibit A. Exhibit B.
22 Holding one on top of each other it would be good to
23 have nice clear plastic to put them on top, but side
24 by side you still get the idea. All of Exhibit A,
25 the top part of this property in Exhibit B. All

1. this allows for is the ability to annex or to add
2. any remaining portions not contemplated in Exhibit
3. A. All right?

4. A way to do that is by filing a
5. supplemental declaration. That process is provided
6. in the documents as well, but why would you annex or
7. add anything already in Exhibit A? It's already
8. included. Whether or not it's buildable lots at the
9. time of declaration, it is irrelevant by the
10. document itself because, as you recall from the very
11. beginning, we're talking about future development
12. tracts and any other undeveloped property included
13. within the boundary lines of the property.

14. Clearly, undisputed Exhibit A boundary
15. lines, these four lots would apply to buildable lots
16. at the time or not were within Exhibit A from the
17. beginning, and they still are today. And as a
18. result, Your Honor, we would ask that you grant our
19. motion for summary judgment.

20. I think when you -- if you agree and do
21. that, again, as I've said, the allegations for
22. breach of fiduciary duty fall by the wayside.
23. Obviously, there can be no breach of fiduciary duty
24. to file a supplemental declaration if you're already
25. in. There could be no tortious interference by

1 failing to file a supplemental declaration if you're
2 already in.

3 Likewise, there can be no dispute about
4 whether or not dues are properly owed and due and
5 payable. I don't think there's a scenario that you
6 can get the benefits of an HOA and allege damages
7 for not being included in an HOA when the HOA
8 specifically says you're in, you've always been in.
9 And the only person that says that you're out is the
10 Plaintiff itself, River City Developers, LLC.

11 I think it's clear and undisputed, clearly
12 within Exhibit A. Exhibit A is clearly within the
13 property that is subject to the declarations and
14 just like in Cullen, real property, future
15 development, subject to the original documents
16 pursuant to Judge Mullins trial court order and the
17 affirmed by the Court of Appeals. Thank you.

18 JUDGE DUKES: Just so I'm clear. I
19 think I see what I'm seeing there. B actually
20 includes property to the south of A that is not in
21 A, is that --

22 MR. MIMS: That is --

23 JUDGE DUKES: Correct?

24 MR. MIMS: That is exactly correct,
25 Your Honor. So the contention that everything in B

1 is subject to annexation obviously doesn't make any
2 sense because that would undo the entire Exhibit A.
3 In other words, what's subject to annexation is
4 what's not in A, the additional property to the
5 south. And I think that's a clear and reasonable
6 reading of the declarations.

7 JUDGE DUKES: Okay. Thank you so
8 much.

9 MR. MIMS: Thank you.

10 JUDGE DUKES: Mr. Morrison, happy to
11 hear from you, sir.

12 MR. MORRISON: Okay, well, first of
13 all, there was a supplemental response filed this
14 morning, just this morning, that we would object to
15 just because it wasn't timely filed. I think that
16 Mr. Mims is trying to argue most -- fair game for
17 argument, but not quite fair game for a filing being
18 that it's, you know, not right or 48 hours before
19 the hearing. That's kind of a minor point.

20 MR. MORRISON: Your Honor, there's --
21 I know there's a 48 hour rule as to reply
22 affidavits. That's simply a reply memorandum as to
23 the motion for summary judgment.

24 JUDGE DUKES: Okay. And certainly
25 what I can do additionally is since things are going

1 from buying into a community and having a
2 nonconforming, you know, house built on the
3 property.

4 And I think, you know, the unit -- the
5 relevant parts of the covenants are 9.1 and 9.4.
6 You know, talking about the land initially submitted
7 and supplemental and making -- and then the
8 supplemental declarations making -- how to annex new
9 lots and new property into the subdivision. And
10 that those were not -- you know, that those
11 procedures laid out in the covenants were not
12 strictly compliant. And that's pretty much our
13 argument.

14 MR. MIMS: Your Honor, if I may
15 briefly?

16 JUDGE DUKES: Please.

17 MR. MIMS: I believe Plaintiff today
18 has conceded that the 17 acres on Gibbes Island are
19 part of Exhibit A which means that this part of the
20 HOA is subject to these dues and assessments. The
21 Sections 9.1 and 9.4 that he's referring to, if you
22 read the opening paragraph, only deals with the
23 property described in Exhibit B which as you recall
24 is the land to the south. It's not encompassed
25 within the boundaries of Exhibit A.

1 So, 9.1 and 9.4 and those (inaudible) the
2 annexation don't apply in this case as conceded by
3 the Plaintiff. The 17 acres at Gibbes Island tax
4 map numbers represented in A-1 highlighted in
5 Exhibit A as well as the tax map number clearly, and
6 now it's unrefuted, is it a part of Exhibit A. 9.1
7 and 9.4 which are the only two requirements for a
8 supplemental declaration only applied to Exhibit B.
9 So we're not even talking about that. It's not even
10 part of the process related to Exhibit A.

11 Finally, Your Honor, we -- in our filings
12 should you rule on our behalf, we asked for
13 attorneys fees and costs under Section 7.4 of the
14 governing documents and ask to supplement that
15 information.

16 JUDGE DUKES: What are the two cases
17 you referenced in this package here?

18 MR. MIMS: They are not, Your Honor.
19 I've got a copy of Cullen I can hand to you. This
20 is Cullen and Kinard. I've got Cullen. I can find
21 it for you if you'd like.

22 MR. MORRISON: Your Honor, if we may.
23 One thing that may be helpful in this is to show the
24 original plat referenced in the -- in the covenants
25 and the amended plat that was filed that has my

1 client's lots subdivided.

2 MR. MORRISON: Those are actually
3 already up here. That's what we -- you want to see
4 them?

5 JUDGE DUKES: Are those exhibits part
6 of the affidavits?

7 MR. MORRISON: Our lots are in this
8 future development.

9 JUDGE DUKES: Yeah, I've got it. I
10 think the plat behind it shows the lots themselves.

11 MR. MIMS: That's correct, Your
12 Honor. And they are exhibits to Coltrane's
13 affidavit, the original affidavit as part of those
14 exhibits. And, again, as set forth in the
15 definition of units, when subdivided, this future
16 development tract here as well as this other
17 property within the boundary lines of Exhibit A. As
18 stated in Exhibit A, these units -- these two units,
19 these lots are within those areas of Exhibit A.

20 JUDGE DUKES: What section is it that
21 you are referring to that's platted? You referenced
22 that earlier.

23 MR. MIMS: Bear with me one second.
24 There's a definition of a unit, Your Honor, in the
25 CCR's. It's on Page 6 -- Book 2301, Page 672 filed

1 on page --

2 JUDGE DUKES: A portion of the
3 Marshes?

4 MR. MIMS: If you read -- you can
5 read the definition in its entirety, but I would
6 point to the second paragraph. It says a parcel
7 shall be deemed to be a single unit until such as a
8 time as a plat subdivides all or a portion of the
9 parcel. Thereafter, the subdivided portion shall
10 contain a number of units shown on the plat. Any
11 portion not subdivided shall continue being a single
12 unit.

13 So, here we've got the original plat,
14 future development tract identified in Exhibit A-1
15 and Exhibit A. Tax R200-018-000-076. That's the
16 initial unit. And then by filing a subsequent plat
17 as set forth on Page 6 of the definition of unit
18 here is a subsequent plat made as exhibit to Mr.
19 Coltrane's affidavit, it creates these particular
20 five lots that have now been classified as units
21 under the declarations.

22 JUDGE DUKES: Mr. Morrison, just a
23 quick question. Was not the 17 acres a unit before
24 subdivision under the rules?

25 MR. MIMS: It was a unit, but it was

1 MR. MORRISON: I guess it says they
2 don't have to subject -- they don't have to expand
3 the community and subject additional property to it.
4 But if they do, they have to record a supplemental
5 declaration.

6 MR. MIMS: Your Honor, briefly I
7 would just address Mr. Morrison's points. Earlier
8 he referenced Section 8.5. That only references
9 (inaudible). It doesn't say anything about the
10 subsequent supplemental declaration. The only
11 provisions are from 9 that deals with a supplemental
12 declaration. As you'll see from the first sentence
13 in 9.1, Page 29, Declarant may from time to time
14 subject to the provisions of this declaration, all
15 or any portion of the property described in Exhibit
16 B, for recording a supplemental declaration.

17 Well, we've already established, Your
18 Honor, that Exhibit A is already subject to the
19 declaration. This Section Article 9 that he keeps
20 referencing only deals with Exhibit B.

21 And it's undisputed now that the lots
22 within -- or at least the future development of land
23 within the boundary lines of Exhibit A which now
24 make up the five lots we're talking about are part
25 of Exhibit A. It's not new property. It's not

1 additional property. It's not being added to or
2 annexed or expanded. Expansion under 9.1, I mean,
3 that would be the only scenario where a supplemental
4 declaration is required. Here it's undisputed.
5 It's already in. It's in Exhibit A.

6 JUDGE DUKES: All right. Anything
7 else from anybody?

8 MR. MORRISON: Not unless you have
9 any questions.

10 JUDGE DUKES: I don't. You're going
11 to get me, within how long, sort of a one-page
12 response optional. If you choose not to do it, just
13 let me know. But by --

14 MR. MORRISON: Five days.

15 JUDGE DUKES: That's fine. All
16 right. And I'll try to let you all know something.
17 If you haven't heard from me in ten days, shoot me
18 an email and remind me I need to keep this near the
19 top of the stack. I know it's important.

20 Anything else for this record?

21 UNKNOWN: Can have one minute with my
22 attorney?

23 MR. MIMS: This thing is on the trial
24 docket. He -- and obviously your determination of
25 this issue would, I think, make all the other issues

1 go away.

2 JUDGE DUKES: Is it a day certain.

3 MR. MORRISON: It's not day certain.

4 It's, like, not before November 1st or something

5 like that.

6 MR. MIMS: Schedule --

7 MR. MORRISON: Well, I guess, if you

8 need extra time to decide it and it gets up to the

9 trial roster, maybe we'd work with you or Heather to

10 get it continued until you're able to make a

11 determination because I think we all -- this is a

12 summary judgment --

13 JUDGE DUKES: I'll let you know by

14 next week.

15 MR. MORRISON: This has a summary

16 judgment written all over it. (Inaudible)

17 interpretation of Real estate documents.

18 JUDGE DUKES: Okay. Just let me

19 know. All right. We'll be off the record for a

20 second.

21 (BREAK)

22 MR. MORRISON: My client just wants

23 to make sure that it's on the record that, you know,

24 not only have new lots been created out of open

25 space, but the whole subdivision was changed around.

1 I mean, you can look on the difference between the
2 original plat and the new recorded plat. I mean,
3 not only are new lots created, but open spaces --
4 new open spaces created, old open spaces taken into
5 lots.

6 And our position is that in order to make
7 those changes, a supplemental declaration should be
8 filed.

9 MR. MIMS: Your Honor, my only
10 response would be that the only issues we're about
11 today are these five lots all clearly and
12 (inaudible) part of Exhibit A. And it's nothing
13 related to anything else as a part of this complaint
14 or answer or the suit.

15 JUDGE DUKES: All right. Thank you
16 all so much. I think that will conclude today's
17 record.

18 (Whereupon, the hearing was concluded
19 at 11:42 a.m.)
20
21
22
23
24
25

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No.: 2017-CP-07-00851

3

4 RIVER CITY DEVELOPERS,)
 LLC,)

5)
 Plaintiff(s),)

6) HEARING
 vs.)

7) February 22, 2019

8 THE MARSHES AT LADY'S)
 ISLAND HOMEOWNERS')
 ASSOCIATION; BUNDY)

9 APPRAISAL & MANAGEMENT;)
 FIRST GREEN, LLC; TIGE)

10 HOWIE AND STEPHEN SCOTT,)
)

11 Defendant(s),)
)

12

13 Hearing reported by Deborah S. Thomas,
 14 Certified Verbatim Reporter and Notary Public in and
 15 for the State of South Carolina; said hearing held
 16 before Honorable Marvin H. Dukes, III, Beaufort
 17 County Master in Equity and Special Circuit Court
 18 Judge in accordance with the South Carolina Rules of
 19 Civil Procedure, at the Beaufort County Courthouse,
 20 102 Ribaut Road, Room 212, Beaufort, South Carolina
 21 on February 22nd, 2019, at the hour of 1:38 p.m.

22

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1 wanted to add?

2 MR. MORRISON: No, just to, you know,
3 remind -- I may -- a lot of points in the motion
4 itself that -- I'll just reiterate. I'm sure you've
5 seen it.

6 JUDGE DUKES: Okay. Great. All
7 right. Thank you so much. All right. Happy to
8 hear from you.

9 MR. MIMS: All right. Thank you,
10 Your Honor. For the record, my name is Kevin Mims.
11 I represent the Defendants in this case along with
12 Michael Timbes who is seated to my right. And
13 Barnwell Fishburne from my office is also here.

14 Mr. Patterson is right. I -- amazing show
15 of restraint on my part. So I waited for him and I
16 appreciated his comments. And enjoyed working with
17 him over the course of the past weeks since he's
18 made an appearance in this case.

19 A few things, Your Honor. You know, we're
20 here today on their motion to reconsider. And in
21 light of that, I bring to the court's attention it
22 seems like we heard a lot of new arguments today. A
23 lot of new information that wasn't argued in the
24 first go around which I think is improper for your
25 consideration.

1 As far as the motion to alter or amend,
2 Cullen versus McNeal remains the law of the land.
3 The governing documents remain exactly as they were
4 a couple months ago whenever you heard this
5 originally.

6 I'm happy to go through the analysis that
7 we laid forth at the initial hearing. I'd
8 incorporate all my previous briefs and memos and
9 affidavits that you considered, but I think you got
10 it right originally. And the order itself, the 12
11 page order, lays it out that, you know, these --
12 this future development, just like in Cullen, was
13 contemplated to be part and parcel of this
14 neighborhood.

15 Just like in Cullen, this future
16 development was described in Exhibit A as we went
17 through before and even brought the blow ups as a
18 nice reminder. I won't make you go through them all
19 again, but you may remember the first time we were
20 here the highlight from the blow ups. The future
21 development is here. The lots are identified here.
22 Exhibit A-1 includes the actual tax map numbers
23 including the tax map number for this parcel, the 17
24 acres that is the future development.

25 And you also recall the Plaintiff's at the

1 initial hearing conceded, stipulated that this tract
2 of land, this land that encompasses now these five
3 lots, it's all a part of Exhibit A. And Exhibit A
4 clearly by simple reading of the governing documents
5 is a part of the neighborhood.

6 The governing documents also deal with how
7 we define units. And that was defined. And we
8 walked through that at the initial hearing that the
9 land stipulated to be in Exhibit A is subject to the
10 governing documents as encumbered. And once they're
11 subdivided, they go from being one unit into
12 multiple units. And it sets forth that dues are
13 owed and assessments are owed as to each unit.

14 And we walked through all of that at
15 length, Your Honor. As you remember Curtis
16 Coltrane, another local lawyer, filed two affidavits
17 and went through at length his analysis and the
18 clarity that he found that this was clearly
19 encumbered, this future development and,
20 subsequently, these lots without the need for any
21 further action.

22 And so we feel the court properly found
23 that. Again, if there were always cases as directly
24 on point as Cullen versus McNeal we may have -- a
25 few lesser lawyers in the world because it is

1 directly on point. There's no mention in that order
2 or that record of a supplemental declaration that
3 the Plaintiffs have tried to enter into evidence
4 here.

5 That was decided solely on the future
6 development description and the governing documents
7 just like you did here. And I think you properly
8 followed it here. Again, that's still good law as
9 far as I know. Haven't seen anything to overturn
10 it. The tax map number for these -- for this land
11 is included on Exhibit A-1 and Exhibit A.

12 Opposing counsel and the Plaintiff's have
13 stipulated at the first hearing that the land in
14 question here is a part of Exhibit A. So I don't
15 see how any other conclusion can be reached except
16 for the one that you previously met. And that these
17 lots are encumbered. And that these assessments are
18 enforceable.

19 And that these governing documents as a
20 whole are enforceable as to these lots. As far as
21 the amount owed, the court found that \$5,800 and
22 some change was due and owing. Mr. Patterson raised
23 the same issue with me earlier this week. And so
24 pursuant to discussions with him, we have filed an
25 affidavit from the records custodian of the property

EXHIBIT “A”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady's Island Homeowners' Association et al.
2017-CP-07-851

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Upon recording, please return to:
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE MARSHES AT LADY'S ISLAND

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date) 1-10-2006
in OR Book 2301 Page 662
This document contains 81 pages
Penelope Bayley
Register of Deeds - Beaufort County, SC

April 12, 2018

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"B"	Land Subject to Annexation	5
"C"	Initial Restrictions and Rules	2
"D"	By-Laws of Blue Gray Plantation Homeowners Association, Inc.	

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE MARSHES AT LADY'S ISLAND**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE MARSHES AT LADY'S ISLAND ("Declaration") is made as of the date set forth on the signature page hereof by NP BLUE GRAY DEVELOPMENT, LLC, a Georgia limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by Recording this Declaration to establish a general plan of development for the subdivision known as The Marshes at Lady's Island. This Declaration provides a flexible and reasonable procedure for The Marshes at Lady's Island's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance, and preservation. An integral part of the development plan is the creation of The Marshes at Lady's Island Homeowners Association, Inc., an association comprised of all owners of real property in The Marshes at Lady's Island, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document does not and is not intended to create a condominium under South Carolina law.

1.2. Binding Effect.

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

This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 40 years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been Recorded within

the year preceding any extension agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any South Carolina law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the easement holder.

1.3. Governing Documents.

GOVERNING DOCUMENTS	
Articles of Incorporation (filed with Secretary of State of the State of South Carolina)	establishes the Association as a non-profit corporation under South Carolina law
By-Laws (the Board of Directors adopts)	governs the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Declaration (Recorded)	creates obligations which are binding upon the Association and all present and future owners of property in The Marshes at Lady's Island
Supplemental Declaration (Recorded)	adds property to The Marshes at Lady's Island; may impose additional obligations or restrictions on such property
Architectural Guidelines (Declarant adopts)	establish architectural standards and guidelines for improvements and modifications to Units, including structures, landscaping, and other items on Units
Restrictions and Rules (initial set attached as Exhibit "C")	govern use of property, activities, and conduct within The Marshes at Lady's Island
Board Resolutions (Board adopts)	establish rules, policies, and procedures for internal governance and Association

Diagram 1.1 - Governing Documents

The Governing Documents apply to all Owners and occupants of property within The Marshes at Lady's Island, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and to aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles of Incorporation" or "Articles": The Marshes at Lady's Island Homeowners Association, Inc.'s Articles of Incorporation, filed with the Secretary of State of the State of South Carolina, as they may be amended.

"Association": The Marshes at Lady's Island Homeowners Association, Inc., a South Carolina non-profit corporation, its successors or assigns.

"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.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under South Carolina corporate law.

"Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within The Marshes at Lady's Island for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of The Marshes at Lady's Island Homeowners Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"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 as provided in Section 3.3 of the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) when Declarant no longer owns any of the property described in Exhibits "A" and "B";
- (b) December 31, 2021; or
- (c) when, in its discretion, the Class "B" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Members representing a majority of the total Class "A" vote of the Association approve. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost. Common Expenses may include expenses incurred as a result of agreements between the Declarant or Association, and the South Association.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing at The Marshes at Lady's Island, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Initially, Declarant shall establish such standard, which may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within The Marshes at Lady's Island change.

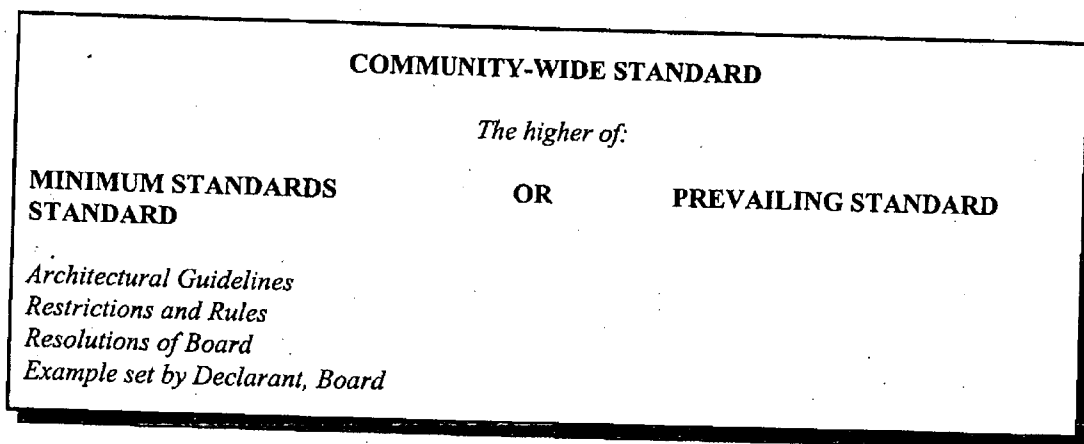


Diagram 2.1. Community-Wide Standard

"Covenant to Share Costs": Any declaration of easements and covenant to share costs or similar instrument executed and Recorded by Declarant which creates certain easements for the benefit of the Association and which obligates the Association to share the costs of maintaining certain property described in such Covenant to Share Costs.

"Declarant": NP BLUE GRAY DEVELOPMENT, LLC, a Georgia limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

"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, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Properties" or **"The Marshes at Lady's Island"**: The real property described in Exhibit "A".

"Record," "Recording," or "Recorded": The filing of a legal instrument in the RMC Office of Beaufort County, South Carolina, or such other place as may be designated as the official location for recording documents affecting title to real estate.

"Restrictions and Rules": The initial restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article III.

"South Association": The Blue Gray Estates Property Owners' Association, Inc., a South Carolina non-profit corporation, its successors and assigns. The South Association administers an adjacent subdivision known as Blue Gray Estates, and is included herein for the limited purpose of reserving certain rights related to architectural review.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

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

A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Units shown on the plat. Any portion not subdivided shall continue to be a single Unit.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for The Marshes at Lady's Island, a framework of affirmative and negative covenants, easements, and restrictions which govern the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in Exhibit "C."

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall mail notice to all Owners concerning any proposed action at least five business 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.

Such action shall become effective, after compliance with subsection (c) below, unless Members representing more than 50% of the total Class "A" votes in the Association and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition as required for special meetings in the By-Laws. If the Board receives such petition prior to the effective date of any action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members representing more than 50% of the total Class "A" votes in the Association, at an Association meeting duly called for such purpose, may vote to modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Such action shall require the approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, one copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(e) The procedures set forth in this Section 3.2 do not apply to the Board's enactment by resolution of rules and regulations governing use and operation of the Common Area; provided, the Board may choose, in its discretion, to submit to such procedures.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and

marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes and that such changes may not be reflected in a Recorded instrument. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment), the Architectural Guidelines (as amended from time to time), or in the initial Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Signs and Displays. The Board shall not interfere with Owners' rights to display religious and holiday signs, symbols, and decorations inside structures on their Units, except that it may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

Except as otherwise provided in this Declaration or approved by the Board of Directors, signs (including "for sale" or "for rent" signs), banners, posters, placards, billboards, advertisements, bulletins, announcements, symbols, displays, or any other manifestation of a message, slogan, or symbol of any kind shall not be displayed upon or visible from the outside of a Unit or placed or displayed anywhere within the Properties; provided those signs installed or authorized during the initial construction of the Properties by Declarant and those signs required by South Carolina law shall be permitted. In addition, one "builder identification" sign shall be permitted to be placed by the Builder on a Unit indicating the name of the building company constructing the residential dwelling on the Unit so long as such sign is placed in the area designated by the Board and the design, quality and size of the sign is approved in accordance with Article IV.

(c) Household Composition. The Board shall not interfere with the freedom of Owners to determine the composition of their households, except that it may require that all occupants be members of a single housekeeping unit and 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.

(d) Activities Within Dwellings. The Board may not interfere with the activities carried on within the confines of dwellings, except that it may prohibit activities not normally associated with property restricted to residential 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 or safety of others, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The Board shall not alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's written objection. Nothing in this provision shall prevent the Board from changing the Common Area available, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Alienation. The Board shall not prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use Board-approved lease forms, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the Association's administrative costs relating to that lease or transfer.

(g) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(h) Reasonable Rights to Develop. The Association shall not unreasonably impede Declarant's right to develop the Properties.

The limitations in subsections (a) through (h) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVI.

3.5 Residential Use Restrictions.

The Property shall only be used for residential purposes, and shall be limited to a maximum of sixty-one (61) single-family dwelling units. Said dwelling units shall be located on separate lots for detached houses, or as attached townhomes containing not more than two (2) Units. Condominiums shall not be allowed.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading, and other site work; exterior alterations of existing improvements; or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure are subject to approval.

All dwellings shall be designed by and built in accordance with the plans and specifications of a design professional approved by Declarant or its designee, in its sole discretion.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Properties or has the right to expand the Properties pursuant to Section 9.1, unless earlier terminated in a Recorded instrument executed by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision 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 foregoing entities shall be limited to such matters as Declarant specifically delegates to it.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, 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, who may be compensated in such manner and amount, if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case is referred to as the "Reviewer."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

(e) Conformance and Compliance Bond. Prior to review of any plans, the Reviewer may require that the Owner post with the Reviewer, in such forms and amounts as the Reviewer may reasonably determine:

(i) a conformance bond to insure that all work, including landscaping, is completed in accordance with the approved plans; and

(ii) a compliance bond to be drawn upon as necessary to cover costs incurred by the Reviewer or the Association in (A) repairing damage to or removing trash from any portion of the Properties necessitated by the activities for the Owner, its agents, contractors, or subcontractors; and (B) providing maintenance or exercising other self-help to cure noncompliance with the Governing Documents, construction rules, or breach of other obligations of the Owner, its contractors or subcontractors relating to such Owner's Unit.

(f) Approved Builder. No Builder shall be allowed to carry out any construction within the Properties until the builder has been approved by the ARC in relation to the Builder's knowledge of construction, construction experience, reputation for high quality design and construction of residences, past and present financial condition, and other factors which the ARC

deems relevant to the approval or disapproval of a builder. The ARC may prepare and, on behalf of the Board of Directors, may promulgate Approved Builder Guidelines (hereinafter the "Guidelines"). The Guidelines shall be those of the Association, and the ARC shall have sole and full authority to prepare and amend them. The Guidelines shall be made available to owners and builders who seek to engage in construction upon any portion of the Properties. The ARC may also promulgate appropriate forms upon which applications for approval shall be submitted, and shall have the authority to change such forms from time to time. The approval of a builder by the ARC shall be conditional and subject to change, in the sole discretion of the ARC, if the ARC determines there has been a change in the factors upon which approval was granted.

4.3. Architectural Guidelines.

Declarant may prepare and amend Architectural Guidelines, in its sole discretion. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions and compliance with the Architectural Guidelines does not guarantee approval of any application.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In Declarant's discretion, such Architectural Guidelines may be Recorded, in which event the Recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

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 opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring Owners.

Declarant, the Association, the Board, any committee, or any member of the Board or any committee shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. South Association Rights.

Notwithstanding the foregoing, the South Association shall have the right to designate in writing from time to time a single individual with authority to exercise certain rights of architectural review with respect to the Property (the "South Association Member"). The Declarant or the Board of Directors shall not materially amend or grant material variances to the architectural review guidelines without the consent of the South Association Member.

Article V Maintenance and Repair

5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Each Owner who owns a Unit which abuts Common Area adjacent to a body of water shall be required to maintain the adjoining area located between the Owner's Unit and the edge of the water line as if said area were a part of the Unit owned by such Owner.

5.2. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her 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. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its

functions in accordance with the Governing Documents 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 By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

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 except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit. No vote shall be exercised for any property which is exempt from assessment under Sections 8.8(a) and (b). All Class "A" votes shall be cast as provided in Section 6.3(c) below.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove Board and committee actions as provided in the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Member. In any situation where there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary

of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 13.5 and 15.2 hereof. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others for the provision of goods or services for the general benefit or convenience of Owners, occupants, and residents of the Properties.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;
- (b) landscaping within public rights-of-way within or abutting the Properties;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all ponds, streams, and/or wetlands located within the Properties which serve as part of the storm water drainage system for the Properties, including improvements and

equipment installed therein or used in connection therewith; and

(e) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

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 Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a covenant to share costs, other Recorded covenants, or agreements with the owner(s) thereof.

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 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 and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of

ownership. 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 cost of the insured improvements under current building ordinances and codes;

(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, such coverage (including primary and any umbrella coverage) shall have a limit of at least two million dollars (\$2,000,000.00) 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 a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(iv) Directors' and officers' liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

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 the By-Laws, that the loss is the result of the negligence or willful

misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in South Carolina 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.

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its 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 Owners' individual policies from consideration under any "other insurance" clause;
- (iv) an endorsement requiring at least 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) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of 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.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or the estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, 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 the Association for the benefit of its Members, 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 are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, 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.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspending 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 charge owed to the Association;

(v) exercising self-help in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee 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; and

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Properties.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) abating an immediate violation on the Common Area and exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action (which may be provided in lieu of the notice and hearing procedures set forth in the By-Laws).

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from

enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce city and county ordinances, if applicable, for the benefit of the Association and its Members, and any municipality having jurisdiction may enforce ordinances within the Properties.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not create any independent legal duty to institute litigation on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.26 of the By-Laws.

7.6. Indemnification of Officers, Directors, and Others.

Subject to South Carolina law, 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 of Directors) 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 for which liability is limited under this Section and South Carolina law. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The 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.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligence 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).

7.7. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within The Marshes at Lady's Island, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties, cannot be compromised 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 shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Provision of Services.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.9. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.5.

The Association is authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.5 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not 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 final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting for Reserves.

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing more than 50% 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 Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.8). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

8.5. Time of Payment.

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.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. 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 or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.6. Obligation for Assessments.

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 the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 15% per annum or such other rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. 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.

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 made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of the Common Area, abandonment of his or her 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 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.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.7. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of South Carolina law), and costs of collection (including attorneys' 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 Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

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; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

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 the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit 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 8.6, including such acquirer, its successors and assigns.

8.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by the Declarant for any purpose.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

PART FOUR: COMMUNITY DEVELOPMENT

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may, from time to time, subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the Properties pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 20 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also subject property to the provisions of this Declaration by a Recorded Supplemental Declaration. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the Owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Properties to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, 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.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified. Any property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

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 property pursuant to Section 9.1, for the purpose of removing any portion of the Properties which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10 percent. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area and Units which they own such facilities and activities as, in Declarant's sole opinion, may be reasonably 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 authorized Builders shall have easements for access to and use of such facilities at no charge.

10.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an 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.

Every Person that acquires any interest in the Properties acknowledges that the Properties is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property, or (b) changes in the master plan.

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 instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by Declarant in a Recorded consent.

10.5. Right to Approve Changes in the Properties' Standards.

No amendment to or modification of the Restrictions and Rules or the Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant. The foregoing sentence 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 an assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Exclusive Rights To Use Name of Development.

No Person shall use the name "The Marshes at Lady's Island" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "The Marshes at Lady's Island" in printed or promotional matter where such term is used solely to specify that particular property is located within The Marshes at Lady's Island and the Association shall be entitled to use the words "The Marshes at Lady's Island" in its name.

10.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Properties, including Units, and a perpetual nonexclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall

promptly repair, at such person's own expense, any damage resulting from such exercise.

10.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Properties in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the Owner's concerns and conduct their own inspection.

10.10. Termination of Rights.

Except as otherwise specified, the rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) 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 the By-Laws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in sections 13.5 and 15.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

Declarant grants 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 or any Unit and any private amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (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, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on

Recorded plats;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "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 and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection 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 benefitting from such easement 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 any maintenance which the Association provides to or along any roadway providing access to such property.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all 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.

11.6. Easements for Maintenance of Lakes, Pond and Waterfront Areas and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns, and 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 bodies of water and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. 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 occurrences.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XII Dispute Resolution and Limitation on Litigation

12.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and 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 (each being a "Bound Party"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

(a) any suit by the Association to collect assessments or other amounts due from any Owner;

(b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such 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 Part Two of this Declaration (relating to creation and maintenance of community standards);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts 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 as to which any applicable statute of limitations would

expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Beaufort County, South Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

Alternative Dispute Resolution Process

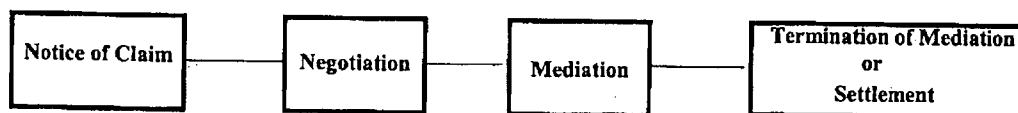


Diagram 14.1 - Alternative Dispute Resolution Process

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

12.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.
- (f) in an emergency where waiting to obtain approval of the Members creates a substantial risk of irreparable injury to the Common Area or Members (the imminent expiration

of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members).

- (g) termination of an employment relationship or enforcement of a contract.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XIII Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

13.5. HUD/VA Approval.

As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B;" dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

PART SEVEN: CHANGES IN THE COMMUNITY

Article XIV Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XV Changes in Common Area

15.1. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Beaufort County, South Carolina, the City of Beaufort, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 13.5 and 15.2.

15.2. Actions Requiring Owner Approval.

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B;" and dedication, conveyance, or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 15.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article XVI Amendment of Declaration

16.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Unit to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) 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 satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, so long as Declarant 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 the rights of more than 2% of the Owners.

16.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long as Declarant owns any property subject to this Declaration or which may become subject

to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article XIII 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.

16.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority 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.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. 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 this Declaration.

16.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Article XVI. Exhibit "C" is incorporated by reference and may be amended in accordance with Article III or Article XVI. 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.

Article XVII Special Rights in Favor of South Association

The South Association was formed pursuant to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Blue Gray Estates dated November 22, 2004 and

recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 2062 at Page 2290 (the "BGE Declaration") to serve as the association of members and act on behalf of the members under the BGE Declaration. The BGE Declaration relates to certain real property described therein known generally as Blue Gray Estates, which adjoins The Marshes at Lady's Island property to the south, and in consideration for the agreement of the South Association to release the BGE Declaration as it related to The Marshes at Lady's Island property from the BGE Declaration, the South Association is being granted certain special rights under this Declaration, as set forth herein.

Notwithstanding any rights declared, reserved or granted by or to Declarant, the Members, the Owners, the Board or the Association under this Declaration, without the written consent and joinder of the South Association: (i) this Declaration may not be terminated; (ii) this Article XVIII may not be amended, modified, repealed, terminated or deleted; (iii) the density and residential use restrictions of Section 3.5 may not be amended, modified, repealed, terminated or deleted (except, however, they may be amended to impose more restrictive requirements or additional restrictions without the written consent and joinder of the South Association); (iv) the Architectural Guidelines may not be repealed, terminated or deleted, and they may not be amended, or any variances granted, if such amendments or variances would result in a material change in the overall character, quality, exterior appearance or nature of the residences constructed in accordance therewith.; (v) no portion of the Properties may be withdrawn, released or removed from the coverage of this Declaration (except, however, non-material slivers or portions of real property along the exterior boundaries of the Properties for the widening of public roads or to make adjustments in the boundary lines with adjoining property owned by others).

If the South Association fails to approve or disapprove (with explanation of the particular reasons for disapproval) any request for an approval, amendment or variance within thirty (30) days after a written request therefore has been given to the South Association, and receipt thereof acknowledged by the South Association, such request shall be deemed approved by the South Association as submitted.

The provisions of this Article shall be covenants that run with the land as a burden on the Properties and as a benefit to Blue Gray Estates. The South Association shall have and retain the specific right to enforce the provisions of this Article of the Declaration and/or to prevent any violations thereof by a proceeding at law or in equity against the person or persons violating or attempting to violate the same. If the South Association resorts to litigation of any nature to enforce any provisions of this Agreement, the South Association shall be entitled to recover its direct and indirect costs, court costs, reasonable attorneys' fees and expenses incurred in connection therewith if it prevails in such proceedings. No failure of the South Association to exercise or enforce and no delay in exercising or enforcing any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise and any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on this 6th day of JANUARY, 2006.

Signed, sealed and delivered
in the presence of

NP BLUE GRAY DEVELOPMENT, LLC,
a Georgia limited liability company

Witness

By:

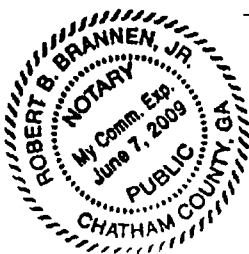
Its: Manager

Witness

STATE OF Georgia
COUNTY OF Chatham

I Robert B. Brannen, Jr (name of notary) do hereby certify that
Daniel M. Whalen, as manager of NP Blue Gray Development, LLC, personally
appeared before me this day and acknowledged the due execution of the foregoing instrument on
behalf of said entity.

Witness my hand and official seal this the 6th day of January, 2006.



[Notary Seal]

Z:\Brannen\DOCS\North Point Property Development, LLC\Secessions (Blue-Gray)\Covenants\Covenants4.wpd

EXHIBIT A**PARCEL 1:**

All those certain lots, tracts or parcels of land situate, lying and being in Beaufort County, South Carolina on Gibbes Island, and shown as the **"MARSHES AT LADY'S ISLAND, PHASE I"** on that plat entitled "Marshes at Lady's Island, Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated December 14, 2005, and recorded in Plat Book 111, page 17, Beaufort County, South Carolina, RMC Office.

Said property includes, but is not limited to, the following lots, or applicable portions thereof, that have been previously subdivided:

Lots 5, Lot VI A through Lot VI J, inclusive, Lot VII A through Lot VII J, inclusive, Phase I, Secession Golf Club Residential Tract as shown on that plat entitled "Plat Showing Phase I Secession Golf Club Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, and last revised October 10, 2000, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina, RMC Office.

Lots C-1 through C-5, inclusive, Lots C-7 and C-8, Lot V3 A through L, inclusive, Phase I, Blue-Gray Estates Residential Tract, as shown on that plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office.

Lots 1-6, inclusive, Phase III, Secession Golf Club Residential Tract, as shown on that plat entitled "Plat Showing Secession Golf Club Residential Tract, Phase IIP", prepared by David E. Gasque, R.L.S. No. 10506, dated August 4, 2004, and recorded in Plat Book 101, page 76, Beaufort County, South Carolina, RMC Office, said plats being incorporated herein and made a part hereof by this reference.

Said property also includes all roads, common areas, future development tracts, marsh, wetlands, and any other undeveloped property included within the boundary lines of the parcel.

EXCEPTING, HOWEVER, from the property conveyed herein, Lot C-6, Lot C-9 and C-10, Phase I, Blue-Gray Estates Residential Tract, as shown on that plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office, which Lots are not owned by Blue Gray, LLC, and the southerly portion of Lot C-8 as shown on said plat, which portion is not included in the description of the property being conveyed by the new plat of Marshes at Lady's Island, Phase I as described above.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Blue Gray, LLC, dated January 6, 2006, and recorded in Deed Book 111, page 17, Beaufort County, South Carolina records

See Attached Exhibit "A-1" for PID Numbers

CHARLOTTE 458065v1

NOTICE: This Property subject to Declaration of Restrictive Covenants recorded in the Office of the Clerk for Beaufort County, South Carolina in Deed Book 2287, at page 2445.

AND, ALSO:

ALL that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as **Lot C6, Phase I, of Blue-Gray Estates**, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Richard L. Church and Nancy J. Church, dated January 6, 2006, and recorded in Deed Book 111, page 17, Beaufort County, South Carolina records.

PID: 200-018-000-331

AND, ALSO:

ALL that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as **Lot C9, Phase I, of Blue-Gray Estates**, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Lucien Williams, dated January 6, 2006, and recorded in Deed Book 111, page 17, Beaufort County, South Carolina records.

PID: 200-018-000-473

AND, ALSO:

ALL that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as **Lot C10, Phase I, of Blue-Gray Estates**, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Mad Dog of Tampa, LLC, dated January 6, 2006, and recorded in Deed Book 111, page 17, Beaufort County, South Carolina records

PID: 200-018-000-474

CHARLOTTE 458065v1

EXHIBIT A-1

<u>PID</u>	<u>Legal</u>
R200-018-000-0479	Lot C2, Blue Gray Estates, Phase 1
R200-018-000-0480	Lot C1, Blue Gray Estates, Phase 1
R200-018-000-0478	Lot C3, Blue Gray Estates, Phase 1
R200-018-000-477	Lot C4, Blue Gray Estates, Phase 1
R200-018-000-0476	Lot C5, Blue Gray Estates, Phase 1
R200-018-000-0475	Lot C7, Blue Gray Estates, Phase 1
R200-018-000-0472	Lot C8, Blue Gray Estates, Phase 1
R200-018-000-556	Lot 1, Secession Golf Club, Phase 3
R200-018-000-055	Lot 3, Secession Golf Club, Phase 3
R200-018-000-0554	Lot 4, Secession Golf Club, Phase 3
R200-018-000-0553	Lot 5, Secession Golf Club, Phase 3
R200-018-000-0552	Lot 6, Secession Golf Club, Phase 3
R200-018-000-076A (part)	17 acres, Gibbes Island
R200-018-000-427	Lot V4-A, Blue Gray Estates, Phase 1
R200-018-000-428	Lot V4-B, Blue Gray Estates, Phase 1
R200-018-000-429	Lot V4-C, Blue Gray Estates, Phase 1
R200-018-000-430	Lot V4-D, Blue Gray Estates, Phase 1
R200-018-000-431	Lot V4-E, Blue Gray Estates, Phase 1
R200-018-000-432	Lot V4-F, Blue Gray Estates, Phase 1
R200-018-000-433	Lot V4-G, Blue Gray Estates, Phase 1
R200-018-000-434	Lot V4-H, Blue Gray Estates, Phase 1
R200-018-000-435	Lot V4-I, Blue Gray Estates, Phase 1
R200-018-000-436	Lot V4-J, Blue Gray Estates, Phase 1
R200-018-000-437	Lot V4-K, Blue Gray Estates, Phase 1
R200-018-000-438	Lot V4-L, Blue Gray Estates, Phase 1
R200-018-000-0481 (part)	All Roads in Blue Gray Estates

EXHIBIT "B"

Land Subject to Annexation

All that certain lot, tract or parcel of land known as the Secession Golf Club Residential Tract as shown on that plat entitled "Boundary Survey of Secession Golf Club Residential Tract", prepared by Gasque & Associates, Inc., dated June 7, 2000, and recorded in Plat Book 75, page 87, Beaufort County, South Carolina records.

EXHIBIT "C"**Initial Restrictions and Rules**

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. **General.** The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration. Each Unit shall only be used for private residential purposes for a single family. Only one building shall be erected on each Unit, except for such accessory buildings as may be approved by the Board or the architectural review committee.
2. **Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, Declarant or the Board of Directors:
 - (a) **Parking.** Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages, the driveway area or required parking pads; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;
 - (b) **Animals and Pets.** Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;
 - (c) **Odors and Noise.** Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
 - (d) **Laws.** Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a

violation;

(e) Hobbies. Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Offensive Activities. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Loud Noises. Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Fireworks. Use and discharge of firecrackers and other fireworks;

(j) Dumping. Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Trash. Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Drainage Interference. Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, or any other impairment of or interference with the neighborhood drainage plan, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns;

(n) Use of Lakes. Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Properties, except that fishing from the shore shall be permitted with appropriate licenses and Declarant, its successors and assigns, shall be permitted and shall have the exclusive right and easement to draw water from lakes, ponds, and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized

use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Properties;

(o) Timeshares. Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Firearms. Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) Fuel Storage. On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Home Occupations. Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve door-to-door solicitation of residents of the Properties; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Properties which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

"Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit 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. All leases shall be in

writing. The Board may require a minimum lease term, which is currently not less than 12 months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within seven days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules;

(s) Wildlife. Capturing, trapping, or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(t) Nature. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Garage Conversions. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV;

(v) Motorized Vehicles. Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes; and

(w) Construction. Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind.

(x) Irrigation. Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources.

(y) Antennas. Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Properties; and (i) satellite dishes designed to receive direct broadcast satellite service which are 18" or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are 18" or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Unit (generally being the rear yard) at which an acceptable quality signal can be received and is not visible from the street,

Common Area, or neighboring property or is screened from the view of adjacent Units and the street in a manner consistent with the Community-Wide Standard and the standards, unless such screening unreasonably interferes with the use of such Permitted Device.

(z) Yard Decorations. No yard ornaments, fountains, statues, lights, artificial plants or other permanent outdoor decorations, unless approved pursuant to Article IV.

Exhibit "D"

BY-LAWS

OF

THE MARSHES AT LADY'S ISLAND HOMEOWNERS ASSOCIATION, INC.

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**BY-LAWS
OF
THE MARSHES AT LADY'S ISLAND
HOMEOWNERS ASSOCIATION, INC.**

**Article I
Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is THE MARSHES AT LADY'S ISLAND HOMEOWNERS ASSOCIATION, INC. (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 certain Recorded Declaration of Covenants, Conditions, and Restrictions for THE MARSHES AT LADY'S ISLAND as it may be amended (the "Declaration"), unless the context indicates otherwise.

**Article II
Membership: Meetings, Quorum, Voting, Proxies**

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 provisions of the Declaration 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 the Board may designate.

2.3. Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. Meetings shall be of the Members unless otherwise required by South Carolina law or specified by the Board. 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 Members representing at least 10% of the total Class "A" votes of the Association.

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 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers 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 for 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 shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, 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 waive, in writing, 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 raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a date not less than 5 nor more than 30 days from the date 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.

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 Members to leave less than a quorum, 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 as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies.

On any matter as to which a Member is entitled personally to cast the vote for his or her Lot, such vote may be cast in person or by proxy, subject to the limitations of South Carolina law relating to the use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his or her 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. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was given, (b) receipt by the Secretary of a written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

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 number.

2.11. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence of Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all Association meetings.

2.12. Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

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 the 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. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a 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: Selection, Meetings, Powers

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 vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members or residents; provided, however, no Owner and resident representing the same Lot may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Lot within the Properties. If a Member 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 Board shall consist of one to seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of one director as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period.

Directors appointed by the Class "B" Member pursuant to Section 3.5 of these By-Laws shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

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 filled by Class "A" votes. 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. Nominations also may be permitted from the floor.

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 Chairperson, who shall be a member of the Board, and three or more Members. Members of the Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall, in its discretion, determine. 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 Members and to solicit votes.

(b) Election Procedures. Each Member may cast all votes assigned to the Lots which it represents for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

3.5. Election and Term of Office.

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Lots permitted 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 Members shall be entitled to elect two of the five directors. The remaining three directors shall be appointees of the Class "B" Member. Directors elected by the 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 directors' 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 Members shall be entitled to elect three of the five directors. The remaining two directors shall be appointees of the Class "B" Member. Directors elected by the 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 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.

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 until the next annual meeting, at which time the Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

Upon expiration of the term of office of each director elected by the Members, Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Directors elected by the Members shall hold office until their respective successors have been elected. Each director's term of office shall be limited to three consecutive terms.

Diagram 3.5 illustrates the concept of transition of control of the Board of Directors.

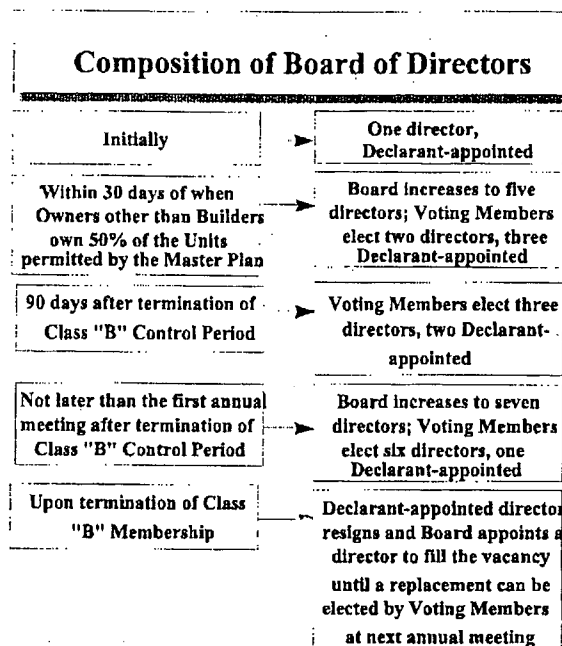


Diagram 3.5 - Composition of Board of Directors

3.6. Director Training.

All directors shall complete, prior to commencing service on the Board and on an ongoing basis thereafter, such training requirements as the Board may establish.

3.7. Removal of Directors and Vacancies.

Any director elected by the Members may be removed, with or without cause, by the vote of 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 Members.

Any director elected by the Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so 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 the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.8. Organizational Meetings.

The first meeting of the Board following each annual meeting of the Members shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.9. Regular Meetings.

Regular meetings of the Board may be held at such time and place as 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.

3.10. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.11. Notice; Waiver of Notice.

(a) Notices of Board meetings 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 directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission.

All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown in the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days

before the date set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, 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 director 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.

3.12. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for 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 for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a date 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 may be transacted without further notice.

3.13. 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.

3.14. Open Meetings; Executive Session.

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Properties which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of subsection (b), all Board meetings 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 a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15. 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.

C. Powers and Duties.

3.16. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or South Carolina law require to be done and exercised exclusively by the Members or the membership generally.

3.17. Duties.

Duties of the Board shall include, without limitation:

- (a) preparing (or contracting for or delegating the preparation of) and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) preparing such budgets and keeping such records as may be required by any Recorded Covenant to Share Costs;
- (d) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (e) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for 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;

- (f) 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 funds may be deposited, in the Board's business judgment, in depositories other than banks;
- (g) making and amending use restrictions and rules in accordance with the Declaration;
- (h) opening bank accounts on behalf of the Association and designating the signatories required;
- (i) 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;
- (j) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (k) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (l) paying the cost of all services rendered on behalf of the Association;
- (m) keeping books with detailed accounts of the Association's receipts and expenditures;
- (n) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;
- (o) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;
- (p) 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; and
- (q) performing the responsibilities of the Association pursuant to any Recorded Covenant to Share Costs.

3.18. Compensation.

Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a 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, excluding the interested director.

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 Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Properties, or diminish the level of services being provided by the Association.

(a) Notice. 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 Board meetings with Sections 3.9, 3.10, and 3.11, 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) Opportunity to be Heard. 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.

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, 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 expenditure required to comply with applicable laws and regulations.

3.20. Management.

The Board 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 may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

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 principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration 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; any thing 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; and
- (f) 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: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines,

by an independent public accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement.

3.22. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner as provided in Section 8.3 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 incurred within the previous 12-month period, exceeds or would exceed 10% of the Association's budgeted gross expenses 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 trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties. Any common management agreement shall require the consent of a majority of the Board.

3.24. Enforcement.

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. 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 one has been 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 request for a hearing 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 violator 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 the 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. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution 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 attorneys' fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

3.25. Rules of Conduct.

The Board may require each director, as a condition of service, to sign and comply with a written set of ethical guidelines which govern the actions of the Board members and officers.

3.26. Board Standards.

While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director from personal liability so long as the party claiming liability does not prove that the director failed to: (a) serve in a manner the director believes to be in the best interests of the Association and the Members; (b) serve in good faith; or (c) act with such care as an ordinarily prudent person in a like position would use under similar circumstances.

In fulfilling its governance responsibilities, the Board's actions shall be governed and tested by the rule of reasonableness. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

Operational standards of the Board and any committee appointed by the Board shall be the requirements set forth in the Governing Documents or the minimum standards which Declarant, the Board, and the Architectural Review Committee may establish. Such standard shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Class "B" membership. Operational standards may evolve as the needs and demands of the Properties change.

3.27. Annual Performance Review.

The Board shall have the authority to poll the membership annually in order to obtain the Owners' and/or residents' evaluation and feedback regarding the Board's administration of the Association's affairs and the performance of its duties and responsibilities during the prior year. The Board may create and deliver (or contract for the creation and delivery of) questionnaires, surveys, opinion polls, or any other devices designed to elicit feedback and comment, to the Owners and residents within the Properties via first class mail, fax, electronic mail, web sites, intranet, telephone, video, or any other medium which the Board, in its discretion, selects after evaluating the cost, time efficiency, ease of use, accessibility, and likelihood of response. The Board may utilize the results of such review and feedback to increase its responsiveness to the desires of the Owners and residents in its future decision-making and in its administration and operation of the Association.

Article IV Officers

4.1. Officers.

The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. 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 Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its 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 Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for 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, 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, 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 3.19.

Article V **Committees**

5.1. General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods (subject to Section 5.4) as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

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 By-Laws, 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 3.25 of these By-Laws.

5.3. Term of Service.

In order to maximize the participation of all Owners and residents within the Properties, service on all committees shall rotate on a regular, two-year basis.

5.4. Limitation on Powers.

The Board shall have the right to disapprove or veto any committee decision or action. Notwithstanding any provision to the contrary, committees shall not have the authority to contractually bind the Association or to commit the Association financially.

Article VI
Miscellaneous

6.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

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 or the Governing Documents.

6.3. Conflicts.

If there are conflicts among the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (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 Lot, 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 Lot: the Governing Documents, 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 Association's office 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;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing 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 Association's expense.

6.5. Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws 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 or Member, at the address which the Member or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;
- (b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or
- (c) if to any committee, at the principal address of the Association 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. Prior to the conveyance of the first Lot by Declarant to a Person other than a Builder, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws 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 Lots; or (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 Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of greater than two percent of the Members, and such amendments shall be subject to disapproval by the U.S. Department of Housing and Urban Development and/or the U.S. Department of Veterans Affairs if either such agency is insuring or guaranteeing residential loans within the Properties.

(b) By Members Generally. Except as provided above, these By-Laws 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, if such exists. 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.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation 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 By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

EXHIBIT “B”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady’s Island Homeowners’ Association et al.
2017-CP-07-851

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to the Affidavit of Curtis L. Coltrane in
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2017-CP-07-851



CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date) 1-9-2006
in Plat Book 111 Page 17
This document contains 1 pages.
Samalia Bayles
Register of Deeds - Beaufort County, SC
April 12, 2018

LOCATION MAP (N.T.S.)

NOTE:
THE GEODETIC MONUMENTS SHOWN ON THIS PLAT
ARE FOR DEED PURPOSES ONLY.
THE GEODETIC MONUMENTATION IS NOT TO BE USED
FOR RECONSTRUCTION OF PROPERTY LINES
OR BOUNDARY INFORMATION.

NOTES:

- 1.) THE BEARINGS SHOWN HEREON ARE MAGNETIC
AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
- 2.) THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS
OF ENGINEERS JURISDICTIONAL WETLANDS IS
UNDETERMINED AS OF THE DATE OF THIS SURVEY.
- 3.) METHOD OF AREA CALCULATION BASED
ON COORDINATE METHOD.
- 4.) THIS PROPERTY LIES IN FLOOD ZONE A-9 (EL. 13.00)
AS DETERMINED BY FEMA FORM COMM-PANEL
NUMBER 450025 0095 D & 450025 0100 D,
DATED: 08/29/88. (INDEX DATED: 11/04/92.)
- 5.) ALL CORNERS ARE 1/2" RODS SET
EXCEPT AS NOTED.

REFERENCES:

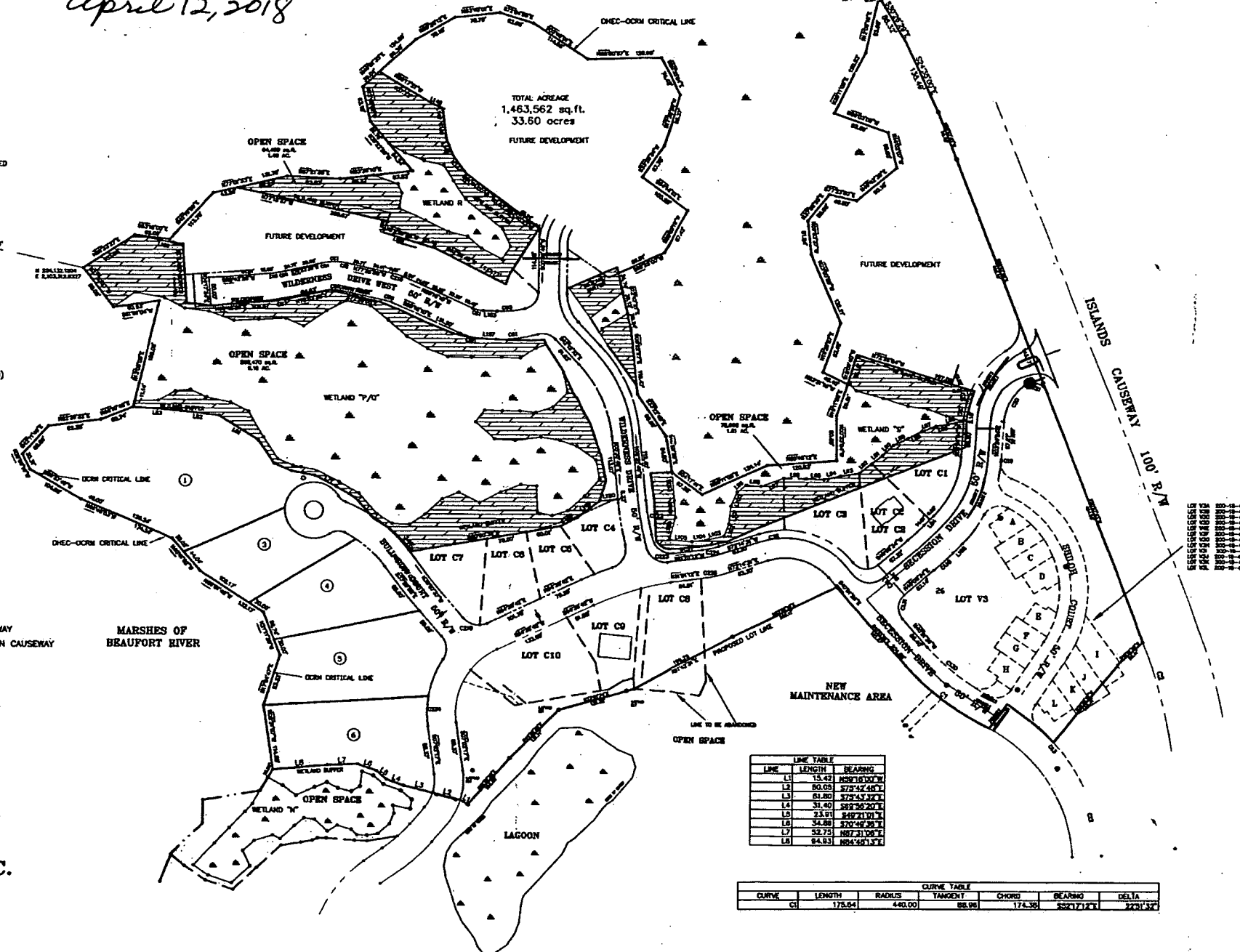
- 1.) LADY'S ISLAND TAX MAP 200-018-000-078A.
- 2.) PLAT BY R.D. TROGDON, JR.
DATED: 10/19/82, REVISED: 09/10/88
PLAT BOOK 35, PAGE 250,
BEAUFORT COUNTY R.L.M.C. OFFICE.
- 3.) DEED BOOK 314 PAGE 1429 N/A
- 4.) DEED BOOK 314 PAGE 1433 N/A
- 5.) DEED BOOK 1365 PAGE 1731 BLANKET EASEMENT
- 6.) DEED BOOK 103 PAGE 170 DEED OVERALL
- 7.) DEED BOOK 333 PAGE 1779 IN 100' R/W ON CAUSEWAY
- 8.) DEED BOOK 298 PAGE 888 50' STRIP IN 100' R/W ON CAUSEWAY

I, David E. Gasque, a Registered Professional Land Surveyor in the
State of South Carolina, certify to owner(s) shown herein that to
the best of my knowledge, information and belief, the survey
shown herein was made in accordance with the requirements
of the minimum standards required for the practice of land
surveying in South Carolina, and meets or exceeds the require-
ments for a CLASS A survey as specified therein, and
there are no apartments or projections other than shown.
This survey is not valid unless it bears the original signature
and has an approved seal.

David E. Gasque, R.L.S.
S.D. Registration Number 10008

GASQUE & ASSOCIATES INC.
LAND SURVEYORS - PLANNERS
28 PROFESSIONAL VILLAGE CIRCLE, BEAUFORT, S.C.
P.O. BOX 1363, BEAUFORT, S.C.
(843) 522-1788

THIS PLAT IS COPYRIGHTED AND IS ONLY INTENDED FOR THE USE
OF THE ENTITY OR PERSON(S) SHOWN HERE ON.



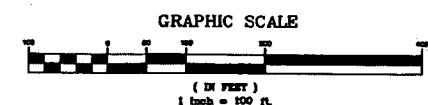
EXEMPT
This plat of property is exempt from having to obtain a
subdivision approval under the provision of the Beaufort
County Development Standards Ordinance as provided
for in Article XII, Section 7.5.2.5(b)
Exempt by: David E. Gasque
Date: 1-9-06

DHEC-CORM CRITICAL LINE
THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF
DHEC-CORM PERMIT AUTHORITY ON THE SUBJECT PROPERTY.
CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO
CHANGE OVER TIME. BY GENERALLY DELINEATING THE PERMIT
AUTHORITY OF THE DHEC-CORM, THE OFFICE OF CORM IN NO
WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION IN ANY
CRITICAL AREA ON THE SUBJECT PROPERTY WHETHER SHOWN OR NOT.
ALL PROPERTY OWNERS AND POSSESSORS ARE ADVISED TO
HAVE THE LINE CHECKED BY CORM, STATE 2006, TO CONSTRUCTION
OR PLACING ON THE SALE OF THIS PROPERTY.

10/19/05 DATE
SIGNATURE
THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR THREE YEARS FROM
THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE

BEAUFORT COUNTY SC - ROD
BK 00111 PG 0017
FILE NUM 200502215
01/09/2006 03:48:18 PM
REC'D BY B BING RCPT# 388368
RECORDING FEES 10.00

**MARSHES AT LADY'S ISLAND
PHASE I
BLUE - GRAY ESTATES
RESIDENTIAL TRACT**
PREPARED FOR:
N P BLUE - GRAY DEVELOPMENT, LLC.
**GIBBES ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA**



DATE: 12/14/05

SCALE: 1"= 100'

JOB #2863800 DRAWN BY: DESIGN 3

EXHIBIT “C”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady's Island Homeowners' Association et al.
2017-CP-07-851

3
10
R. Wilson
4736

Prepared without the benefit of a title exam by:
Derek C. Gilbert, Esq
Gilbert Law Firm LLC
2 Professional Village Circle
Beaufort, South Carolina 29907
Tel: 843-524-4000
Fax: 843-524-4006
derek@dgcgilbert.com
File No. 140747- KIRVEN ST RI

ADD DMP Record 8/12/2014 01:38:34 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R200 018 000 0598 0000 00

BEAUFORT COUNTY SC - ROD
BK 3339 Pgs 2834-2836
FILE NUM 2014038301
08/11/2014 03:59:59 PM
REC'D BY Jenkins RCPT# 750815
RECORDING FEES \$10.00
County Tax \$20.90
State Tax \$49.40

RECORDED
2014 Aug -13 10:02 AM

Parcel ID No. R200 018 000 0598 0000 Sharon D. Burris
BEAUFORT COUNTY AUDITOR

*****AREA ABOVE THIS LINE RESERVED FOR RECORDING*****

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE
(General Warranty Deed)

GRANTOR: George Wilson Kirven

GRANTEE: River City Developers, LLC

Grantee's Address: 1857 Ribaut Road, Port Royal, SC 29935

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENT, that Grantor, for and in consideration of the sum of Nineteen Thousand and 00/100 Dollars, (\$19,000.00), paid by Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, SUBJECT TO the matters set forth below, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, the real estate (the "Premises") described on Exhibit A attached hereto and incorporated herein.

This conveyance is made SUBJECT TO all applicable easements, conditions, covenants and restrictions of record.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date) 8-11-2014
in OR Book 3339 Page 2834
This document contains 3 pages.
Sharon D. Burris
Register of Deeds - Beaufort County, SC
April 11, 2014

Book3339/Page2834 CFN#2014038301

TO HAVE AND TO HOLD all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns forever.

And, SUBJECT TO the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused this General Warranty Deed to be executed on this the 24 day of July, 2014.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Pam Shipsey
Witness #1

George Wilson Kirven by Melissa R. Wicker, Atty in fact
George Wilson Kirven by Melissa R. Wicker
Attorney in Fact

[Signature]
Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that George Wilson Kirven by Melissa R. Wicker, Attorney in Fact, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 24 day of July, 2014.

[Signature]
Notary Public for South Carolina
My Commission Expires: 1-10-15

(SEAL)

ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being on Gibbs Island, Beaufort County, South Carolina, shown and designated as Lot 16, The Marshes at Lady's Island, Phase I, and having such metes, courses, distances and bounds as will more fully shown on that certain plat prepared for NP Blue-Gray Development, LLC, by David E. Gasque, RLS, recorded of March 1, 2007, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 118 at Page 131.

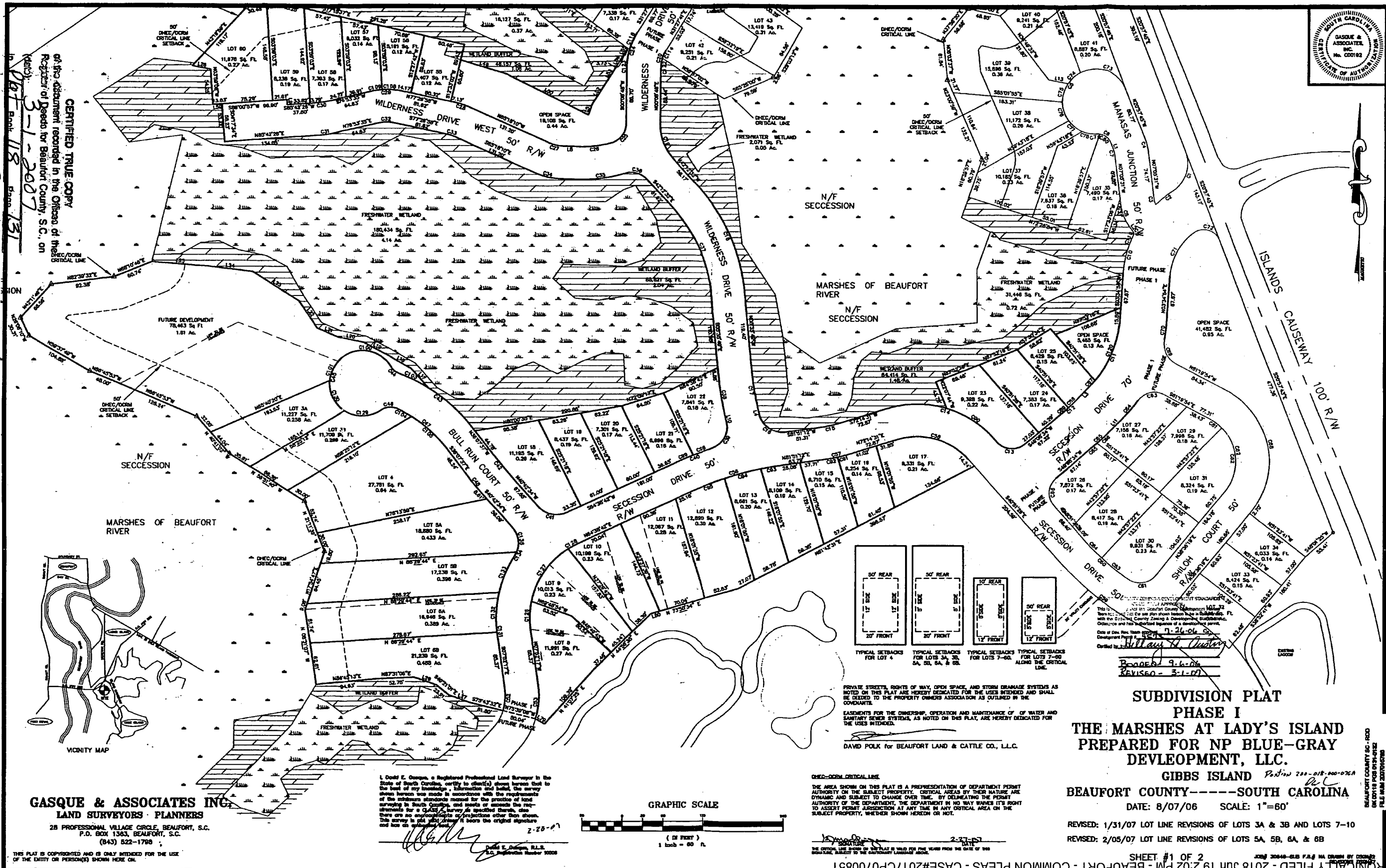
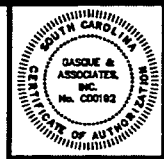
This property is subject to all applicable Restrictions, Covenants, Conditions, Easements, Visible Encroachments or Projections and Rights-of-Way filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

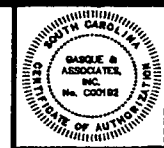
This is the same property conveyed to the within Grantor by deed from Ameris Bank, dated December 20, 2011 and recorded in Book 3107 at Page 2348 in the Office of the Register of Deeds for Beaufort County, South Carolina.

EXHIBIT “D”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady's Island Homeowners' Association et al.
2017-CP-07-851

This document contains 2 pages.
Registered in Beaufort County, S.C. on
April 12, 2018





SUBDIVISION PLAT
PHASE I
THE MARSHES AT LADY'S ISLAND
PREPARED FOR NP BLUE-GRAY
DEVELOPMENT, LLC.

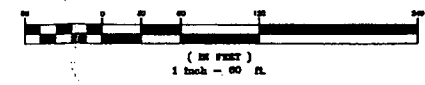
GIBBS ISLAND
BEAUFORT COUNTY-----SOUTH CAROLINA

DATE: 8/07/06 SCALE: 1"=60'

REVISED: 1/31/07 LOT LINE REVISIONS FOR JOE 2004-018 F.S. IN DRAWN BY DORRIS
LOTS 3A & 3B AND LOTS 7 - 10

SHEET #2 OF 2

GRAPHIC SCALE



- STREET ADDRESSES:
- LOT 1 8 BALL RUN COURT
 - LOT 2 8 BALL RUN COURT
 - LOT 3 8 BALL RUN COURT
 - LOT 4 8 BALL RUN COURT
 - LOT 5 8 BALL RUN COURT
 - LOT 6 8 BALL RUN COURT
 - LOT 7 8 BALL RUN COURT
 - LOT 8 8 BALL RUN COURT
 - LOT 9 8 BALL RUN COURT
 - LOT 10 8 BALL RUN COURT
 - LOT 11 8 BALL RUN COURT
 - LOT 12 8 BALL RUN COURT
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 - LOT 59 8 BALL RUN COURT
 - LOT 60 8 BALL RUN COURT

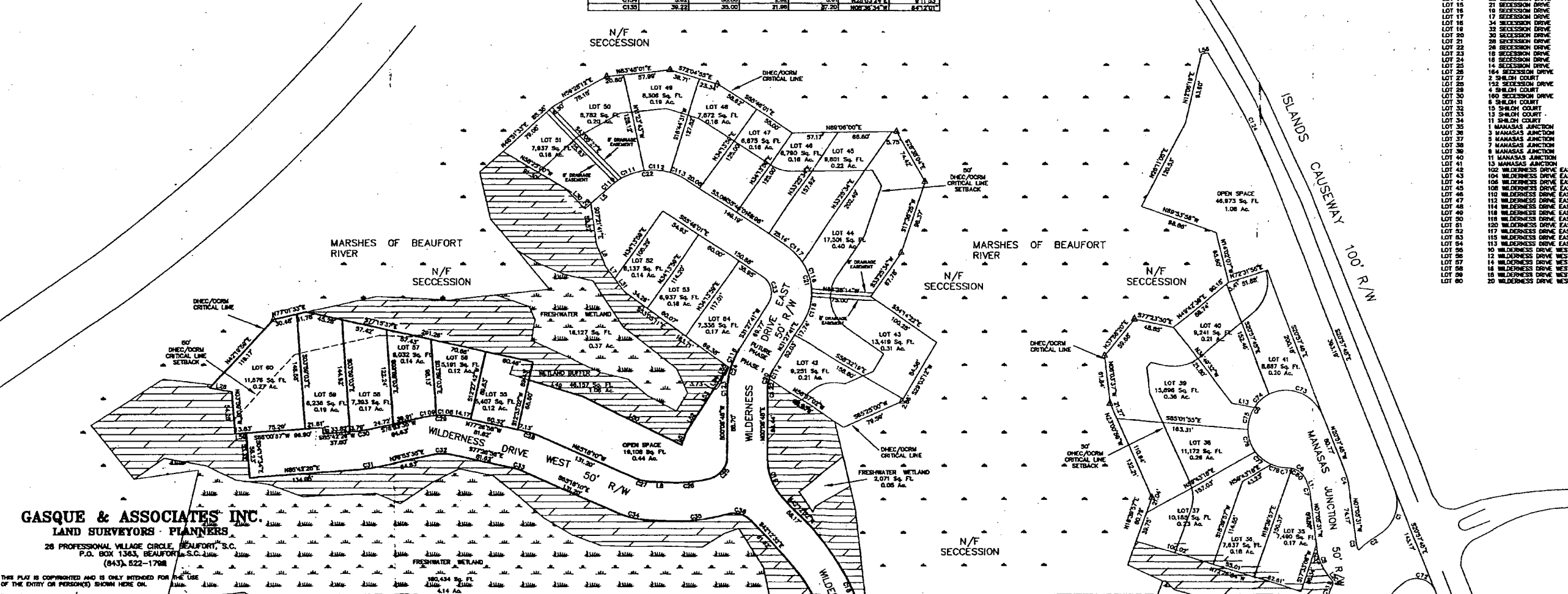
NOTES:
ALL CORNER ARE SET 1/2" REBAR.
A INDICATES CALCULATED POINT.
TOTAL OPEN SPACE = 12.43 ACRES.

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	LONG CHORD	TANGENT
C1	88.00	50.00	177.10°	N177.10°E	62.88	40.43
C2	32.43	100.00	11.90°	N11.90°E	32.43	18.37
C3	3.88	75.00	2.92°	N2.92°E	3.88	2.24
C4	18.18	75.00	13.91°	N13.91°E	18.18	10.71
C5	218.63	200.00	200.00°	S00.00°E	218.63	70.78
C6	30.77	200.00	20.31°	S20.31°E	30.77	17.89
C7	8.09	75.00	3.52°	S3.52°E	8.09	4.84
C8	30.43	75.00	27.31°	S27.31°E	30.43	18.37
C9	3.21	50.00	2.92°	S2.92°E	3.21	1.91
C10	80.03	100.00	20.31°	S20.31°E	80.03	47.84
C11	117.37	100.00	30.41°	S30.41°E	117.37	71.87
C12	30.01	400.00	4.38°	S4.38°E	30.01	17.51
C13	48.48	50.00	82.38°	S82.38°E	48.48	31.40
C14	18.88	100.00	10.91°	S10.91°E	18.88	10.91
C15	28.38	175.00	15.40°	S15.40°E	28.38	16.71
C16	68.00	50.00	89.12°	S89.12°E	68.00	42.73
C17	81.84	475.00	7.26°	S7.26°E	81.84	47.84
C18	178.73	275.00	20.31°	S20.31°E	178.73	103.88
C19	50.44	75.00	42.21°	S42.21°E	50.44	29.00
C20	37.33	50.00	31.85°	S31.85°E	37.33	22.40
C21	115.18	75.00	87.12°	S87.12°E	115.18	71.48
C22	101.28	75.00	77.22°	S77.22°E	101.28	60.08
C23	38.08	25.00	87.12°	S87.12°E	38.08	23.83
C24	54.83	100.00	31.85°	S31.85°E	54.83	31.85
C25	36.98	50.00	70.17°	S70.17°E	36.98	23.83
C26	48.10	175.00	15.40°	S15.40°E	48.10	24.71
C27	18.33	50.00	10.91°	S10.91°E	18.33	10.91
C28	21.30	100.00	12.08°	S12.08°E	21.30	12.08
C29	44.78	100.00	20.31°	S20.31°E	44.78	27.77
C30	28.92	175.00	15.40°	S15.40°E	28.92	16.71
C31	34.81	250.00	8.98°	S8.98°E	34.81	17.34
C32	22.38	50.00	20.31°	S20.31°E	22.38	13.32
C33	10.80	50.00	12.08°	S12.08°E	10.80	12.08
C34	38.87	100.00	22.01°	S22.01°E	38.87	19.88
C35	74.50	125.00	33.69°	S33.69°E	74.50	37.44
C36	57.98	50.00	63.98°	S63.98°E	57.98	34.83
C37	143.77	225.00	20.31°	S20.31°E	143.77	74.44
C38	68.01	50.00	70.17°	S70.17°E	68.01	34.83
C39	81.23	50.00	89.12°	S89.12°E	81.23	48.71
C40	98.87	50.00	108.43°	S108.43°E	98.87	58.38
C41	45.80	35.00	74.28°	S74.28°E	45.80	26.80
C42	57.98	50.00	89.12°	S89.12°E	57.98	34.83
C43	140.86	250.00	22.01°	S22.01°E	140.86	19.88
C44	18.48	25.00	37.52°	S37.52°E	18.48	11.54
C45	338.24	200.00	27.41°	S27.41°E	338.24	188.00
C46	77.01	25.00	81.24°	S81.24°E	77.01	47.84
C47	63.98	200.00	18.43°	S18.43°E	63.98	37.77
C48	41.88	50.00	49.47°	S49.47°E	41.88	24.01
C49	33.13	75.00	20.31°	S20.31°E	33.13	18.84

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	LONG CHORD	TANGENT
C50	82.47	175.00	24.32°	S24.32°E	82.47	24.32
C51	142.88	475.00	17.22°	S17.22°E	142.88	71.87
C52	37.78	25.00	81.24°	S81.24°E	37.78	18.84
C53	108.78	100.00	24.32°	S24.32°E	108.78	60.08
C54	184.34	400.00	5.71°	S5.71°E	184.34	103.88
C55	35.53	50.00	37.52°	S37.52°E	35.53	22.40
C56	45.80	50.00	63.98°	S63.98°E	45.80	26.80
C57	130.82	75.00	89.12°	S89.12°E	130.82	114.88
C58	43.72	50.00	89.12°	S89.12°E	43.72	26.80
C59	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C60	44.88	50.00	63.98°	S63.98°E	44.88	26.80
C61	47.18	50.00	89.12°	S89.12°E	47.18	26.80
C62	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C63	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C64	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C65	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C66	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C67	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C68	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C69	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C70	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C71	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C72	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C73	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C74	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C75	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C76	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C77	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C78	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C79	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C80	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C81	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C82	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C83	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C84	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C85	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C86	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C87	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C88	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C89	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C90	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C91	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C92	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C93	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C94	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C95	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C96	43.77	50.00	89.12°	S89.12°E	43.77	26.80
C97	37.40	25.00	81.24°	S81.24°E	37.40	18.84
C98	78.27	50.00	134.74°	S134.74°E	78.27	47.84
C99	218.03	125.00	33.69°	S33.69°E	218.03	198.00
C100	43.77	50.00	89.12°	S89.12°E	43.77	26.80

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	LONG CHORD	TANGENT
C101	70.83	200.00	20.31°	S20.31°E	70.83	35.42
C102	28.18	100.00	11.90°	S11.90°E	28.18	14.54
C103	18.87	100.00	10.91°	S10.91°E	18.87	10.91
C104	11.77	75.00	8.98°	S8.98°E	11.77	8.98
C105	34.88	75.00	24.32°	S24.32°E	34.88	17.37
C106	31.85	75.00	20.31°	S20.31°E	31.85	16.71
C107	22.80	75.00	13.91°	S13.91°E	22.80	11.54
C108	13.22	75.00	5.71°	S5.71°E	13.22	5.71
C109	41.18	75.00	31.85°	S31.85°E	41.18	22.40
C110	43.77	75.00	37.52°	S37.52°E	43.77	24.01
C111	30.87	75.00	24.32°	S24.32°E	30.87	16.71
C112	27.41	75.00	20.31°	S20.31°E	27.41	15.82
C113	19.88	75.00	13.91°	S13.91°E	19.88	11.54
C114	11.77	75.00	8.98°	S8.98°E	11.77	8.98
C115	37.40	100.00	17.37°	S17.37°E	37.40	17.37
C116	5.88	100.00	3.49°	S3.49°E	5.88	3.49
C117	103.38	100.00	20.31°	S20.31°E	103.38	63.40
C118	31.36	30.38	89.12°	S89.12°E	31.36	17.34
C119	14.11	50.00	10.91°	S10.91°E	14.11	14.08
C120	27.41	100.00	17.37°	S17.37°E	27.41	17.37
C121	24.32	110.00	10.91°	S10.91°E	24.32	11.54
C122	42.01	125.00	18.43°	S18.43°E	42.01	21.20

LINE	LENGTH	BEARING
L1	10.00	S00°00'00"E
L2	12.04	S45°00'00"E
L3	22.38	S45°00'00"E
L4	7.11	N03°00'00"E
L5	33.94	S45°00'00"E
L6	7.83	S00°00'00"E
L7	19.08	S00°00'00"E
L8	84.07	N07°22'00"E
L9	7.71	S00°00'00"E
L10	7.38	N33°00'00"E
L11	22.88	N45°00'00"E
L12	28.90	N53°00'00"E
L13	29.10	S78°00'00"E
L14	56.35	S00°00'00"E
L15	38.81	S00°00'00"E
L16	31.40	S00°00'00"E
L17	33.22	S00°00'00"E
L18	46.45	S34°00'00"E
L19	81.57	S07°00'00"E
L20	98.32	S00°00'00"E
L21	34.06	S70°00'00"E
L22	31.40	S00°00'00"E
L23	28.11	S00°00'00"E
L24	6.53	N48°00'00"E
L25	38.93	N48°00'00"E
L26	31.40	S00°00'00"E
L27	24.48	S00°00'00"E
L28	56.20	S07°00'00"E
L29	28.92	S00°00'00"E
L30	28.40	S70°00'00"E
L31	33.81	S00°00'00"E
L32	33.81	S00°00'00"E
L33	14.51	S00°00'00"E



GASQUE & ASSOCIATES, INC.
LAND SURVEYORS - PLANNERS
28 PROFESSIONAL VILLAGE CIRCLE, BEAUFORT, S.C.
P.O. BOX 1343, BEAUFORT, S.C. 29902
(843) 622-1708

THIS PLAT IS COPYRIGHTED AND IS ONLY INTENDED FOR THE USE OF THE PARTY OR PARTIES SHOWN HERE ON.

EXHIBIT “E”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady’s Island Homeowners’ Association et al.
2017-CP-07-851

4-10-18
Supper
4308

BEAUFORT COUNTY SC - ROD
BK 02467 PGS 0997-1000
FILE NUM 2006087732
10/31/2006 03:38:42 PM
REC'D BY P BAXLEY RCPT# 452890
RECORDING FEES 10.00
County Tax 5,335.00
State Tax 12,610.00
TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

THIS INDENTURE, made and entered into as of the 27 day of October, 2006, by and between NP Blue Gray Development, LLC, a Georgia limited liability company (hereinafter referred to as the "Grantor"), and Mitchell Development Company, Inc., a South Carolina corporation, and Spad Co., LLC, a South Carolina limited liability company (hereinafter referred to as "Grantee") (the words "Grantor" and "Grantee" to include their respective heirs, legal representatives, successors and assigns where the context requires or permits);

WITNESSETH, THAT:

GRANTOR, for and in consideration of the sum of Four Million Eight Hundred Fifty Thousand Dollars and No/100 (\$4,850,000.00) in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto said Grantee, all that tract or parcel of land lying and being located in Beaufort County, South Carolina, known as Lots 1 through 22, inclusive, and Lots 55 through 60, inclusive, The Marshes at Lady's Island, and being more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property").

The within Deed was prepared in the office of Inglesby, Falligant, Horne, Courington & Chisholm, P.C., 17 West McDonough Street, Savannah, Georgia 31401 by Robert B. Brannen, Jr., Esq.

THIS CONVEYANCE and the warranties herein contained are expressly made subject to liens, encumbrances, covenants and restrictions of record, and real property ad valorem taxes not currently due and payable.

TO HAVE AND TO HOLD the said described Property, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, only to the proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

RECORDED
2006 Dec -11 09:04 AM
Sharon G. Burns
BEAUFORT COUNTY AUDITOR

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds in Beaufort County, S.C., on
(date) 10-31-2006
in Plat Book 2467 Page 997
This document contains 4 pages.
Jamelle Baxley
Register of Deeds - Beaufort County, SC
April 12, 2018

AND THE SAID GRANTOR will warrant and forever defend the right and title to the above described Property unto the said Grantee against the claims of all persons and entities whomsoever.

In witness whereof, the undersigned have signed sealed and delivered this instrument the day and year first written above.

NP Blue Gray Development, LLC

Signed, sealed and delivered
in the presence of:

Kelly J. Gatzke
Witness

Robert B. Brannen Jr.
Witness

By: Daniel M. Whalen
Its: MR.

STATE OF Georgia
COUNTY OF Chatham

I Robert B. Brannen Jr. (name of notary) do hereby certify that
Daniel M. Whalen And / / / / /
as Manager of NP Blue Gray Development, LLC, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument on behalf of said entity.

Witness my hand and official seal this the 27th day of October, 2006.

Robert B. Brannen Jr.

Grantee's Address: c/o David Polk
135 Sunset Blvd.
Beaufort, SC 29907

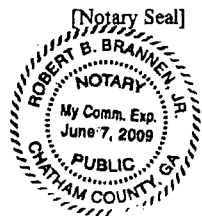


EXHIBIT "A"

ALL those certain lots, tracts or parcels of land situate, lying and being in Beaufort County, South Carolina and being known as **Lots 1 through 22, inclusive, and Lots 55 through 60, inclusive, The Marshes at Lady's Island**, and as shown on that subdivision map entitled, "Subdivision Plat, Phase 1, The Marshes at Lady's Island, Prepared for NP Blue-Gray Development, LLC, Gibbs Island, Beaufort County, South Carolina," prepared by David E. Gasque of Gasque & Associates, Inc., SCRLS No. 10506, dated August 8, 2006, and recorded in Plat Book 115, pages 179 and 180, Beaufort County, South Carolina deed records.

This being a portion of the property conveyed to NP Blue Gray Development, LLC pursuant to the following:

- A. Title to Real Estate from Blue Gray Development, LLC to NP Blue Gray Development, LLC, dated January 6, 2006 and recorded in Deed Book 2301, page 610, Beaufort County, South Carolina records.
- B. Title to Real Estate from Mad Dog of Tampa, LLC to NP Blue Gray Development, LLC, dated January 4, 2006 and recorded in Deed Book 2301, page 607, Beaufort County, South Carolina records.
- C. Title to Real Estate from Richard L. Church and Nancy J. Church to NP Blue Gray Development, LLC, dated January 5, 2006 and recorded in Deed Book 2301, page 617, Beaufort County, South Carolina records.
- D. Title to Real Estate from Lucien Williams to NP Blue Gray Development, LLC, dated January 6, 2006, and recorded in Deed Book 2354, page 2346, Beaufort County, South Carolina records.

See Attached Exhibit "A-1" for PID Numbers

E:\Brannen\DOCS\North Point Property Development, LLC\Scissions (Blue-Gray)\Sale to MEI\Deed.SC 2.wpd

EXHIBIT "A-1"

TAX REFERENCES:

Lot 1	R200 018 000 0556 0000
Lot 2	R200 018 000 0602 0000
Lot 3	R200 018 000 0555 0000
Lot 4	R200 018 000 0554 0000
Lot 5	R200 018 000 0553 0000
Lot 6	R200 018 000 0552 0000
Lot 7	R200 018 000 0603 0000
Lot 8	R200 018 000 0474 0000
Lot 9	R200 018 000 0473 0000
Lot 10	R200 018 000 0472 0000
Lot 11	R200 018 000 0593 0000
Lot 12	R200 018 000 0594 0000
Lot 13	R200 018 000 0595 0000
Lot 14	R200 018 000 0596 0000
Lot 15	R200 018 000 0597 0000
Lot 16	R200 018 000 0598 0000
Lot 17	R200 018 000 0599 0000
Lot 18	R200 018 000 0475 0000
Lot 19	R200 018 000 0331 0000
Lot 20	R200 018 000 0601 0000
Lot 21	R200 018 000 0476 0000
Lot 22	R200 018 000 0477 0000
Lot 55	R200 018 000 0609 0000
Lot 56	R200 018 000 0608 0000
Lot 57	R200 018 000 0607 0000
Lot 58	R200 018 000 0606 0000
Lot 59	R200 018 000 0605 0000
Lot 60	R200 018 000 0604 0000

EXHIBIT “F”

**to the Affidavit of Curtis L. Coltrane in
*River City Developers, LLC v.
The Marshes at Lady’s Island Homeowners’ Association et al.*
2017-CP-07-851**

RECORDED
2010 Apr -20 10:41 AM

Prepared by: McDonnell & Associa
P.O. Box 12245
Columbia, SC 29211

Shawn W. Burns
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MASTER'S DEED
Public Sale

To all whom these Presents shall concern:

I Marvin H. Dukes, III, as Master in Equity for Beaufort County, in the said State, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in Beaufort County between Ameris Bank as Plaintiff and Mitchell Development Company, Stephen E. Mitchell, John David Polk, SPAD Co, LLC., by an Order dated October 30, 2009 and filed of record on October 30, 2009 in Case No. 2009-CP-07-00027, it was decreed that the property hereinafter described should be sold by the Master in Equity for Beaufort County on the terms and for the purposes mentioned in the order(s) granted in the case, as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Master in Equity for Beaufort County, pursuant to the foregoing and in consideration of the sum of Five Hundred and 00/100 Dollars (\$500.00) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto:

Grantee Name: Ameri Bank

Grantee Address: 1301 Gervais Street, Suite 700, Columbia, SC 29201

Property Description:

All those certain pieces , parcels or lots of land, situate, lying and being on Gibbs Island, Beaufort County, South Carolina, shown and designated as Lots: 1, (comprised of Lots 1 and 2 identified on prior plat*) 3A, 5B, 9 16,55,56,57 and 58, The Marshes at Lady's Island, Phase I, and having such metes, courses, distances and bounds as will be more fully shown on that certain plat prepared NP Blue-Gray Development, LLC, by David E. Gasque, R.L.S., under date of March 1, 2007, a copy of which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 118 at Page 131.

This being a portion of the property conveyed to Mitchell Development Company and Spad Co. LLC by deed of NP Blue Gray Development, LLC dated October 27, 2006 and recorded October 31, 2006 in the Office of the Register of Deeds for Beaufort County, South Carolina in Records Book 2467 at Page 997.

* Prior Plat identified as that certain plat prepared NP Blue-Gray Development, LLC, by David E. Gasque, R.L.S., under date of June 6, 2006, a copy of which is recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 115 at Page 180.

Tms# 2006-018-000-0556-0000

ADD DMP Record 4/19/2010 09:56:40 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R200	018	000	0556	0000	00

Book2932/Page434

CERTIFIED TRUE COPY

of the document recorded in the Offices of the
Register of Deeds for Beaufort County S.C., on
(date): 5-11-10

In Book 2932 Page 434
This document contains 4 pages.

Register of Deeds for Beaufort County, S.C.
Bundy 4-13-78

BEAUFORT COUNTY SC-ROD
BK 02932 PGS 0434-0437
ELECTRONICALLY FILED
FILED 2010 JUN 18 2 02 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851
02/11/2010 01:35:07 PM

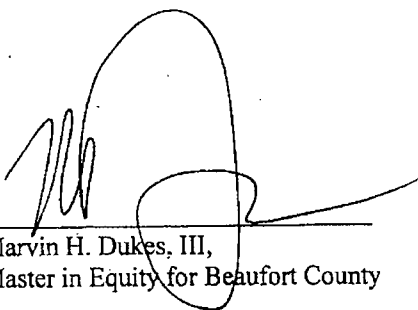
TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, and benefit forever.

IN WITNESS WHEREOF, I, the undersigned, Marvin H. Dukes, III, as Master in Equity for Beaufort County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 12 day of Jan, 2009. 2010

SIGNED, SEALED, AND DELIVERED
in the Presence of:

Heather R. McLeod
Russell R. T.

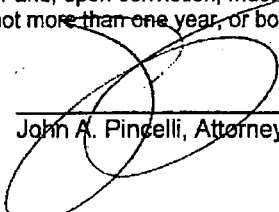

Marvin H. Dukes, III,
Master in Equity for Beaufort County

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

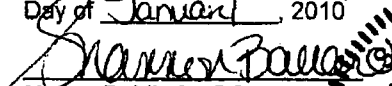
AFFIDAVIT

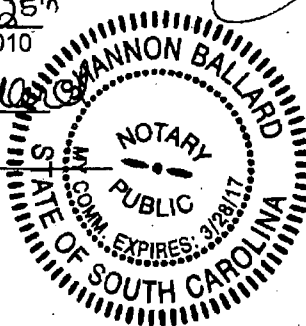
Personally appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and understand such information.
2. The property located at 135 Sunset Blvd, Beaufort, SC 29907 was transferred by Mitchell Development Company to Ameris Bank.
3. The DEED is (check on of the following)
 - (A) ___ Subject to the deed recording fees as a transfer for consideration paid or to be paid in money or money's worth.
 - (B) ___ Subject to the deed recording fees 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 distribution to a trust beneficiary.
 - (C) ☒ Exempt from the deed recording fees because (Exemption # 3)
(Explanation if required) Otherwise exempted under the laws and Constitution of this State or of the United States
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: **Attorney**.
5. I understand that a person required to furnish this affidavit, who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


John A. Pincelli, Attorney

Sworn to before me this 25th
Day of January, 2010


Notary Public for SC
My Commission Expires: _____



INFORMATION

Exception provided in this paragraph, the term "value" means "the consideration paid or to be paid 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 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 purpose in determining fair market value under the provisions of the law.

Exempted from the deed:

- (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) Transfers that are otherwise exempt 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 interests in the realty that are being exchanged in order to partition the realty;
- (6) Transferring an individual grave space at a cemetery company licensed under Chapter 55 of Title 39;
- (7) Transfers that constitute a contract for the sale of timber to be cut;
- (8) Transferring realty to a corporation, a 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 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 partnership" is a partnership whose partners are all members of the same family. 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, grandchildren, and the spouse and lineal descendants of any of 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;
- (12) Transfers 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;
- (13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the same time of the original purchase as well as for the purpose of purchasing the realty;
- (15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under Federal Power Act (16 U.S.C. Section 791 (a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT “G”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady's Island Homeowners' Association et al.
2017-CP-07-851

RECORDED
2012 Jan -10 02:12 PM

Shawn Q. Burns
BEAUFORT COUNTY AUDITOR

3/28/12 5514
Prepared by and return to:
Levin Gilley & Fisher, LLC
Attorneys at Law
P.O. Box 2358
Beaufort, SC 29901-2358
(843) 522-9000
File # 9841-11-F

BEAUFORT COUNTY SC - ROD
BK 03107 PGS 2348-2350
FILE NUM 2011065629
12/27/2011 04:03:54 PM
REC'D BY V GARVIN RCPT# 664339
RECORDING FEES 10.00
County Tax 8.80
State Tax 20.80

TMP No.: R200 018 000 0598 0000

Lot 16, Phase I, The Marshes at Lady's Island, Beaufort, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT **Ameris Bank** ("Grantor"), in the State aforesaid, for and in consideration of the sum of **Seven Thousand Nine Hundred Seventy-Five and 00/100 Dollars (\$7,975.00)**, to it in hand paid at and before the sealing of these presents by **George Wilson Kirven** ("Grantee"), P.O. Box 338, Beaufort, South Carolina 29901, for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **George Wilson Kirven**, his heirs and assigns forever, the following described real property, to-wit:

See Attached Exhibit "A" for Legal Description

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 **George Wilson Kirven**, his heirs and assigns forever.

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 **George Wilson Kirven**, his heirs and assigns forever, against **Ameris Bank** and its Successors and Assigns, for and during the period of Grantor's ownership and no further.

ADD DMP Record 1/4/2012 04:29:45 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R200	018	000	0598	0000	00

CERTIFIED TRUE COPY

of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on

(date) 12/27/2011

in OR Book 3107 Page 2348

This document contains 3 pages.

Carrelle Cox
Register of Deeds - Beaufort County, SC

April 12, 2018

Book3107/Page2348

WITNESS Grantor's Hand and Seal this the 10th day of December, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

AMERIS BANK

Donnie Lewis
Witness 1

W. David Aldridge
By: W. David Aldridge
Its: Vice President - Special Asset Officer

Rachel Benasuly
Witness 2/Notary

Teresa Jones
By: Teresa Jones
Its: Vice President - Lending

STATE OF GEORGIA)
COUNTY OF GLYNN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that **Ameris Bank**, by its Vice Presidents **W. David Aldridge** and **Teresa Jones**, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 10th day of December, 2011.

Rachel Benasuly
Notary Public for Georgia
My Commission Expires: 5/15/15

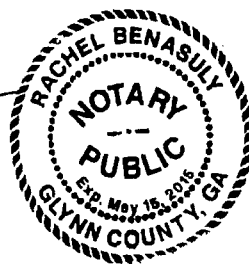


EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being on Gibbs Island, Beaufort County, South Carolina, shown and designated as Lot 16, The Marshes at Lady's Island, Phase I, and having such metes, courses distances, and bounds as will be more fully shown on that certain plat prepared for NP Blue-Grey Development, LLC, by David E. Gasque, R.L.S., under date of March 1, 2007, a copy of which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 118 at Page 131.

This Property is subject to all applicable Restrictions, Covenants, Conditions, Easements, Visible Encroachments or Projections and Rights-of-Way filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being a portion of the same property conveyed to the Grantor herein by Master's Deed given by Marvin H. Dukes, III, as Master-in-Equity for Beaufort County, South Carolina, recorded on February 11, 2010 in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 2932 at Page 434.

THIS DEED WAS PREPARED by the law firm of Levin Gilley & Fisher, LLC, 811 Craven Street, P.O. Box 2358, Beaufort, South Carolina 29902-2358.

TMP No.: R200 018 000 0598 0000

EXHIBIT “H”

to the Affidavit of Curtis L. Coltrane in
River City Developers, LLC v.
The Marshes at Lady’s Island Homeowners’ Association et al.
2017-CP-07-851

3
10
R. Williams
4746

Prepared By and Return to:
Harvey & Battley, P.A.
Thomas C. Davis, Esquire
1001 Craven Street
Beaufort, SC 29902
File No.: P-23313-14CG

RECORDED
2014 Aug -13 10:02 AM

Sharon G. Burns
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3339 Pgs 2817-2819
FILE NUM 2014038297
08/11/2014 03:59:59 PM
REC'D BY fjenkins RCPT# 758215
RECORDING FEES \$10.00
County Tax \$66.00
State Tax \$156.00

EL
RONICALLY FILED - 2018 Jun 19 2:02 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

(Please do not write above this line - Reserved for the Register of Deeds)

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that David M. Mixson (hereinafter called "Grantor"), for and in consideration of the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00) to the Grantor in hand paid at and before the sealing of these presents by River City Developers, LLC, a South Carolina limited liability company (hereinafter called "Grantee"), 1857 Ribaut Road, Port Royal, SC 29935, 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, subject to the easements, restrictions, reservations and conditions set forth below, unto the Grantee, its successors and assigns, in fee simple, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, its successors and assigns forever, in fee simple.

AND THE GRANTOR does hereby bind himself and his heirs and assigns, to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against himself and his heirs and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
date: 8/11/2014

OK Book 3339 Page 2817

This document contains 3 pages.

James B. Burns
Register of Deeds - Beaufort County, SC

April 12, 2018

Book3339/Page2817 CFN#2014038297

WITNESS his hand(s) and seal(s) this 16th day of July, 2014.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

Deena McCullough
1st Witness

David M. Mixson
David M. Mixson

Sara B. Stevens
2nd Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that the Grantor personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this
16th day of July, 2014.

Sara B. Stevens
Notary Public for
My Commission Expires

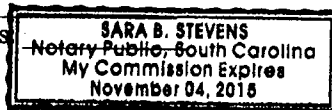


EXHIBIT "A"

ALL those certain pieces, parcels or lots land, situate, lying and being on Gibbs Island, Beaufort County, South Carolina, shown and designated as Lots 55, 56, 57 and 58, The Marshes at Lady's Island, Phase I, and having such metes, courses, distances and bounds as will be more fully shown on that certain plat prepared for NP Blue-Grey Development, LLC, by David E. Gasque, RLS, under date of March 1, 2007, a copy of which is recorded at the office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 118 at Page 131.

This property is subject to all applicable restrictions, covenants, conditions, easements, visible encroachments or projections and rights-of-way filed of record at the office of the register of deeds for Beaufort County, South Carolina.

This is a portion of the same real property acquired by the Grantor herein by deed from Ameris Bank recorded December 28, 2011 in Book 3108 at Page 194 at the office of the Register of Deeds for Beaufort County, South Carolina.

This instrument was prepared by Thomas C. Davis, Esquire, of the law firm of Harvey & Battey, P.A., 1001 Craven Street, Beaufort, South Carolina 29902

BEAUFORT COUNTY TAX MAP REFERENCE:

R200 018 000 609 0000
R200 018 000 608 0000
R200 018 000 607 0000
R200 018 000 606 0000

EXHIBIT “I”

**to the Affidavit of Curtis L. Coltrane in
*River City Developers, LLC v.
The Marshes at Lady’s Island Homeowners’ Association et al.*
2017-CP-07-851**

ADD DMP Record 1/6/2012 12:07:44 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R200	018	000	0473	0000	00

BEAUFORT COUNTY SC - ROD
BK 03108 PGS 0194-0196
FILE NUM 2011065884
12/28/2011 04:02:42 PM
REC'D BY V GARVIN RCPT# 664463
RECORDING FEES 10.00
County Tax 40.70
State Tax 96.20

Prepared by and return to:
Levin Gilley & Fisher, LLC
Attorneys at Law
P.O. Box 2358
Beaufort, SC 29901-2358
(843) 522-9000
File # 9837-11-1

TMP No.: R200-018-000-0473-0000; R200-018-000-0609-0000; R200-018-000-0608-0000;
R200-018-000-0607-0000; R200-018-000-0606-0000
Lots 9, 55, 56, 57, and 58, Phase I, The Marshes at Lady's Island, Beaufort, South Carolina

STATE OF SOUTH CAROLINA)

LIMITED WARRANTY DEED

COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT **Ameris Bank** ("Grantor"), in the State aforesaid, for and in consideration of the sum of **Thirty-Six Thousand Five Hundred Seventy-Five and 00/100 Dollars (\$36,575.00)**, to it in hand paid at and before the sealing of these presents by **David M. Mixson** ("Grantee"), 6 Rush Street, Beaufort, South Carolina 29907, for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **David M. Mixson**, his heirs and assigns forever, the following described real property, to-wit:

See Attached Exhibit "A" for Legal Description

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 **David M. Mixson**, his heirs and assigns forever.

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 **David M. Mixson**, his heirs and assigns forever, against **Ameris Bank** and its Successors and Assigns, for and during the period of Grantor's ownership and no further.

ADD DMP Record 1/6/2012 12:10:45 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R200	018	000	0609	0000	00

ADD DMP Record 1/6/2012 12:11:33 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R200	018	000	0608	0000	00

CERTIFIED TRUE COPY

RECORDED
2012 Jan -10 03:15 PM

is document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C. on

(e): 12-28-2011
Book 3108 Page 194

this document contains 3 pages.

Jamelle B. Burrell
Register of Deeds - Beaufort County, SC

Sharon G. Burrell
BEAUFORT COUNTY AUDITOR

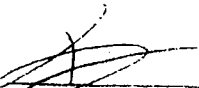
April 12 2018

Book3108/Page194

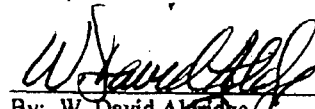
WITNESS Grantor's Hand and Seal this the 27th day of December, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

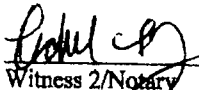
AMERIS BANK



Witness 1



By: W. David Aldridge
Its: Vice President - Special Asset Officer



Witness 2/Notary



By: Teresa Jones
Its: Vice President - Lending

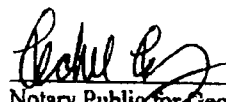
STATE OF GEORGIA

COUNTY OF GLYNN

)
)
) **ACKNOWLEDGEMENT**

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Ameris Bank, by its Vice Presidents W. David Aldridge and Teresa Jones, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 27th day of December, 2011.



Notary Public for Georgia
My Commission Expires: 5/5/15

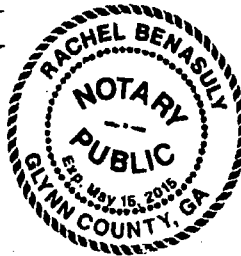


EXHIBIT "A"

ALL those certain pieces, parcels or lots of land, situate, lying and being on Gibbs Island, Beaufort County, South Carolina, shown and designated as Lots 9, 55, 56, 57, and 58, The Marshes at Lady's Island, Phase I, and having such metes, courses distances, and bounds as will be more fully shown on that certain plat prepared for NP Blue-Grey Development, LLC, by David E. Gasque, R.L.S., under date of March 1, 2007, a copy of which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 118 at Page 131.

This Property is subject to all applicable Restrictions, Covenants, Conditions, Easements, Visible Encroachments or Projections and Rights-of-Way filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

This is a portion of the same property conveyed to the Grantor herein by Master's Deed given by Marvin H. Dukes, III, as Master-in-Equity for Beaufort County, South Carolina, recorded on February 11, 2010 in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 2932 at Page 434.

THIS DEED WAS PREPARED by the law firm of Levin Gilley & Fisher, LLC, 811 Craven Street, P.O. Box 2358, Beaufort, South Carolina 29902-2358.

TMP No.: R200-018-000-0473-0000; R200-018-000-0609-0000; R200-018-000-0608-0000;
R200-018-000-0607-0000; R200-018-000-0606-0000

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NUMBER: 2017-CP-07-851
RIVER CITY DEVELOPERS, LLC,	)	
Plaintiff,	)	
vs.	)	
THE MARSHES AT LADY'S ISLAND	)	AFFIDAVIT
HOMEOWNERS' ASSOCIATION; BUNDY	)	
APPRAISAL & MANAGEMENT; FIRST	)	
GREEN, LLC; TIGE HOWIE AND STEPHEN	)	
SCOTT,	)	
Defendants,	)	

Personally appeared before me Curtis L. Coltrane, who, being duly sworn, states as follows:

1. I have been hired to serve as an expert witness by counsel for the Defendant The Marshes At Lady's Island Homeowners' Association in this case. The opinions expressed in this affidavit are based on the allegations in the Complaint and the evidence that is available to me at this time, and are subject to expansion or modification as further evidence or issues are developed.
2. I have been asked to give an opinion on the following question: Is the lot described as Lot Numbers 16, 55, 56, 57 and 58 of "The Marshes at Lady's Island" subdivision encumbered by the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island," which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 662?
3. The "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island," is recorded in the Office of the Register of Deeds for Beaufort County, South

Carolina, in Official Record Book 2301 at Page 662 (hereinafter, the "Declaration"). A certified true copy of the Declaration is attached hereto as **Exhibit "A."**

4. The Declaration includes the following text relevant to the question set out in Number 2 above:

(a) Article I, Section 1.2, entitled "Binding Effect," which reads:

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

(b) Article II, Definition for "Properties" or "The Marshes at Lady's Island," which reads:

The real property described in Exhibit "A."

(c) Exhibit "A" to the Declaration reads as follows:

All those certain lots, tracts or parcels of land situate, lying and being in Beaufort County, South Carolina on Gibbes Island, shown as the "Marshes at Lady's Island, Phase I" on the plat entitled "Marshes at Lady's Island, Phase I, Blue-Gray Estate Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated December 14, 2005, and recorded in Plat Book 111 at Page 17, Beaufort County, South Carolina, RMC Office.

Said property includes, but is not limited to, the following lots, or applicable portions thereof, that have been previously subdivided:

Lots 5, VI A through Lot VI J, inclusive, Lot VII A through Lot VII J, inclusive, Phase I, Secession Golf Club Residential Tract as shown on the plat entitled "Plat Showing Phase I Secession Golf Club Residential Tract", prepared by David E. Gasque, R.L.S. Number 10506, dated January 19, 1999, last revised October 10, 2000, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina, RMC Office.

Lots C-1 through C-5, Lots C-7 and C-8, Lot V3 A through L, inclusive, Blue-Gray Estates Residential Tract, as shown on the plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office.

Lots 1-6 inclusive, Phase III, Secession Golf Club Residential Tract, as shown on that plat entitled "Plat Showing Secession Golf Club Residential Tract, Phase III", prepared by David E. Gasque, R.L.S. No 10506, dated August 4, 2004, and recorded in Plat Book 101, page 76, Beaufort County, South Carolina, RMC Office, said plats being incorporated herein and made a part hereof by reference.

Said property also includes all roads, common areas, future development tracts, marsh, wetlands, and any other undeveloped property included within the boundary lines of the parcel.

EXCEPTING, HOWEVER, from the property conveyed herein, Lot C-6, Lot C-9 and C-10, Phase I, Blue-Gray Estates Residential Tract, as shown on the plat entitled "Plat Showing Phase I, Blue-Gray Estates Residential Tract", prepared by David E. Gasque, R.L.S. No. 10506, dated January 19, 1999, last revised February 6, 2001, and recorded in Plat Book 78, page 42, Beaufort County, South Carolina, RMC Office, which Lots are no owned by Blue Gray, LLC, and the southerly portion of Lot C-8 as shown on said plat, which portion is not included in the description of the property being conveyed by the new plat of Marshes at Lady's Island, Phase I as described above.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Blue Gray, LLC, dated January 6, 2006, and recorded in in Deed Book 111, page 17, Beaufort County, South Carolina, records.¹

See Attached Exhibit A-1 for PID Numbers

NOTICE: This Property subject to Declaration of Restrictive Covenants recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 2287, at Page 2445.

AND, ALSO:

All that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as Lot C6, Phase I, of Blue-Gray Estates, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

¹ The recording information in the derivation is hand written on the original and is incorrect. The deed from Blue Gray, LLC, to NP Blue Gray Development, LLC, is recorded the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 610.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Richard L. Church and Nancy J. Church, dated January 6, 2006, and recorded in in Deed Book 111, page 17, Beaufort County, South Carolina, records.²

PID: 200-018-000-331

AND, ALSO:

All that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as Lot C9, Phase I, of Blue-Gray Estates, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Lucien Williams, dated January 6, 2006, and recorded in in Deed Book 111, page 17, Beaufort County, South Carolina, records.³

PID: 200-018-000-473

AND, ALSO:

All that certain piece, parcel or lot of land, situate, lying and being on Gibbes Island, Beaufort County, South Carolina designated as Lot C10, Phase I, of Blue-Gray Estates, as shown on those certain plats prepared by David E. Gasque, RLS No. 10506, last revised February 6, 2001, and recorded in Plat Book 76, page 110, Beaufort County, South Carolina records and in Plat Book 78, pages 42 through 44, Beaufort County, South Carolina records.

This being the same property conveyed to NP Blue Gray Development, LLC pursuant to that Title to Real Estate from Mad Dog of Tampa, LLC, dated January 6, 2006, and recorded in in Deed Book 111, page 17, Beaufort County,

² The information in the derivation is incorrect. The deed from Richard L. Church and Nancy J. Church to NP Blue Gray Development, LLC, is dated January 5, 2006, and is recorded the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 617.

³ The recording information in the derivation is hand written on the original and is incorrect. The deed from Lucien Williams to NP Blue Gray Development, LLC, is recorded the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2364 at Page 2346.

South Carolina, records.⁴

PID: 200-018-000-474

A certified true copy of the Plat that is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 111 at Page 17 is attached hereto as **Exhibit "B"**.

5. The legal description on Exhibit "A" to the Declaration, encompasses all of the property within the boundaries of the tract shown on the plat recorded in Plat Book 111 at Page 17, and is not restricted to platted building lots. This is shown by the following text that appears in Exhibit "A" to the Declaration:

Said property also includes all roads, common areas, future development tracts, marsh, wetlands, and any other undeveloped property included within the boundary lines of the parcel.

6. Article II, Definition for "Unit," which reads:

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

A parcel shall be deemed to be a single Unit until such time as a plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Unites shown on the plat. Any portion not subdivided shall continue to be a single Unit.

7. The definition for "Unit" is not limited to either a structure or a platted building lot. The language expressly encompasses a parcel that can be subdivided into smaller parcels.

⁴ The information in the derivation is incorrect. The deed from Mad Dog of Tampa, LLC, to NP Blue Gray Development, LLC, is dated January 4, 2006, and is recorded the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 617.

8. River City Developers, LLC, took title to Lot 16 by a deed from George Wilson Kirven that is dated July 24, 2014, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 3339 at Page 2834. A certified true copy of Deed Book 3339 at Page 2834 is attached hereto as **Exhibit "C"**.

9. In the deed for Lot 16, the description is made by referenced to a Plat that is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 118 at Page 131. A certified true copy of the Plat recorded in Plat Book 118 at Page 131 is attached hereto as **Exhibit "D"**.

10. The title of River City Developers, LLC, to Lot 16 traces back to a deed from NP Blue Gray Development, LLC, which is identified as the "Declarant" in the Declaration. NP Blue Gray Development, LLC, conveyed Lot 16 to Mitchell Development Co., *et al.*, by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2467 at Page 997. The Hon. Marvin H. Dukes, III, conveyed Lot 16 to Ameris Bank by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2932 at Page 434. Ameris Bank conveyed Lot 16 to George Wilson Kirven by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, 3107 at Page 2348. Each of these deeds were recorded subsequent to the recording of the Declaration. Certified true copies of the deeds referred to in this paragraph are attached hereto as **Exhibits "E", "F" and "G."**

11. On the Plat recorded in Plat Book 118 at Page 131 (Exhibit "D"), the property described as Lot 16 fronts on "Secession Drive" and lies just to the east of the intersection of "Secession Drive" and "Wilderness Drive."

12. River City Developers, LLC, took title to Lots 55, 56, 57 and 58 by a deed from David

M. Mixon that is dated July 16, 2014, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 3339 at Page 2817. A certified true copy of Deed Book 3339 at Page 2817 is attached hereto as **Exhibit "H."** This deed was recorded subsequent to the recording of the Declaration.

13. The title of River City Developers, LLC, traces back to a deed from NP Blue Gray Development, LLC, which is identified as the "Declarant" in the Declaration. NP Blue Gray Development, LLC, conveyed Lots 55, 56, 57 and 58 to Mitchell Development Co., et al., by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2467 at Page 997. The Hon. Marvin H. Dukes, III, conveyed Lots 55, 56, 57 and 58 to Ameris Bank by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2932 at Page 434. Ameris Bank conveyed Lots 55, 56, 57 and 58 to David M. Mixson by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, 3108 at Page 194. Each of these deeds were recorded subsequent to the recording of the Declaration. Certified true copies of the deeds referred to in this paragraph are attached hereto as **Exhibits "E," "F," and "I."**

13. On the Plat recorded in Plat Book 118 at Page 131 (Exhibit "D"), the property described as Lots 55, 56, 57 and 58 front on "Wilderness Drive West."

14. The property from which Lots 16, 55, 56, 57 and 58 were subdivided is shown on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 111 at Page 17 (Exhibit "B"), and the property described as Lots 16, 55, 56, 57 and 58 all lie within the boundaries of tract described on the Plat.

15. The Deeds into River City Developers, LLC, for Lots 16, 55, 56, 57 and 58 make the

conveyances subject to "all applicable restrictions, covenants, conditions, easements, visible encroachments or projections and rights-of-way filed of record at the Office of the Register of Deeds for Beaufort County, South Carolina."

16. It is my opinion, to a reasonable degree of certainty, that because the description of the property that is encumbered by and subject to the Declaration, includes everything that is within the boundaries of the tract shown on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 111 at Page 17, and because the properties owned by River City Developers, LLC, known as Lots 16, 55, 56, 57 and 58 of "The Marshes at Lady's Island Subdivision" lie within that boundary, the same are encumbered by and are subject to the Declaration.



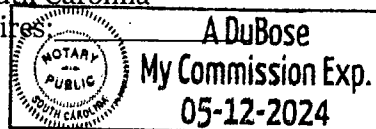
Curtis L. Coltrane

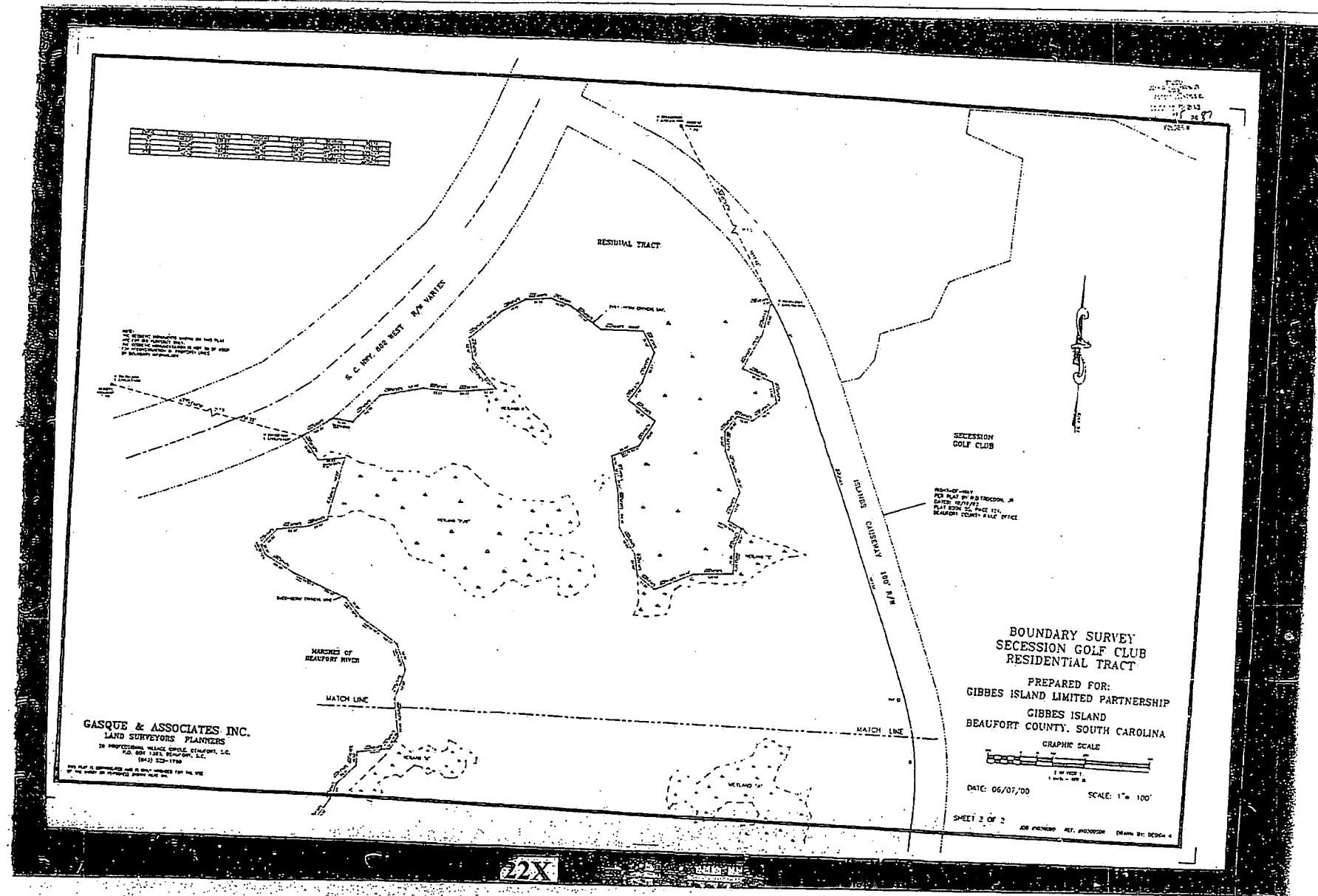
Sworn to Before Me on this
17th Day of April, 2018.



Notary Public for South Carolina

My Commission Expires:





ELECTRONICALLY FILED - 2018 Jun 21 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) (Case No. 2017-CP-07-00851)

RIVER CITY DEVELOPERS, LLC.)
Plaintiff,)
v.)
MARSHES AT LADY'S ISLAND)
HOME OWNERS ASSOC, et al.)
Defendants.)

AFFIDAVIT
(Benjamin C. Gecy)

PERSONALLY appeared before me, Benjamin C. Gecy (herein sometimes "the Affiant"), who, first being duly sworn, says the following:

1. My name is Benjamin C. Gecy, and I am 44 years of age, of sound mind, and I reside at 27 Dolphin Point Drive at Lady's Island in Beaufort County, South Carolina (29907).
2. I am the managing member and sole owner of River City Developers, LLC, a South Carolina limited liability company on whose behalf I am duly authorized to speak.
3. I make this Affidavit on my own personal knowledge.

4. In August of the year 2014, My company River City Developers purchased 5 lots in the community known as The Marshes. These lots contained the following Beaufort County Tax Map Reference #'s:

Lot 55- R200-018-000-609-0000

Lot 56- R200-018-000-608-0000

Lot 57- R200-018-000-607-0000

Lot 58- R200-018-000-606-0000

Lot 16- R200-018-000-0598-0000

5. I received Deeds for all 5 lots that contained the following legal description and derivation language:

"This property is subject to all applicable restrictions, covenants, conditions, easements, visible encroachments or projections and rights-of-way filed of record at the office of the register of deeds for Beaufort County, South Carolina".

6. In addition to the derivation language above, the deed references a plat recorded March 1, 2007 in the office of the register of deeds Beaufort County in plat Book 118 at Page 131.

7. The 5 River City deeds did not reference a specific book and page number for recorded Master Declarations of CCR's, and only contained the language "applicable" as referenced above.

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8. As part of River City's closing on the 5 lots with some of its own money, RCD secured private financing and funding through multiple investors and lenders whom River City had strong previous relationships with.

9. In addition, to receiving the deeds, RCD also received a HUD settlement statement with charges and certifications from Bundy Management on behalf of the Marshes HOA, for pro rated HOA charges and assessments.

10. Approximately a year later in 2015, after closing on the 2nd construction loan, I contacted the Declarant and HOA about the lack of maintenance and access to the open space and common areas. My inquiries were shunned, which forced me to review the HOA's open space maintenance and obligations in the recorded Master Documents.

11. After examining the CCR's recorded on January 10, 2006, I noticed the plat referenced in the Master Declaration, plat book 111 page 17 recorded in the Beaufort County Register of deeds December 14, 2005, was not the same plat describing RCD's 5 lots. I was not familiar with this plat as it was not consistent with the open space or lot designs illustrated in the 2007 plat book 118 at Page 131, which described my property purchased.

12. The Master Declaration for The Marshes was recorded on January 10, 2006 and contained a detailed exhibit "A" of the land initially submitted and subject to the Declaration. None of my lots, nor the above referenced Tax map numbers were

documented in this initial submission to the declaration. I was unable to find any other supplemental recordings to the declaration, subjecting any new or other real property.

13. In fact, the 2007 new plat, 118 at page 131, created an entirely new subdivision, with new lot lines, and new open space areas. It was obvious to me, the developer had expanded and completely changed the community from the original plat "book 111 page 17" and design.

14. I crossed referenced my deeds which described the March 2007 plat book 118 at page 131, recorded on a date March 1, 2007. I searched the public records extensively in an effort to find where the The Marshes HOA, and or The Declarant, subjected the newly formed lots, open space and real property. This search proved to be unsuccessful, as I was unable to find any supplemental recordings to the marshes declaration subjecting any new real property.

15. I was certain the language in 9.1 through 9.4 of the Master Declaration required a filing of supplemental declaration for the newly formed lots described in plat book 118 at page 131, which included RCD's lots 55,56,57,58,16.

16. I contacted a local attorney named Tom Mikell, whom I asked to prepare an opinion on the lots purchased by RCD.



17. Tom Mikell's scope of work was to determine RCD's lot assessment liability, voting rights, as well as, the developers / associations compliance of the expansion procedures spelled out in the Declaration.

18. I have included Tom Mikell's full opinion and research, which has been previously filed as an exhibit to my attorney's MSJ motion.

19. Tom Mikell agreed with my opinion, and concluded the HOA failed to follow the procedures for expansion and annexation of the March 2007 plat and the newly formed real property as described in the March 2007 Plat, Book 118 at Page 131. Therefore, RCD's lots contained no assessment liability nor any voting rights.

20. It was obvious from the Original 2005 plat referenced in the Master Declaration, book 111 page 17, that lots 55, 56, 57, 58 were created from an area (future development & open space) which was exempt from paying assessments as described on page 28 Section 8.8 (a) and (c) of the Master Declaration. The future development tract owned by the declarant and the open space dedicated for the HOA, are clearly exempt from assessments as described section 8.

21. The Master Declaration allows the developer to expand the community and provides a procedure for annexing newly formed lots and real property. This procedure of adding newly formed real property and units requires the filing of a supplemental declaration as described in Section 9.



22. It was obvious from the multiple plat recordings and reconfigurations of the community, the developer was expanding and trying to create additional units and real property.

23. In 2015, I forwarded my findings and Tom Mikell's research to the HOA Board, The Declarant, and Counsel for the HOA and Declarant.

24. My initial letters offered assistance in cleaning up the records by filing a Supplemental Declaration identifying the new lots and open space.

25. All of my letters reflected the urgency in correcting the records with a Supplemental Declaration.

26. To help expedite compliance with the procedures, I offered to pay for the corrections and supplemental filings with my attorney, Ray Williams.

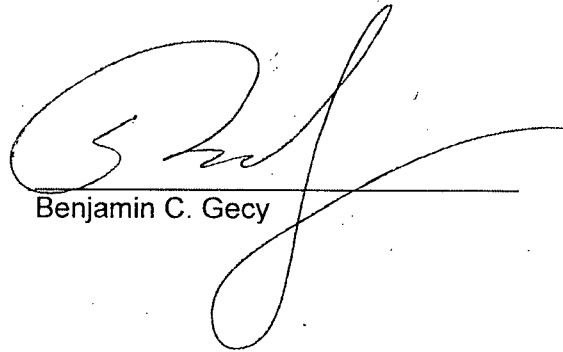
27. In 2015, I also notified The HOA, its agents, and attorneys, that RCD and its lots were not obligated to assessment liability until the Supplemental Declaration was filed. It was at this time I protested and refused to pay anymore assessments or charges until the HOA and developer complied with the procedures for expansion.

(u)

28. The HOA, and its agents and attorneys continued to bill RCD for assessments, late fees and attorney fees. I disputed every attempt to collect with return notices, copied to The HOA, The Declarant and Bundy Management.

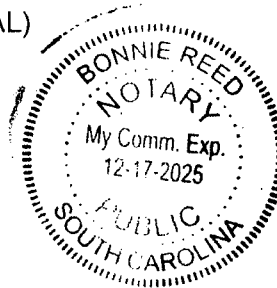
29. The continued interference and collection efforts by The HOA, and its agents have forced me to file the underlying action (Case No. 2017-CP-07-00851) seeking relief from the court.

FURTHER THE AFFIANT SAYETH NOT.


Benjamin C. Gecy

SWORN to and Subscribed before me
on this 7th Day of August, 2018.


Notary Public for South Carolina
My Commission Expires: 12-17-2025 (SEAL)





LAW OFFICES
J. THOMAS MIKELL, PC

POST OFFICE BOX 1727 (29901)
14 PROFESSIONAL VILLAGE CIRCLE (29907)
BEAUFORT, SOUTH CAROLINA
PHONE (843) 524-2110
FAX (843) 524-4995

J. THOMAS MIKELL*
BENJAMIN T. COPPAGE (SC & GA)

tom@mikelllaw.com
ben@mikelllaw.com

November 4, 2015

Michael A. Timbes
c/o Thurmond Kirchner Timbes & Yelverton, P.A.
15 Mid-Atlantic Wharf
Suite 101
Charleston, SC 29401

Re: The Marshes at Lady's Island
Our File: 5368.0001

Dear Mr. Timbes:

Recently Ben Gecy of River City Developers, LLC retained me to review the Governing Documents related to Lots 16, 55, 56, 57 and 58 in that planned real estate development known as The Marshes at Lady's Island. I was requested to determine (1) if those Lots are subject to the Declaration of Covenants (Record Book 2301 at Page 662) for that development, and, (2) if First Green, LLC is the developer?

In the process of reviewing those two issues I examined the materials stated on Attachment A hereto. My examination of those documents led me to the cogent findings stated on Attachment B hereto for the first question and to the cogent findings stated on Attachment C hereto for the second question.

Based on these findings, my conclusions are these:

Issue One. The land initially submitted to the provisions of the Declaration does not include the five Lots (15, 55-58) and the land subject to annexation does not include the five Lots, it only refers to acreage. A similar issue has previously been ruled on in Davey v. Artistic Builders, Inc. 263 S.C. 431, 211 SE2d 235 (1975). In that case there was not a section in the

* Certified Mediator and Arbitrator
* Member - College of Community Association Lawyers

Declaration specifically designating the method of annexation which does exist in Record Book 2301 at Page 662.

There is a method to annex (to "add" by my Thesaurus) Lots into the development (which is called an expandable declaration in the world of real estate development) that is spelled out in Sections 9.1 and 9.4 of the Declaration. That method of annexation was not complied with as there is no recorded Supplemental Declaration stating (1) the Lots to be annexed nor (2) a recorded Supplemental Declaration stating that the provisions of the Declaration are to apply to those new Lots.

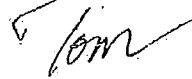
As restrictive covenants are contracts and they are strictly construed by the Courts, the provisions of the contract, i.e. the Declaration, have not been complied with.

Thus, the Declaration of Covenants in Record Book 2301 at Page 662 does not apply to Lots 16, 55-58 for the failure to follow the contractual process stated in the Declaration.

Issue Two. Again, the Declaration spells out who the Declarant shall be, i.e., the recorded assignee of NP Blue Gray Development, LLC. At this time the recorded assignee is SCBT, NA so that entity is the Declarant.

I will be glad to discuss any of these matters with you at your convenience.

Sincerely,



J. Thomas Mikell

Cc: Ben Gecy
c/o River City Developers, LLC



Attachment A -- Documents Examined

1. Declaration of Covenants in Record Book 2301 at Page 662.
2. Assignment by NP Blue Gray Development, LLC to Revelation Development, LLC in Record Book 2644 at Page 2351.
3. Assignment by Revelation Development, LLC to SCBT, NA in Record Book 2830 at Page 2307.
4. Plat Book 111 at Page 17.
5. Plat Book 115 at Page 179.
6. Plat Book 118 at Page 126.
7. Plat Book 118 at Page 131.
8. Letter by Ben Gecy of September 10, 2015.
9. Letter by Michael A. Timbes of October 2, 2015.
10. Letter by Ben Gecy of October 6, 2015.
11. Letter by Michael A. Timbes of October 15, 2015.

Attachment B - Cogent Findings

ISSUE ONE

(Are the Lots subject to the Declaration of Covenants?)

1. The Table of Exhibits on page 4 of the Declaration in Record Book 2301 at Page 662 states that Exhibit A is the land Initially Submitted (to the provisions of the Declaration) and that Exhibit B is the land Subject to Annexation.
2. A review of Exhibit A refers to Plat Book 111 at Page 17 and some lots previously surveyed and numbered on other recorded plats.

None of those plats has a Lot 16, 55, 56, 57 or 58 on it.

To the contrary, where Lot 16 was subsequently platted there is a blank area and where Lots 55, 56, 57 and 58 were subsequently platted, it states the area to be for "Future Development" as part of a 30.60 acre tract.

In summary, none of the five lots under examination existed at the time the Declaration in Record Book 2301 at Page 662 was executed and recorded.

3. A review of Exhibit B (Plat Book 75 at Page 874) reveals a boundary survey of 86.03 acres; i.e., none of the five lots existed at the time the Declaration was recorded but the areas where they are located are defined on Exhibit B as "Land Subject to Annexation".
4. The method to effectuate an annexation is clearly stated in the Declaration in Record Book 2301 at Page 662 in the Index on page ii as Article IX entitled "Expansion".
5. Specifically, Section 9.1 plainly states that the Declarant may, from time to time, subject... all or any portion of the property described in Exhibit B by recording a Supplemental Declaration describing the property being subjected.

In constitutional law this type of clause is called a "granting clause" because it grants the body (the Declarant in this case) the authority to do an act but it does not accomplish that act.

6. In addition, Section 9.4 plainly states that the Supplemental Declaration will be effective "... upon recording..." and at that time the owners of the land subjected by the Supplemental Declaration shall have voting rights and assessment liability.

It is very clear from this language that it is only at the point in time when the Supplemental Declaration that describes the lots being subjected to the Declaration is recorded that the provisions of the Declaration to include voting rights and assessment obligations become applicable to the annexed Lots.



This constitutes a restriction upon the act of the Declarant when the act is thereafter performed.

7. At no place in any of the recorded documents is there a statement or anything akin to such a statement which states that newly platted Lots become subject to the provisions of the Declaration merely by the recording of a plat that describes those new lots.
8. There is no recorded Supplemental Declaration which (a) describes Lots 16, 55, 56, 57 and 58 (nor any other Lot except those on Plat Book 111 at Page 17) and (b) that those newly platted Lots are thereafter subject to the provisions of the Declaration in Record Book 2301 at Page 662 which two conditions are prescribed by Sections 9.1 and 9.4.
9. Section 1.3 of the Declaration in Record Book 2301 at Page 662 states that the "Governing Documents" apply to all Owners.
10. A review of the definition of Governing Documents as stated in the diagram on Page 2 has these words:

Supplemental Declaration adds property to The Marshes at Lady's Island;
(Recorded)

Thus, this language states that for a Supplemental Declaration to apply, it must be "recorded" and by that process there is an addition (a synonym to annexation) to the Declaration.

11. On Page 6 in the definition Section of the Declaration at Record Book 2301 at Page 662 the term "recorded" is defined as being filed at the RMC Office of Beaufort County.

Again, the Supplemental Declaration must be recorded at the RMC Office of Beaufort County for it to apply.

ATTACHMENT C -- COGENT FINDINGS

ISSUE TWO

(Is First Green, LLC the developer?)

1. The Definition of Declarant in Article II of the Declaration of Covenants in Record Book 2301 at Page 662 is NP Blue Gray Development, LLC, or, any successor or assign who (a) takes title of the property described in Exhibits A or B for the purpose of development and/or sale and (b) who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.
2. There is a recorded Assignment of Declarant Rights in Record Book 2644 at Page 2351 from NP Blue Gray Development, LLC to Revelation Development, LLC.
3. There is a recorded Assignment of Declarant Rights in Record Book 2830 at Page 2307 from Revelation Development, LLC to SCBT, NA.
4. There is no subsequently recorded assignment of developer rights.





STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF RAYMOND H. WILLIAMS

PERSONALLY appeared before me RAYMOND H. WILLIAMS, who, after being duly sworn, sayeth:

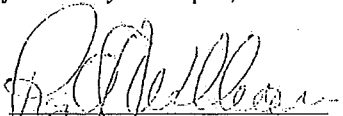
The underlying facts in this matter arise from the Declaration of Covenants for The Marshes of Lady's Island as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2301 at Page 662 (the "Declaration"). The property described in said Declaration references Plat Book 111 at Page 17, recorded January 9, 2006 ("Original Plat"). Thereafter a separate plat was recorded on March 1, 2007 in Plat Book 118 at Page 131 ("Subdivided Plat"), which subdivides several lots which were shown as "FUTURE DEVELOPMENT" on the Original Plat referenced in the Declaration. The Declaration has not been amended nor supplemented to reference the subdivided lots as shown on the Subdivided Plat.

Attached please find my letter dated November 9, 2016 to Kathy Bundy, the Manager for The Marshes at Lady's Island Homeowners Association ("HOA Manager"), which includes a letter from J. Thomas Mikell, Esq. (see Exhibit A). This letter was forwarded by the HOA Manager to Michael Timbes, Esq., attorney for developer of The Marshes at Lady's Island. I have further contacted Michael Timbes on November 28, 2016 and informed him that the Declaration had not been amended to show the acreage or "FUTURE DEVELOPMENT" as subdivided. Mr. Timbes stated that he would record a supplemental declaration for The Marshes at Lady's Island.

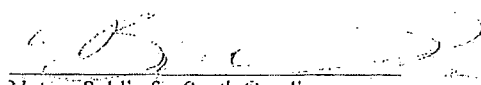
At the time of closing for Lot 55 a/k/a 10 Wilderness, the HOA Manager provided the attached invoice to be collected at closing for past due 2015 and 2016 HOA dues in the total amount of \$1,056.93 (see Exhibit B). We had attempted to reach an agreement to place the amount due being charged by the HOA in escrow, pending the recordation of a Supplemental Declaration. However, developer's attorney Michael Timbes informed us that the HOA would not agree to escrow. An ALTA settlement statement was prepared by buyer's attorney which collected the amount billed by the HOA, and signed by River City Developers, LLC as seller (see attached Exhibit C the "Initial Settlement Statement"). The developer's attorney thereafter put the closing attorneys on notice via telephone that the amount of HOA dues needed to be increased by \$305.29 to include a portion of the legal expenses incurred in connection with the seller's four lots. A revised and final settlement statement was thereafter signed by River City Developers, LLC, which included HOA dues which were paid to the HOA in the amount of \$1,362.29 (see Exhibit D the "Final Settlement Statement"). The HOA dues collected at closing were thereafter forwarded to the HOA Manager with the attached letter of protest (see Exhibit E).

There is no agreement that the Affiant has knowledge of regarding the escrow or potential escrow of any HOA dues which are due and owing on any lot owned by River City Developers, LLC.

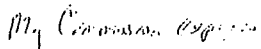
FURTHER AFFIANT SAYETH NOT.

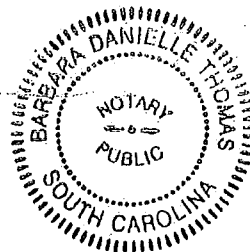

Raymond H. Williams

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 11th DAY
OF DECEMBER, 2016.


Notary Public for South Carolina

(SEAL)


7/23/2017



ELECTRONICALLY FILED - 2018 Jun 21 12:22 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700851

EXHIBIT A

Letter from Raymond H. Williams
Letter from J. Thomas Mikell

RAYMOND H. WILLIAMS, P.A.

Attorney at Law
800 Congress Street (Zip: 29902)
Post Office Drawer 1027
Beaufort, SC 29901-1027
Phone: (843)521-5000
Facsimile: (843)521-3098
RH.Williams@hargray.com

November 9, 2016

VIA U.S. MAIL and email to kathy@bundyinc.com

Kathy Bundy
The Marshes at Lady's Island Homeowners Association
P.O. Box 1225
Beaufort, SC 29901

Re: 10 Wilderness Drive a/k/a Lot 55, The Marshes at Lady's Island
14 Wilderness Drive a/k/a Lot 57, The Marshes at Lady's Island

Dear Kathy:

Please be advised that I represent River City Developers, LLC with regard to the sale of the above referenced properties. As you probably know, Benjamin Gecy and Tom Mikell have previously brought attention to concerns regarding the recorded restrictions for The Marshes (see attached letter from Mr. Mikell dated November 4, 2015).

After review of the Declaration of Covenants, Conditions & Restrictions for The Marshes recorded in Book 2301 at Page 662 and the assignments as recorded in Book 2644 at Page 2351, Book 2830 at Page 2307 and Book 2897 at Page 1321, please be advised that I concur with Tom Mikell's cogent findings that the Declaration of Covenants, as recorded, do not apply to the lots purchased by River City Developers, LLC (Lots 55, 56, 57 and 58). The land initially submitted in the declaration does not include the subdivided lots, nor were these lots officially annexed into the development by way of a supplemental declaration. To be in compliance with the provisions of the original declaration, the developer needs to record a supplemental declaration. *(Please note: The developer is First Green, LLC per Assignment of Declarant's Rights recorded in Book 2897 at Page 1321).*

I understand that your records currently show the 2015 and 2016 assessments now due on the lots currently owned by River City. I suggest we collect any unpaid assessments at closing to hold in escrow, pending the recordation of a supplemental declaration which specifically annexes the lots into the development. Please review and advise at your earliest convenience, as Mr. Gecy is anxious to resolve this matter.

Please feel free to contact me with any questions or comments.

Most sincerely,

Raymond H. Williams

RHW/bdt

cc: Henri Ann Logan, Esquire (settlement agent for Lot 55)
Derek C. Gilbert, Esquire (settlement agent for Lot 57)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2017-CP-07-851
RIVER CITY DEVELOPERS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	SUPPLEMENTAL AFFIDAVIT
THE MARSHES AT LADY'S ISLAND	)	
HOMEOWNERS' ASSOCIATION; BUNDY	)	
APPRAISAL & MANAGEMENT; FIRST	)	
GREEN, LLC; TIGE HOWIE AND STEPHEN	)	
SCOTT,	)	
	)	
Defendants,	)	

Personally appeared before me Curtis L. Coltrane, who, being duly sworn, states as follows:

1. I have been hired to serve as an expert witness by counsel for the Defendant The Marshes At Lady's Island Homeowners' Association in this case. The opinions expressed in this affidavit are based on the allegations in the Complaint and the evidence that is available to me at this time, and are subject to expansion or modification as further evidence or issues are developed.
2. I have been asked to give an opinion on the following question: Is the lot described as Lot Numbers 16, 55, 56, 57 and 58 of "The Marshes at Lady's Island" subdivision encumbered by the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island," which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 662.
3. Exhibit "A-1" to "Declaration of Covenants, Conditions, and Restrictions for The

Marshes at Lady's Island," is a listing of tax parcel identification numbers for the properties that are encumbered by the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island."

4. On Exhibit "A-1" which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2301 at Page 713, the tax parcel identification number described as "R200-018-000 076A (part) - 17 Acres Gibbes Island," appears.

5. Lot Numbers 16, 55, 56, 57 and 58 were subdivided by the recording of a plat on September 6, 2006, entitled "Subdivision Plat Phase 1 The Marshes at Lady's Island Prepared for NP Blue-Gray Development, LLC. Gibbes Island, Beaufort County, South Carolina," in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 115 at Page 179.

6. On face of the recorded Plat, the following notation appears: "R200 018 000 076A," which the same tax parcel identification number as is shown on Exhibit "A-1" to the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island."

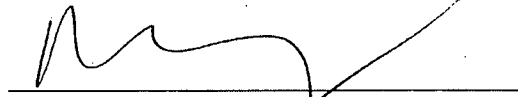
7. It is my opinion, to a reasonable degree of certainty, that, in addition to the reasons stated in my affidavit dated April 17, 2018, that because the Lots numbered 16, 55, 56, 57 and 58, were subdivided from the parcel bearing tax parcel identification number "R200 018 000 076A," and because the property bearing tax parcel identification number "R200 018 000 076A," is listed on Exhibit "A-1" to the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at Lady's Island," the same are encumbered by and are subject to the "Declaration of Covenants, Conditions, and Restrictions for The Marshes at

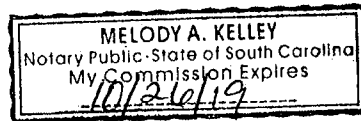
Lady's Island."



Curtis L. Coltrane

Sworn to Before Me on this
23rd Day of July, 2018.



Notary Public for South Carolina
My Commission Expires: _____

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4484

STATE OF SOUTH CAROLINA	)	SUPPLEMENTAL DECLARATION TO
	)	DECLARATION OF COVENANTS, CONDITIONS,
	)	AND RESTRICTIONS FOR WRIGHT'S POINT
COUNTY OF BEAUFORT	)	

WHEREAS, Anthony R. Porter and Jimmy W. Porter, collectively, as Developer, filed that certain Declaration of Covenants, Conditions, Restrictions and Easements for Wright's Point, dated April 24, 1998, and recorded in Book 1049, Page 2283, and as rerecorded in Book 1152, Page 2278, in the ROD Office for Beaufort County, as amended and supplemented from time to time (the "Declaration"); and

WHEREAS, Article I, Section 1.12 of the Definitions defined Developer in Part as, "Developer shall mean and refer to (a) Anthony R. Porter, or", and

WHEREAS, in Article II, Section 2.03, second paragraph, it provides as follows:

"Developer reserves unto himself, his heirs and assigns, the right to develop and submit additional phases to this Declaration of Covenants, Conditions, Restrictions and Easements, Wright's Point Homeowners Association, Inc. and related documents. Such additional phases shall be limited to the property which Developer has acquired from Lewis H. Wright, et al and/or Mary P. Logan, of any properties contiguous thereto. Such additional phases will be subject to all of the Covenants, Conditions, Restrictions and Easements and the By-Laws upon Developer, his heirs and assigns, filing a copy of the plat signed by the Developer showing such additional phases or in the alternative filing with the Clerk of Court for Beaufort County, South Carolina his intention to add additional phases to the development.", and

BEAUFORT COUNTY SC- ROD
BK 02533 PGS 0260-0266
DATE: 03/07/2007 11:48:58 AM
INST # 2007018349 RCPT# 475342

CHARLESTON 285333v1

WHEREAS, Anthony R. Porter wishes to acknowledge that Jimmy W. Porter is a Developer, even though his name was not set forth in Article I, Section 1.12, and

WHEREAS, Richard Ratcliff Homes, Inc. (Ratcliff") has acquired a portion of "Parcel B" and "Parcel D" as described in Exhibit A to the Declaration. Anthony R. Porter is in the chain as to Parcel B and Jimmy D. Porter is in the chain as to Parcel D; and

WHEREAS, Ratcliff has obtained a subdivision plat showing 20 Lots and a roadway which are already subject to the Declaration, and said Lots are more fully shown as "Lots 1 thru 11 and 13 thru 21" on a plat entitled, "SUBDIVISION PLAT FORMERLY PARCELS "D-1", "D-2", "D-3" & RIGHT-OF-WAY, BECOMING WRIGHTS POINT SUBDIVISION, A PORTION OF PHASE II PREPARED FOR RICHARD RATCLIFF AND RICHARD RATCLIFF HOMES, INC., PORT ROYAL ISLAND, BEAUFORT COUNTY ---- -- SOUTH CAROLINA", dated February 28, 2007, by David E. Gasque, R.L.S., recorded contemporaneously herewith in the ROD Office for Beaufort County, South Carolina ("Plat"), and

WHEREAS, Developer wishes to file the within Supplemental Declaration as authorized by Article II, Section 2.03 of the Declaration and Ratcliff has joined in to acknowledge its consent to the within Supplemental Declaration; and

WHEREAS, the name of the Association is incorrect in the Declaration and the Developer wishes to correct the name.

NOW THEREFORE, in consideration of the premises contained herein, the Developer does hereby record this Supplemental Declaration:

CHARLESTON 285333v1

1. Pursuant to Article II, Section 2.03, Developer does hereby add and subject Lots 1 thru 11 and 13 thru 21 ("Lots") as shown on the Plat to the Declaration.

2. Ratcliff, the owner of the above referenced Lots hereby joins in and consents to this Supplemental Declaration and acknowledges that the Lots are subject to the Declaration.

3. The Declaration is hereby amended to correct the name of the Association in all places to, "WRIGHT'S POINT HOMEOWNERS ASSOCIATION.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this

28th day of February, 2007.

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CHARLESTON 285333v1

Michelle Hobson

First witness signs here

Paul A. Austin

Second witness signs here

Notary may act as witness

DEVELOPER

Anthony R. Porter

(L.S.)

ANTHONY R. PORTER

STATE OF NC

COUNTY OF Mitchell

I, Sean A. Austin, Notary Public for the State of NC, do hereby certify that ANTHONY R. PORTER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 28 day of February, 2007.

Paul A. Austin

Notary Public, State of NC

My commission expires: 2/15/09

Michelle Hobson

First witness signs here

John A. Austin

Second witness signs here

Notary may act as witness

DEVELOPER

Jimmy W. Porter (L.S.)
JIMMY W. PORTER

STATE OF NC

COUNTY OF Mitchell

Mr. Sean A. Austin, Notary Public for the State of
NC, do hereby certify that JIMMY W. PORTER personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 28 day of February, 2007.

Sean A. Austin
Notary Public, State of NC
My commission expires: 2/15/09

CONSENT

Richard Ratcliff Homes, Inc., the owner of the Lots as shown on the Plat hereby consents and joins in this Supplemental to acknowledge that its Lots are subject to the Declaration.

This 1st day of March, 2007.

RICHARD RATCLIFF HOMES, INC.

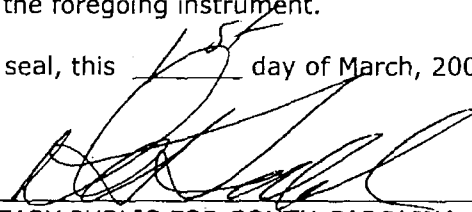
BY [Signature]
Its: PRESIDENT

[Signature]
Witness
[Signature]
Witness

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary, do hereby certify that Richard J. Ratcliff, President of Richard Ratcliff Homes, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my Hand and official seal, this 15 day of March, 2007.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9-19-12

(SEAL)

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 10, 2020



Stephen A. Spitz (SC Bar #5287)
Irish "Ryan" Neville (SC Bar # 76513)
STEVENS & LEE
151 Meeting Street, Suite 350
Charleston, SC 29401
Phone: 843-414-5080
irn@stevenslee.com
sasp@stevenslee.com
ATTORNEYS FOR APPELLANT

RECEIVED
JAN 16 2020
SC Court of Appeals