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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-213155

Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property
Owners Association, Inc.,.....Respondents,

v.

Palms Properties, LLC,.....Defendant.

Palms Properties, LLC,.....Third-Party Plaintiff,

v.

Rivers Point Row, LLC, John Derbyshire, Linda Derbyshire, and John Hagerty,.....Appellants.

RECORD ON APPEAL
VOLUME VI

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April 15, 2013



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1 conferred with anybody like, you know, engineer or
2 surveyor, you know, one of your friends, your father,
3 your sisters, anybody that's not a lawyer about the
4 ownership issue that Mr. Mikell presented to you?

5 A You know, my father knows about it, but he
6 really hasn't gotten involved in this.

7 Q Okay. Have you looked at the master deed and
8 the amendments to the master deed of the HOA yourself?

9 A I have.

10 Q And have you looked at any other documents
11 like that, any deeds or records of the Rivers Point
12 Row, LLC, anything like that?

13 A No.

14 Q After this issue came up, and by that, I mean
15 the issue Mr. Mikell raised with you, did you get back
16 in touch with Mr. Hagerty? And again, in doing this,
17 please don't tell me anything that Mr. David or
18 anybody in his office related back to you that he'd
19 heard. Okay? I'm talking about you directly.

20 A I did not directly get involved with Mr.
21 Hagerty again, after the closing.

22 Q So you hired lawyers. And after that, your
23 dealings were primarily with them?

24 A Well, from Mr. Mikell's explanation of the
25 situation, this was something that was, you know,

1 required legal knowledge to sort out.

2 Q Other than, again, what you may have learned
3 or talked with your attorneys about, did you get back
4 in touch with anyone at the homeowners' association,
5 after Mr. Mikell raised this issue with you?

6 A I only had one contact with Mr. Bruner.
7 Actually, he contacted me wanting to know what was
8 going on, what was happening. And I responded back, I
9 think, through e-mail that I just didn't know what was
10 going on or what was happening at this point.

11 Q Okay. How recently or long ago was that?

12 A I'd say a couple of years.

13 Q Okay. And again, don't tell me about any
14 legal advice you've gotten, but when you -- when Palms
15 purchased this property, did it purchase title
16 insurance?

17 A No, it did not.

18 Q Can you explain that issue to me without
19 telling me anything your lawyers might have told you?

20 A Well, the reason that I didn't purchase it,
21 maybe I misunderstood the purpose of title insurance,
22 but I always understood it to be something that if
23 someone had claims to the property, someone that may
24 have owned it from the past had claims to it, that, if
25 you owned it, they could come and claim it and get it.

1 And if you had insurance, that would cover you in case
2 something like that happened.

3 The way I was looking at it is, you know,
4 this is a piece of property on a, you know,
5 development, you know, of townhouses and apartments.
6 And I really sincerely doubted that anyone had a claim
7 to that one little piece of property that I was
8 purchasing.

9 Q Did you have any conversations or discussions
10 with Mr. Hand about that, at or before the closing?

11 A Other than him just saying, "Are you sure you
12 don't want it?", during the closing.

13 Q How much did Palms pay for this property?

14 A \$180,000.

15 Q Was all or any part of that financed?

16 A No, it was cash.

17 Q What was the source of the cash for that?

18 A Just savings.

19 Q And was that money that Palms had accumulated
20 through its other operations, or was that personal
21 savings of some of the members?

22 A This was actually money that my father had
23 accumulated, that he essentially loaned to me.

24 Q Did he loan it to you or to Palms?

25 A He loaned it to Palms.

1 Q Was that loan documented in any way? Is
2 there any note --

3 A We have a contract written up.

4 Q Do you know, and I can look at the contract,
5 but off the top of your head, do you know if it
6 provided for interest?

7 A Yeah, I was being charged 7 percent.

8 Q And were there any interim payments that were
9 supposed to be made on that?

10 A No, no. Actually, the payments were supposed
11 to be paid in full, when the property was developed
12 and the townhouses were sold.

13 Q And you anticipated my next question a little
14 bit: Was the plan to build these townhouses and sell
15 them, or was the plan to build them and hold them as
16 rental property as you had on Teresa?

17 A I was actually going to hold a couple of the
18 buildings myself. But the other ones, I actually had
19 sold four of them to people who were interested in
20 purchasing them. So I had an agreement, a verbal
21 agreement with an accountant and two other individuals
22 to purchase those townhouses.

23 Q Who is the accountant?

24 A It's my father's accountant. I'm trying to
25 remember his name, but I could get it to you, if it

1 was important.

2 Q If you could, please, I would appreciate
3 that.

4 A Okay.

5 Q And help me understand, did you think three
6 or four people were interested in buying?

7 A I think, as I remember, four total.

8 Q I thought you said you had an accountant and
9 two others?

10 A Yeah, two individuals. The accountant was
11 going to buy more than one, I think. I can't recall
12 exactly how many he decided. I think he might have
13 said he wanted to buy three, and then I had two
14 individuals who wanted to purchase one single unit
15 themselves.

16 Q Do you remember the names of those
17 individuals?

18 A Well, one of them was Sergei, and his last
19 name is Znokyo, Z-N-O-K-Y-O. And the other one is a
20 guy I used to work with at the Medical University of
21 South Carolina. His name was Shahid Hussein.

22 Q Did you say Hussein is the last name?

23 A Uh-huh. (Affirmative)

24 Q And you said these were verbal agreements, no
25 written documents?

1 A (Shakes head negatively)

2 Q Had you discussed sales prices with these
3 folks?

4 A I had.

5 Q What was your projected sales price?

6 A 150.

7 Q Had you done any pro formas for this project?

8 A Explain.

9 Q I'm probably using the wrong terminology, but
10 before you talked with your father's accountant and
11 these other folks, had you attempted to project the
12 cost of construction and the prices at which you would
13 sell these units?

14 A Yes, I did. And that's why I came up with a
15 price of 150.

16 Q And that's what I would call a pro forma, but
17 that's probably an incorrect term, but indulge me in
18 that and call it that, too, please. This pro forma
19 that you'd done, was that actually a written document?

20 A It wasn't a written document. It was a
21 speculation that I had, based on my experience of
22 building and some of the prices that I had already
23 gotten on how much these were going to cost..

24 Q Did you actually get prices on these units?

25 A I did.

1 Q From whom?

2 A One company was -- I think I got it from
3 Nationwide Homes. I got it from a company that is now
4 defunct. It was around the corner from where we were
5 located. And I think I got an additional bid, but I
6 can't remember right now the company that gave it to
7 me.

8 Q The defunct company, do you remember the name
9 of that company?

10 A It's right over near Trudy's School of Dance.
11 It was like American Modular or something like that, I
12 think the name of it is. I've got paperwork from
13 them. If it's important, I can get it.

14 Q How about Mr. Goletz, did he give you a
15 number?

16 A Mr. Goletz decided that it was too big of a
17 project for him and that he didn't want to take it,
18 but I got a couple of representatives from the major
19 modular homes that were interested in doing it.

20 Q Did you have a projected build-out date for
21 these?

22 A The date was going to be completed before the
23 three-year deadline. Modular homes basically take,
24 the minute I order them, take eight weeks to produce
25 in the factory and take probably another month to

1 complete. They're very fast.

2 So the minute I put the order in, and I was
3 really almost ready to put the order in. I only had
4 to tie up a few loose ends like, you know, the sewage
5 connection and that type of thing. It would take very
6 little time to put them up.

7 Q The three-year deadline, remind me what that
8 is. That doesn't ring a bell with me.

9 A There was a three-year deadline from the time
10 that I purchased the property to the time that I
11 needed to complete it.

12 Q And who imposed that deadline?

13 A It was, you know, something Mr. Hagerty had
14 mentioned, and I think it actually might have been in
15 the contract, too.

16 Q Okay. Was Palms planning to finance the
17 construction of these units?

18 A We were going to the bank to finance it.

19 Q Right. Had you done anything to line up
20 financing on behalf of --

21 A We'd actually talked to Wachovia about doing
22 it.

23 Q Had you gotten any kind of a commitment or
24 term sheet out of Wachovia on that?

25 A Not complete, no. It was, you know, just

1 throwing some numbers around and sitting with a couple
2 of the loan officers and talking about what we were
3 going to do. And you know, I was getting ready to
4 turn over some of the information, the plans to them,
5 when Mr. Mikell and I had met.

6 Q Did you have somebody particular that you
7 dealt with at Wachovia?

8 A Yeah, I can't recall their names. I have
9 their business cards probably still, but they're in
10 this Broad Street office up here. That's where I met
11 with them.

12 MR. MASSALON: We've been going awhile, and
13 I'm getting close to the end. So if you don't mind,
14 let me take five and check my notes. I'll let
15 everybody stretch their legs and other things.

16 (Short break)

17 BY MR. MASSALON:

18 Q Mr. Beall, I've got just a few more questions
19 for you. And they're going to seem like I'm skipping
20 around, and it's because I am. There are just a few
21 things that I need to go back that I inadvertently
22 skipped over in my notes. So I apologize for that.

23 First of all, do you have an official
24 position or title with Palms?

25 A I'd be like the manager, member manager.

1 Q And I'm not sure that I've seen or, if I
2 have, I haven't processed the operating agreement for
3 Palms. Is it a member-managed or manager-managed LLC;
4 do you know?

5 A I think it's a member managed. I believe we
6 got it set up that way, yeah.

7 Q Have you always been the manager of Palms?

8 A I have.

9 Q And would you be the person that would have
10 whatever business records of Palms there are that
11 exist?

12 A Sure, yeah.

13 Q Does Palms have more than one bank account?

14 A No.

15 Q Does it have just like a checking account?

16 A It has a checking and a savings account.

17 Q Checking and savings, where are those?

18 A Wachovia.

19 Q Now Wells Fargo?

20 A I guess.

21 Q Soon to be Wells Fargo?

22 A Uh-huh. (Affirmative)

23 Q And you're responsible for either preparing
24 or having the tax returns prepared?

25 A Yes.

1 Q Who does that work for Palms?

2 A Generally, it was done by -- gosh, the name
3 of the company? It's a local guy, Bob. He's down on
4 King Street. I'll think of his name in a second, but
5 he -- the taxes are professionally prepared, so far
6 have been professionally prepared, except for this
7 year. And I actually prepared the taxes this year.

8 Q Okay. Well, if you think of the name as
9 we're talking about --

10 A I'll think of it in a second. It's just I
11 haven't thought of his name in a long time.

12 Q Just interject.

13 A I think I had it done pretty much the -- all
14 the preceding years by this gentleman. Bob Baldwin is
15 his name.

16 Q Bob Baldwin.

17 A He did them all the preceding years. And I
18 think I got H&R Block to do them for 2007, and I did
19 2008's.

20 Q Okay. The records that you've got for Palms
21 Properties, other than financial records, you know,
22 bank statements and stuff like that, tax returns, do
23 you have somewhere, either in your home or in your
24 office, you know, correspondence relating to Palms
25 Properties and documents, again, not that you got from

1 your lawyers, but just general business documents?

2 A Sure.

3 Q You got those? How about computer records,
4 do you have some e-mail address or place that you
5 segregate out Palms Properties' information from your
6 other business or personal items?

7 A No, not really. I mean, it's just not that
8 complex.

9 Q You mentioned, I think, that you may have had
10 some e-mails relating to this. Have you saved those?

11 A I may have some of the e-mails that I
12 received from Mr. Bruner.

13 Q Well, if you would, and again, assuming that
14 they're not attorney-client privileged, you know, they
15 don't contain advice from your lawyers or questions to
16 them, I'll just ask, and you don't have to tell me
17 now, but if you'd just make a note that I'd like
18 copies of any e-mails that you have that aren't to
19 your lawyers or from your lawyers.

20 A Okay.

21 Q Okay? Relating to this project.

22 A Now, again, this was a long time ago.

23 Q I understand.

24 A And e-mail is expunged at MUSC. And some of
25 this stuff was done through my personal, but maybe one

1 or two were sent to me from them to my MUSC account.

2 So I can't say that I have any of those things. They
3 probably don't exist.

4 Q Right. And that's why I said I'm not asking
5 you to answer me now.

6 A Okay.

7 Q I'm just, for purposes of, you know, while
8 I'm thinking about it, if you have any e-mails --

9 A If I have a hardcopy, I'll give it to you.

10 Q Or if you happen to have a copy that's, you
11 know, stuck in your outbox or your trash or something
12 that may still be electronically stored, but exist,
13 I'd like copies of that, obviously subject to whatever
14 objections from your lawyers. I'm not pressing for an
15 answer. I'm just asking a question.

16 (Exhibit No. 1 marked)

17 BY MR. MASSALON:

18 Q This is a copy of the answer that your
19 attorneys filed on behalf of Palms Properties in this
20 case. And I'll tell you that I am not asking you to
21 be a lawyer or pretend to be a lawyer, but I have a
22 couple of questions about some of the things in here.
23 So I'm going to give you that for reference purposes.

24 First, I'll ask you: Before I gave that to
25 you, have you seen a copy of that?

1 A I believe I have, yes.

2 Q If you would, turn over to -- and I don't
3 think these pages are numbered. Page 6, at the top,
4 it should have a heading that says, "For A Second
5 Cause Of Action". Do you see that?

6 A Yeah.

7 Q Down below that, what I want you to focus on
8 for me for a minute is the "Third Cause Of Action"
9 that begins at the bottom. Okay. Now, flip over to
10 the next page. And you can see there that there is an
11 allegation that false representations were made to you
12 by Rivers Point Row, LLC. Do you see that?

13 A Uh-huh. (Affirmative)

14 Q That's a yes?

15 A I see it, yes.

16 Q Okay. Tell me, and again, I'm not asking you
17 to play lawyer or guess what your lawyers may have had
18 in mind when they wrote this. I point this out
19 because there's a claim of fraud in this case. And
20 what I want to know is if you can think of any
21 statements, representations that were made to you by
22 Rivers Point, LLC that you believe to be false?

23 A Are you saying statements that were made to
24 me personally by Mr. Hagerty?

25 Q Well, that would be one kind that possibly

1 could be, yes.

2 A And who else?

3 Q Well, I'll tell you who I know to be the
4 other members of Rivers Point Row, LLC. John
5 Derbyshire is one. And his wife, Linda Derbyshire, is
6 another. So my statement could include any
7 representations that you believe were false by any of
8 those people.

9 A I had no statements from the Derbyshires.
10 I've never met them. Mr. Hagerty, I never spoke to
11 him personally until the closing. So in that respect,
12 no direct false representations from him personally.

13 Q Okay. Now, taking it a step further: Do you
14 recall any representations or statements that were
15 made to you by someone that you believe to be acting
16 on behalf of Mr. Hagerty or the Derbyshires or Rivers
17 Point, LLC, anybody acting on their behalf that you
18 believe to be false?

19 A I don't recall. I don't recall anything of
20 purposeful false information. Again, it's hard for me
21 to remember the details of what happened.

22 Q I understand. Now, I'm going to ask, if you
23 would, to flip over from where we were just looking?
24 It's like one more page. And just for reference
25 purposes, if you look at the very bottom, there's a

1 reference to the South Carolina Unfair Trade Practices
2 Act. Do you see that?

3 A Uh-huh. (Affirmative)

4 Q Yes?

5 A Yes.

6 Q Over on the next page, I'll tell you that
7 there's also been a claim alleged for unfair trade
8 practices against Rivers Point, LLC. And I want, if
9 you would, to focus on the Paragraph 47. And it says,
10 in part, in there that Rivers Point Row has done
11 things that are unfair, unethical and deceptive. Do
12 you see that?

13 A I do.

14 Q And again, I don't want you to try to guess
15 what your lawyers may have had in mind or pretend
16 you're a lawyer, but do you have any factual
17 information about unfair, unethical or deceptive acts
18 either by Rivers Point Row, the members of Rivers
19 Point Row, LLC or somebody acting on their behalf?

20 A By unethical, do you mean -- explain. You
21 need to explain a little further because, I guess, my
22 opinion is we're all here because of something that
23 could have potentially been unethical. I mean, that's
24 why we're here. And my opinion is, if we're here, I
25 have suspicion that there are some unethical things

1 that have occurred.

2 Q Well, as far as the clarification goes of
3 what would be unethical, and I'm not trying to be
4 clever, but what I would say to that is, since it's
5 your deposition, I would include in that anything that
6 you would consider unethical.

7 A I would consider it unethical that Mr.
8 Hagerty went back and tried to get folks that were
9 members of the homeowners' association to agree to the
10 terms or actually to change the master deed, to let
11 him change it.

12 Q Okay. Now, tell me about that, if you would.

13 A Just some information that I got and I can't
14 remember who I got it from.

15 Q It wasn't your lawyers, though?

16 A No, it wasn't them.

17 Q Okay. Well, tell me, understanding that it's
18 limited information, tell me the best you can recall
19 about that.

20 A I heard from somebody that Mr. Hagerty had,
21 after the fact, after the initial suggestion that
22 there was a problem with what was happening with me
23 purchasing the property, that he tried to contact
24 members of the homeowners' association and get them to
25 reissue the master deed or change it so that the

1 property was defined separate from the rest of the
2 homeowners' association.

3 Q Do you remember when or about when this
4 information came to your attention?

5 A Several months ago.

6 Q It was after this lawsuit was filed?

7 A Yeah, I think it was, yeah.

8 Q Okay. But you can't remember who it was?

9 A I can't remember who it was.

10 Q Okay. Anything else, other than that?

11 A No.

12 Q Okay. Assume for me for just a minute, and
13 I'm not asking you to agree that this happened, okay,
14 I'm just asking for you to make an assumption that
15 Palms got the right from Rivers Point, LLC to build
16 eight condominiums or townhouses on this property,
17 that it didn't get fee-simple title to the property,
18 but it got the right to build eight units, eight
19 townhouses on the property.

20 A Uh-huh. (Affirmative)

21 Q And Palms had been able to build those units.
22 Would Palms have any damages in this case?

23 MR. DAVID: Object to the form.

24 MR. MASSALON: And that's an objection for --

25 MR. DAVID: Go ahead and answer the question,

1 I'm sorry.

2 A Well, if we agreed to build the property in
3 the scheduled time that I had to build it and carrying
4 forth with what I intended to do without interruption,
5 without delay?

6 Q Okay. We can add that to the hypothetical.
7 That's a good clarification. Assume that Palms got
8 not a fee-simple title to the real estate, but the
9 right to build the eight units and the project had
10 proceeded on schedule from that point forward. My
11 question is: Would Palms have any damages, under that
12 scenario?

13 A Okay. Let me just make sure that I've got
14 you clear. Are you saying that if something happened
15 tomorrow and that I had clear title to build
16 something, would I have any damages?

17 Q That's actually not the current hypothetical.
18 The current hypothetical is: Assume for me that when
19 Palms got the deed from Rivers Point, LLC, the same
20 date it got that deed --

21 A Right.

22 Q -- that instead of getting fee-simple title
23 to the dirt --

24 A Uh-huh. (Affirmative)

25 Q -- what it received instead was the right to

1 build eight townhouses on that dirt.

2 A Uh-huh. (Affirmative)

3 Q Okay? And that had happened.

4 A Uh-huh. (Affirmative)

5 Q Under that scenario, would Palms have any
6 damages?

7 A If I had been able to build the eight
8 townhouses as I had originally planned without delay
9 and built them in the time that I had understood that
10 they could be built in, I don't see that any damages
11 would have come from that, other than, you know, well,
12 you know, damages or any, you know, outrageous
13 homeowners' association fees that I would have been
14 associated with.

15 Q But the plan all along, when you made this
16 transaction, was to build eight units and either
17 resell them or hold them for rental?

18 A That's correct.

19 Q And if Palms had been able to do that,
20 whether it owned the dirt or not, it wouldn't have
21 been damaged financially?

22 A Well, I don't think so, no. I think that,
23 you know, the fact that I had people who wanted to
24 purchase the units, the fact that I was hoping to have
25 enough money to even get two of the units really

1 almost cost free, and the fact that I had chosen to
2 use modular construction to keep the cost down would
3 have been probably pretty good for Palms Properties.

4 Q Now, I'll ask the question that you were
5 alluding to earlier, which is: Assume not that it
6 happened then, but it happens now. Say tomorrow,
7 through some means, Palms has the right to build eight
8 townhouses on this property and either hold them for
9 rental or sell them to somebody else. If that happens
10 tomorrow or any day after that, next week, would Palms
11 have any damages to claim?

12 A Sure.

13 Q Okay. Tell me how you'd figure those or how
14 I would figure them?

15 A Well, first of all, I mean, the simple fact
16 that the whole thing's been held up to a point now
17 where it's just, you know, it's bottomed out. There's
18 really no chance to sell real estate, maybe not to
19 sell it for the price that I intended to sell it. The
20 original purchasers, the people who were involved who
21 agreed to verbally purchase those things, probably are
22 not interested anymore.

23 I would be concerned with any kind of
24 homeowners' association, you know, assertion would
25 have any ability for me to build what I wanted now

1 that things have been modified and altered. You know,
2 a lot of ifs. There's a whole lot of ifs right now.
3 And you know, I've lost damages in, you know,
4 interest, personal time, surveying fees, fees that I
5 paid to the City, various other fees that I
6 guesstimate probably exceeds \$70,000 just for myself,
7 and that does not include legal fees.

8 Q And remind me, and you may have answered this
9 already and I just forgot: Palms hasn't paid any
10 interest on the amount it borrowed from your father;
11 is that right?

12 A Hasn't paid any yet, no.

13 Q Okay. Do you have a calculation of what the
14 interest tab is right now?

15 A I'm guessing it's close to probably over
16 \$50,000.

17 Q Does Palms have any other real estate
18 projects going on right now?

19 A No, no.

20 Q Do you have any plans for any?

21 A Well, I mean, we've been frozen because of
22 this. We've missed out on a lot of opportunity
23 because of this.

24 Q The information you gave me about the market
25 bottomed out and that sort of stuff, is that based on

1 anything, other than just general knowledge of the
2 economy and what's going on in the world today?

3 A Well, I'm sure things are still selling, but
4 it's harder to borrow money now. I mean, banks are
5 very tight. I mean, I had a good relationship with
6 them back then. Undertaking projects now are a lot
7 more difficult than they were back then. I had, you
8 know, a lot more -- a lot of things rolling back then,
9 and things were looking pretty good. I would say that
10 in itself is a huge difficulty, just the paranoia of
11 the banking system, being able to borrow the money to
12 build.

13 Q Have you or somebody for you taken a look at
14 the residential real estate market to try to make any
15 empirical analysis of what's selling, how fast it's
16 selling, how much it's selling for, anything like
17 that?

18 A Other than just generally looking at it, no,
19 I haven't, you know, consulted with anybody or talked
20 with anybody about it.

21 Q Okay.

22 A I mean, I can just drive around the
23 neighborhood and see.

24 MR. MASSALON: All right. Thanks. Those are
25 all of the questions I've got now.

1 THE WITNESS: Okay.

2 EXAMINATION

3 BY MR. MIKELL:

4 Q Mr. Beall, you talked about you saw an MLS
5 article about eight units at Rivers Point being for
6 sale. I don't think you ever identified when that was
7 that you saw that article. Can you do that?

8 A It would be prior.

9 Q Obviously, prior to closing.

10 A Yeah, but I'm trying to think. It must have
11 been -- I would say it was in maybe April of 2005.

12 Q Okay. Now, you used an interesting word, at
13 least interesting to me, several times when you were
14 discussing the communications that you were having
15 with Mr. Hagerty and decisions and answers to your
16 questions and whatever. You said that he had, and the
17 word I wrote down was, the power for making decisions.
18 Tell me about that.

19 A Well, this was a word, I think, that I may
20 have picked up from the real estate agent. They, for
21 lack of other terminology I guess, said that
22 essentially he had the power to make decisions, and he
23 was the one who was going to make decisions on this.
24 And that only came up toward the end, when we were
25 getting ready to close.

1 And I think, after the closing, that, you
2 know, eventually, it was going to be turned over to an
3 HOA. And the only reason I would say power is I think
4 that's probably the word they used just to describe
5 that he had the ability maybe to -- and maybe I didn't
6 use the proper word, but.

7 Q Well, let's discuss Mr. Hagerty's power and
8 the decisions that were being made as related to you.
9 You said you went to the project, I believe, twice
10 before the closing?

11 A Twice possibly, you know, three or four times
12 maybe.

13 Q The buildings that are there on the site, are
14 they all the same architectural design and control?

15 A No, a variety. It goes from two bedroom to
16 one bedroom, and they have actually two different
17 varieties of the two bedrooms and two different
18 varieties of the one-bedroom apartments.

19 Q But aren't they all in buildings, in single
20 buildings?

21 A Yeah, they are. They are, yeah.

22 Q Mr. Hagerty told you you could build eight
23 separate modular buildings on the site?

24 A Well, what I was going to build and what he
25 signed off on were buildings very similar to what's

1 there. It's all housed in a big building, but they're
2 set up in a townhouse configuration, where it appears
3 to be one building.

4 Q I was under the impression, from some of your
5 comments, that these were eight separate buildings?

6 A They would be a building with, you know, six
7 townhouses in one or five townhouses in one and three
8 in the other, but they would be separated by all the
9 necessary things to make them individual, you know,
10 like fire walls and that type thing.

11 Q Right. They'd be separate units, but --

12 A Right, not buildings.

13 Q So what you're telling me, and I'm just
14 trying to understand, there were two buildings that
15 you were talking about?

16 A Yeah. I've got -- actually, there's a copy
17 of a plan that shows these elevations.

18 Q Are any of the other sites there broken up
19 into two buildings?

20 A I don't think so. I mean, they all house,
21 you know, a certain amount of apartments per building.
22 And that's essentially what I was going to do, too.

23 Q Okay. I didn't get that impression in the
24 way you described the modular buildings?

25 A It was advertised as suitable for eight town

1 homes, and I was using their terminology to describe
2 that.

3 Q Now, you used a Mr. Hand to do the closing
4 for you. You said you had not had any communications
5 with him prior to the closing. My question is: Who
6 selected Mr. Hand?

7 A Mr. Hagerty.

8 Q He's the fellow that told you or did not tell
9 you about the owners' association activities and
10 control?

11 A No, we didn't discuss that at all. That was
12 only discussed after the closing.

13 Q Now, you made the statement that you were
14 informed by Mr. Hagerty that you had three years to
15 build these eight units from the time that you bought
16 the property.

17 A That's correct.

18 Q Is that what I understand?

19 A That's correct.

20 Q Would it surprise you to learn that the
21 document actually says that it's, looking at Exhibit
22 H, three years from the date this document is
23 recorded, which is a year before you bought it?

24 A That would be a surprise to me.

25 MR. MIKELL: Thank you. I don't have any

1 other questions.

2 EXAMINATION

3 BY MR. DAVID:

4 Q Without waiving any privileged communication,
5 you had a conversation with Mr. Mikell concerning the
6 homeowners' association sometime after you and Mr.
7 Clarence Matthews met with the Board of Directors?

8 A That's correct.

9 Q Mr. Mikell was in attendance that night?

10 A He was.

11 Q Okay. And for lack of a better term, the
12 power of the Board of Directors had been changed from
13 Mr. Hagerty, the, I guess, the developer declarant to
14 that of the Board of Directors?

15 A Correct.

16 Q And you sometime after that received a letter
17 from Mr. Mikell basically telling you that you would
18 not be allowed to build anything on that property?

19 A That was correct, yes.

20 Q Did you have a discussion with him, before
21 you received the letter?

22 A The only thing that we discussed --

23 Q And I'm talking about prior to receiving the
24 letter.

25 A Prior? Well, no, no, we didn't.

1 Q You went and had a meeting with the Board of
2 Directors. And then, sometime after that, you
3 received the letter from Mr. Mikell?

4 A We met with the director of the homeowners'
5 association. Mr. Mikell and I went to Athens,
6 discussed my situation, and then I received a letter
7 from Mr. Mikell.

8 Q That being that you did not have ownership to
9 the property and could not build on it?

10 A That's correct.

11 Q Okay. Did you ever have an occasion to,
12 prior to your purchasing the property, discuss with
13 your Realtor what you wanted to do, what you wanted to
14 build, what you wanted to put there?

15 A I had discussed that with him.

16 Q And after you signed the contract, did you go
17 back and make several supplements or addendums to that
18 contract through your Realtor with Mr. Hagerty?

19 A We did.

20 Q And were those signed and approved by you and
21 Mr. Hagerty?

22 A They were.

23 Q And did those addendums have to do with the
24 use of water and sewage and the units that were going
25 to be built there, including the parking spaces?

1 A The parking spaces, water, sewer, ability to
2 build a sidewalk in the common area, the fact that I
3 was going to be using modular homes, the design of the
4 modular homes, the look of the modular homes, the
5 usage of brick in the modular homes.

6 I actually submitted him a plan and a plot
7 showing the modular homes' position on the property
8 and an elevation that he both signed on.

9 Q And he signed off on all of that --

10 A All of it.

11 Q -- not only in the contract, but in certain
12 plans?

13 A That's correct.

14 Q Okay. And after he signed off on those, was
15 it determined that the previous recorded plat was in
16 err?

17 A It was, yes.

18 Q So you had to have that corrected --

19 A That is corrected.

20 Q -- in order to get your plans approved?

21 A That's right.

22 Q Now, you have been asked about certain
23 resolutions by the Board of Directors when Mr. Hagerty
24 was the Chairman or the Director of the Board. Have
25 you seen those?

1 A I don't believe -- explain again. I'm not
2 sure.

3 Q There are certain minutes of meetings or
4 actions that have been taken, in fact, without a board
5 meeting. Have you ever had an opportunity to see
6 those?

7 A No, I have not.

8 Q Has anyone ever discussed those with you?

9 A No.

10 Q After the time that you purchased this
11 property, did you ever have an opportunity to go back
12 and have a conversation with Mr. Hand?

13 A No, I did not.

14 Q The information that is in your summons and
15 complaint that you were asked about certain
16 allegations of fraud, certain allegations of unfair
17 trade practices, the information that is -- the
18 factual information that's contained in there, is that
19 information that you provided to your attorneys?

20 A It is.

21 Q And the documentation that has been provided
22 is information either that you received or that has
23 been received by one of your agents?

24 A That's correct.

25 Q Do you recall what was told to you about Mr.

1 Hand and why you chose him as your attorney?

2 A I remember that I actually was wanting to go
3 through your office. And the suggestion was that we
4 use Joe Hand because that's --

5 Q Who's we?

6 A Ben Hays got information from the real estate
7 agent that represented Mr. Hagerty saying that they
8 wanted to use Joe Hand for this transaction.

9 Q Did they give you any explanation or reason
10 why?

11 A I think the suggestion was that they used Joe
12 before, and that's who they wanted to use.

13 Q Has anyone, other than Mr. Mikell, ever made
14 any comments to you or questioned the ownership of
15 this property?

16 A No.

17 Q The meeting with the Board of Directors that
18 you had, did they basically tell you, at some point in
19 time, that they would not approve any structure that
20 you wanted to put on the property?

21 A The only meeting I had with the Board of
22 Directors was the one that I was with Mr. Matthews,
23 and Mr. Mikell was there, too. We presented what we
24 were going to do, and everybody was very polite and
25 cordial. Mr. Matthews and I left. Later, Mr. Mikell

1 contacted me and gave me information that I stated
2 that I did not own the property.

3 MR. DAVID: I don't think I have anything
4 further.

5 MR. MASSALON: Let me get her to mark one
6 thing for me.

7 (Exhibit No. 2 marked)

8 REEXAMINATION

9 BY MR. MASSALON:

10 Q Mr. Beall, I'm showing you what we've marked
11 as Exhibit No. 2. And take all the time you want and
12 look at it, but my question is -- we've had some
13 testimony about the multiple-listing agreement. And
14 my question is: Is that the document or the listing
15 that you've been referring to?

16 A It appears to be. I think, actually, there
17 was a photo included, but I think there's a copy of
18 it, maybe the original photo.

19 Q Other than the photo and there's some
20 handwritten information at the bottom?

21 A That's Mr. Hays' handwriting.

22 Q Okay. Other than the absence of the photo
23 and the handwritten information at the bottom, do you
24 notice anything about that that is different than the
25 MLS listing?

1 A It appears to be the same one.

2 Q Okay. If you look up in the top left-hand
3 corner, you see a reference to the zoning?

4 A Uh-huh. (Affirmative)

5 Q That's a yes?

6 A I do.

7 Q And the word "Condominium" is referred to in
8 there, right?

9 A Uh-huh. (Affirmative)

10 Q And that's a yes?

11 A That is a yes.

12 Q And at the time you looked at the listing,
13 would it be fair for me to understand that the use of
14 the word condominium there didn't trigger any further
15 inquiry by you or Mr. Hays about what the word
16 condominium was or what it meant or whether there was
17 a condominium in place?

18 A We did not discuss that, but we did discuss
19 the zoning.

20 Q What do you remember about the zoning
21 discussion?

22 A I remember that -- I remember the zoning was
23 appropriate for what we were going to build, based on
24 what Mr. Matthews was looking at.

25 Q Now, down below, there is some handwritten

1 notes. You said you think that's Mr. Hays'
2 handwriting?

3 A I think so.

4 Q Okay. And if I'm reading it correctly, the
5 first thing it says is either Chairmen or Chairman of
6 ARB contact number. Do you see that?

7 A I see that, but I'm not sure that's his
8 writing or not. I mean, it looks a little bit like
9 it, but I'm not sure. He would be the only one that
10 can answer that. I know that this is his writing.

11 Q The part below that, where it says, "Waiting
12 for survey --

13 A "Waiting for survey to be recorded."

14 Q What's it say?

15 A "Buyer to pay cash."

16 Q Okay. Understanding what you've told me that
17 this isn't your handwriting, being a lawyer, I have to
18 ask you anyway: Do you know when or about when this
19 information would have been handwritten on this
20 document?

21 A You know, I'm guessing it was in March or
22 April, 2005.

23 Q Before or after contract?

24 A Before.

25 Q Before or after closing?

1 A Before.

2 Q So if Mr. Hays wrote "Chairman of ARB contact
3 number" on this, then that at least suggests that he
4 knew there was an architectural review board in place?

5 MR. DAVID: Object to the form.

6 A I, you know, never -- that was never
7 mentioned, you know. For instance, I've never seen
8 this particular page.

9 Q Okay.

10 A I haven't seen this part of it. I mean, I've
11 seen the top part of it. I don't even know what that
12 means.

13 Q All right. So if I wanted to know what that
14 means, I'd have to ask -- figure out who wrote it and
15 ask them?

16 A You would have to.

17 Q One final thing: Under the listing agent,
18 there's a guy's name there, John Vance?

19 A I do believe that John Vance was representing
20 Mr. Hagerty.

21 Q If memory serves correctly, I don't think his
22 name has come up before. So I'll ask you: Now that
23 we know Mr. Vance was the listing agent, do you recall
24 having any communications with him?

25 A No direct communications with him. I think I

1 met him once.

2 Q But you didn't talk about this situation?

3 A Oh, no, not this.

4 MR. MASSALON: That's all I have.

5 REEXAMINATION

6 BY MR. MIKELL:

7 Q There's something about this thing that
8 intrigues me a little bit, being a real estate lawyer.
9 If I understand what you said earlier, you got a deed
10 and a plat at the closing. And subsequently, there
11 was some discussion with the engineers and whatever.
12 And your surveyor, a Mr. Matthews, indicated that the
13 original survey was in error. Am I right about that?

14 A That's correct.

15 Q And so he got Mr. Seabrook's CAD information
16 or whatever and created a new survey?

17 A Yeah, just to -- I think the lines were drawn
18 properly, but the numbers didn't match the lines.

19 Q I don't understand that?

20 A Again, you know, I'm a layman speaking on
21 surveying terms, and Mr. Matthews really would explain
22 it better than I. That's why I brought him to that
23 original meeting because I wanted to tell everybody
24 what was happening, and, you know, he was a better
25 representation of it.

1 Q Well, at some point in time, I have in my
2 notes that you said something about there was an extra
3 2 feet that needed to be added or something. Was that
4 part of this survey issue?

5 A No, that had already been done.

6 Q Okay.

7 A That already had been something signed off on
8 Mr. Hagerty. Now, what was happening was Mr.
9 Matthews was saying, if you're going to put a building
10 here, you're going to need to have this much space
11 between these buildings. So you need to have the line
12 drawn here, and it has to be this far away from the
13 building. He was just looking at the legal or the
14 survey aspects of how big the property could be to put
15 the townhouses on the property.

16 And he was saying, if you're going to put a
17 five-unit townhouse here and a three-unit townhouse
18 here, this property was going to have to be this size.
19 So we determined what size that was and where the
20 lines were going to have to be. And every time we
21 made a change, we contacted Mr. Seabrook, who made the
22 change. And then, we had Mr. Hagerty sign off on it.

23 Q And that's what intrigues me about this. You
24 got new plats, but did you get a new deed? You can't
25 just go amending a plat because you feel like it.

1 A Well, I mean, the deed, I assumed was being
2 changed.

3 Q It refers to a different plan.

4 A Well, I assumed the deed was being changed.
5 along with the changes to the property.

6 Q So you don't know if you ever got a new deed
7 --

8 A I don't know.

9 Q -- to conform to the new plan?

10 A Right. I mean --

11 Q The answer is, you don't know?

12 A I don't know.

13 MR. MIKELL: Okay. Thank you.

14 REEXAMINATION

15 BY MR. DAVID:

16 Q You bought this property. And you got a deed
17 and a plat at the time of closing?

18 A Correct, yes, yes.

19 Q Then, after you received this, when you
20 started laying out the configuration of your project,
21 Mr. Matthews told you that you had to have additional
22 space either in the front, back or on the side of the
23 buildings; is that correct?

24 A Yes. He said it was like there was one line
25 that I think had to have additional space.

1 Q Okay. And so he made that additional space,
2 and Mr. Seabrook prepared a new plat?

3 A That's correct.

4 Q Okay. Showing the additional line that was
5 drawn on that property?

6 A That's correct.

7 Q And after that time, Mr. Hagerty, as the
8 declarant or as an official member of the homeowners'
9 association, approved that drawing?

10 A That's correct.

11 Q And to your knowledge, there was never a plat
12 recorded, rerecorded or anything, other than the
13 original deed and plat that you received at the time
14 of closing?

15 A That's correct. Now, again, Mr. Matthews has
16 most of the information on that. It's possible that
17 Mr. Seabrook did rerecord it, and he probably did.
18 But you know, as far as my concern was, having the
19 property changed and that everybody was going to
20 understand these changes were being made and make
21 necessary adjustments.

22 Q Who do you consider everyone?

23 A Well, I mean, certainly the person who is
24 authorizing the change, the person representing or
25 actually selling the property.

1 Q And who was that?

2 A Mr. Hagerty.

3 Q You were asked several questions about some
4 legal terms and your definition of that. Let me back
5 up and ask you a couple of questions about that.

6 Do you believe that you have been dealt
7 fairly with in this transaction?

8 A In this transaction today?

9 Q No, not here today?

10 A No, I don't. I don't feel like I have.

11 Q The transaction where you purchased this
12 property?

13 A I don't feel like I've been dealt with
14 fairly.

15 Q Do you believe that you relied on information
16 that you later found out was untrue?

17 A Yes, I do.

18 Q Do you now know, after speaking, or do you
19 now believe, after speaking with Mr. Mikell, that
20 there's a real question as to the ownership of this
21 property?

22 A I do.

23 Q Did anyone ever bring that to your attention,
24 prior to the time of closing or any time before you
25 entered into the contract and paid your earnest money

1 deposit?

2 A No, did not.

3 Q Was there anything that was said by anyone,
4 including the seller's agent, your agent, the attorney
5 that closed on this for you, that there were any
6 questions, but that you owned the property and that
7 you could build what you had intended to build and
8 what had been approved by Mr. Hagerty on this
9 property?

10 A There was no question that I would be able to
11 build what I wanted to build there.

12 Q And have you been prevented from doing that
13 now?

14 A I have.

15 Q Did you have any way to ascertain, other than
16 the information that was presented to you at the time
17 of closing and subsequent to the closing, that you
18 could not build what you had anticipated building?

19 A I did not.

20 Q And did you use all of your best efforts and
21 those of the professionals that you relied on, the
22 real estate agent, the surveyor, and the attorney,
23 that the information that you relied on and that you
24 sought was true and correct?

25 A Yes.

1 MR. DAVID: I don't have anything further.

2 MR. MASSALON: I'm done.

3 (The deposition concluded at 12:45 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

I, Lisa A. McCarn, Court Reporter and Notary Public, certify that I did have GREG BEALL to appear before me at 10:53 a.m. on the 2nd day of October, 2009 at Wills & Massalon, 134 Meeting Street, Suite 100, Charleston, South Carolina; that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of his testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 12th day of October, 2009.



Lisa A. McCarn

Notary Public for South Carolina

My Commission Expires:

August 17, 2015



ERRATA SHEET

I have read the entire deposition. To the best of my knowledge, it contains a true and accurate transcript of the proceedings at the time and place herein mentioned. Any corrections that I have are contained and described on this sheet.

Signed the _____ day of _____, 2009,

Greg Beall

PAGE	LINE	DESCRIPTION OF ERROR/CHANGE
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

RIVERS POINT ROW HORIZONTAL
PROPERTY REGIME, a/k/a RIVERS
POINT ROW PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

PALMS PROPERTIES, LLC,

Defendant.

CASE NO.: 2008-CP-10-2279

 **COPY**

PALMS PROPERTIES, LLC,

Third Party Plaintiff,

vs.

RIVERS POINT ROW, LLC &
JOHN DERBYSHIRE, LINDA
DERBYSHIRE, and JOHN HAGERTY,
Individually,

Third Party Defendants.)

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, at 10:00 a.m. on June 1,
2012 at 100 Broad Street, Charleston, South Carolina.

Bernadette A. Cali, CSR
Notary Public

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1 (Hearing commenced.)

2 THE COURT: We're here today in the case captioned
3 Rivers Point Row Horizontal Property Regime versus
4 Palms Properties, LLC, is the initial suit. There's a
5 third party claim, Palms Properties, LLC versus Rivers
6 Point Row, LLC. The case number is 2008-CP-10-2279.

7 We're here today to entertain dispositive motions.
8 We have a number of motions, I think; principally,
9 dispositive motions. I've received, like I said, a lot
10 of reading of recent origin.

11 Let me start -- counsel for the Plaintiff, Rivers
12 Point Row Horizontal Property Regime, for the record?

13 MR. BUHMEYER: Michael Buhmeyer.

14 THE COURT: You represent only the Plaintiff,
15 which is the HOA -- POA?

16 MR. BUHMEYER: That is correct.

17 THE COURT: Mr. David and Mr. Query, you-all are
18 together?

19 MR. QUERY: That is correct, Your Honor. We
20 represent Palms Properties, LLC.

21 THE COURT: So the Defendant and third party
22 Plaintiff?

23 MR. QUERY: Correct.

24 THE COURT: Mr. Massalon and Mr. Neville?

25 MR. MASSALON: We're here for everybody else,

1 Judge; the Rivers Point Row, LLC and the individual
2 Third Party Defendants Hagerty, Linda Derbyshire, John
3 Derbyshire.

4 THE COURT: Very good. Thank you.

5 (Discussion off the record.)

6 THE COURT: Now, you-all had a prior motion for
7 summary judgment. I have received, Mr. Buhmeyer, your
8 motion for summary judgment and memoranda recently.

9 Mr. Query, Mr. David, I have responses -- do I
10 have a summary judgment motion from you-all?

11 MR. QUERY: No, Your Honor, just our opposition to
12 summary judgment, by the Third Party Defendants.

13 THE COURT: Very good.

14 MR. MASSALON: The only other issue we have is, we
15 have an affidavit this week that we moved to strike on
16 some grounds under the rules. That really relates to
17 Mr. Buhmeyer's motion for summary judgment.

18 THE COURT: All right. Did you-all file
19 your-all's motion first?

20 MR. MASSALON: We did.

21 THE COURT: Are you prepared to walk through that?

22 MR. MASSALON: We are.

23 THE COURT: Let's do it in that fashion. I've
24 reviewed the affidavit of Mr. Danny Forsberg, the
25 engineer, and your-all's objection to that. We'll

1 cross that bridge when we come to it.

2 I'll entertain your motion first, Mr. Massalon.
3 Mr. Buhmeyer, you're next. I'll be glad to hear from
4 you-all on each of them, if you would like.

5 Your opposition is as to both; correct? Or just
6 as to Palms? I'm sorry.

7 MR. QUERY: Just as to the Third Party Defendant.

8 THE COURT: Got it. You-all are Palms. All
9 right. Very good. Mr. Massalon.

10 MR. MASSALON: Thank you, Your Honor.

11 THE COURT: Somebody did a timeline, and I'm much
12 appreciative of that.

13 MR. MASSALON: I wish I could claim that, but I
14 think Mr. Buhmeyer did that.

15 As I said, Your Honor, we're here for the Rivers
16 Point Row, LLC and just to try to hold down my own
17 confusion, I will call that the LLC, so I don't confuse
18 it with the Rivers Point Row HOA. And then I'm here
19 also for the individual Defendants.

20 THE COURT: Let's see if we can do that. Before
21 coming out here I met with my court reporter, and just
22 to keep the record clear, can we all agree that you-all
23 will reference Rivers Point Row, LLC as the LLC, and
24 then Palms Properties will be Palms Properties, and
25 then Rivers Point Row Horizontal Property Regime, you

1 just want to call it the POA?

2 MR. BUHMEYER: Yes, Your Honor.

3 THE COURT: Whatever you're comfortable with
4 referring to them as. That would help keep the record
5 and my court reporter -- her head was spinning and so
6 was mine, as I read some of this stuff.

7 MR. MASSALON: That works for me. I'm easy to
8 confuse also.

9 THE COURT: If you fall back on that, I'll correct
10 you on that. I'll probably get some nasty-grams from
11 Ms. Cali over there.

12 (Laughter)

13 MR. MASSALON: Just as a broad factual overview,
14 Your Honor -- I know you've read a lot about this, but
15 the LLC recorded the Master Deed for this property back
16 in May of '04. One of the things, of course, it did
17 was created the POA. And for a time the individual
18 Third Party Defendants served as the developers and
19 also the board of directors of the POA. So Mr. Hagerty
20 and the Derbyshires were the LLC, and also they were
21 the directors of the HOA -- or the POA.

22 Now, the focus of these motions, in our view, is
23 Exhibit H to the Master Deed. Essentially, what that
24 exhibit did was reserve the right to the developer to
25 build another building at Rivers Point Row. And it

1 basically said that they could build the building, it
2 couldn't exceed eight units using the, quote, existing
3 common area.

4 Now, in January of 2005, about five or six months
5 after they acquired this property, the LLC signed a
6 contract with Palm Properties, Mr. Beall who owned Palm
7 Properties, and the contract was to convey a lot to
8 build this Building 2 on.

9 The property was actually conveyed in May of '05,
10 May 12 of '05, and at that time several significant
11 things happened for purposes of today's motions.

12 First of all, the POA issued a resolution
13 authorizing and approving the conveyance to Palms, and
14 then the Master Deed was amended a couple of times in
15 pretty rapid succession.

16 One amendment was to Exhibit H, to kind of restate
17 the wording of the right reserved to build this
18 building, and then there was an amendment to the part
19 of the Master Deed that described the property. And,
20 again, that was just to clarify, somewhat, this right
21 to build Building 2.

22 Now, after that conveyance not much happened for
23 about a year or so. Then Mr. Beall started doing some
24 work, I guess, in preparation to build this building.
25 There is a letter that's been submitted to you a couple

1 of times that Tom Mikell wrote in January of '07 to
2 Mr. Beall; January 17 of '07. And at that time
3 Mr. Mikell said, I know, Mr. Beall -- I'm paraphrasing
4 here -- that you think you own this property, but the
5 POA says you don't. We challenge your title to this
6 property. We say that the LLC didn't have the right to
7 convey it to you.

8 But most importantly, I think, he said we'll let
9 you build your building, but we need to agree on the
10 terms of how that's going to go. This is in January of
11 2007.

12 Now, the reason that's important is because -- and
13 Mr. Beall's testimony, which we've also submitted to
14 you, what he told me was he bought this property to
15 build this building and resell these condos. And that
16 if he had been able to do that or if he had done that,
17 sold the condos, he wouldn't have any damages. That
18 was what he was doing. He wasn't building a dream
19 home, he wasn't building vacation property. This was a
20 pure commercial transaction.

21 The other reason that date is important, January
22 of '07, is the developer's right to build Building 2
23 was just three years long. It ran from May of '04 to
24 May of '07. Mr. Mikell also told him, we'll give you
25 some more time to get your building built -- again, I'm

1 paraphrasing -- if we can come to some agreement.

2 After that the next significant thing that
3 happened was the POA filed this lawsuit asking for a
4 declaration that the conveyance from the LLC to Palms
5 was invalid because the LLC didn't have the right to
6 convey it. And, as you know the rest of the story,
7 Palms answered, then they sued us, and now they've
8 added the individuals.

9 I point out what's obvious but not insignificant,
10 that all of my colleagues are sitting at the same table
11 down here. It's somewhat unusual, in my experience,
12 for plaintiffs and the people they sue to sit at the
13 same table but it's instructive here and really goes to
14 these motions and the reason why we think we're
15 entitled to summary judgment and the HOA is not.

16 From our standpoint the Third Party Complaint that
17 was filed by Palms against us is not really a proper
18 third party complaint. Rule 14, as you well know, says
19 if somebody sues you and you claim a right to
20 reimbursement or a right to recovery from them because
21 of that, then you can add them in as a third party
22 defendant.

23 What they've got going on between the two of them
24 is really just the contest; whether Mr. Beall had the
25 right, I guess, to own this property in fee simple, and

1 we've submitted an affidavit and things that I'll get
2 to when we argue about the summary judgment motion.

3 But as far as suing us, that really is an issue
4 between Palms and the HOA, because, as I said, the HOA
5 gave Mr. Beall the opportunity to build this building
6 and do what he set out to do. For reasons of his own
7 he didn't do it. So whatever damages he's got here are
8 a self-inflicted wound. This is not anything we did
9 because of what they've got going on. It's just a
10 choice he made. Maybe it was a bad economy. I don't
11 know.

12 So our motion for summary judgment is, one, that
13 because Rule 14 doesn't permit Palms to make a claim
14 like this, and because he can't find any damages, we
15 should get summary judgment on the third party claim.
16 The rest of it, really, is dependent on that. I'll
17 articulate the argument but, candidly, if we don't win
18 on that we don't win on this.

19 The rest of our summary judgment is for a claim to
20 be indemnified for the attorneys fees. The Master Deed
21 says that if the LLC gets sued because of what they did
22 or didn't do they should be indemnified by the POA.

23 If we're right, and I believe we are on the law of
24 this and the facts of it, and the claim by Palms
25 against us gets kicked out, then we would ask you to

1 look at the attorneys fees provision in the Master Deed
2 and basically direct the POA to reimburse us for the
3 fees that we've incurred in defending this third party
4 claim.

5 I've got a few other comments but I'll save them,
6 because I think they will come out with Mr. Buhmeyer.

7 THE COURT: Let me ask you a couple of questions,
8 because these are the ones that are on my mind and
9 might give you-all some help, when you start to
10 respond, as to where I'm going with this thing. That
11 is this.

12 The reason I find the timeline to be significant
13 is because -- not because I'm some expert in the area
14 of condominium law, because I'm not, but I have had to
15 cross this bridge a time or two.

16 My understanding is once the Master Deed is
17 recorded then you no longer have what I refer to as
18 real property. You have a horizontal property regime.
19 Are we in agreement on that?

20 MR. MASSALON: I think we are.

21 THE COURT: So May of '04 our property converts
22 from real property to an HPR, Horizontal Property
23 Regime.. Okay?

24 Now, where, in the documentation, is this Building
25 2 that's been subsequently conveyed to Mr. Beall or was

1 Mr. Beall conveyed real property? That's what I'm
2 trying to figure out with the conveyance to Mr. Beall.

3 MR. MASSALON: Well, I think I'll have to answer
4 that question in two parts.

5 The documentation conveys a lot, I think. If you
6 read them, the deeds convey a lot. And this really
7 goes to the summary judgment issue. But I believe if
8 you look at this transaction and what everybody did and
9 what they were up to, what they were trying to
10 accomplish, I believe what they were really trying to
11 accomplish was to convey the developer's right to build
12 this building; Mr. Beall. And because this was the
13 kind of transaction I described, I think that's what
14 Mr. Beall wanted to get.

15 But if you ask me if the documentation contains an
16 assignment of developer's rights I would have to say
17 no. But we have, in our Answer to the Third Party
18 Complaint and Counterclaim, alleged a claim for
19 reformation.

20 That's -- again, I don't want to get ahead of
21 myself, but the way we see that getting resolved is
22 that you hear the testimony and decide whether the
23 document should be reformed to convey what I think they
24 were trying to accomplish, but the documents will say
25 that.

1 THE COURT: So in response to my inquiry, how did
2 Mr. Beall get his rights?

3 MR. MASSALON: By deed, general warranty deed.

4 THE COURT: Was that a conveyance of raw land?

5 MR. MASSALON: It was a conveyance of a parcel
6 that was described in the deed that referred to a plat.
7 And if you give me just a minute, Judge, I'll actually
8 look at it. The document that conveyed it --

9 THE COURT: Looks like .38 acres or something;
10 some small amount of land.

11 MR. MASSALON: Yes, sir, .38 acres. And it refers
12 to a plat of Mr. Seabrook dated June 21, '06.

13 THE COURT: The plat post dates the Master Deed?

14 MR. MASSALON: Yes, sir.

15 THE COURT: Okay.

16 MR. MASSALON: And the -- again, this goes to one
17 of the issues in Mr. Buhmeyer's motion, but if you look
18 at the plat that was recorded with the Master Deed, it
19 does not have an out parcel designated in it. And,
20 again, as I read Exhibit H it says this building is
21 going to be built on common area.

22 It says developer reserves the right to build a
23 building using the existing common area. I can pull
24 out the exact language, but it says something to that
25 effect.

1 Again, I think that's where the mistake came in,
2 is trying to convey this by deed instead of by an
3 assignment of developer's rights, because I think
4 that's what they had. I think the developer had the
5 right to build a building. There is an argument that's
6 been made that the developer didn't have a valid right
7 to build this building because it wasn't specifically
8 described but, again, I don't think the statute -- I
9 know the statute doesn't say it's got to be described
10 in words. It articulates what can be built there.

11 When you look at any plat of Rivers Point Row or
12 if you've ever been there, it is a pretty dense
13 development and if somebody is going to build a
14 building that is -- in my view, there's exactly one
15 place it could go, which is where this parcel was
16 subsequently carved out. There is a little gazebo kind
17 of a garden area, open space, but everything else is
18 pretty much roads, buildings or tennis court out there.
19 It's pretty dense. That's where the subsequent plat
20 was drawn to delineate this .38 acres.

21 THE COURT: All right. I think that would give me
22 what I wanted in that regard.

23 So when did the developer hand over to the
24 Property Owners Association its rights as the declarant
25 in this matter?

1 MR. MASSALON: I don't mean to be a pain about
2 this, Judge, but it's slightly murky. I think it's
3 undisputed -- at least I believe it's undisputed that
4 it was after the conveyance to Palms and these
5 resolutions were passed.

6 But what I think the record will show is that
7 starting in the summer of '05, after the conveyance to
8 Palms, the LLC started trying to turn over to the POA,
9 but it initially had a lack of interest. People
10 weren't showing up to elect the board and coming
11 forward to accept leadership positions, and I think --
12 and I'll look, when I sit down, to try to pick out the
13 date, but I don't think it actually got done until
14 about October of 2005, when they actually elected a
15 board consisting of property owners; September-October,
16 later in the year. But it wasn't for lack of trying.

17 They were trying to get out of that role and turn
18 it over, but I think they had to have a couple of
19 meetings to get it -- actually get it done.

20 THE COURT: All right. Very good. Thank you,
21 Mr. Massalon.

22 MR. MASSALON: Thank you.

23 THE COURT: All right. Mr. Buhmeyer, let me hear
24 from you first, then. And just in response to their's
25 and I'll come back to yours.

1 MR. BUHMEYER: Thank you. May it please the
2 Court.

3 The only issue I'm going to address with regard to
4 the counterclaim and summary judgment is the issue of
5 the attorneys fees that are sought and indemnification
6 for those against the POA.

7 There was a reply made initially by the prior
8 attorney, Mr. Mikell, that stated that this is a suit
9 that's brought by the Plaintiff to determine the
10 validity of a deed and not to enforce any provisions of
11 the Master Deed.

12 This is according to what relief for attorneys
13 fees there are provided for in the Master Deed. And
14 any allegations don't really apply to the Plaintiff in
15 that fold.

16 And, also, notwithstanding the fact that Palms
17 joined Rivers Point Row in this suit, there is really
18 no provision in the Master Deed which allows any person
19 to recover costs and disbursements and reasonable
20 attorneys fees and expenses -- which is part of the
21 language of the deed -- for any defense of a suit. So
22 matters are only recoverable when forced provisions of
23 the declaration.

24 And with regard to the last discussion about the
25 POA transfer, I believe when I reviewed the records of

1 all the meeting minutes, the first indication that I
2 saw of the actual declarant -- the first declarant
3 being out of it and the people that were involved as
4 the owners of the buildings, was 6/27 of '05 was the
5 first meeting minutes that I was able to ascertain.

6 THE COURT: First initial meeting of the new board
7 of the Property Owners Association?

8 MR. BUHMEYER: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. BUHMEYER: That's all I have. Thank you.

11 THE COURT: Again, that conveyance to Mr. Beall
12 was --

13 MR. MASSALON: May 12 of '05, Your Honor.

14 THE COURT: All right. Mr. Query.

15 MR. QUERY: If it please the Court.

16 Your Honor, first of all I would be happy to sit
17 at Mr. Massalon's table.

18 (Laughter)

19 MR. QUERY: That aside, Your Honor, my learned
20 colleague places much less significance in a general
21 warranty deed than Professor Means (phonetic) did
22 decades ago when I was up there.

23 THE COURT: Did they even have horizontal property
24 regimes?

25 MR. QUERY: No, sir.

(1 (Laughter)

2 THE COURT: It's a creature of statute; is it not?

3 MR. QUERY: It is, Your Honor. And there are some
4 very specific protections in that statutory scheme,
5 Your Honor, that deal with common elements of a
6 horizontal property regime, and I think by all accounts
7 we think that -- by all accounts what was intended to
8 be conveyed by the general warranty deed included
9 elements of common property.

10 So, first of all, we think that statutorily they
11 would have been prevented from making such a conveyance
12 without the consent of -- the unanimous consent of all
13 of the members of the regime or all of the property
14 owners.

15 But, secondly, Your Honor, and I think the linch
16 pin in this -- we're talking about very sophisticated
17 developers, one of whom is an attorney who has focused
18 in this area. And so to say that they sought out --
19 that they set out to convey a right to build on a piece
20 of property and sought to accomplish that by the giving
21 of a general warranty deed is pretty preposterous in
22 and of itself.

23 Clearly they understood that they conveyed an
24 assignment of their right to build. And you could have
25 called it an assignment of a right to build, and that

1 would have come directly out of the Master Deed and
2 been born of their right that they reserved in the
3 Master Deed. But instead they chose to convey by
4 general warranty deed.

5 Now, we can make certain guesses about why that
6 was. The best guess would be, that's the only way a
7 bank would loan the money for you to be able to do the
8 building, but that is probably a guess, because that
9 was in their minds. They are the ones who decided to
10 offer to sell, offered to sell fee simple title and
11 then gave a general warranty deed on this property
12 without any idea that that was -- that they were not
13 able to do that.

14 Mr. Beall bargained for that, paid \$180,000 for it
15 and received a general warranty deed to the identical
16 property that they had conveyed by the Master Deed
17 almost exactly one year before.

18 They simply lacked the capacity to make that
19 conveyance, Your Honor. They knew, or should have
20 known, that they lacked that capacity. They did it in
21 order to induce Mr. Beall to go forward with this deal.

22 To now take the position that an attempted
23 assignment of a right to build with a very short
24 limitation, really, in terms of what we're talking,
25 even if you add the generous seven months that

1 Mr. Mikell indicated in his letter, that that is the
2 same as conveying property by general warranty deed?
3 Just by the examination of the documents alone, Your
4 Honor, should make it impossible for the Court to grant
5 summary judgment in this case.

6 Clearly had there actually been a conveyance by
7 general warranty deed Mr. Beall would today own this
8 property, he would not be subject to the almost certain
9 ruling of this Court that that deed is going to be set
10 aside.

11 Even though he would have restrictions that would
12 result from the horizontal property regime, owning the
13 property is significant. He could go to them and he
14 could negotiate. He could say, let me build one
15 building, let me build a swimming pool and charge
16 you-all to come over and use my swimming pool; I'm
17 going to build me a nice campsite over there. He could
18 do whatever he wanted to with it, because it would be
19 his property by the traditional concept of the
20 ownership of property.

21 He received none of that. He has no right now to
22 go and bargain with the horizontal regime, at least not
23 with the leverage of saying this property belongs to me
24 and I want you-all to work with me on doing something
25 here, otherwise I'll put up my no-trespass signs and

1 I'll give you a certain amount of time to get your
2 gazebo off my property.

3 So there is a tremendous significance, Your Honor.
4 The LLC relies heavily on an answer to a single
5 question by a layman in a deposition in which he said,
6 yes, if I build the buildings I wouldn't have had
7 damages. He goes on in subsequent pages, on number 66
8 that I included in our memorandum, and maybe 67 and 68
9 as well, to talk about the fact that he lost \$180,000
10 if he doesn't, in fact, have a deed to this property;
11 that he's lost all of the interest that he is obligated
12 to pay on the loan of \$180,000; that he's lost
13 attorneys fees; that he's lost the rights to this piece
14 of property.

15 So to suppose that he has no damage because he
16 didn't build these buildings within that time limit,
17 something that even though Mr. Mikell's letter may have
18 said we're going to give you a right to do it, as long
19 as you do it the way we say we want you to do it, not
20 as long as you do it according to what you agreed with
21 the LLC to do. But now the new, whatever we say you
22 can do with the property owners association, to say
23 that that is the same as having received a general
24 warranty deed just does not fly, Your Honor.

25 He did not -- the Palms did not get the property

1 that they bargained for. They paid the price. They
2 are entitled, at the very least, to the return of those
3 monies and we believe that they are entitled to
4 substantial damages in addition to that. And we also
5 believe that there will be evidence of unfair trade
6 practices, fraud or misrepresentation.

7 THE COURT: All right, sir.

8 MR. QUERY: Thank you, Your Honor.

9 THE COURT: Mr. Massalon.

10 MR. MASSALON: Just a couple of points.

11 First of all, as far as my misplaced reliance on
12 the answer to a single deposition question, I would
13 invite Your Honor to take a look at the contract and
14 the addenda to it that were submitted. I know
15 Mr. Query submitted them. Several people have.

16 For instance, Paragraph 30 of the contract with
17 Mr. Beall says this. It's contingent upon the lot's
18 ability to accommodate eight townhouses.

19 Addendum A signed by Mr. Beall -- C, says Palms
20 Property, LLC is purchasing from Rivers Point Row a .36
21 acre parcel, refers to the plat; the seller approves
22 the following guidelines for the construction on tract
23 B2. It's got a big long list of things that they do;
24 how many units there will be, how big they'll be; they
25 will be consistent with the exterior design of the

1 existing buildings.

2 There are a couple more addenda there and I know
3 you can read better than I can, so I won't read them
4 all to you, but looking at this contract, even if you
5 ignore the deposition, there really can be no question
6 that Mr. Beall was buying this property to build these
7 townhouses and that he knew that they were going to be
8 part of this HOA.

9 And all this about building swimming pools or
10 putting up a tent, all that stuff, this was just not
11 that deal. He was not a free American buying a piece
12 of real estate to make a homestead. This was a
13 commercial deal. They all knew what it was.

14 And the other thing I'll say, then I'll sit down
15 on this one, is, again, the case that was cited to you
16 or referred to -- the word there was consent by the
17 HOA. And let me just reemphasize that May 11 there was
18 a resolution passed by the HOA consenting to this deal.
19 It's in the materials.

20 And, again, there may be some quibbling back and
21 forth about who was running it when, but what you heard
22 from counsel is consistent with what I recall, that
23 sometime after all this conveyance was done and after
24 that resolution approving the sale to Palms was passed
25 then the HOA -- the process started. I don't think it

1 actually accomplished in June, but that's when it
2 started and it got accomplished sometime after that, I
3 think, with the election of officers and all that. But
4 I don't think there is any question that when the
5 resolution approving this contract was passed that
6 Mr. Hagerty and the Derbyshires were properly serving
7 as board of directors of the POA and they consented to
8 it, and they could.

9 So, again, I'll sit down. That's all I've got on
10 that.

11 THE COURT: Let me ask you, Addendum E to the
12 contract of sale, which appears to be dated May 12 of
13 '05 -- so that would be the day afterward, after the
14 consent resolution was passed?

15 MR. MASSALON: Yes, sir.

16 THE COURT: I see the language in here, the
17 seller -- first of all, Palms Properties is purchasing
18 the .36 acre tract designated as B2. Then it goes on,
19 the seller and the HOA approve the following guidelines
20 for construction on tract B2.

21 Is it your position that your client was the HOA
22 on that date?

23 MR. MASSALON: On that date they were serving in
24 both roles, as the developer and also as the board of
25 the HOA.

1 As Mr. Buhmeyer said, sometime in June -- and I'm
2 sure he's right about the date -- they had a meeting to
3 try to turn it over, but it was at least a month after
4 this.

5 THE COURT: Did any of you-all recall offhand what
6 the triggering point was, the tipping point for when
7 the developer would turn over the homeowners
8 association to the owners? Was it a number of units or
9 a percentage or do you have any idea?

10 MR. BUHMEYER: I can't recall that I went over
11 that information, Your Honor, but I do believe that at
12 the time this deed transfer occurred there were
13 approximately 75 to 80 percent of the units already
14 sold to individual property owners. Generally speaking
15 it's usually half or more.

16 THE COURT: I'm raising the question. Okay? It
17 will be in those documents somewhere.

18 MR. MASSALON: I'll try to pull it.

19 THE COURT: If it's not, we have a different
20 problem to fight about; my limited knowledge about this
21 stuff as to who has the right to do what and when.
22 Okay?

23 MR. MASSALON: I'll try to look it up. I believe
24 it's in the documents. I just don't remember exactly
25 what it was.

1 THE COURT: Okay. All right. Very good, then.

2 That's the Third-Party Defendant's motion for
3 summary judgment. That's Rivers Point Row, LLC. Okay.
4 I'll take that under advisement. We'll move forward
5 with the next one.

6 Mr. Buhmeyer, I'll be glad to entertain yours, if
7 you would like.

8 MR. QUERY: Your Honor, I had just one other
9 point. If I can say it again it would make me feel
10 better.

11 We do question, pursuant to Section 27-31-60 and
12 70, of the horizontal property regime statute, Your
13 Honor, that the board, at whatever juncture that
14 turning over took place, once there were units sold and
15 common property ownership attached, we believe that
16 that statute then would prevent the board from having
17 the authority to do anything with common elements; and
18 we deal here entirely with common elements.

19 So we think that's an important factor. And the
20 fact that, as to the attorneys fees aspect of this, the
21 Palms would only have become a member of the HOA and
22 been subject to the provisions of the Master Deed --
23 according to all of the documents -- upon the
24 completion of these units, which of course were never
25 started nor completed.

1 THE COURT: All right. I want make sure I'm clear
2 on this point.

3 You bring up the statutory criteria of the
4 Horizontal Property Act on the basis that at any time
5 after the creation of the common elements it would
6 require the homeowners association or the unanimous
7 consent of all of the unit owners? Which are you
8 telling me?

9 MR. QUERY: The unanimous consent of all the unit
10 owners, I believe, Your Honor.

11 So we think they lack the capacity both by virtue
12 of the fact that they had conveyed the identical
13 property by the Master Deed and that they statutorily
14 lacked the capacity, because they had to get the
15 consent of 100% of the property owners.

16 THE COURT: Okay.

17 MR. MASSALON: And, Your Honor, if I may respond
18 to that last question you asked?

19 On Page 8 of the Master Deed, Section -- Article 4
20 Section 4, what it says is that the tip point is when
21 the declarant has conveyed three fourths of all units
22 or notified the unit owners in writing that it is
23 relinquishing controlling interest. So it's either one
24 of those.

25 The reason that I say it's a little murky is

1 because of something it says before that. When it's
2 describing the board of directors in part it says the
3 board of directors shall consist of such number of
4 individuals as may be selected in accordance with the
5 bylaws. And I guess the question, although -- to me,
6 as long as it was after this conveyance -- I'm not sure
7 it's of particular importance today, but I think what
8 happened is the declarant notified -- the LLC notified
9 the homeowners association, was ready to turn it over,
10 but there was no one elected to replace them for some
11 period of time that -- and, again, I don't remember
12 exactly when it was, but it took a little while.

13 I guess the question is, can the board have no
14 members for some period of time or do the people who
15 were there continue to serve until their replacements
16 are elected?

17 That's why I say it's a little murky. I'm not
18 sure it's important, but I would say that if Mr.
19 Buhmeyer has a notification June 27, that sounds about
20 right, and that's one of the tipping points under the
21 Master Deed.

22 THE COURT: The requirements themselves are three
23 quarters; 75%?

24 MR. MASSALON: It's three quarters of the units or
25 notification that we're out. I think it's either one

1 of those.

2 THE COURT: Which section?

3 MR. MASSALON: Section 4 on page 8, right at the
4 top of page 8 of the Master Deed.

5 THE COURT: Okay. All right.

6 (pause)

7 THE COURT: All right. Mr. Buhmeyer, you may
8 proceed, sir.

9 MR. BUHMEYER: Thank you, Your Honor. May it
10 please the Court.

11 I would like to think that everybody here would
12 agree that this whole matter has been going on for
13 quite a long time now, 2004 or five. In 2008 the case
14 got filed by Mr. Mikell, the first attorney
15 representing the POA in this action. It's been more
16 than four years since that happened.

17 Once I heard a judge say that the biggest
18 complaint about lawyers is we take too long, we charge
19 too much. That might be why I'm standing here today.

20 The last time we were here for the motion I told
21 you that the POA wants nothing else other than a
22 judicial determination of the validity of the deed at
23 issue in this case between the developer, the LLC, and
24 the First Party Defendant Palms.

25 They have chosen to forego chasing any attorneys

1 fees or any other sort of liability that may be found
2 with the adverse parties to this suit in the interest
3 of economy, both judicial and financial. Any liability
4 for money damages should properly be mitigated, then
5 sorted out between these two parties.

6 I may be misunderstanding it, but I believe that
7 that's the supposed intent of a declaratory judgment
8 action. It's an action brought to decide an issue
9 between the parties to a dispute in a less complicated
10 and drawn out fashion than your average civil action.

11 In Sunset Cay versus City of Folly Beach our
12 Supreme Court advised that the Declaratory Judgment Act
13 should be liberally construed to accomplish its
14 intended purpose of affording a speedy and inexpensive
15 method of deciding legal disputes and of settling legal
16 rights in relationships. Again, I think everybody here
17 would agree it's been anything but speedy and
18 inexpensive.

19 The facts surrounding this case with regard to
20 Plaintiff's claims are all found in documents filed
21 with the Charleston County Registered Deeds Office and
22 contained as a part of the public record and not in
23 dispute.

24 The matter is one of law, of legal interpretation
25 and decision, and that's why we now bring this motion

1 for summary judgment asking that the Court rule whether
2 the deed at issue filed by the closing attorney,
3 Mr. Joseph Hand, with the Registered Deeds Office in
4 Charleston County, which attempted to convey a part of
5 the Plaintiff's property to Defendant Palms from the
6 same entity that made the prior conveyance to the
7 Plaintiff, the Third Party Defendant, LLC, as the
8 developer, is a legally valid transfer of real property
9 or not.

10 We all know what the purpose for summary judgment
11 is generally defined as, so I won't delve into that in
12 the interest of time. But let me point out that in
13 Thompkins versus Festival Center Group the Court of
14 Appeals provided that summary judgment is appropriate
15 in those cases in which plain, palpable and undisputed
16 facts exist on which reasonable minds cannot differ.
17 It's not sufficient that one create an inference which
18 is not reasonable or an issue of fact that is not
19 genuine. Any inference that goes to the intent of the
20 parties to this transaction is not a reasonable
21 inquiry.

22 What the parties bargain for or whether the
23 transaction was proper is not a genuine issue of fact
24 with regard to the Plaintiff's position in this matter.

25 The undisputed fact remains that a general

1 warranty deed for real property was executed between
2 the Defendants in this action and recorded in the
3 Registered Deeds Office in Charleston County.

4 That stated, there truly is no way to see how the
5 facts of this case could, using reasonable minds, have
6 more than one interpretation. So we're left to address
7 the legal interpretation of the matter in order to
8 determine the validity of the deed at issue.

9 As we've all talked about already, the controlling
10 law governing this matter is Title 27 Section 31 known
11 as the South Carolina Horizontal Property Act;
12 specifically Sections 27-31-70 and 130. I'll simply
13 refer to this statutory scheme as the Act.

14 As stated in Plaintiff's Memorandum of Law in
15 support of this motion, a tract of property, which
16 includes the parcel subsequently subdivided and sold to
17 Palms that is the subject of this action, was deeded to
18 Plaintiff as a horizontal property regime and as a
19 result became subject to the statutes of the Act as
20 well as the terms of the deed.

21 Section 27-31-70 states that the common elements,
22 both general and limited, shall remain undivided and
23 shall not be the object of an action for partition or
24 division of the co-ownership. Any covenants to the
25 contrary shall be void.

1 Section 27-31-130 provides for all co-owners to
2 waive the regime, if so desired, subject to assent of
3 creditors, recorded encumbrances, if any. The statutes
4 are clear on the face and a plain unstrained reading is
5 is no way ambiguous.

6 In Article 2 the Master Deed defines common
7 elements, what the deed identifies as common areas by
8 reference to definitions found in the Act with regard
9 to what the Act defines as general common elements,
10 meaning and including the land, whether leased or in
11 fee simple, or whether submerged on which the apartment
12 or building stands provided, however, that the
13 submerged land developed or used under this chapter is
14 subject to any law and act to delay the leasing of
15 submerged lands by the state for the public benefit,
16 and several other bullet points, including all other
17 elements of the property in existence or to be
18 constructed or installed or actually of common use or
19 necessary to its existence, upkeep or safety.

20 Basically, everything on the property outside of
21 the four interior walls of each unit is designated a
22 common element. The deed makes no reference to any
23 agreed upon limited common elements, so there is no
24 need to address the statutory wording.

25 The deed further states that this term is more

1 specifically defined in Article 3 Section 4 of the
2 contents and that it includes all of the property and
3 improvements thereon other than the units.

4 Looking at Section 4 of Article 3 of the Master
5 Deed we find a section titled General Description and
6 Phasing. And this section identifies the property as
7 consisting of all present units and common areas as
8 described in Exhibit A. And reference is made to the
9 last sentence of this section, to a future building
10 with phasing as described in Exhibits H and D.

11 It is important here to note, also, that this
12 Article 3 contains the requisite submission clause in
13 Section 1 and states that by recording of this Master
14 Deed the property submitted to provisions of the Act,
15 with property being defined both herein under Section 4
16 and previously in Article 2 as the land, all
17 improvements and structures thereon and all easements,
18 et cetera, as described in Exhibit A.

19 Exhibit A is simply the legal description of the
20 deeded property showing meets and bounds, easements
21 plan, et cetera, et cetera.

22 All this makes it clear that the entire parcel
23 needed(phonetic) to plan was submitted and became part
24 of the regime either as common elements or units.

25 So applying 27-31-70 of the Act, no part of the

1 common elements could be subsequently divided and sold,
2 such covenant being void.

3 The case on point in this discussion is the appeal
4 of decision in declaratory judgment action in which the
5 same issue was presented as the case at bar today in
6 Reyhani versus Stone Creek Condo, II Horizontal Property
7 Regime.

8 The South Carolina Court of Appeals had to decide
9 whether a deed to the Appellant Reyhani was a valid
10 transfer in fee simple -- excuse me, the Appellee.
11 Reyhani was a valid transfer in fee simple of a part of
12 the property previously deeded to a regime under the
13 Act.

14 The Master in that case ruled it was a valid
15 transfer but the appeals court reversed and remanded
16 the case so that the deed could be declared invalid.

17 The Court agreed with the appellants, the
18 homeowners association or property owners association,
19 that once common elements are set aside and vested in
20 the co-owners, such co-owners may not be unilaterally
21 deprived of their interest in the common elements by
22 the developer.

23 There were some factual issues in this case, not
24 present in today's matter, that complicated the issue
25 and required a finding of fact, but the general holding

1 the court gave was that absent an agreement assented to
2 by the condominium owners or deed amendment allowing
3 transfer, no successors in interest could acquire the
4 right to hold fee simple deed to a part of the tract
5 previously submitted, by deed, as common elements.

6 Basing it's decision on the facts as presented in
7 its holding the Court ordered that the property be
8 returned to the regime.

9 In this case no agreement of the co-owners has
10 been offered as evidence to support the subdivision and
11 sale of the property to Palms. The original Master
12 Deed and both subsequent amendments reserved to the
13 developer LLC the right to build a building, but
14 nowhere is a right given or reserve to sell any part of
15 the common elements of the deeded property and effect a
16 deed transfer in fee simple ownership to Palms or
17 anyone else for that matter.

18 Even Defendant Palms in their most recent reply to
19 the LLC's second counterclaim admits that the Court
20 will necessarily decide the deed invalid or otherwise
21 defective.

22 The next issue involves the developer's
23 restoration of its right to build in the deed and in
24 subsequent amendments; the analysis of its validity, as
25 a matter of law under the tenants and requirements of

1 the Act.

2 As stated, this right is of use and not ownership,
3 as any declaration such as this should be strictly
4 construed against the developer as the drafter.

5 Section 27-31-110 of the Act mandates the
6 requirements with regard to plot and building plans.

7 It states that there must be attached to the
8 Master Deed or lease, at the time it is filed for
9 record, a map or plat showing the horizontal and
10 vertical location of any building which is proposed or
11 in existence and other improvements within the property
12 boundary which shall have the seal and signature of a
13 registered land surveyor licensed to practice in this
14 state.

15 There must also be attached a plot plan of the
16 completed or proposed construction showing the location
17 of the building which is proposed or in existence and
18 other improvements. And a set of floor plans of the
19 building which must show graphically the dimensions,
20 area and location of each apartment therein and the
21 dimension, area and location of common elements
22 affording access to each apartment.

23 Other common elements, both limited and general,
24 must be shown graphically, insofar as possible, and
25 must be described in detail in words and figures.

1 Building plans must be certified to by an engineer
2 or architect authorized and licensed to practice his
3 profession in this state.

4 Again, this statute is clear on its face and
5 unambiguous. Upon a full and fair reading of the
6 Master Deed for Rivers Point Row it is clear that the
7 requirements for building of a named Building 2 in this
8 regime after the deed was recorded have not been met;
9 therefore, the developer's reservation of a right to
10 build is not sufficiently definite. It's deficient as
11 a matter of law and is unenforceable.

12 No adequate description of the location of the
13 proposed building is included in the deed, nor are any
14 plans for such building attached to the deed.

15 Exhibit B to the deed shows no Building 2 on the
16 plat, and Exhibit C references Building 2 in terms of
17 value and percentage, common interest only. Nor was
18 the right to build reserved as an assignable right per
19 the terms of the deed.

20 Only the second amendment executed on the same
21 date as the sales transaction between Palms and the
22 developer on 5/12 of '05, and not recorded until more
23 than a month later on 6/22/05, changed the language of
24 the right reserved from -- declarant reserves the right
25 to build Building 2, to declarant shall cause the

1 building of Building 2.

2 The question is, does this last minute change make
3 the right assignable? More likely an eleventh hour
4 intent to inject some validity to a transaction suspect
5 from its inception by the same individuals who
6 initiated it. That then begs the question of the
7 validity of the deed amendment as well.

8 Article 7, Section 2 and 3 of the Master Deed
9 control amendments by the association and the developer
10 respectively. Two thirds vote of the holders of common
11 interest or by a declarant under a list of reasons
12 provided, none of which would be applicable to this
13 instance.

14 No information has been provided that would
15 indicate this amendment was validly executed and
16 recorded per the terms of the amendment process in the
17 original Master Deed.

18 Also there was an addendum to the contract of sale
19 between Palms and Rivers Point Row, as was referred to
20 earlier by the other counsel, dated May 12, 2005;
21 again, the same date that the sales transaction was
22 executed which states that the seller and the POA -- I
23 think it's referred to as the HOA in there -- approve
24 of various items having to do with the sale of the
25 property to Palms.

1 The HOA itself didn't even have it's first meeting
2 until late June. I refer to 6/27 of '05. So how
3 exactly the developer gets the approval of the HOA to
4 add this addendum, I don't really know.

5 To conclude, the Plaintiff's position is that --
6 excuse me. The developer's recording of the Master
7 Deed transferred fee simple ownership of the entire
8 subject tract from the developer to the Plaintiff, and
9 the developer did not reserve a right in the deed as
10 originally filed or obtain a right through subsequent
11 deed amendment or other collateral agreement with the
12 unit owners, to subdivide and sell to the Defendant or
13 any other third party any portion of the property
14 deeded to Plaintiff in the Master Deed.

15 By the time this transaction occurred the units
16 were more than 75% sold to other owners. These owners
17 cannot be unilaterally deprived of their right to
18 common property by the action of the developer.

19 The deed reserved only a right for the developer,
20 Rivers Point Row, LLC, to build an undefined Building 2
21 on an unspecified part of the common area of the tract
22 within three years after the recording of the deed.
23 The right reserved is deficient and did not meet the
24 statutory requirements of the Act with regard to plot
25 plan and must contain sufficient definiteness of

1 description and location as required.

2 Further, no wording of the deed, any amendment to
3 it or any other collateral agreement evidences that
4 this right was to be assignable or transferable from
5 the developer to a third party via deeded sale of part
6 of the regime's property or by any other attempt to
7 transfer the right as it existed.

8 Defendant Palms cannot legally hold valid legal
9 title in fee simple on any part of the property that
10 was subject to the previously recorded Master Deed of
11 the POA. And any purported transaction initiated by
12 the developer which attempts to effectuate this
13 transfer is void as a legal nullity.

14 Therefore, the Plaintiff requests that the Court
15 declare the deed recorded at Book X-541 Page 464 to be
16 invalid as a matter of law and issue a decree directing
17 Register Of Deeds of Charleston County to strike this
18 erroneous deed recording from the county records.

19 Thank you, Your Honor.

20 THE COURT: All right. Mr. Buhmeyer, let me ask
21 you a couple of questions.

22 You say the units were 75% sold. That's been one
23 of my questions. On what date? May 12, 2005?

24 MR. BUHMEYER: That's what the records that I've
25 looked at indicate.

1 THE COURT: All right. That would have been sales
2 of prior units; is that correct?

3 MR. BUHMEYER: Yes, sir.

4 THE COURT: And who's got those records? Is
5 that -- that's got to be some fact that either is
6 correct or incorrect. I'm trying to figure out what it
7 is. That's going to be something I'm going to ask you
8 to supplement the record with.

9 MR. BUHMEYER: Okay.

10 THE COURT: It's either yes or no. X date or Y
11 date. Either before or after the fact. That's a
12 significant fact to this Court.

13 My next question for you is, when did the Building
14 2 language first arise? Is that contemplated in the
15 original Master Deed?

16 MR. BUHMEYER: Yes, Your Honor.

17 THE COURT: It is?

18 MR. BUHMEYER: It's Exhibit H. And it was twice
19 amended by the deed amendments that I referred to, and
20 it's referred to in the resolutions, as well,
21 Mr. Massalon spoke about.

22 THE COURT: So Building 2 is referenced in Exhibit
23 H to the Master Deed?

24 MR. BUHMEYER: It is.

25 THE COURT: But does not appear in the plot plan

1 and building plat?

2 MR. BUHMEYER: Does not. Only thing that appears
3 in the plot plan or Master Deed, that I was able to
4 ascertain, is that there is a percentage interest of
5 the common elements before Building 2, and then a
6 percentage interest afterwards. And there was some
7 worry to -- as to the eight units that were described
8 in Exhibit H and how much they might sell for.

9 THE COURT: It contemplated eight units?

10 MR. BUHMEYER: It did; yes, sir. But it did not
11 offer any type of description of the building or where
12 it was to be located. Mr. Massalon referred to tennis
13 courts; it could have been built there. Could have
14 been -- clubhouse could have been torn down, could have
15 been built on top that of. It's vague, extremely
16 vague. It just says a building.

17 THE COURT: What was the other exhibit? It was D,
18 was it? D for dog?

19 MR. BUHMEYER: Yes, sir.

20 THE COURT: What does it say there?

21 MR. BUHMEYER: There, again, that's what I just
22 referred to as the schedule of assigned values and
23 percentage interest.

24 THE COURT: That's the percentages?

25 MR. BUHMEYER: Yes, sir.

1 THE COURT: They show two different percentages?

2 MR. BUHMEYER: Before and after Building 2; yes,
3 sir.

4 Again, my argument would be that it's just not
5 sufficiently definite as to location or description in
6 accordance with the Section 130 of the statute.

7 THE COURT: Okay. Response? Mr. Massalon?

8 MR. MASSALON: Yes, sir. I guess I'll begin
9 generally and then talk a little more specifically
10 about these issues.

11 The primary concern or problem or issue I've got
12 with the Plaintiff's summary judgment motion is really
13 not to drag this out unnecessarily or enrich anyone at
14 the association's expense -- POA's expense. It really
15 goes back to the arguments that I made more thoroughly
16 before.

17 What Mr. Buhmeyer is asking the Court to do is to
18 issue a final declaration about an instrument that we
19 have asked the Court to reform. And basically I
20 think --

21 THE COURT: Let me just stop you right there. You
22 acknowledge that the deed in and of itself would be
23 invalid, that that cannot be done?

24 MR. MASSALON: If the deed is invalid that the
25 instrument cannot be reformed?

1 THE COURT: No. No. I'm just getting you to
2 acknowledge that the deed in itself would be a nullity.
3 Once you've created a horizontal property regime there
4 is no land anymore. There is a horizontal property
5 regime with common elements, and they have X
6 characteristics. They no longer have characteristics
7 of what you and I think of as dirt, as raw land. It's
8 now a horizontal property regime.

9 MR. MASSALON: I would agree with that, but I
10 don't think that that necessarily translates into the
11 deed being invalid as a matter of law. So I agree with
12 the first thing, but if you're leading me to the second
13 thing, I will not agree with that.

14 THE COURT: All right.

15 MR. MASSALON: And the specific reasons are these.
16 There are some arguments about statutes and cases that
17 require all the property owners to consent or everybody
18 to agree, and I don't think those statutes say that. I
19 don't think the case is dispositive, for these reasons.

20 When I look at these statutes I don't see a 100%
21 requirement in there. And, again, we've got what we
22 say is a binding resolution before the conveyance, on
23 the POA, authorizing this transaction and authorizing
24 the conveyance.

25 The case that was cited, to me the most

1 important -- I'm sure I'm going to butcher this name --
2 the Reyhani case that was cited. To me the most
3 important word in that case is unilateral. I think the
4 teaching point of that case is that the developer
5 cannot unilaterally move common elements around. But,
6 again, in that case they said there is no evidence of
7 consent by the POA, so we don't have to remand it for
8 fact finding. In this case I think we have evidence of
9 consent by the POA.

10 Now, to be fair, I'm sure it's disputed, but I
11 think there is evidence here that precludes summary
12 judgment on this issue and gives us an opportunity to
13 make our arguments about reformation and the
14 transaction of what really happened.

15 THE COURT: Given that, what is that evidence?

16 MR. MASSALON: The evidence -- I think the primary
17 evidence is the resolution that the -- that was passed,
18 when my clients were in control of the POA, that says
19 this transaction is authorized and approved by the POA.

20 THE COURT: May 11, 2005?

21 MR. MASSALON: Yes, sir.

22 THE COURT: All right.

23 MR. MASSALON: Now, a couple of other points. On
24 the issue of assignment, let me point -- direct the
25 Court to a couple of provisions that I think dispose of

1 that issue in my favor.

2 On page 2 of the Master Deed the declarant is
3 defined as Rivers Point Row, LLC, its successors and
4 assigns. Declarant may assign its rights as declarant
5 upon a written assignment.

6 Again, I won't belabor it, but I think it defines
7 declarant as successors and assigns and says it can
8 assign rights.

9 If you look at the attachment H, Exhibit H to the
10 original Master Deed which describes the Building 2
11 right, it doesn't say Rivers Point Row, LLC. The first
12 word is, declarant reserves the right.

13 So, again, I think it's a clever argument, but I
14 don't think it's a correct reading of the Master Deed.
15 Because the declarant is inherently -- it concludes
16 that.

17 Next Mr. Buhmeyer says we lose because the
18 reservation doesn't require or doesn't meet the
19 requirements of the Act for reserved rights.

20 Again, I'm kind of on a one word kick today, so
21 I'll stay with it. In the statute that he cited about
22 the description, it requires a general description.
23 Again, it doesn't say that you have to have it
24 described by meets and bounds and it's got to be this
25 big and that tall and this color; just requires a

1 general description. I think if you look at what the
2 statute says, and I'll read it to you again, but if you
3 look at that and you look at Exhibit H and the
4 amendments to it, I think it is sufficiently
5 articulated and described of what it's going to be, and
6 I invite Your Honor to look at the plat, and I just
7 think that -- I can't see anywhere else that eight
8 units can go on this crowded parcel. I guess it
9 certainly is possible that they tear up the tennis
10 courts, but it's just as possible that they knock down
11 another building and put it there.

12 Again, anything is possible, but when you look at
13 a place that it could be, I think it's really the only
14 open spot that's not a building in the existing --
15 constructed amenity or a road.

16 And as for the question about the 75% threshold,
17 we will look and see when that occurred. I don't
18 believe it had occurred prior to June, but that's just
19 what I recall. But we'll go back and look and, as you
20 said, supplement the record and tell you what we knew
21 about when that 75% threshold was reached. But I don't
22 have that information today.

23 Just to recap, I think the issue about the consent
24 precludes summary judgment, because that's the -- it
25 takes it out of the Reyhani case. The statutes don't

1 say it has to be 100%. We have this claim for
2 reformation.

3 I think if you grant Mr. Buhmeyer's motion for
4 summary judgment we have arguments that I would like to
5 make and we won't be able to make because that issue's
6 already have been decided.

7 THE COURT: Very good. All right. Mr. Query or
8 Mr. David, any response to the POA's motion?

9 MR. QUERY: None, Your Honor.

10 THE COURT: All right. Very well.

11 MR. BUHMEYER: If I may, Your Honor, I would like
12 to respond to Mr. Massalon's comment about the statute.

13 I don't see anything that's really referred to as
14 general in here, other than common elements being both
15 limited and general.

16 As far as a description that the legislature, I
17 believe, went to great pains to write this statute
18 because it does deal with specificity. It does deal
19 with putting the world on notice that they want floor
20 plans, want to know where this building is going to be
21 or where it is. They don't want any guessing game
22 going on, and that's the response I would have.

23 THE COURT: Is the May 2004 plat the one that
24 created the units or was that the 1996?

25 MR. MASSALON: Your Honor, I don't think it was

1 either one of those. This was a condo conversion
2 project and so -- again, the other thing I would offer
3 is, to me the clear intent of this statute is when
4 you've got somebody with raw land that says you're
5 going to build something, this -- I believe, everything
6 there was already built.

7 THE COURT: You had pre-existing buildings which
8 had, in fact, been apartments. So you had units there
9 that existed. It's just a matter of either restating
10 them or renaming them. You're converting title from an
11 apartment house owner to individual unit owners and
12 whatever that percentage number is.

13 MR. MASSALON: Correct.

14 THE COURT: You still have this -- this is what
15 I'm concerned about -- the creation of Building 2.
16 Right? It's contemplated in the original Master Deed.

17 MR. MASSALON: In the original Master Deed; yes,
18 sir.

19 THE COURT: In Exhibit H.

20 MR. MASSALON: In Exhibit H.

21 THE COURT: I'm now looking at -- I don't know
22 that I've seen that yet, but I'm looking at a May 24,
23 2005 action of directors of the POA without a meeting,
24 which provides -- it's very last Paragraph 10 -- that
25 Exhibit H it is deleted and replaced with the

1 following. So there is something going on.

2 MR. MASSALON: Let's see.

3 THE COURT: This is Exhibit 5 to the index that
4 has the timeline. I'm not sure who presented this to
5 me.

6 MR. DAVID: We did, Your Honor.

7 THE COURT: Starts with the affidavit of Mark
8 Sharpe from the Palm Properties.

9 MR. MASSALON: Let me take a look here, Your
10 Honor.

11 (pause)

12 MR. MASSALON: It's Exhibit 5.

13 Your Honor, I think -- and I'll ask one of my
14 colleagues here to help me out on this while I look --
15 but I think that we may have copies of this document --
16 is this the one we have with two different dates on it?
17 No? Let me look real quick and see.

18 MR. DAVID: This isn't what we sent, Your Honor.
19 It is very confusing to us. Hopefully, one of these
20 days we'll be able to take the attorneys that
21 represented everybody in this case. It may shed a
22 little light as to how and why. In deference to him,
23 I'm -- I can't believe that he would have closed the
24 loan without having the title examined. I believe he
25 was --

1 THE COURT: Stranger things have happened.

2 MR. DAVID: Very true, Your Honor. So at some
3 point in time somebody knew or should have known,
4 certainly recognized, that this property is being
5 conveyed. But if you have a contract for \$180,000 and
6 then you can walk away, I'm sure that you're looking
7 for ways to be able to live up to that contract and
8 collect that \$180,000.

9 So if we look at the May 24, 2005 resolution
10 without notice, and when you look at the May 11, the
11 day before, resolution, again without notice, it will
12 be interesting to hear from the powers that be as to
13 what was intended by that, to be able to give a general
14 warranty deed when record notice had to have been given
15 to the closing attorney and to the people that he
16 represented, which was the principles of the homeowners
17 association and my client, to convey a good and
18 simple -- fee simple title under a general warranty
19 deed.

20 I don't think that anybody, in looking at this,
21 will acknowledge or would agree that there is a general
22 warranty deed that can be transferred. So now how do
23 we do what we're doing to be able to pass this on?

24 One of things that concern Grady and I in this is
25 that there is so many of these plats. If we look at

1 the plat by which the property was conveyed initially
2 to the homeowners association, and it changed form in
3 its legal entity, if you will, then that's one plat.
4 That has no reservation on it, as I recall.

5 Then they attempted to do another plat whenever
6 they conveyed it to my client. There is testimony in
7 his deposition that because of the size of the property
8 being identified later, and that there was no way to be
9 able to build these eight units on the property that
10 was conveyed. That's in the deposition.

11 We go back and we see that there was an additional
12 plat that was prepared to try to make this happen. I
13 think that there is also a deed that's floating around
14 somewhere that attempted to add this property to it,
15 but I have not been able to find a copy of a recorded
16 document.

17 There is testimony that they attempted to do a
18 plat. I don't believe the plat was recorded, nor do I
19 believe that there was a deed that was ever recorded.

20 So there are an awful lot of unusual events that
21 have taken place in this since January 26 of 2005.

22 I mean, a contract was given. There are a number
23 of different addendums to that contract that someone
24 who has dealt in this field for a number of years would
25 have had to have recognized that there is a problem

1 that we need to solve. Under the laws as I understand
2 them, that full disclosure is something that the Court
3 likes.

4 So if these things were known by the seller, the
5 homeowners association, the people in control, would
6 not the better practice and the policy to have been to
7 have made that known to the person that was going to
8 spend \$180,000? That would have made everything very
9 clear. Everybody would have understood where they
10 were, what they had to do.

11 So, when we talk about the deeds and we talk about
12 the plats there is an awful lot of confusion. All I
13 know is what is recorded in the RMC Office and what
14 gives everybody record notice. Record notice, in my
15 opinion, is a significant problem, for many reasons, to
16 the sellers of this property and to their directors, if
17 you will, their individuals who at the last minute
18 attempted to do something I'm not sure that they
19 legally have the authority to do.

20 THE COURT: All right.

21 MR. BUHMEYER: If I may, Your Honor, again, if
22 from Plaintiff's position -- even if the Plaintiff
23 conceded the fact that there was a right to build,
24 which we don't, there is still the issue of the deed
25 transfer, and there was never anything in the original

1 Master Deed or any of the amendments to it that
2 reserved a right to sell property in fee simple.

3 THE COURT: Right. Well, I'm of the opinion --
4 I'll be glad to hear from you-all, but I'm of the
5 opinion that it can't be done legally.

6 The question I've got is whether or not -- you
7 brought the issue of the reformation up there. Was
8 that what was intended here? That's why I'm looking
9 into the issue of whether Building 2 was contemplated
10 at the outset.

11 MR. MASSALON: Yes, Your Honor.

12 THE COURT: And it was done -- could it have been
13 done in a different fashion? That's what I'm hearing
14 from your side, whether or not that was done. That, I
15 think, is going to be answered definitively as to
16 whether or not you-all were still the declarant at the
17 time the conveyance is made, because if you're not then
18 I don't think it's a fact that -- whatsoever. That's
19 why I asked those questions about the dates and asked
20 those questions about the ownership interest. That's
21 just my thinking on this.

22 Mr. Query, I can see you're ready to jump up.

23 MR. QUERY: Yes, sir. I would like to call the
24 Court's attention again to Section 27-31-60 and the
25 language in there that says, an apartment owner shall

1 have the exclusive ownership of his apartment and shall
2 have a common right to a share with the other co-owners
3 in the common elements of the property equivalent to
4 the percentage representing the value of the individual
5 apartment with relation to the value of the whole
6 property. The percentage shall be computed by
7 taking -- so forth and so on.

8 THE COURT: Right.

9 MR. QUERY: The percentage shall be expressed at
10 the time the horizontal property regime is constituted,
11 shall have a permanent character and shall not be
12 altered without the acquiescence of the co-owners.

13 Now, that's everybody. That's 100% in slightly
14 different language, but that is everyone. And they
15 simply didn't do that. And I don't think that there
16 can be any reformation, because Your Honor would be
17 reforming as to people who were not parties to the
18 transaction.

19 THE COURT: All right. I want to make sure that
20 we're clear on something here. That would be as to the
21 owners of the units; correct?

22 MR. QUERY: Yes, Your Honor.

23 THE COURT: Whatever their percentage interest is?
24 As I understand under Exhibit D for dog, D, the
25 original Master's Deed contemplated a different

1 percentage ownership with or without Building 2; did it
2 not?

3 MR. QUERY: I believe so, Your Honor.

4 THE COURT: So we do have that question. So then
5 the question becomes one of, does it require all the
6 owners -- in other words, there is an undivided
7 interest, or is the property owners association free to
8 make that decision? That's my question. Okay?

9 MR. QUERY: Yes, sir.

10 THE COURT: That's what I'm wrestling with. My
11 experience tells me that it has to do with the hand-off
12 of when the declarant is no longer in control of the
13 Property Owners Association. And so whatever those
14 threshold criteria are, if it's 75% under the
15 guidelines -- I think we heard in the statute it was
16 some two thirds figure, but whatever that figure is at
17 that point in time, I think that becomes a trigger
18 mechanism, or I heard Mr. Massalon say or whenever it's
19 handed over. There is a hand-over provision.

20 So you've got those competing dates going on here
21 as well. I hear what you're telling me. I fully
22 understand what you're saying. But it's that -- this
23 may be a different animal. I'm really looking -- I'm
24 thinking about in terms of declarations of covenants
25 and restrictions and when those get passed off.

1 This is a creature of statute. I don't think
2 there is any doubt about that. We've all agreed. The
3 horizontal property regime is a creature of statute.
4 There is not a whole lot of reported cases on these
5 things. I've got one of them out there. I'm happy to
6 have another one, but -- but I'll wrestle that. Those
7 are the factors that I'm looking at, because they are,
8 to me, questions of fact that can be resolved. I don't
9 think that -- once those things are issued they may or
10 may not be relevant. That's what I'm hearing you say.
11 Those are irrelevant, because we got our unit, we got a
12 right to say. My experience has been at some point in
13 time there is a pass-off of who it is making that
14 decision process. There is a triggering mechanism for
15 that. Sometimes it's 50% of the ownership, sometimes
16 it's 75%. Sometimes it's by statute. But somebody has
17 to make that decision.

18 So whatever that timeframe is is a factor in my
19 process, and what I would like to do before I rule
20 would be to get that information from you. I may -- if
21 you all can agree to whatever it is, you can submit it
22 to me in that fashion. I may want to reconvene this
23 hearing for just that purpose. Let's figure out the
24 dates, what they are, before I rule.

25 My gut tells me they can't do what they are doing.

1 They can't do it. That's my gut. I'm just telling you
2 on that. The question becomes one of, is there an
3 alternative method you could use to get that done? I
4 don't know the answer to that question. But I hear
5 Mr. Massalon, here you are knocking at the door saying
6 that's what we want to do.

7 MR. MASSALON: And I guess, just to encapsulate my
8 position in a sentence or two, first position is as
9 long as these guys have controlling interest, which we
10 say they had at the time of the transaction, they could
11 approve this for the POA. If I'm wrong about that,
12 then what you say is, second -- I don't want to cut
13 Grady off.

14 THE COURT: He's not agreeing with that at all. I
15 understand your position. Your position is if we have
16 an ownership interest we have an ownership interest,
17 you've got to get our permission, it's unanimous.

18 MR. QUERY: Yes, Your Honor. We believe that
19 section of the statute clearly says that that occurs at
20 the creation of the horizontal property regime by the
21 delivery of the Master Deed, not at that point where
22 ownership takes place.

23 I agree completely with Your Honor with regard to
24 other things that might be done about changing some
25 restrictions and things like that, but this is talking

1 about ownership interest. It is settled on each of
2 those apartment owners at the time they purchased, and
3 from that point on they've got to say -- even though
4 that Section H may say your percentage ownership is
5 going to change slightly at some point in the future,
6 perhaps, it doesn't take it away. They still -- that's
7 absolute, I believe.

8 MR. MASSALON: I just have two points.

9 First of all, I would like for the Court to keep
10 in mind that this statute is a bylaw statute, meaning
11 this does not talk about the Master Deed and the
12 property-interest issue we were discussing earlier.
13 This talks about how the association is administered,
14 so I think under my argument that's a fundamentally
15 different issue than what's in the Master Deed, for the
16 purposes of this question.

17 Then the other thing, and I know we've been going
18 long, I would remind the Court that we filed that
19 affidavit -- motion about Mr. Forsberg. And I will be
20 happy to summarize it if you would like me to. Let you
21 read it if you like me to; like to not skip over that
22 and --

23 THE COURT: I wouldn't make you abandon it, but I
24 can tell you that I'm very familiar with Mr. Forsberg.
25 Are you objecting to him as an expert or opinion

1 testimony? What is your basis for the objection?

2 MR. MASSALON: Basically, I know Mr. Forsberg,
3 too, and I think he's an expert on some things. I
4 don't think that he is an expert on reading deeds and
5 plats and interpreting what they mean for the purposes
6 of this. To me it kind of usurps the function of the
7 Court. That is not a proper subject of his expertise.

8 THE COURT: Your objection, then, is as to his
9 conclusions?

10 MR. MASSALON: Yes.

11 THE COURT: Not his expertise, but his ability --
12 all right. I'm with you on that.

13 There was one other case I was going to bring up.
14 Mr. Query, I think -- I pick this out of the supplement
15 to the statute. That's Rowland versus Heritage
16 Lichfield, Inc.; South Carolina Court of Appeals, 2007.
17 The South Carolina cite is 372 SC 161. Southeast 2cd
18 cite is 641, Southeast 2cd 465. That talks -- also
19 talks in terms of an undivided interest in the whole.
20 So I'm bringing that to your-all's attention. That's
21 clearly where Mr. Query is going with his argument, and
22 I understand that.

23 MR. QUERY: Thank you, Your Honor.

24 THE COURT: All right. How much time do you think
25 you'll need to get that information together about the

1 turn over date? You seem to be clear on the June date.
2 The other would be the ownership interest and, of
3 course, from your perspective does that impact the
4 bylaws or impact the Master Deed?

5 MR. MASSALON: What I'm assuming I'm going to have
6 to do, unless -- because this offer that Mr. Buhmeyer
7 was talking about is consistent with what I remember --
8 I don't think there is another date that they offered
9 to turn it over. I guess on the ownership issue what
10 we probably need to do is go back and see what was
11 conveyed prior to that date and come up with some
12 percentage, and I just am not sure how long that will
13 take.

14 May I talk with my client and just ask -- and
15 advise the Court? I would think probably 30 days to do
16 something like that, but I'll do it faster if we can.
17 I'm just not sure what we need to do to get that done.

18 MR. DAVID: Checking the RMC Office as to however
19 many units have been sold.

20 MR. QUERY: Your Honor, that's going to be the
21 question is how many units. I don't think we need 30
22 days to count these units.

23 THE COURT: There should be some matrix, too.
24 Your pretty certain the first meeting of the POA was
25 June-something '06?

1 MR. BUHMEYER: Yes, Your Honor.

2 THE COURT: So it's post this conveyance?

3 MR. BUHMEYER: Your Honor, I would concede that.

4 As far as the number of units I had read that. There's
5 extensive documentation since I took over this case,
6 and I know I read that in one of them. I would have to
7 go back and look through it. I don't know if it was
8 the other attorney's notes or if it was something that
9 was in a deposition or where that came from. It was
10 just a matter of reference, to point out that there was
11 a significant transfer of property interest to
12 individual owners before the deed transferred.

13 MR. MASSALON: Mr. Neville may remember.

14 MR. NEVILLE: I was just going to say that the
15 June 26 date, of 2005, does ring a bell for when, like,
16 Mr. Massalon said our folks were trying to turn it
17 over. There was at least a month, if not more, that
18 took place of this trying to get a quorum on the POA's
19 side, for the turn over to occur that our guys just
20 couldn't get it. It took until, I believe, until
21 August, if not a little bit later. It was late summer,
22 early fall, as to when the actual turn over did occur,
23 but it wouldn't shock me that June 26 is when our guys
24 initially reached out to them. Maybe that's what Mr.
25 Buhmeyer is thinking.

1 THE COURT: Okay.

2 MR. MASSALON: But as far as checking the records,
3 as you know I'm not a real estate lawyer, but as
4 quickly as we can do it, if there is some ready source
5 of that information I wouldn't drag it out. If
6 somebody's got it or if there is an abstractor that
7 could collect it quickly, I'm not sure if there is a
8 way to do that, but as quickly as we can get it we'll
9 get it in.

10 THE COURT: Where do you stand, in the event I
11 don't grant summary judgment, or even in the event I
12 do, seems there is a battle here. So where do you
13 stand with your discovery and what needs to be done, in
14 that regard, assuming the POA gets out of here?
15 Assuming they get out of here.

16 MR. NEVILLE: We've been ragging on our end with
17 trying to take the deposition of Joe Hand since October
18 of 2011, and for one reason or another it hasn't gotten
19 done; not for lack of effort in trying to schedule it.
20 But I recently received word from Joe Hand's attorney,
21 Joe Qualey, that we can hopefully get that taken care
22 of sometime this summer. But I'm not holding my
23 breath. That is as far as we're --

24 THE COURT: Is Joe Hand still practicing law. Is
25 he still in the Charleston area?

1 MR. NEVILLE: Still in with Mark Weeks, from what
2 I know, and there was just some issue as to whether our
3 clients, Palms, and our client would waive
4 attorney-client privilege, and as we've got --
5 hopefully address that issue. That's the only
6 discovery that we have on our end.

7 There has been some talk today about different
8 testimony and whatnot. I just point out that there has
9 been zero depositions taken of our clients, and so
10 anything about testimony hasn't occurred. I don't know
11 if they intend on taking our client's 30(b)(6). I know
12 there has been some talk about taking our client's
13 deposition, but nothing has been noticed. And we have
14 an expert and -- Greg Pearce. He hasn't been noticed
15 either.

16 THE COURT: All right. This is a fairly threshold
17 issue. What I'm asking for is just generalized
18 information. The sooner you can get that to me, the
19 sooner I can get an answer.

20 Here's what I would ask that you do. You can each
21 send me something if you would like. If you could find
22 a record -- if you can agree on whatever that timeframe
23 was when the numbers were met, that's great.

24 What I'm going to ask you do is supplement the
25 memoranda that you have provided me, and that would

1 be -- Mr. Query, from your standpoint it doesn't matter
2 what the transition date was, because from our
3 perspective the Master Deed requires unanimity and you
4 can't get it, didn't have it, you never got it. Put
5 that in writing to me.

6 Mr. Buhmeyer, the same from you; DJ action. This
7 cannot be done. It's improper. Just violates the
8 statute. Okay.

9 Then, Mr. Massalon, you've got the hard road to
10 hoe. You have to convince me this is subject to some
11 type of reformation and legally why that would be.
12 Whether that's through the Master Deed or through the
13 bylaws. That will make some difference in how this
14 happens. Okay?

15 I will give it my good old college try and read
16 it, and it is my practice to try and give you-all an
17 answer within 30 days of you-all submitting information
18 to me. I'm going on vacation for, basically -- on the
19 12th of June, for basically the rest of the month, so
20 if you get me that prior -- doesn't matter before or
21 after. I ain't taking it with me.

22 MR. DAVID: How many units are there?

23 MR. MASSALON: I can't call that number. That
24 should be easy to find. It may be in the Master Deed.
25 But I don't know off the top of my head.

1 THE COURT: It will exist somewhere. Or you could
2 do it the other way. You could figure out what
3 percentage of those eight units makes the difference
4 and you can mathematically work that that way.

5 MR. MASSALON: They are listed in the bylaws, Dan,
6 but I have to take a second to count them up. It says
7 32 plus 76 plus 24. Whatever that number is is the
8 total.

9 THE COURT: It's 132. Seventy-six plus 24 plus
10 32. You've got 132. Possibly 140. You can get your
11 building built. Ain't looking real good right now,
12 though.

13 (Laughter)

14 THE COURT: All right, gentlemen. Thank you-all.
15 As much as I hate reading that stuff, it certainly made
16 it easier for me to ask you the questions I need to
17 ask. Thank you-all.

18 (Hearing concluded.)

19

20

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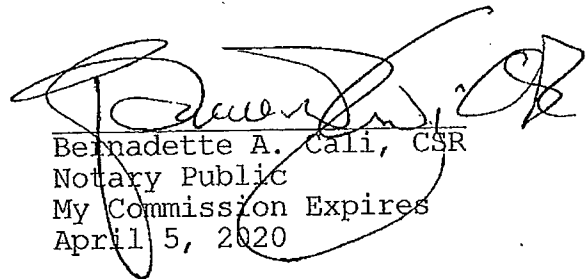
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COUNTY OF CHARLESTON)

C E R T I F I C A T E

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this November 1, 2012.


Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

8X X541PG464

Prepared by and Return to: Hand Law Offices, LLC
105 Wappoo Creek Drive, Suite 3-B
Charleston, SC 29412
Tax Map No.: #TMS#- 425-07-00-371

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WARRANTY DEED

WHEREAS, River Point Row, LLC, grantor herein, held a special meeting on the 11th Day of May, 2005 and at said meeting it was duly resolved that John B. Hagerty, Member, shall have authority to execute any and all agreements and documents on behalf of said Company to effectuate and complete the sale of the hereinbelow-described property pursuant to that Agreement to Buy and Sell by and between Rivers Point Row, LLC, as Seller and Greg Beall-Palms Properties, LLC, as Buyer; and

WHEREAS, this conveyance shall be subject to that certain Master Deed of Rivers Point Row dated May 4, 2004 in Book G-493, page 004 as amended by that First Amendment to Master Deed dated May 24, 2004 and recorded May 24, 2004 in Book R-495, page 385

KNOW ALL MEN BY THESE PRESENTS THAT, RIVERS POINT ROW, LLC (hereinafter referred to as "Grantor") for and in consideration of the sum of ONE HUNDRED EIGHTY THOUSAND AND 00/100 (\$180,000.00) Dollars to it paid by PALMS PROPERTIES, LLC (hereinafter referred to as "Grantee") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its heirs, successors, and assigns forever:

ALL that piece, parcel or tract of land, together with any buildings or improvements thereon, situate, lying and being on James Island in the County of Charleston, State of South Carolina, shown and designated as Tract B2 on a plat entitled: PLAT SHOWING THE SUBDIVISION OF TRACT 8 OWNED BY RIVERS POINT ROW, LLC INTO TRACT B1 CONTAINING 8.10 ACRES AND TRACT B2 CONTAINING 0.38 ACRE; by E.M. Seabrook, Jr., Inc., dated May 2, 2005 and recorded in Plat Book EH, Page 904.

BEING a portion of the property conveyed to Rivers Point Row, LLC by Intercontinental Fund III Rivers Point SC, LLC a Massachusetts Limited Liability dated 05/04/04 and recorded 05/04/04 in the RMC Office for Charleston County in Deed Book G-493, page 759.

TMS# 425-07-00-371

OK X541PG465

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantee: 1067 Blue Marlin Drive
Charleston, SC 29412

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its heirs, and assigns forever.

AND THE GRANTOR does hereby bind Grantor successors, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors, and assigns, against Grantor and Grantor successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hand and Seal this 12th day of May, in the year of our Lord 2005.

Signed, Sealed and Delivered
In the Presence of:

[Signature]
1st Witness

Rivers Point Row, LLC

[Signature]
2nd Witness (Notary)

BY: [Signature]
John B. Hagerty/Member

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Personally appeared before me the undersigned and made oath that she saw the within named Grantor sign, seal and as its act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

[Signature]
1st Witness

SWORN to before me this
12th day of May, 2005

[Signature]
Notary Public for the Charleston
My Commission Expires:

OK X541PG466

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

AFFIDAVIT

Date of Transfer of Title
Closing Date: 5/12/05

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

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Rivers Point Row, LLC ON 5/12/05
TO Palms Properties, LLC
3. Check one of the following: The DEED is
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or as a transfer to a trust or as distribution to a trust beneficiary.
 - (c) ☐ EXEMPT from the deed recording fee because (exemption # _____)
(Explanation, if required)
(If exempt, please skip items 4-5, and go to item 7 of this affidavit.)
4. Check one of the following if either 3(a) or item 3(b) above has been checked.
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 180,000.00
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES or NO ☒ to the following: Alien or encumbrance existed on the land, tenement, or realty before transfer and remained on the land, tenement or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording fee is computed as follows:
 - (a) ☒ the amount listed in item 4 above.
 - (b) ☐ the amount listed in item 5 above (no amount place zero)
 - (c) ☐ subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney
8. Check if Property other than Real Property is being transferred on this Deed.
 - (a) ☐ Mobile Home
 - (b) ☐ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____
deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. 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.

SWORN to before me this 12th
day of May, 2005.
Notary Public for SC
My Commission Expires: 5/17/15

Signed
Grantor, Grantee, or Legal Representative

Type or Print Name here

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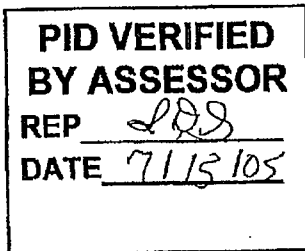
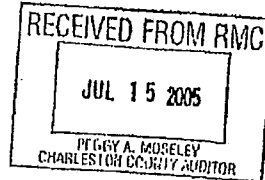
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OKG 493PG001

MASTER DEED
OF
RIVERS POINT ROW
HORIZONTAL PROPERTY REGIME

Charleston, South Carolina

Developer:

Rivers Point Row, LLC

Prepared by:

John B. Hagerty, Esquire

Law Offices of
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Suite 600, 151 Meeting Street
Charleston, South Carolina 29401
(843) 853-5200

RIVERS POINT ROW MASTER DEED

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BKG 493PG004

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MASTER DEED

RIVERS POINT ROW HORIZONTAL PROPERTY REGIME

Rivers Point Row, LLC a South Carolina limited liability company, (sometimes hereinafter referred to as "Declarant") having its principal place of business in the County of Charleston, South Carolina, makes and grants this MASTER DEED dated May 14, 2004 to establish a plan of condominium ownership for the Property described herein.

WHEREAS, Declarant is the fee simple owner of that certain tract of land and the holder of certain permits described in Exhibit A hereto and incorporated herein by reference (the Land'); and

WHEREAS, the Declarant, being about to sell and convey condominium Units located as more particularly described herein, desires to (a) establish a horizontal property regime pursuant to the Act, as defined below; (b) assure to the Owners of such Units and their heirs, successors and assigns that the use, benefit and enjoyment of the Common Area, as defined herein, will be administered in an orderly manner; and (c) subject the Property to certain restrictions, reservations, servitudes, covenants, agreements, easements, liens and charges, as hereinafter set forth; and

WHEREAS, there has been incorporated an Association of Unit Owners known as RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC., for the purposes of maintaining and administering the Common Area connected with and appertaining to the condominium Units, providing for the disposition of various matters relating to the Units and their Co-owners, and such other purposes as are set forth in this Master Deed.

NOW THEREFORE, in consideration of the premises contained herein, Declarant grants and covenants as follows:

ARTICLE I

Section 1. Property Subject to Master Deed. The Property described in Article II shall be subject to the provisions set forth in this Master Deed, which provisions shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and upon the Unit Owners and their heirs, successors and assigns, respectively.

ARTICLE II

Section 1. Definitions. Those definitions contained in Section 27-31-20 of the Act, as defined herein, are incorporated in this Master Deed unless it clear from the context that a definition in the Act is contradictory to the following definitions: In which event the following definition shall apply except where the definition of the Act is mandatory.

(a) "Act" means the Horizontal Property Act, Section 27-31-20 et seq. of the 1976 Code of Laws of South Carolina, as amended from time to time. References to specific sections of the Act contained herein refer to the sections as designated at the time of recordation of this Master Deed.

(b) "Apartment" means a "Unit", as defined herein.

(c) "Association" means Rivers Point Row Property Owners Association, Inc., the South Carolina not-for-profit corporation whose members consist of all the persons, corporations, limited liability companies, partnerships, associations, trusts or other legal entities, or any combination thereof, which own a Unit.

(d) "Board of Directors" means the Board of Directors of the Association.

(e) "Building" means a structure or structures, containing in the aggregate two or more Units, comprising a part of the Property.

(f) "Co-owner" or "Owner" or "Unit Owner" means a Person which owns a Unit.

(g) "Common Area" or "Common Element" means "General common elements as defined in the Act and more specifically defined in Article III, Section 4 of this Master Deed. It includes all of the Property and improvements thereon other than the Units.

(h) "Common Expense" means all liabilities or expenditures made or incurred by or on behalf of the Association, as more specifically defined in Article VI, Section 1 of this Master Deed.

(i) "Common Charge" means those monetary charges levied against the Unit owners to pay for the Common Expenses.

(j) "Common Interest" means the percentage of undivided interest in the Common Area appertaining to each Unit, as expressed in the Master Deed. Any specified percentage of the Common Interest means such percentage of the undivided interests in the aggregate.

(k) "Condominium" or "condominium ownership" means the form of ownership intended by the Master Deed, that is, ownership by Owners of individual Units, with a common right to share the Common Area.

(l) "Declarant" means Rivers Point Row, LLC a South Carolina limited liability company, its successors and assigns. Declarant may assign its rights as Declarant upon a written assignment signed by the Declarant and the assignee and duly recorded in the R.M.C. Office for Charleston County, South Carolina. Conveyance of a deed to a Unit or the existence of a mortgage on a Unit or the Property shall not be deemed to make the grantee of such deed or mortgage a "Declarant."

(m) "Elevations" means the drawing(s) showing the external vertical characteristics of a Building or improvements on the Property, or the vertical location of Units in such improvements, which drawing(s) are attached hereto and by this reference made a part hereof. (See Exhibit "C".)

(n) "Floor Plan" means the plans for the Building(s) which show the dimensions, area and location of each Unit therein, which plans are attached hereto and by this reference made a part hereof. (See Exhibit "C".)

(o) "Joint Owner" means a Person which owns a Unit with any other entity and the combination of which constitutes a Unit Owner. Where a Person is a Joint Owner of a Unit, the Association may establish such rules and procedures as it deems appropriate to govern which Joint Owner or Owners has the right to act on behalf of the Unit Owner for the Unit.

(p) "Limited Common Area" and/or "Limited Common Areas" means that Common Area which is specified in this Master Deed or the Exhibits thereto as being reserved for the use of a certain number of Units to the exclusion of the other Units.

(q) "Majority of Co-owners" or "Majority of Owners" means fifty one percent (51%) or more of the Common Interests, as calculated on the basic value of the Property as a whole, computed in accordance with the provisions of Section 27-31-60 of the Act, and as shown in Exhibit "F" to this Master Deed. "Value" as shown herein is set forth for the sole purpose of the Act and does necessarily relate to current or future property value or sales price.

(r) "Master Deed" means this Master Deed.

(s) "Operation of the Property" means and includes the administration and operation of the Property and the maintenance, repair, and replacement of, and the making of any additions and improvements to the Common Area.

(t) "Plot Plan" means the plat(s) or survey(s) of the Property showing the horizontal location of any Building or other significant improvements on the Property, said Plot Plan being attached hereto, and by this reference made a part hereof (See Exhibit "B".)

(u) "Person" means an individual, firm, corporation, limited liability company, partnership, association, trust or other legal entity.

(v) "Property" means the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, as described in Exhibit A.

(w) "Regime" means the Rivers Point Row Horizontal Property Regime created by the recordation of this Master Deed, as set forth in Section 27-31-30 of the Act.

(x) "Unit" means an "Apartment" as that term is used in the Act, and includes one or more rooms and adjoining patio and/or balcony designated as part thereof, and

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occupying one or more floors or a part or parts thereof, designed or intended for independent use as a single family dwelling, as set forth on the Unit Plans; provided, however, that the term excludes any elements excluded pursuant to Article III, Section 4, below.

(y) "To record" means to record in accordance with the provisions of the Act, Sections 30-5-30 through 30-5-200 and 30-7-10 through 30-9-80, or other applicable recording statutes.

ARTICLE III

Section 1. Submission of the Property to the Act. Declarant, as the owner in fee simple of the Property, by recording this Master Deed, submits the Property to the provisions of the Act. In order to implement the horizontal property regime plan of ownership for the Property, Declarant covenants and agrees to and hereby does subdivide the above described Property vertically and horizontally into the freehold estates referred to herein as Units.

Section 2. Unit Plans.

(a) Documents Included in Unit Plans. In accordance with Section 27-31-110 of the Act, attached hereto and made a part of this Master Deed are the following documents constituting the "Unit Plans"

- (a) Site Plan/Survey (Exhibit B).
- (b) Unit Plans, Floor Plans, Elevation Plans and Photographs (Exhibit C).
- (c) Unit Sizes and Designations (Exhibit D)

(b) Information in Each Document. The Plot Plan shows the location of the Buildings and significant improvements in relation to the Land. The Unit Plans show Unit types, dimensions and the intended use of various spaces within the Unit. The Building Floor Plans show the location of the Units within the Buildings; the designation of each Unit; and the location of corridors, stairwells, storage areas and some of the areas which are intended as Common Area. The Elevations show the typical exterior dimensions of each type of end Unit and interior Unit. The Unit Sizes and Designations show the number of Units in each Building and the size and designation of each Unit. The Unit Plans are certified by an engineer or architect licensed to practice in South Carolina.

Section 3. Allocation of Common Interests. The allocation of Common Interests among the Units is shown on Exhibit D, incorporated herein by reference.

Section 4. Description of Rivers Point Row.

(a) General Description and Phasing. The Rivers Point Row project, with its present Units and Common Area, consists of the Property, as described in Exhibit "A" with improvements as follows:

Three Buildings (Buildings 1, 15 and 17) on the Property each building containing Eight one bedroom Garden Units for a total of Twenty Four one bedroom Garden Units each containing face to face of interior wall surface dimensions of 675 square feet; Four Buildings (Buildings 4, 5, 6, and 16) on the Property each building containing Eight two bedroom Garden Units for a total of Thirty Two two bedroom Garden Units each containing face to face of interior wall surface dimensions of 883 square feet; Ten Buildings (Buildings 3, 7, 8, 9, 10, 11, 12, 13, 14 and 18) on the Property of which Eight buildings contain Eight two bedroom Townhouse Units and of which Two buildings contain Six two bedroom Townhouse Units for a total of Seventy Six two bedroom Townhouse Units each containing face to face of interior wall surface dimensions of 908 square feet, for a total of One Hundred Thirty Two (132) Units at Rivers Point Row; uncovered parking on the Property; a swimming pool, a tennis court, a Club House Building and a volleyball court. In this Master Deed, the first residential floor above the ground level is referred to as the "first floor" and the second residential floor above the ground level is referred to as the "second floor."

All improvements are in place except that Building 2 has not been built and the Phasing is to be as described in Exhibit H and Exhibit D, herein.

(b) The Unit sizes and designations are shown in Exhibit C.

(c) Description of Parking Areas. The Property contains the vehicle parking areas for the use of Unit Owners and for guest parking summarized in (a), above. The parking areas are subject to those rules and regulations promulgated by the Association.

(d) Limits of Units. Unless otherwise expressly stated or otherwise shown in the Unit Plans, the horizontal boundary of each Unit ends at the centerline of any non-structural element which separates two Units, at the exterior side of any nonstructural element which separates a Unit from Common Area, and at the exterior of exterior doors, windows, and glass walls and the frames thereof. Unless otherwise expressly stated or otherwise shown in the Unit Plans, the upper vertical boundary of a Unit ends at the point at which a ceiling becomes a structural element supporting a space above the Unit (e.g. the Unit contains any suspended ceiling material or panel and any spackling application, paint or other application which is not an essential element of the structural component). Unless otherwise expressly stated or otherwise shown in the Unit Plans, the lower vertical boundary of a Unit ends at the point at which the floor becomes a structural element supporting the Unit (e.g. the Unit contains the carpeting, tile, wood flooring, paint, matting, etc. on top of the structural element). A Unit shall not be deemed to include perimeter walls of the Building or interior or exterior load-bearing walls, columns or similar load-bearing elements; the structural elements of floors and ceilings which support the Unit or adjacent Units; pipes, wiring, conduits, channels, ducts or other utility lines running through the boundaries of the Unit which are utilized for or serve more than one Unit; or personal property and assets held and maintained for the joint use and enjoyment of all the Unit Owners. A Unit shall be deemed to include (i) all other walls, columns, partitions, floors and ceilings within its perimeter walls which are not load-bearing, including plaster, paint, wallpaper or the like; (ii) carpeting, floor covering and window covering within the perimeter walls of the Unit; (iii) appliances, hardware, doors, heating and air conditioning components, built-in fixtures and similar elements which serve

only the Unit; and (iv) pipes, wiring, conduits, channels, ducts, chases or other utility lines within the perimeter walls of the Unit which serve only the Unit.

(e) Common Area and Easements for Access to Common Area. The Common Area consists of the entire Property and every part thereof, other than the Units.

(f) Limited Common Area. The Limited Common Areas are generally shown on the Unit Plans. The use of the Limited Common Area is restricted exclusively to the Unit to which such Limited Common Area is adjacent unless otherwise expressly stated herein or otherwise shown in the Unit Plans. Unless otherwise expressly stated herein, for all purposes other than use (e.g. approval of modifications, repair, insurance, and governance), the Limited Common Area is deemed to be a part of the Common Area. [See Article VI, Section 1 (c).]

(g) Disputes Regarding What Is Common Area or Unit. If a dispute arises between Unit Owners or between a Unit Owner or Unit Owners and others as to what portion of the Property constitutes a Unit, Common Area or Limited Common Area, the Board of Directors of the Association shall have the authority to determine the proper designation of the disputed area, after such consultation with others as it may determine to be appropriate, provided that such determination shall be set forth in writing, shall be made in good faith, and shall not be clearly inconsistent with this Master Deed.

Section 5. Determining Common Interests. For the purpose of determining the total Common Interests, the Common Interest of each Unit, and the percentages for purposes of voting on all matters requiring a vote by the Owners, the percentages as provided in Exhibit D shall govern from time to time.

Section 6. Easements Reserved. The Declarant reserves for itself, its successors and assigns (i) non-exclusive easements through Units, Common Area, and Limited Common Area as may reasonably be required for conduits, pipes, ducts, plumbing, wiring and other facilities for furnishing utility services to the Common Area and to Units other than a Unit or Limited Common Area through which it passes; and for lateral and subjacent support in every portion of a Unit which contributes to the support of the improvements; and (ii) easements in, over, across, under and upon the Property as may be required, in its sole discretion, to provide ingress and egress necessary and convenient for the construction and development of improvements on the Property, including all utility lines and facilities; and storage, staging, assembly, supervision, protection and construction during development or construction of the improvements. Declarant shall have a transferable, perpetual power and authority to grant and accept easements to and from any private entity or public authority, agency, public service district, public or private utility or other Person, upon, over, under and across the Common Area for constructing, installing, maintaining, repairing, inspecting and replacing television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to, storm and sanitary sewer systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant without notice to or consent by the Association. The rights of the Declarant to grant easements shall automatically be assigned to the Association

upon conveyance by the Declarant of the last Unit in the Regime to another Person, other than a mortgagee.

ARTICLE IV

Section 1. Administration of Regime by Association. In order to provide for the effective and efficient administration of the Regime by the Unit Owners, a nonprofit corporation known and designated as RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC. ("the Association") has been organized. The Association shall administer the operation and management of the Regime and undertake and perform all acts and duties incident thereto in accordance with the provisions of this Master Deed, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations promulgated by the Association from time to time. A copy of the Bylaws are annexed hereto and made a part hereof as Exhibit F.

Section 2. Membership and Voting.

(a) Membership. The Owner of each Unit shall automatically be a member of the Association upon its acquisition of an ownership interest in title to any Unit. The Owner of a Unit shall have rights in the Association in the same proportion as its Common Interest. The membership of an Owner shall terminate automatically upon conveyance of title to the Unit, regardless of the means by which such conveyance of title occurs. No Person holding any lien, mortgage or other encumbrance upon any Unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Regime, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Master Deed, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulation governing the use of the Units, Common Area, and Limited Common Area, as the Board of Directors of the Association may deem to be in the best interest of the Regime.

(b) Voting. The Owner of each Unit shall have the right to cast the number of votes attributable to the Common Interest of such Unit. Votes may be cast in person or by proxy at all meetings of the Association. The holder of a proxy need not be an Owner.

Section 3. Association Governance: Board of Directors. The Board of Directors of the Association (the "Board of Directors") shall function in accordance with this Declaration and the Bylaws. The Bylaws may be amended, from time to time, only as provided herein. The Board of Directors shall constitute the final administrative authority of the Association, and, unless modified by a vote of owners owning a majority of the Common Interests, all decisions of the Board of Directors shall be binding upon the Association and the Owners; provided, however, that the Owners may not modify or invalidate any provision of this Master Deed or the Bylaws except by amending the applicable provision. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

Section 4. Selection of Board of Directors. Prior to Loss of the Controlling Interest (as defined below), the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as determined by the Declarant from time-to-time. Said individuals need not be Owners of Units. Following Loss of the Controlling Interest by the Declarant, the Board of Directors shall consist of such number of individuals as may be selected in accordance with the Bylaws. "Loss of the Controlling Interest" shall occur at the earlier of (i) the conveyance by Declarant of ownership of three fourths (3/4ths) of all Units (other than conveyance to a mortgagee pursuant to the terms of a mortgage or in lieu of enforcement of the terms of a mortgage), or (ii) the date on which the Declarant notifies the Unit Owners in writing that it is relinquishing the Controlling Interest.

Section 5. Rules and Regulations. The Board of Directors shall have the authority from time-to-time to adopt rules and regulations governing the use, administration and operation of the Property, subject to the terms of this Declaration and the Bylaws. The initial Rules and Regulations are set forth in Exhibit E, attached hereto and incorporated herein by reference.

Section 6. Indemnification. The members of the Board of Directors, the officers of the Association as may be elected by the Board of Directors, and such other officers or employees of the Association or the Managing Agent of the Association as the Board of Directors shall specify by written resolution from time-to-time, shall not be liable to the owners or the Association for any mistake in judgment or acts or omissions unless such act or omission was made in bad faith or was the result of gross negligence. The Association shall indemnify and hold harmless such non-labile Persons against all liabilities to others arising out of any action or agreement made by such Persons on behalf of the Association unless such action or agreement was made in bad faith or with gross negligence.

Section 7. Working Capital. At the time that title is conveyed to an owner by the Declarant, the Owner shall contribute to a working capital reserve established by the Association the sum of \$250.00 Dollars. Such funds shall be used solely for initial operating and capital expenses of the Regime.

Section 8. Insurance.

(a) Type of Insurance. If such insurance is available at reasonable cost, the Board of Directors shall endeavor to obtain insurance coverage, in such amounts as it shall reasonably determine, for the Property, excepting personal property of a owner located within the Unit owned by such Owner. The insurance shall, to the extent feasible, cover the insurable interests of the Association and the owners of Units, and any mortgagees of the Association and the Owners of Units. To the extent feasible at reasonable cost, such insurance coverage shall be obtained:

(i) against loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based upon current replacement cost);

(ii) against such risks as vandalism, theft and malicious mischief;

(iii) for comprehensive general public liability and, if applicable, automobile liability insurance for any vehicles owned or leased by the Association, covering loss or damages resulting from accident or occurrences on or about the Property or elsewhere;

(iv) for worker compensation or other mandatory insurance;

(v) for fidelity insurance covering any employees or officers of the Association or Managing Agent having access to any substantial funds of the Association;

(vi) for officers and directors, providing coverage against claims brought against the Board of Directors or officers of the Association acting in such capacity; and for

(vii) such other insurance as the Board of Directors shall determine to be reasonable and desirable from time-to-time.

(b) Other Insurance Criteria. All insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association. The insurance coverage shall, if feasible, provide that;

(i) the interest of the Association shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association;

(ii) the coverage shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to the Association;

(iii) subrogation shall be waived with respect to the Association and its Board of Directors, employees and agents, and Owners, members of their household and mortgagees; and

(iv) there shall be a cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(c) Insurance Premiums. The Association shall collect and enforce the payment of a share of the premium for such insurance from each Unit Owner as a part of the Common Expenses; provided, however, where the insurer allocates the insurance premium(s) among the Units based on current insured values for the Units which differ from the allocation of Common Interests among the Unit Owners pursuant to this Declaration, then each Unit Owner shall pay that portion of the premium(s) as shall be determined by the insurer or the Board of Directors to be allocable to the Unit of the Unit Owner. No Unit Owner may elect not to pay its proportionate share of the insurance obtained by the Association for the Property and the Unit.

(d) Insurance to Be Purchased Directly by Unit Owner. Each Unit Owner shall purchase liability insurance for accidents occurring in its own Unit and shall be responsible for purchasing Insurance on all personal property in the Unit; provided, however, that the Board of Directors, in its sole discretion, may assist the Unit Owners by obtaining

information regarding personal property insurance which may be available through the insurer(s) selected by the Board of Directors for insuring of the Property.

(e) Insurance Trustee. The Board of Directors may, at its discretion, retain any bank, trust company or South Carolina law firm to act as trustee, agent or depository (the "Insurance Trustee") on its behalf for the purpose of receiving or distributing any insurance proceeds. If no Insurance Trustee is retained, the powers of the Insurance Trustee set forth in this Section 8 shall be vested in the Board of Directors. The Insurance Trustee shall receive the proceeds from the casualty insurance policies held by it, and shall hold such proceeds in trust for the Association, Unit Owners, and any mortgagees, as applicable. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of the policies, nor for the failure to collect any insurance proceeds. The fees and reasonable expenses of the Insurance Trustee shall be a Common Expense. Unless otherwise waived by the Board of Directors, the Board of Directors or any Insurance Trustee appointed by the Board of Directors is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association.

(f) Rights of Mortgagees Regarding Reconstruction. No mortgagee shall have any right to participate in the determination of whether property is to be rebuilt, nor shall any mortgagee have the right to require that the Insurance Trustee, the Board of Directors, or any Owner apply insurance proceeds to repayment of its loan except in accordance with the following provisions. If insurance proceeds are sufficient to pay for the cost of reconstruction and repair of all damaged portions of the Property, or if the insurance proceeds are insufficient but additional funds are committed by special assessment or any other manner within ninety (90) days after the costs of restoration and repair are determined, then no mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan.

(g) Use of Insurance Proceeds If Damage Only to Units. If a loss occurs only to any improvements within any Unit(s), without any loss to any improvements within the Common Area, the Insurance Trustee shall immediately pay all proceeds received because of such loss directly to the Owners of the Unit damaged, and their approved first mortgagees, if any, as their interest may appear, or to the first mortgagee only if required by any condominium rider to a mortgage, and it shall be the duty of these Owners to use such proceeds to effect necessary repair to the Unit. The Insurance Trustee may rely upon the written statement of the Association as to whether or not a loss has been incurred to the Units or Common Area or both.

(h) Use of Insurance Proceeds If Damage to Units and Common Area Is Less Than \$20,000.00. If a loss of \$20,000.00 or less occurs to improvements within one or more Units and to improvements within the contiguous Common Area (including Limited Common Area), or to improvements within the Common Area alone, the Insurance Trustee shall pay the proceeds received as a result of such loss to the Association. Upon receipt of such proceeds, the Association will promptly contract for the necessary repairs to the improvements within the Common Area and within the damaged Units; provided, however, that if the necessary repairs to the improvements with the damaged Units are repairs which can be accomplished without detrimentally affecting other Owners or the Common Area, then the

Association may allow the Owner of the Unit to contract directly for the repair of the improvements within the Unit. Unless the Board of Directors shall determine that the insurance proceeds are sufficient to repair all of the damage to the Common Area and within the Units, the proceeds shall be applied first to repair the improvements within the Common Area, and the balance of the funds shall be apportioned to repair improvements within the damaged Units, in proportion to the loss sustained to improvements within all the damaged Units, as estimated by the insurance carrier. In such event, the Owners of Units containing damaged improvements shall be subject to a special assessment and shall contribute to the Association the remaining funds necessary to repair the improvements within their Units. If any Owner(s) of Units containing damaged improvements refuses to pay such assessment, then the majority of Owners of Units so damaged may proceed with the reconstruction at the expense of all Owners benefited thereby.

(i) Use of Insurance Proceeds If Damage to Units and Common Area Is More Than \$20,000.00. If a loss of more than \$20,000.00 occurs to improvements within one or more Units and to improvements within contiguous Common Area (including Limited Common Area), or to improvements within the Common Area alone, the Insurance Trustee shall hold all insurance proceeds and any and all other funds paid as hereinafter provided in trust, and shall distribute the same as follows:

(i) The Board of Directors of the Association shall cause to be obtained detailed estimates and/or bids for the cost of rebuilding and reconstructing the damage and for the purpose of determining whether insurance proceeds are sufficient to pay for the same.

(ii) If the insurance proceeds are sufficient to rebuild and reconstruct all the damaged improvements within the Common Area and within the Units, or upon the collection of the necessary funds that are described in subparagraph (iii) of this paragraph, then:

1. If the casualty loss necessitates reconstruction of more than two-thirds in value of the improvements on the Property, as determined by the Board of Directors, then the Insurance proceeds shall be disbursed pro-rata, in accordance with their respective Common interests, to the Owners and their respective mortgagees, and in such proportions as the Board of Directors in its sole discretion may determine. This paragraph may be waived, altered or amended with the consent of such percentage of the Owners as are required to amend this Declaration.
2. If the casualty loss necessitates reconstruction of two-thirds or less in value of the improvements on the Property, as determined by the Board of Directors, then the damaged improvements shall be completely repaired and restored.

(iii) If the insurance proceeds are not sufficient to repair or replace all the improvements within the Common Area and within the Units so that special assessments shall be required to complete repair or replacement, then:

1. If the casualty loss necessitates reconstruction of more than two-thirds in value of the improvements on the Property, as determined by the Board of Directors, then the insurance proceeds shall be disbursed, prorata, in accordance with their respective Common Interests, to the Owners and their respective mortgagees, and in such proportions as the Board of Directors in its sole discretion may determine. This paragraph may be waived, altered or amended with the consent of such percentage of the Owners as are required to amend this Declaration.
2. If the casualty loss necessitates reconstruction of two-thirds or less in value of the improvements on the Property, as determined by the Board of Directors, then the Board of Directors shall meet and shall determine the amount of and terms of a special assessment against the Units and the owners thereof to obtain the necessary funds to repair the improvements. Such assessment need not be uniform as to all Units, but may be in accordance with such factors as the Board of Directors of the Association shall consider to be fair and equitable under the circumstances; whereupon the Board of Directors of the Association, having determined the amount of such assessment, shall immediately levy such assessment setting forth the date of payment of the same, and the funds received shall be delivered to the trustee and disbursed as provided in the preceding paragraph. If any Owner or Owners of Units containing damaged improvements refuses or refuse to pay such assessment, then the majority of Owners of Units so damaged may proceed with reconstruction at the expense of all Owners benefited thereby.

(j) Use of Excess Funds After Reconstruction. If funds remain in the hands of the Insurance Trustee after complete repair and reconstruction and after the Insurance Trustees fee and other fees or costs have been paid, such funds shall be distributed (i) first, to the Unit Owners who made contributions in proportion to their contributions, until all contributions (and such interest thereon, if any, as the Board of Directors determines is appropriate and reasonable) have been repaid, and (ii) second, to the Unit Owners in proportion to their Common Interests.

(k) Contract Administration During Reconstruction.

(i) The Insurance Trustee or Board of Directors, as appropriate, shall endeavor to require all payees to deliver paid bills and waivers of mechanics liens and execute any affidavit required by law or by the Association, or any approved first mortgagee named on a mortgage endorsement. The Board of Directors shall negotiate and obtain one or more contractors willing to do the work on a fixed price basis, or some other reasonable terms under the circumstances, which said contractor shall post performance and payment bonds. The Insurance Trustee shall disburse the insurance proceeds and other funds held in trust in accordance with the progress payments specified in the construction contract between the Association and the contractor.

(ii) Any repair, rebuilding, or reconstruction shall be substantially in accordance with the architectural plans and specifications for the original Building or as the Building was last constructed, or according to plans approved by the Board of Directors.

Section 9. Condemnation. If the Property or any part thereof shall be taken or condemned by any authority having a power of eminent domain, any compensation therefor shall be payable to such bank, trust company or law firm authorized to do business in South Carolina as the Board of Directors shall designate as Trustee for all Unit Owners and mortgagees affected thereby, according to the loss or damages to their respective Units, and, to the extent feasible, shall be used promptly by the Board of Directors for restoring or replacing such improvements on the remaining Property. In so doing, the Board of Directors shall follow the concepts and procedures set forth in the preceding Section 8, as applicable. If the Board of Directors determines that such restoration or replacement is impracticable, the Association shall, with the proceeds received from such condemnation or taking, remove all necessary remains of such improvements so taken or condemned, restore the Site thereof to good and orderly condition, and equitably distribute any remaining proceeds from such condemnation or taking to the Unit Owners or mortgagees affected thereby, according to the loss or damage to their respective Units.

ARTICLE V

Section 1. Notice of Sale or Lease. If an Owner sells, leases, or otherwise conveys a Unit, the conveying or leasing Owner shall promptly furnish to the Association, in writing, the name and address of such purchaser, lessee, or transferee; if a lease, the term of the lease; and the forwarding address of the conveying or leasing Owner. The Association may require a conveying or transferee Owner to provide a certified copy of the instrument by which the Unit was obtained.

Section 2. Acquisition by Devise or Inheritance. When any Person receives title to a Unit by devise or inheritance, or by any other method not heretofore considered, it shall be the responsibility of such Person to notify the Association that such transfer has occurred and to provide the information set forth in Section 1, above.

Section 3. Notice Procedure. Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and (a) personally delivered or (b) sent postage or delivery charges prepaid either (i) by United States mail, certified, return receipt requested, in which case notice shall be deemed to occur on the certified date of delivery or rejection of delivery or (ii) if within the United States, by First Class United States mail, in which case notice shall be deemed to occur three (3) calendar days after date of postmark, or (iii) by any recognized express delivery service which provides evidence of delivery, in which case notice shall be deemed to occur on the date of delivery.

All notices to Owners shall be delivered or sent to such address as has been designated in writing to the Association, or if no address had been so designated, at the addresses of such Owners respective Unit.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Rivers Point Row Property Owners Association, Inc.
21 Rivers Point Row
Charleston, SC 29412

or to such other address as the Association may from time to time notify the Owners and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

Rivers Point Row, LLC
c/o John B. Hagerly
Nelson Mullins Riley & Scarborough, L.L.P.
Suite 600, 151 Meeting Street
Charleston, SC 29401

or to such other address as Declarant may from time to time notify the Association.

All notices to mortgagees shall be delivered or sent to such addresses as such mortgagees special in writing to the Association.

Section 4. General Maintenance and Repair.

(a) All maintenance of and repairs to any Unit (other than maintenance of and repairs to any Common Area contained therein which are not necessitated by the negligence, misuse or neglect of the Owner of such Unit or such Owner's invitees or licensees), including internal installations for the sole benefit of such Unit, such as telephones, air conditioners, heating elements, plumbing lines and fixtures, electric fixtures, doors, windows, lamps, etc., shall be made by the Owner of such Unit. All maintenance and repair shall be performed promptly and diligently by each Owner obligated to do same. Each Owner shall be responsible for all damages to any Unit and/or the Common Area caused by his failure to maintain or make repairs. An Owner shall reimburse the Association or another Owner, as applicable, for any expenditures incurred in repairing or replacing any Common Area or other Unit damaged through his neglect, including any deductible paid by the Association or the other Owner prior to receipt of any insurance proceeds for such damage.

(b) All maintenance, repairs and replacements to the Common Area and Limited Common Area, whether located inside or outside of the Units (other than maintenance of and repairs to the Common Area contained therein which are necessitated by the negligence,

misuse or neglect of the Owner of such Unit or such Owner's invitees or licensees) shall be made by the Association and be charged to all the Unit Owners as a Common Expense.

(c) The Association shall have access to each Unit and Limited Common Area from time to time during reasonable hours, as determined by the Board of Directors, for the maintenance, repair or replacement of any Common Area, or for making emergency repairs therein to prevent damage to the Common Area or to another Unit.

Section 5. Alterations or Improvements by Board. Additions, alterations, or improvements included within the Association budget or costing Five Thousand (\$5,000.00) Dollars or less may be performed by the Board of Directors without approval of the Unit Owners, and the cost thereof shall constitute part of the Common Expense. Additions, alterations or improvements not included within the approved budget and costing more than Five Thousand (\$5,000.00) Dollars must be approved by the Board of Directors and by a vote representing fifty one (51%) percent of the Common Interests of the Unit Owners.

Section 6. Maintenance and Decoration of Unit Interiors. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit, and such Unit Owner may decorate, and shall maintain, such interior surfaces in good condition, at his sole expense. Such use, decoration and maintenance, including the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Association. The interior surfaces of all windows forming part of the perimeter wall of a Unit shall be cleaned by the Unit Owner. Decorating of Common Area (other than interior surfaces within the Units as above provided), and any redecorating of Units made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Area by the Association, shall be furnished by the Association as part of the Common Expense.

Section 7. Unit Mortgages. Each Unit Owner shall have the right, subject to the provisions hereto, to make a separate mortgage or encumbrance on his Unit. No Unit Owners shall have the right to make or create, or cause to be made or created, any mortgage, encumbrance or other lien on or affecting the Property or any part hereof except his Unit.

Section 8. Encroachments. If any Unit shall encroach upon any Common Area for any reason not caused by the purposed or negligent act of the Unit Owner(s), or agents of such Owner(s), then an easement appurtenant to such Unit shall exist for the continuance of such encroachment on the Common Area for so long as such encroachment shall naturally exist. If any portion of the Common Area shall encroach upon any Unit then an easement shall exist for the continuance of such encroachment of the Common Area into any Unit for so long as such encroachment shall naturally exist.

Section 9. Real Estate Taxes and Assessments. It is intended that real estate taxes, assessments and similar charges shall be separately assessed against each Unit Owner for his Unit and his Common Interest in the Common Area, as provided in the Act. If, for the year in which this Master Deed is recorded, such taxes, assessments or charges are not separately

taxed to each Unit Owner, but are taxed or assessed on the Property as a whole, then each Unit owner shall pay his proportionate share thereof in accordance with his respective Common Interest. The Board of Directors of the Association shall determine the amount due and notify each Unit Owner as to the real estate taxes payable by such Owner.

ARTICLE VI

Section 1. Regular Assessments and Budget. Assessments shall be computed and assessed against all Units as follows:

(a) Fiscal Year and Annual Budget. The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for assessments to all Owners (the "Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year. If the Board fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase of the then current calendar year over the preceding calendar year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items), or its successor index, as determined by the Board of Directors. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. Within ninety (90) days following the close of the Association's fiscal year, or such later date as the Board of Directors determines is warranted, the Board of Directors shall cause an unaudited financial statement of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon request, a copy of the Annual Report shall be provided to any Owner of any Unit.

(b) Determining the Budget. The Budget and the Assessments shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Area and the operation of the Association. Such estimated expenses and costs may include, among other things, the following; expenses of management, including compensation of any management agent; taxes and special assessments; insurance premiums; repairs and maintenance; wages and personnel expenses for Association employees; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities which may be incurred by the Association. Such expenses and costs shall constitute the Common Expenses.

(c) Application of Assessments. Except as expressly stated below, the Owner of each Unit shall pay that percentage of the Assessments as the Owner's Common

Interest bears to all Common Interests. (See Exhibit D.) A different allocation may apply for (i) property insurance premiums to the extent that the insurance premium(s) are based on an allocation of current insured values for the Units which differs from the allocation of Common Interests (See Article IV, Section 8(c)), (ii) any Special Assessments allocable to specific Unit Owners, and (iii) any costs of constructing, repairing or maintaining any improvement to a Limited Common Area (such as screens, windows, awnings, panels, tiles, etc.) which is not part of the original improvements in or to the Limited Common Area, but have been added by a current or previous Owner of the Unit.

(d) When Assessments for Units Begin. Assessments for new Units shall commence on the first day of the calendar month following the date that the Building containing the Unit has been subjected to this Master Deed. The applicable Assessment for such Unit shall be pro-rated and shall be payable for the balance of the current fiscal year.

(e) Assessments for Units Owned by Declarant. Declarant and Affiliates of Declarant shall pay Assessments on Units owned by them in the same manner as other Unit Owners. Until the end of the first full calendar year of operation of the Association, the Declarant may, in its sole discretion, also elect to contribute to the Association some or all of any amount by which the actual expenditures of the Association exceed the Assessments collected by the Association during such period.

(f) Notice of Assessments. Unless the Board of Directors elects a longer payment period, the Assessments shall be due and payable monthly in advance. Unless otherwise determined by the Board of Directors, the Association shall, by December 15, furnish to each Unit Owner a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the periodic Assessment payable by such Owner. After a Unit owner has been notified of the amount of the periodic Assessment, no further notice of the Assessment due shall be required.

(g) Payment of Assessments. Unless otherwise expressly approved by the Board of Directors, Assessments shall be due and payable prior to the first day of the period to which they apply.

(h) Special Assessments. In addition to the regular Assessments authorized above, the Board of Directors may levy during any fiscal year one or more Special Assessments which cumulatively do not exceed Two Hundred Dollars (\$200.00) per one percent (1%) interest in the cumulative Common Interests. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. Any other Special Assessment levied by the Board of Directors shall have the approval of Units representing a majority of the Common Interests. Meetings of Owners for the purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners of the Units, in accordance with the notice procedure set forth in Article V, Section 3. The meeting shall occur no earlier than seven (7) days after the date of mailing or delivery. The notice shall state generally the purpose and amount of the proposed Special Assessment. Owners may be represented at such meetings by written proxy, which

proxy may be held by any Person. Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with Article V, Section 3.

(i) Effect of Non-Payment of Assessments. Any Assessment (including any Special Assessment) which is not paid to the Association when due by an Owner shall be delinquent. The Board of Directors may levy an administrative charge not to exceed five percent (5%) of the amount due, plus interest of one (1%) percent per month of the unpaid Assessment from the date when due. Such charges shall be added to and collected in the same manner as the Assessment. The Board of Directors may in its discretion waive all or any portion of such charges or interest if it determines, in its sole discretion, that the failure to pay the Assessment or charge when due was caused by circumstances beyond the control of the Owner. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

(j) Creation of Lien and Personal Obligation for Assessments. Assessments, including Special Assessments, interest and charges thereon, and costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due and, unless expressly agreed by the Board of Directors of the Association, also of any subsequent Owner, (ii) a charge on the Unit to which such assessments are applicable and (iii) a continuing lien upon each Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may but shall not be required to, prepare a written notice of lien setting forth the amount of the unpaid Assessment or Special Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any managing agent of the Association and may be recorded in the R.M.C. office for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced as set forth in this Master Deed or otherwise permitted by law.

(k) Subordination of the Lien: Mortgagee Rights. The lien of the Assessments provided for herein shall be subordinate to the lien of any unpaid taxes and any recorded mortgage on the applicable Unit. Sale or transfer of any Unit shall not affect the lien of the Assessments. However, pursuant to Section 27-3 1-210(b) of the Act, if a mortgagee of any mortgage of record or other purchaser of a Unit obtains title at a foreclosure sale, the Person acquiring title shall not be liable for Assessments allocable to the Unit which accrued after the date of recording of the mortgage and prior to the acquisition of title at the foreclosure sale. Such unpaid Assessments shall be deemed Common Expenses collectible from all Unit Owners, including the Person acquiring title, its successors and assigns, in accordance with their respective Common Interests.

(l) Remedies. The Association may bring an action at law against the delinquent Owner personally for the collection of any delinquent Assessment or Special Assessment, or foreclose the lien against the delinquent owners Unit in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The

Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the subject Unit.

(m) Abatement of violations by Unit Owners. All Units shall be utilized, resided in and operated in accordance with the provisions of this Master Deed, the Bylaws, and the rules and regulations promulgated from time-to-time by the Association. The violation or breach of any such provision shall give the Board of Directors the right (which right may be delegated to any management agent of the Association), in addition to other rights set forth in this Master Deed or permitted by law, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

(n) Discharge of Mechanics Liens. The Board of Directors may cause to be discharged any mechanic's lien or other encumbrance which in the opinion of the Board of Directors may constitute a lien against the Common Area. Where less than all of the Owners are responsible for the existence of said lien, the Owners responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

(o) Attorneys Fees and Costs. In any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof.

(p) Statement of Account. Upon payment of a reasonable fee determined by the Board of Directors and upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

(i) The amount of unpaid annual Assessment or Special Assessment, if any, applicable to such Unit.

(ii) The amount of the current annual Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due.

(iii) The amount of any credit for advance payments of, annual Assessments or Special Assessments.

ARTICLE VII

Section 1. Compliance and Conflict. This Master Deed is intended to comply with the Act. If any provision of this Master Deed conflicts with a mandatory provision of the Act, the provisions of the Act will apply and control. If such invalidates any provision of this Master Deed, such invalidation will not affect any of the other provisions contained herein, and they shall remain in full force and effect.

Section 2. Amendments by Association. Amendments to this Master Deed, other than those authorized by Section 4, below, shall be adopted, upon the vote of at least two-thirds (2/3rds) of the Common interests, in accordance with the procedure set forth in the Bylaws; provided, however, that no amendment which imposes a greater economic or legal burden on Declarant than exists under the current provisions of this Master Deed shall be valid unless it is approved, in writing, by Declarant.

Section 3. Amendments by Declarant. Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Master Deed without the consent of the Association, any Owner, any easement grantee, or any mortgagee if in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with this Master Deed; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any Units subject to this Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to this Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to this Master Deed; (v) enable any insurer to provide insurance required by this Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration, or (vii) clarify any provision of this Master Deed or eliminate any conflict between provisions of this Master Deed.

Section 4. Title. Every Unit Owner shall promptly cause to be duly recorded with the R.M.C. Office for Charleston County the deed or other document conveying the Unit to such Owner. Upon request of the Board of Directors, the owner shall file a true copy of such evidence of title with the Board of Directors or its designee.

Section 5. Management Agreement. Any agreement for management of the Association or the Common Area, or any other contract providing for services of the Declarant or an affiliate of the Declarant shall not exceed three (3) years and shall be on terms which are reasonably comparable to those which would be available from another entity of equal qualifications. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee on not less than ninety (90) days written notice.

Section 6. Right of Declarant to Sell, Lease and Repair Units and Common Areas. So long as Declarant or any affiliate of Declarant shall own any Unit, whether by reacquisition or otherwise, the Declarant or affiliate shall have the absolute right to lease, sell or mortgage any such Unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interest, and as to the lease, sale or mortgage of any Unit by the Declarant. This provision of the Master Deed may not be suspended or superseded by any amendment unless consented thereto, in writing, by the Declarant. Declarant shall have the right to transact on the Property any business necessary to consummate sale of Units, including, but not limited to, the right to maintain models, have signs, employees in the office, use the Common Area and to show Units, and may assign this commercial usage right to such other persons or entities as it may choose. Declarant has the further right, but not the

DKG 493PG024

obligation to continue to make repairs and improvements to Common Areas without cost to the Association.

Section 7. Applicable Law. This Master Deed and the Bylaws shall be construed in accordance with the laws of the State of South Carolina. Any provisions of the Act which are required to be incorporated herein but which are not specifically set forth herein shall be deemed to be incorporated herein by reference. In all cases, the provisions set forth or provided for in this Master Deed shall be construed together and given that interpretation which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be extended by implication as to make them fully effective. The captions herein as to the contents of various portions of the Master Deed are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Master Deed shall be the date of its filing for record in the R.M.C. office for Charleston County, South Carolina.

Section 8. Interpretation. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to any Person, as defined herein, shall in all cases be assumed as though in each case fully expressed

IN WITNESS WHEREOF, the Declarant has hereunto set its Hand and Seal this
4th day of May, 2004.

Witnesses:

Heidi J. McLean
Patricia M. [Signature]

Rivers Point Row, LLC

By: [Signature]
Its: Manager

BK 6 49376025

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ACKNOWLEDGMENT
S.C. §30-5-30

I Harold E. McLean a Notary Public for South Carolina do hereby certify that John B. Hagerty, Managing Member of Rivers Point Row, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 4th day of May, 2004.

Harold E. McLean
Notary Public for South Carolina
My Commission Expires: 11.13.12

BKG 493PG026

EXHIBIT "A"
Real Estate Description
Exhibit A

Property Description

ALL that piece, parcel, or tract of land, situate, lying and being on James Island in the City of Charleston, Charleston County, South Carolina, being more particularly described as follows, to wit:

To find the BEGINNING POINT, start at the point of intersection of the Southwest side of Rivers Point Row, and the Southeast side of Folly Road (S.C. Highway No. 171) thence S 57° 42'E two hundred seventy-eight and 21/100ths (278.21') feet to a 5/8" IRF which is the point of beginning. Said tract butting and bounding as follows: Beginning at said point of beginning and thence bounded by Rivers Point Row S 57° 42'E four hundred seventy-one and 89/100ths (471.89') feet to a point; thence, bounded by Rivers Point Home Owners Association Tract "A-1" S 47° 42'E one hundred forty-four and 29/100ths (144.29') feet to a 1" IPF, thence, bounded by Rivers Point Home Owners Association Tract and Epworth Methodist Church S 18° 56' W three hundred eighty and 19/100ths (380.19') feet to a 5/8" IRF, thence, bounded by Epworth Methodist Church N 70° 53' W one hundred thirty-five and no/100th (134.00') feet to a 5/8" IRF; thence, bounded by Epworth Methodist Church S 19° 06' 18" W one hundred nine and 74/100ths (109.74') feet to a 1" IPF; thence, bounded by Epworth Methodist Church, John Edward Hickman and Mitchell D. McCullers, N 71° 20' 54" W two hundred twenty-nine and 80/100ths (229.80') feet to a 1" IPF; thence bounded by James Island Public Service District and The Southern Bell Telephone and Telegraph Company N 70° 36' 01" W three hundred eighty-six and 82/100ths (386.82') feet to a 5/8" IRF; thence bounded by Alva M. Boroughs and Sanders Brothers Construction Co., N 32° 32' 15"E six hundred forty-eight and 11/100ths (648.11') feet to the BEGINNING POINT; all as shown on Plat prepared by E. M. Seabrook, Jr., Inc. No. C00045, dated July 3, 1996, entitled "Tract B, Rivers Point, City of Charleston, S.C." and recorded in the RMC Office for Charleston County in Plat Book EB at Page 405.

TMS # 425-07-00-139

ALSO

AN EASEMENT, appurtenant to and running with Tract B, designated as "44' Drainage Easement" on the aforesaid Plat prepared by E. M. Seabrook, Jr., Inc., No. C00045, dated July 3, 1996, last revised September 26, 1997, over and across the following described property:

COMMENCE at the point of intersection of the Southwest right-of-way of Rivers Point Row, and the Southeast right-of-way of Folly Road (S.C. Highway No. 171) thence run S 57° 42'E

BKG 493PG027

seven hundred fifty and 10/100ths (750.10') feet to a point, thence run S 47° 42'E on hundred forty-four and 29/100ths (144.29') feet to a 1" IPF; thence turn and run S 18° 56'W two hundred sixty-four and 93/100ths (264.93) feet to a point which is the point of beginning. From the point of beginning thus described turn and run S 71° 20'E four hundred one and 20/100ths (401.20') feet to a point; thence turn and run S 28° 52'W twenty-one and 63/100ths (21.63') feet to a point, thence turn and run S 44° 19'E twenty-eight and 88/100ths (28.88') feet to a point on the right-of-way of Oyster Pt. Row; thence turn and run N 54° 59' 55"E for a chord distance of sixty and no/100th (60.00') feet to a point; thence turn and run N 40° 06'49" W fifty-seven and 99/100ths (57.99') feet to a point; thence N 71° 20'W four hundred eight and 86/100th (408.86') feet to a point; thence turn and run S 18° 56'W forty-four and no/100ths (44.00) feet to the point of beginning.

BEING the identical property conveyed to the Grantor herein by deed of
dated _____ and recorded in the RMC Office
for Charleston County in Book _____, Page _____.

BKG 49356028

EXHIBIT "B"

Site Plan/Survey

See attached survey of Rivers Point Row Horizontal Property Regime, Rivers Point, owned by Rivers Point Row, LLC, James Island, Charleston, South Carolina, made by E.M. Seabrook, Jr., Inc. dated July 3, 1996 ^{Revised} March 18, 2004.

EXHIBIT "C"

The Units and Building are shown in the Exhibit C on the site plan, the floor plans, the elevation plans and the photographs of the buildings. The charts shown herein reflect the type of unit and the dimensions of each unit. Any square footages shown in this Exhibit C are approximate square footages. The basic construction of these buildings are wood frame, dry wall interiors, wood composition and brick veneer siding and tab shingles. The common elements and limited common elements have been depicted on the Unit Plans. There are shown on the site plan the location of the clubhouse, swimming pool, tennis court and other common elements.

The unit types are as follows:

- 76 - 2 bedroom, Townhouse Units
- 32 - 2 bedroom, Garden Units
- 24 - 1 bedroom, Garden Units

Refer to the site plan, floor plans, elevation plans, charts and photographs in this Exhibit C for a more complete description of the unit types.

HORIZONTAL PROPERTY REGIME RIVERS POINT ROW CONDOMINIUMS

REG 493PG031

SCHEDULE OF SHEETS

A1 FLOOR PLAN / ELEVATIONS - ONE BEDROOM GARDEN UNITS
A2 FLOOR PLAN / ELEVATIONS - TWO BEDROOM GARDEN UNITS
A-3 FLOOR PLAN / ELEVATIONS - TOWNHOUSE UNITS
A-4 DIMENSIONS CHART
A-5 PHOTOGRAPHS - BUILDINGS 1 - 4
A-6 PHOTOGRAPHS - BUILDINGS 5 - 8
A-7 PHOTOGRAPHS - BUILDINGS 9 - 12
A-8 PHOTOGRAPHS - BUILDINGS 13 - 16
A-9 PHOTOGRAPHS - BUILDINGS 17 - 18
A-10 FLOOR PLAN / PHOTOGRAPHS - CLUBHOUSE

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

ARCHITECT'S CERTIFICATION

I certify to the best of my knowledge, information and belief, that the floor plans, measurements, and projections contained herein are a true and correct representation of the actual conditions and dimensions of the property described herein, and that the same conform to the requirements of the South Carolina Condominium Act, Chapter 39, of the Code of Laws of South Carolina, 1976.

Robert Carl Sayer

Robert Carl Sayer
Registered Architect / S.C. 2001
Fifth Columbia Avenue
Charleston, South Carolina 29401

PREPARED FOR
RIVERS POINT ROW CONDOMINIUMS, LLC

HORIZONTAL PROPERTY REGIME
RIVERS POINT ROW CONDOMINIUMS

21 RIVERS POINT ROW
CITY OF CHARLESTON
CHARLESTON COUNTY
SOUTH CAROLINA 29412

DRAWING / DIMENSIONS / PHOTOGRAPHS
PREPARED BY

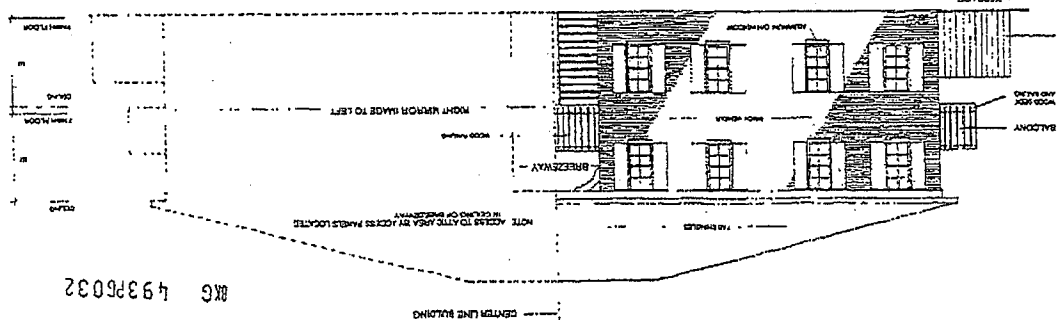
EPSS
EDWARDS
ARCHITECTS

1 PHICKNEY STREET
CHARLESTON, SOUTH CAROLINA 29401

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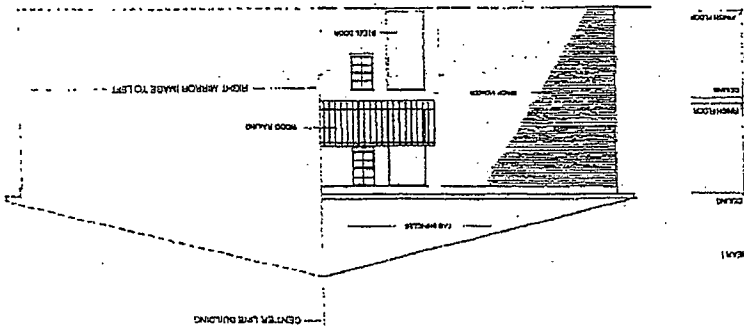
Dr. J. H. M. van der Kerkhof

4937032 2009064

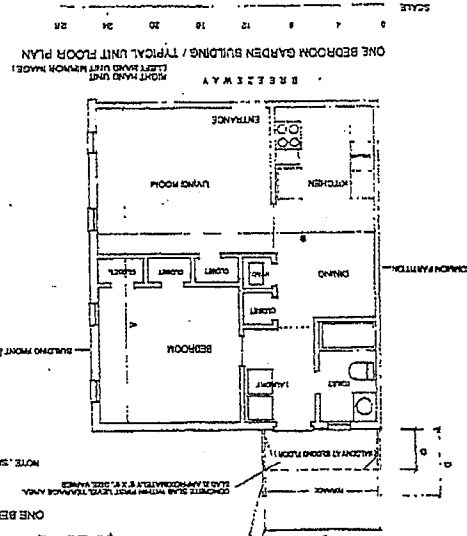


ONE BEDROOM GARDEN BUILDING (REAR ELEVATION SIMILAR)

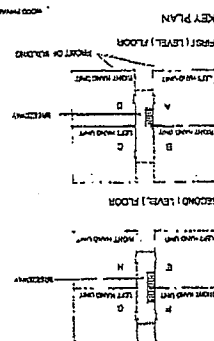
NOTE: SEE SHEET NO. 1 FOR CLUTT DIMENSIONS



ONE BEDROOM GARDEN BUILDING SIDE ELEVATION

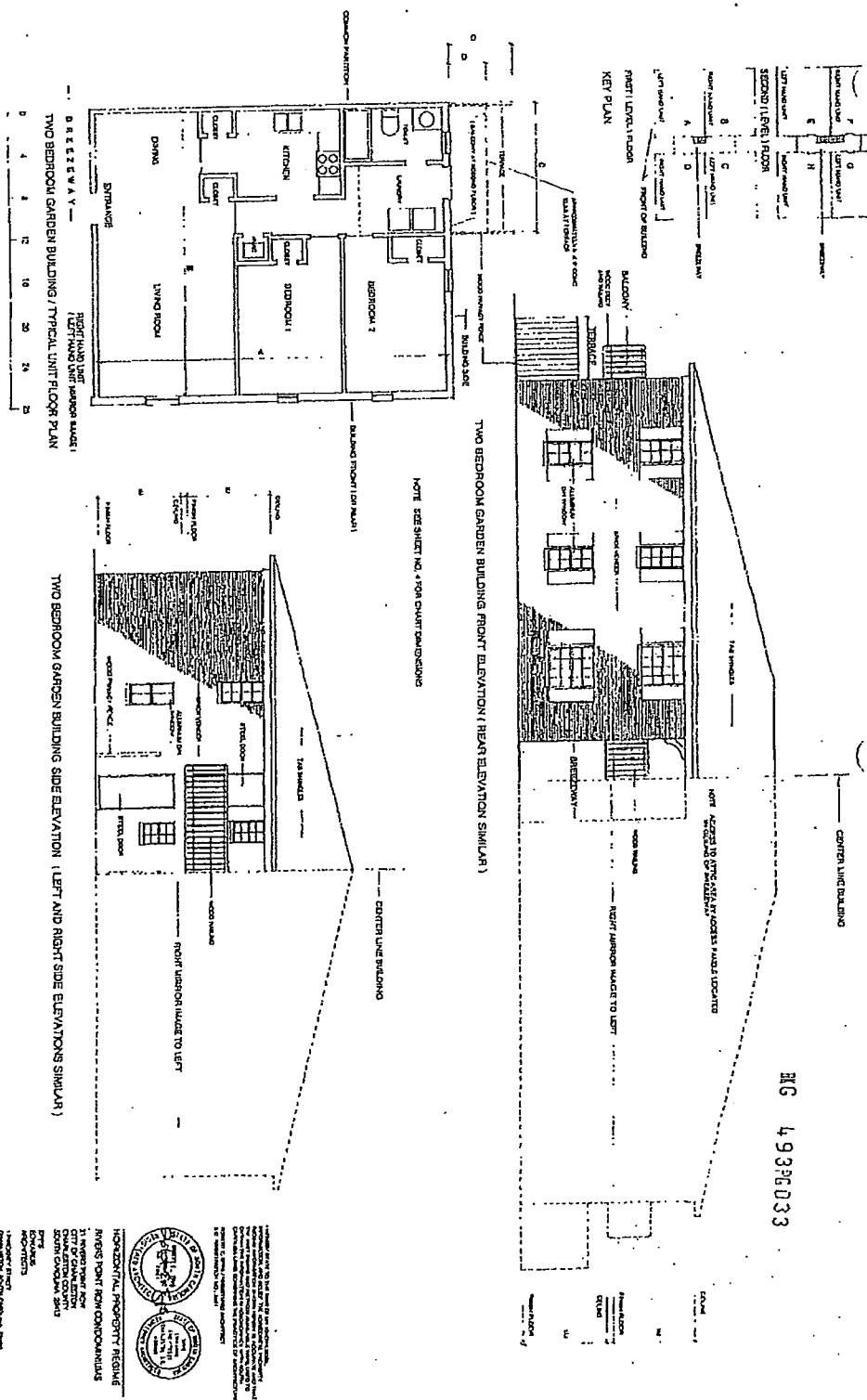


ONE BEDROOM GARDEN BUILDING / TYPICAL UNIT FLOOR PLAN

[illegible]

KEY PLAN

The image contains two floor plans, labeled 'SECOND LEVEL' and 'THIRD LEVEL'. Both plans show a central vertical corridor. On the second level, the corridor is flanked by rooms labeled 'A' (top), 'B' (middle), and 'C' (bottom). On the third level, the corridor is flanked by rooms labeled 'D' (top), 'E' (middle), and 'F' (bottom). The plans also indicate 'EAST' and 'WEST' directions and 'STAIR' locations.

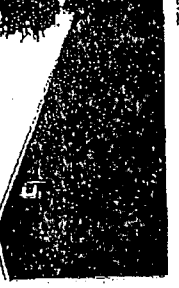


HORIZONTAL PROPERTY REGIME
INVESTMENT POINT NOW CONDOMINIUMS
 1 INVESTMENT POINT NOW
 OFFICE OF CHARLOTTE
 HANCOCK COUNTY
 SOUTH CAROLINA 29412

REG
 CHARTER
 PROCEEDINGS

INVESTMENT STREET
 HANCOCK COUNTY, SOUTH CAROLINA 29412

INVESTMENT STREET
 HANCOCK COUNTY, SOUTH CAROLINA 29412



BKG 493PG036

members state to the best of his knowledge, information, and belief, no income, receipts, or profits attributable to the partnership have been received by the partnership since the date of the last meeting of the partnership. The partnership is not a partnership for federal income tax purposes.



HORIZONTAL PROPERTY REGIME
RIVERS POINT ROW CONDOMINIUMS

21 RIVERS POINT ROW
CITY OF CHARLOTTE
CHARLOTTE COUNTY
SOUTH CAROLINA 29405

DMG
GOWANS
ARCHITECTS

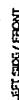
1 HARRISON DRIVE
CHARLOTTE, SOUTH CAROLINA 28203

WEST MO. 6, P. 12 DATE 1/10/84

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HORIZONTAL PROPERTY REGIME
RIVERSIDE POINT ROW CONDOMINIUMS
21 AVENUE POINT ROW
CITY OF CHARLESTON
CHARLESTON COUNTY
SOUTH CAROLINA 29412

DUFF
 ENGINEERS
 ARCHITECTS
 1 PEARSON STREET
 OVERSEAS SOUTH EAST ASIA HOUSE
 WILMINGTON & CO 10 DUFF APTN 4 2304





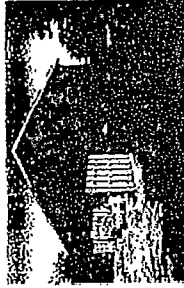
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Copyright Clearance Center, Inc. 222 Rosewood Drive, Danvers, MA 01923. 1-800-348-6450. www.copyright.com



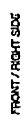
HORIZONTAL PROPERTY REGIME
RYERS POINT ROW CONDOMINIUMS
21 RYERS POINT ROW
CITY OF CHARLOTTE
CONNECTION COUNTY
SOUTH CAROLINA 29412

ENGINEERING
 CONSULTANTS
 ARCHITECTS
 *INDUSTRY STUDY
 DUBLINER SOUTH CINCINNATI 2007
 3-07-07 7 20 10 215 2007 2 2007



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HORIZONTAL PROPERTY REGIME
RIVERS POINT ROW CONDOMINIUMS
21 RIVERS POINT ROW
CITY OF CHICAGO
COOK COUNTY
SOUTH CHICAGO 60649
DPC
DRAWING
ADVERTISE
"PROPERTY STREET
CHICAGO, SOUTH CHICAGO, ILL 60649"
BUILT MAY 5, 1970 BUILT JUNE 8, 1970



EXG 493P6040

THESE PLANS HAVE BEEN PREPARED BY THE ARCHITECT AND ENGINEER, AND THE CITY ENGINEER HAS REVIEWED THEM FOR CONFORMANCE WITH THE CITY OF CHARLOTTE, NORTH CAROLINA, ORDINANCES AND REGULATIONS. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLANS AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON. THE ARCHITECT AND ENGINEER ASSUME RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT.



HORIZONTAL PROPERTY REGIME
 RUDS MONTGOMERY CONDOMINIUMS
 17100 RUDS MONTGOMERY
 CITY OF CHARLOTTE
 NORTH CAROLINA 28210
 OWNER: RUDS MONTGOMERY
 ARCHITECT: [Faint text]
 ENGINEER: [Faint text]
 DATE: 10/1/2010
 SHEET NO. 1 OF 10



LEFT SIDE



LEFT SIDE / REAR



REAR



REAR



RIGHT SIDE



RIGHT SIDE



FRONT



FRONT

BUILDING 16



CLUB HOUSE / FRONT



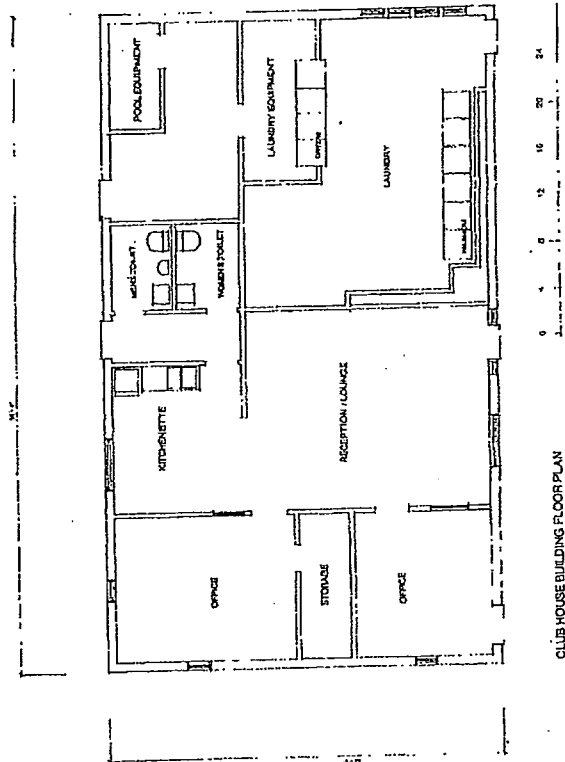
CLUB HOUSE / RIGHT SIDE



CLUB HOUSE / REAR



CLUB HOUSE / LEFT SIDE



REG 493PG041

1. I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE ABOVE IS A TRUE AND CORRECT REPRESENTATION OF THE EXISTING CONDITIONS OF THE PROPERTY DESCRIBED HEREIN, AND THAT I HAVE NOT BEEN AWARE OF ANY VIOLATIONS OF ANY APPLICABLE ORDINANCES OR REGULATIONS. I HAVE NOT BEEN AWARE OF ANY VIOLATIONS OF ANY APPLICABLE ORDINANCES OR REGULATIONS.



HORIZONTAL PROPERTY REGIME

RIVERS PORTFOLIO CONDOMINIUMS

21 MOORE ROAD

CITY OF CHARLOTTE

CONDOMINIUM UNIT 1001

SEVENTH FLOOR, 7001

DATE: 10/1/00

PROJECT NO. 10 OF 10 DATE: APRIL 1, 2004

EXHIBIT D

DKG 49235142

SCHEDULE OF ASSIGNED VALUES AND PERCENTAGE INTEREST

Each Unit Owner owns, in addition to his, her or its Unit, an interest in the Common Areas of the Property, which percentage ownership interest has been determined and computed by taking as a basis the value of each individual Unit in relation to the value of the Units as a whole. Such percentage interest in the Common Areas of each Unit Owner shall vary.

The value set forth are based on the following:

32 - 2BR Garden Units @	\$95,000.00
76 - 2BR Townhouse Units @	\$105,000.00
24 1BR Garden Units @	\$83,000.00

The basis for determining value is for the sole purpose of complying with the Act and does not necessarily reflect the market value of the Unit or the property of the regime and shall in no way inhibit or restrict the fixing of a different value or sales price by a Unit Owner to his, her or its Unit in any type of acts or contracts.

UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
<u>Townhouse Units</u>				
3-A	\$105,000.00	0.81%	\$105,000.00	0.76%
3-B	\$105,000.00	0.81%	\$105,000.00	0.76%
3-C	\$105,000.00	0.81%	\$105,000.00	0.76%
3-D	\$105,000.00	0.81%	\$105,000.00	0.76%
3-E	\$105,000.00	0.81%	\$105,000.00	0.76%
3-F	\$105,000.00	0.81%	\$105,000.00	0.76%
3-G	\$105,000.00	0.81%	\$105,000.00	0.76%
3-H	\$105,000.00	0.81%	\$105,000.00	0.76%
7-A	\$105,000.00	0.81%	\$105,000.00	0.76%
7-B	\$105,000.00	0.81%	\$105,000.00	0.76%
7-C	\$105,000.00	0.81%	\$105,000.00	0.76%
7-D	\$105,000.00	0.81%	\$105,000.00	0.76%
7-E	\$105,000.00	0.81%	\$105,000.00	0.76%
7-F	\$105,000.00	0.81%	\$105,000.00	0.76%
7-G	\$105,000.00	0.81%	\$105,000.00	0.76%
7-H	\$105,000.00	0.81%	\$105,000.00	0.76%
8-A	\$105,000.00	0.81%	\$105,000.00	0.76%
8-B	\$105,000.00	0.81%	\$105,000.00	0.76%
8-C	\$105,000.00	0.81%	\$105,000.00	0.76%
8-D	\$105,000.00	0.81%	\$105,000.00	0.76%
8-E	\$105,000.00	0.81%	\$105,000.00	0.76%
8-F	\$105,000.00	0.81%	\$105,000.00	0.76%
8-G	\$105,000.00	0.81%	\$105,000.00	0.76%
8-H	\$105,000.00	0.81%	\$105,000.00	0.76%

Fig 9.9.9.4.3

UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
Teahouse Units				
9-A	\$105,000.00	0.81%	\$105,000.00	0.76%
9-B	\$105,000.00	0.81%	\$105,000.00	0.76%
9-C	\$105,000.00	0.81%	\$105,000.00	0.76%
9-D	\$105,000.00	0.81%	\$105,000.00	0.76%
9-E	\$105,000.00	0.81%	\$105,000.00	0.76%
9-F	\$105,000.00	0.81%	\$105,000.00	0.76%
9-G	\$105,000.00	0.81%	\$105,000.00	0.76%
9-H	\$105,000.00	0.81%	\$105,000.00	0.76%
10-A	\$105,000.00	0.81%	\$105,000.00	0.76%
10-B	\$105,000.00	0.81%	\$105,000.00	0.76%
10-C	\$105,000.00	0.81%	\$105,000.00	0.76%
10-D	\$105,000.00	0.81%	\$105,000.00	0.76%
10-E	\$105,000.00	0.81%	\$105,000.00	0.76%
10-F	\$105,000.00	0.81%	\$105,000.00	0.76%
10-G	\$105,000.00	0.81%	\$105,000.00	0.76%
10-H	\$105,000.00	0.81%	\$105,000.00	0.76%
11-A	\$105,000.00	0.81%	\$105,000.00	0.76%
11-B	\$105,000.00	0.81%	\$105,000.00	0.76%
11-C	\$105,000.00	0.81%	\$105,000.00	0.76%
11-D	\$105,000.00	0.81%	\$105,000.00	0.76%
11-E	\$105,000.00	0.81%	\$105,000.00	0.76%
11-F	\$105,000.00	0.81%	\$105,000.00	0.76%
11-G	\$105,000.00	0.81%	\$105,000.00	0.76%
11-H	\$105,000.00	0.81%	\$105,000.00	0.76%
12-A	\$105,000.00	0.81%	\$105,000.00	0.76%
12-B	\$105,000.00	0.81%	\$105,000.00	0.76%
12-C	\$105,000.00	0.81%	\$105,000.00	0.76%
12-D	\$105,000.00	0.81%	\$105,000.00	0.76%
12-E	\$105,000.00	0.81%	\$105,000.00	0.76%
12-F	\$105,000.00	0.81%	\$105,000.00	0.76%
12-G	\$105,000.00	0.81%	\$105,000.00	0.76%
12-H	\$105,000.00	0.81%	\$105,000.00	0.76%
13-A	\$105,000.00	0.81%	\$105,000.00	0.76%
13-B	\$105,000.00	0.81%	\$105,000.00	0.76%
13-C	\$105,000.00	0.81%	\$105,000.00	0.76%
13-D	\$105,000.00	0.81%	\$105,000.00	0.76%
13-E	\$105,000.00	0.81%	\$105,000.00	0.76%
13-F	\$105,000.00	0.81%	\$105,000.00	0.76%
14-A	\$105,000.00	0.81%	\$105,000.00	0.76%
14-B	\$105,000.00	0.81%	\$105,000.00	0.76%
14-C	\$105,000.00	0.81%	\$105,000.00	0.76%
14-D	\$105,000.00	0.81%	\$105,000.00	0.76%
14-E	\$105,000.00	0.81%	\$105,000.00	0.76%
14-F	\$105,000.00	0.81%	\$105,000.00	0.76%

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UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
Townhouse Units				
18-A	\$105,000.00	0.81%	\$105,000.00	0.76%
18-B	\$105,000.00	0.81%	\$105,000.00	0.76%
18-C	\$105,000.00	0.81%	\$105,000.00	0.76%
18-D	\$105,000.00	0.81%	\$105,000.00	0.76%
18-E	\$105,000.00	0.81%	\$105,000.00	0.76%
18-F	\$105,000.00	0.81%	\$105,000.00	0.76%
18-G	\$105,000.00	0.81%	\$105,000.00	0.76%
18-H	\$105,000.00	0.81%	\$105,000.00	0.76%

Garden Units 2 Bedroom	VALUE	% per Act	Value After Building 2	% After Building 2
4-A	\$95,000.00	0.73%	\$95,000.00	0.69%
4-B	\$95,000.00	0.73%	\$95,000.00	0.69%
4-C	\$95,000.00	0.73%	\$95,000.00	0.69%
4-D	\$95,000.00	0.73%	\$95,000.00	0.69%
4-E	\$95,000.00	0.73%	\$95,000.00	0.69%
4-F	\$95,000.00	0.73%	\$95,000.00	0.69%
4-G	\$95,000.00	0.73%	\$95,000.00	0.69%
4-H	\$95,000.00	0.73%	\$95,000.00	0.69%
5-A	\$95,000.00	0.73%	\$95,000.00	0.69%
5-B	\$95,000.00	0.73%	\$95,000.00	0.69%
5-C	\$95,000.00	0.73%	\$95,000.00	0.69%
5-D	\$95,000.00	0.73%	\$95,000.00	0.69%
5-E	\$95,000.00	0.73%	\$95,000.00	0.69%
5-F	\$95,000.00	0.73%	\$95,000.00	0.69%
5-G	\$95,000.00	0.73%	\$95,000.00	0.69%
5-H	\$95,000.00	0.73%	\$95,000.00	0.69%
6-A	\$95,000.00	0.73%	\$95,000.00	0.69%
6-B	\$95,000.00	0.73%	\$95,000.00	0.69%
6-C	\$95,000.00	0.73%	\$95,000.00	0.69%
6-D	\$95,000.00	0.73%	\$95,000.00	0.69%
6-E	\$95,000.00	0.73%	\$95,000.00	0.69%
6-F	\$95,000.00	0.73%	\$95,000.00	0.69%
6-G	\$95,000.00	0.73%	\$95,000.00	0.69%
6-H	\$95,000.00	0.73%	\$95,000.00	0.69%
16-A	\$95,000.00	0.73%	\$95,000.00	0.69%
16-B	\$95,000.00	0.73%	\$95,000.00	0.69%
16-C	\$95,000.00	0.73%	\$95,000.00	0.69%
16-D	\$95,000.00	0.73%	\$95,000.00	0.69%
16-E	\$95,000.00	0.73%	\$95,000.00	0.69%
16-F	\$95,000.00	0.73%	\$95,000.00	0.69%
16-G	\$95,000.00	0.73%	\$95,000.00	0.69%
16-H	\$95,000.00	0.73%	\$95,000.00	0.69%

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UNIT	VALUE	% per Act	Value After Building 2	% After Building 2
<u>Garden Units</u>				
<u>1 Bedroom</u>				
1-A	\$83,000.00	0.64%	\$83,000.00	0.60%
1-B	\$83,000.00	0.64%	\$83,000.00	0.60%
1-C	\$83,000.00	0.64%	\$83,000.00	0.60%
1-D	\$83,000.00	0.64%	\$83,000.00	0.60%
1-E	\$83,000.00	0.64%	\$83,000.00	0.60%
1-F	\$83,000.00	0.64%	\$83,000.00	0.60%
1-G	\$83,000.00	0.64%	\$83,000.00	0.60%
1-H	\$83,000.00	0.64%	\$83,000.00	0.60%
15-A	\$83,000.00	0.64%	\$83,000.00	0.60%
15-B	\$83,000.00	0.64%	\$83,000.00	0.60%
15-C	\$83,000.00	0.64%	\$83,000.00	0.60%
15-D	\$83,000.00	0.64%	\$83,000.00	0.60%
15-E	\$83,000.00	0.64%	\$83,000.00	0.60%
15-F	\$83,000.00	0.64%	\$83,000.00	0.60%
15-G	\$83,000.00	0.64%	\$83,000.00	0.60%
15-H	\$83,000.00	0.64%	\$83,000.00	0.60%
17-A	\$83,000.00	0.64%	\$83,000.00	0.60%
17-B	\$83,000.00	0.64%	\$83,000.00	0.60%
17-C	\$83,000.00	0.64%	\$83,000.00	0.60%
17-D	\$83,000.00	0.64%	\$83,000.00	0.60%
17-E	\$83,000.00	0.64%	\$83,000.00	0.60%
17-F	\$83,000.00	0.64%	\$83,000.00	0.60%
17-G	\$83,000.00	0.64%	\$83,000.00	0.60%
17-H	\$83,000.00	0.64%	\$83,000.00	0.60%
<u>Townhouse Units</u>				
2-A	n/a	n/a	\$105,000.00	0.76%
2-B	n/a	n/a	\$105,000.00	0.76%
2-C	n/a	n/a	\$105,000.00	0.76%
2-D	n/a	n/a	\$105,000.00	0.76%
2-E	n/a	n/a	\$105,000.00	0.76%
2-F	n/a	n/a	\$105,000.00	0.76%
2-G	n/a	n/a	\$105,000.00	0.76%
2-H	n/a	n/a	\$105,000.00	0.76%
TOTAL	\$13,012,000.00	100.00%	\$13,852,000.00	100.00%

EXHIBIT "E"
RULES AND REGULATIONS

RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.

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In order to create a congenial, safe and dignified living atmosphere which is respectful of the concerns of Rivers Point Row Owners, these Rules and Regulations have been adopted. These Rules and Regulations supplement the Master Deed of the Regime and the Bylaws of the Association. They apply to Owners and their families, tenants, guests, agents, invitees, contractors, employees and others.

(a) Residential and Business Usage. All Units shall be utilized for single family residential purposes only. No business or business activity shall be carried on upon any Unit at any time; provided, however, that (i) nothing herein shall prevent Declarant or its designee, or any entity approved by the Board of Directors, from using any Unit owned by Declarant or leased by Declarant from carrying on business related to the development, sale, leasing, or management of the Property and (ii) to the extent allowed by applicable zoning laws, a private office may be maintained in a Unit as long as such use is incidental to the primary residential use of the Unit, does not violate any applicable law, does not involve any exterior signage or advertising of the Unit as a place of business, and does not contribute to parking, traffic or security problems, all in the opinion of the Board of Directors.

(b) Prohibited Uses. A Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will, in the sole opinion of the Board of Directors, (i) increase the insurance rates on his Unit or the Common Area, (ii) obstruct or interfere with the rights of

other Unit Owners, or the Association or (iii) annoy other Unit Owners by unreasonable noises or otherwise. A Unit Owner shall not commit or permit any nuisance, immoral, improper, offensive or illegal act in his Unit or on the Common Area.

(c) Owner Responsible for Conduct of Others in Unit. Each Unit Owner shall be deemed responsible to the Association for the conduct of members of his household and his tenants, agents, invitees, guests, and pets while on Rivers Point Row property, but the responsibility of the Unit Owner shall not relieve any member of his household or any of his tenants, agents, invitees, or guests from any liability to the Association or to a Unit Owner for their own acts.

(d) Access to Rivers Point Row. Access to Rivers Point Row property for personal guests or invitees may be authorized by Unit Owners, Unit tenants and immediate family members of such Owners or tenants and who are age 18 or older. All access is subject to these Rules and Regulations. Personal guests and invitees may not authorize access for others unless approved by the Board of Directors or any management agent for Rivers Point Row. Only persons with proper authorization may remain on Rivers Point Row. Any guest or invitee may be required to provide the management agent, the Board of Directors, or law enforcement officials with proper identification and the name and telephone number of the person who authorized his access.

(e) Access to Amenities. Access to Rivers Point Row amenities, such as the pool area, is limited to Unit Owners, Unit tenants, immediate family members of such Owners or tenants, and personal guests who are accompanied by a Unit Owner, tenant or immediate family member of such Owner or tenant.

(f) Obeying Laws. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

(g) Pets. A Unit Owner may keep a domestic pet in his Unit under the regulations promulgated by the Association from time to time. A Unit Owner may not keep any other animals, livestock or poultry, nor may any of the same be raised, bred, or kept upon any portion of the Property, including any balcony or patio. All pets shall be housed within the Unit. Pets must not constitute a nuisance or cause unsanitary conditions. Incessant barking or howling of a dog which is clearly audible in another Unit shall be a nuisance, unless otherwise expressly determined by the Board of Directors. No pet shall be permitted to leave its excrement on any portion of the Common Areas or Area of Common Responsibility or the Unit of another Owner and any owner of such pet shall immediately remove the same. The Board of Directors shall have the right to determine, in its sole discretion, whether a particular pet meets the criteria set forth above, and, if not, it may require the owner of the pet to remove such pet from the Property.

(h) Signs and Antennas. Unless otherwise expressly permitted in writing by the Board of Directors, an Owner (i) shall place no sign, advertisement or notice on the Common Area, Limited Common Area, or his Unit, and (ii) shall erect no antennas or aerials

upon any part of his Unit or the Common Area which is visible from another Unit or the Common Area.

(i) Approval of External or Structural Modifications.

(1) Unless otherwise expressly permitted in writing by the Board of Directors, no modification of a Unit or Limited Common Area which would be visible from any other Unit or any portion of the Common Area, and no modification of a structural element of a Unit or the Common Area, shall be permitted until two (2) sets of plans showing the nature, shape, dimensions, materials, color and location thereof have been submitted to and approved by the Board of Directors or its designee.

(2) The Board of Directors or its designee shall have four (4) calendar weeks from receipt of all required information to review the submitted information. It may approve, reject or modify the proposed plans based on its perception of the consistency and harmony of the plans with the Master Deed, the design of Rivers Point Row, and other practical and aesthetic factors deemed appropriate by the Board of Directors. Other Owners shall be given the opportunity to examine such plans upon prior written request during reasonable business at a location identified by the Board of Directors. If notice of approval, disapproval, proposed modification or request for additional information, is received by the submitting Owner within such four (4) calendar week period, the plans shall be deemed approved.

(3) Compliance with the above procedures is not a substitute for compliance with other applicable building, zoning, subdivision and development standards ordinances and codes. The Association and Board of Directors shall not be responsible for any defects in any plans or specifications approved by the Board of Directors, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant nor any member of the Board of Directors shall be liable for damages to anyone submitting plans or specifications for approval, or to any person affected by a mistake of judgment, negligence or non-feasance arising out of, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications.

(j) Trash. Trash, garbage or other waste shall be placed in dumpsters at times and places designated by the Board of Directors. Except when moving household garbage or waste to the dumpsters or other designated pickup areas, it shall be kept in closed.

sanitary containers inside the Unit. No trash, garbage or other waste shall be left on decks or porches or in Common Areas not expressly intended for such storage. All biodegradable garbage shall be placed in a sealed plastic bag before placing it in the dumpster.

(k) Obstruction of Common Areas. Unless otherwise expressly approved by the Board of Directors, corridors, stairs roads and common avenues of ingress and egress shall be used for no purpose other than normal transit through them. No Owner or agent, servant, tenant, family member or invitees of an Owner shall park any vehicle or place or cause to be placed in the roads and common avenues, or encumber any corridors or stairs with furniture, packages or obstructions of any kind.

(l) Parking and Vehicles. Unless expressly approved by the Board of Directors or the management agent:

(1) the Owner(s) or tenants of a Unit and their guests or invitees may not occupy more than two (2) parking spaces, except that guests may park in areas designated for guest parking;

(2) no parking shall be permitted on streets or driveways unless clearly marked as parking spaces;

(3) no boat, boat trailer or unlicensed, unsafe or inoperable vehicle may be parked on the property;

(4) no house trailer, mobile home, or bus, and no recreational motor vehicle, truck or commercial vehicle over 3/4 ton capacity shall be parked on the property; provided that such vehicles which will fit into a designated parking space shall be permitted on the property for loading, unloading or maintenance services during normal business hours;

(5) no washing of vehicles is permitted on the Common Area and vehicle repairs shall be limited to minor emergency repairs, such as a dead battery or flat tire.

(6) vehicles violating these Rules may be towed at the sole cost and risk of the person violating the Rule.

(m) Firearms and Fireworks. The use of firearms, pellet or air guns, and bows and arrows is prohibited on Rivers Point Row property. Fireworks are permitted only if expressly approved by the Board of Directors and if performed in a safe manner under the supervision of an adult.

(n) Swimming Pool Rules. The following pool rules apply:

- (1) There is no life guard on duty. Swim at your own risk. No children under the age of 13 are allowed in the pool area unless accompanied by an adult.
- (2) Pool hours are between 6:30 A.M. until 10:00 P.M. Persons in the pool at other hours may be requested to leave. The pool may be closed periodically for maintenance, in which event notice of closure shall be posted.
- (3) Health and safety rules posted in the pool area shall be observed.
- (4) Any Owner, resident or guest who wishes to use the pool area for a group function or party consisting of more than eight (8) people must obtain written permission from the Board of Directors or the management agent. Written permission will be granted on a first-come, first served basis except where permission is requested for a series of functions, in which case the Board of Directors or management agent reserves the right to determine the appropriate usage. At any function, the person hosting the party shall (i) be responsible for cleaning up before departure, (ii) be responsible for the conduct of their guests, and (iii) be in attendance at all times.
- (5) Unless expressly approved by the Board of Directors, approval of a pool party shall not result in excluding other authorized persons from using the pool in the normal manner
- (6) No pets are authorized in the enclosed pool area. Pets shall not be tied or left unattended in common areas while using the pool.
- (7) Except at approved functions, food is permitted only in any designated areas. No glass containers are allowed in the enclosed pool area.
- (8) No radios, cassette or compact disk players, phonographs, etc. are allowed in the pool area unless a headphone is used. Live entertainment is permitted only as part of an approved function and only if expressly approved.
- (9) Inflatable or floating paraphernalia are not permitted in the pool except as swimming aids.
- (o) Solicitations. Persons soliciting contributions or the purchase of goods or services, and persons seeking to distribute materials, brochures or information shall not be allowed access to Rivers Point Row property unless (1) expressly required by law or the Board

of Directors or (2) expressly invited, by name, as a guest of a specific Unit Owner or tenant, in which the person invited shall limit their solicitation to the person(s) expressly inviting them.

(p) Hanging of Clothing on Railings or Decks. Beach towels, bathing suits, clothing, etc. shall not be hung on decks and railings so as to be visible to a person in any other Unit or anywhere on Rivers Point Row property.

(q) Waiver of violations by Board. The Board of Directors may, for good cause, as determined in its sole discretion, waive violations of these use provision or other rules and regulations promulgated from time to time. Such waiver shall be in writing.

(r) Fines for Violations. Without waiver of any other rights which the Association or any Owner may have under the Master Deed or applicable law, the Board of Directors may impose a fine of up to \$100 for each violation of these Rules and Regulations. Payment of the fine may be enforced in the same manner as any other Assessment.

EXHIBIT F

BYLAWS OF

RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Rivers Point Row Property Owners Association, Inc., a South Carolina nonprofit corporation, hereby adopts the following Bylaws for such corporation

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.1. Name. The name of the nonprofit corporation is "Rivers Point Row Property Owners Association, Inc.", hereinafter referred to as the "Association".

1.2. Offices. The principal offices of the Association shall be in Charleston County, South Carolina.

ARTICLE II

DEFINITIONS

2.1. Definitions. Except as otherwise provided herein or required by the context hereof, all terms defined in the Master Deed of the Rivers Point Row Horizontal Property Regime (the "Master Deed") shall have the same defined meanings when used in these Bylaws.

ARTICLE III

MEMBERS

3.1. Members. Members shall be those Persons defined in Article IV, Section 2 of the Master Deed. As set forth in such section, a member shall have the right to cast the number of votes attributable to the Common Interest of all Units owned by such Member.

3.2. Annual and Regular Meetings. The first meeting of the Members shall be held within one (1) year from the date of recordation of the Master Deed. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Other regular meetings of the Members, if any, shall be held on such dates as the Board of Directors may determine. Meetings may be held in South Carolina at such location as is determined by the Board of Directors.

3.3. Special Meetings. Special meetings of the Members may be called (a) by or at the request of the Board of Directors or the President or (b) if Members owning at least

twenty five percent (25%) of the total Common Interests (as defined in the Master Deed) deliver to the President or Secretary of the Association, a written and signed demand for such a meeting describing the purpose for which it will be held. The close of business on the thirtieth (30th) day before delivery of the demand for a special meeting shall be the record date for determining whether the twenty five percent (25%) requirement has been met. The special meeting shall be held within thirty (30) days of the delivery of the written demand. Special meetings shall be held in South Carolina at such location as is determined by the President or the Board of Directors. The notice of the special meeting shall state the date, time, location and purpose(s) of the meeting. Only those matters that are within the purpose(s) described in the meeting notice shall be addressed at the special meeting.

3.4. Notice of Meetings. Notice to Members of meetings shall be in accordance with Section 10.1. Notice of meetings shall be mailed by first class or registered mail or personally delivered no less than ten (10) and no more than sixty (60) days before the meeting date.

3.5. Waiver of Notice of Meeting. Attendance of a Member at a meeting shall be deemed waiver of notice of the meeting unless the Member objects at the beginning of the meeting to holding the meeting or transacting business at the meeting, and proper notice of the meeting was not given to the Member(s).

3.6. Quorum and Vote Required. The presence in person or by proxy of Members owning at least fifty one percent (51%) of the total Common Interests (as defined in the Master Deed) shall constitute a quorum in accordance with the Act, as defined in the Master Deed; the vote of Members owning at least fifty one percent (51%) of the total Common Interests (as defined in the Master Deed) shall be required for any action which is determined by the Members.

3.7. Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if the Association delivers a written ballot, setting forth the proposed action and providing an opportunity to vote for or against such action, to every Member entitled to vote on the matter. Approval of such action shall be deemed to occur when the number of votes cast by ballot equals or exceeds those that would otherwise be required. Any solicitation for votes by a written ballot shall (a) state the number of responses required to meet the quorum requirements and the percentage of approvals necessary to approve the matter (other than election of directors) and (b) specify the time by which the ballot must be received by the Association in order to be counted.

3.8. Proxies. Votes may be cast in person or by proxy at all meetings. The holder of a proxy need not be a Member. Unless otherwise stated in the proxy, the proxy is valid for a period of one (1) year from the date of the proxy. The proxy may be revoked if the Member attends the meeting and votes in person or a written notice of revocation is delivered to the President or Secretary of the Association.

ARTICLE IV

BOARD OF DIRECTORS

4.1. General Powers. As set forth in Article IV, Section 3 of the Master Deed, the Property, affairs, and business of the Association shall be managed by its Board of Directors. The Board may exercise all of the powers of the Association, whether derived from law, the Master Deed, the Articles of Incorporation, or these Bylaws, except such powers as are expressly vested in another Person by such sources. The Board, in addition to other powers, shall have authority to make decisions regarding the care, upkeep and surveillance of the Property, the Common Area and Limited Common Area; and to designate and dismiss personnel as necessary for the proper functioning of such area. The Board may by written contract delegate, in whole or in part, to a Management Agent such of its duties, responsibilities, function, and powers, or those of any officer, as are properly delegable. The Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association.

4.2. Number Tenure, and Qualifications.

4.2.1. For so long as Declarant owns a Controlling Interest (see Article IV, Section 4 of the Master Deed), the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as designated by Declarant from time-to-time. Such Directors need not be Members.

4.2.2. At such time as the Declarant no longer owns a Controlling interest, or such earlier time as the Declarant records a document waiving its authority to designate the Board, the successor Board shall be selected as follows;

A. The successor Board shall consist of not less than three (3) nor more than five (5) Persons. Each director shall be a Member or, if the Member is an organization, a person approved or designated by such Organization. The current Board of the Association shall constitute a Nominating Committee to nominate competent and responsible Persons to serve as Directors of the Association. The President or Secretary of the Association shall cause written notice to be given, in accordance with Section 10.1, to all Members that a meeting shall be held at a designated time and place in Charleston County not earlier than seven (7) days after the date such notice is given for election of Directors. The notice shall contain the names of those persons recommended by the Nominating Committee, but shall note that other nominations may be made by Members at the meeting.

B. At the meeting and each subsequent election of Directors, each Member, personally or by written proxy in form approved by the then existing Board, shall be entitled to cast all of the votes as are allocable to the Units owned by such Member. The number

of votes allocable to each Unit shall be the same as the Common Interest allocable to such Unit, as defined in the Master Deed.

C. After giving the Members (or proxy holders) attending such meeting the opportunity to nominate other Persons, with a second by another Member or proxy holder, the Directors shall be elected by written ballot. Each Member shall be authorized to vote for as many nominees as the number of Directors to be elected (i.e. if three Directors are being elected, then the Member may cast his votes for three nominees). Those nominees receiving the highest number of votes shall be the Directors.

D. In subsequent elections for Directors, the same procedure as set forth above shall be followed.

4.3. Annual and Regular Meetings. The first meeting of the Board of Directors shall be held within one (1) year from the date of recordation of the Master Deed. Subsequent annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Regular meetings of the Board of Directors shall be held on such dates as the Board of Directors may determine.

4.4. Special Meetings. Special meetings of the Board may be called by or at the request of two Directors, or if there are less than three Directors, then any Director. The Director(s) calling a special meeting of the Board may fix any place within Charleston County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. The notice shall state the date, time and place of the meeting, but it shall not be necessary to state the purpose. Notice shall be in accordance with Section 10.1, provided that notice may also be given by facsimile transmission if the Director given such notice has provided a facsimile number to the Association and the sender retains a record of its electronic receipt.

4.5. Quorum. Telephonic Meetings and Manner of Acting. A majority of the number of Directors then holding office shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means which permits all participating Directors to communicate simultaneously (such as a telephone conference call). The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. A Director who is present at a meeting shall be deemed to have assented to the action taken at such meeting unless (a) the Director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting; or (b) the Director votes against the action and the vote is entered in the minutes of the meeting, or (c) the Director abstains and the abstention is entered in the minutes of the meeting. The Directors shall act only as a Board and individual Directors shall have no powers as such.

4.6. Waiver of Notice of Meeting. Attendance of a Director at a meeting shall be deemed waiver of notice of the meeting unless the Director objects to the calling of the meeting before the business is put to a vote, and proper notice of the meeting was not given.

4.7. Compensation. No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacities as Directors.

4.8. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1. and 4.2.2., above).

4.9. Vacancies. If a vacancy shall occur in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by vote of the remaining Directors. If a vacancy shall occur in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors. Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

4.10. Action of Directors Without Meeting. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors and filed with the records of the Board.

ARTICLE V

OFFICERS

5.1. Number. The officers of the Association shall be a President, a Vice President, a Secretary-Treasurer (with the responsibilities of Secretary and Treasurer set forth below), and such other officers, including Assistant Secretaries, as may from time to time be appointed by the Board.

5.2. Election. Tenure and Qualifications. The officers of the Association shall be chosen by the Board at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold any two or more of such offices, except that the President may not also be the Secretary-Treasurer. No individual holding two or more offices shall act in or execute any instrument in the capacity of more than one office. During the

period that the Declarant owns a Controlling Interest (see Article IV, Section 4 of the Master Deed), it is not necessary that an officer be a Director or a Member.

5.3. Subordinate Officers and Agents. The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or a Member.

5.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.5. Vacancies and Newly Created Offices. If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular special meeting.

5.6. The President. The President shall preside at meetings of the Board and at meetings of Members called by the Association. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

5.7. The Vice President. The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him.

5.8. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Master Deed, or any resolution of the Board may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

5.9. The Treasurer. The Treasurer shall have custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President or the Board to do so, report the state of the finances of the Association. He shall perform such other duties as the Board may require of him.

5.10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

ARTICLE VI

COMMITTEES

6.1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer or a Member.

6.2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

6.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5. Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII

INDEMNIFICATION

7.1. Indemnification. The Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2. Determination. To the extent that a Director, officer, employee, or agent of the Association had been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in completion thereof. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of a quorum consisting of Directors excluding the Person whose indemnification is being considered.

7.3. Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board (excluding the Person whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.4. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Master Deed, Articles of Incorporation, Bylaws, agreements, vote of disinterested members of Directors, or applicable law. The indemnification authorized by this Article shall apply to all present and future Directors.

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officers, employees, and agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons.

7.5. Insurance. The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his Status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified.

7.6. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

ARTICLE VIII

FISCAL YEAR AND SEAL

8.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2. Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the word "Seal."

ARTICLE IX

RULES AND REGULATIONS

9.1. Rules and Regulations. In accordance with Article IV, Section 5 of the Master Deed, the Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Master Deed, or these Bylaws. Upon request of any Member, such Member shall be provided a copy of the rules and regulations or the Master Deed, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.

ARTICLE X

NOTICES

10.1. Notices. Unless otherwise expressly stated in these Bylaws, notices required hereunder shall be deemed given when in writing and delivered by hand or three (3)

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calendar days after being deposited in the United States Mail, First Class, postage prepaid.
(See Section 3.4 for notices to Members of meetings.)

All notices to Members shall be delivered or sent to such address as has been designated in writing to the Association, or if no address had been so designated, at the addresses of a Unit owned by such Member.

All notices to the Association shall be delivered or sent in care of the Association at;

c/o Rivers Point Row Property Owners Association, Inc.

21 Rivers Point Row

Charleston, SC 29412

or to such other address as the Association may from time to time notify the Members and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at;

Rivers Point Row, LLC

c/o John B. Hagerty

Nelson Mullins Riley & Scarborough, L.L.P.

Suite 600, 151 Meeting Street

Charleston, SC 29401

or to such other address as Declarant may from time to time notify the Association.

All notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

ARTICLE XI

AMENDMENT OF BYLAWS

11.1. Amendment by Association. The Bylaws may be amended by a vote of the Members representing at least fifty-one percent (51%) of the Common Interests. Notice of a meeting of the Association to vote on the proposed amendment(s) shall be given to Members in the same manner that is set forth in Section 3.4, above. The notice shall contain a general description of the proposed change and purpose of the proposed change. No

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amendment shall be valid if it is materially different from that set forth in the notice or inconsistent with the Master Deed or Articles of Incorporation of the Association, as amended. No amendment to the Bylaws which imposes a greater economic or legal burden on Declarant than exists under the current provisions of these Bylaws shall be valid unless it is approved, in writing, by Declarant. Upon amendment of the Bylaws, such amendment shall be recorded within a reasonable period of time in the R.M.C. Office for Charleston County, South Carolina.

11.2. Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Member or any mortgagee if, in Declarant's opinion, such amendment is necessary to; (i) bring any provision of the Bylaws or the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Master Deed or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Master Deed; (v) enable any insurer to provide insurance required by the Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration; or (vii) clarify any provision of the Bylaws or the Master Deed or eliminate any conflict between provisions of the Bylaws or the Master Deed.

The foregoing was adopted as By-Laws of the Rivers Point Row Property Owners Association, Inc. at the first meeting of the Board of Directors on the ____ day of ____, 2004.

Rivers Point Row property Owners
Association, Inc.

By: _____

Its: _____

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

FILED

APR 27 2004

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

Mark Hammond
SECRETARY OF STATE

TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is Rivers Point Row Property Owners Association, Inc.
2. The initial registered office of the nonprofit corporation is 151 Meeting Street, Suite 600
Street Address
Charleston Charleston SC 29401
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is
John B. Hagerty
Print Name

I hereby consent to the appointment as registered agent of the corporation.

John B. Hagerty
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
- a. ☐ The nonprofit corporation is a public benefit corporation.
- b. ☐ The nonprofit corporation is a religious corporation.
- c. ☒ The nonprofit corporation is a mutual benefit corporation.

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

4. Check "a" or "b", whichever is applicable:
- a. ☒ This corporation will have members.
- b. ☐ This corporation will not have members.

APR 27 2004

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

5. The address of the principal office of the nonprofit corporation is

151 Meeting Street, Suite 600, Charleston, Charleston County, South Carolina 29401
Street Address City County State Zip Code

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

- a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

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Rivers Point Row Property Owners Association, Inc.
Name of Corporation

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to
7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.
- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form).

The nature of the principal business is a non-profit property owners' association for the mutual benefit of its members; and the optional provisions that follow, shall apply:

- a. Any person or legal entity that owns record fee simple title to any Unit, as defined in the Declaration of Covenants, Conditions and Restrictions ("Declaration") presently of record, is a member of the Property Owners Association with voting rights in the Property Owners Association as set forth in its By-Laws. Membership in the Property Owners Association shall attach to, be appurtenant to, and may not be severed or alienated from, ownership of any lot or Unit.
- b. Amendments of the Articles of Incorporation shall be approved by a majority of the Board of Directors, and adopted by a vote representing not less than two-thirds (2/3) of the owners of Units.
- c. As long as the Declarant (i.e. Rivers Point Row, LLC), as defined in the Declaration, has a Controlling Interest in the Association, as defined in the Declaration, annexation of any added property to the Association, mergers and consolidations of the Association, subjecting the Common Areas to a mortgage, amendment of the Articles of Incorporation or dissolution of the corporation, shall require prior approval by HUD or VA so long as any Unit is financed or insured by HUD or VA.
9. The name and address of each incorporator is as follows (only one is required)
- John B. Hagerty 151 Meeting Street, Suite 600, Charleston, SC 29401
Name Address Zip Code
10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:
- a. not applicable
Name (Only if named in articles)
- Signature of director
11. Each incorporator must sign the articles.

John B. Hagerty
Signature of incorporator - John B. Hagerty

The State of South Carolina

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Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.,
a nonprofit corporation duly organized under the laws of the state of South Carolina on April 27th, 2004, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of
the State of South Carolina this 29th day of
April, 2004.

Mark Hammond

Mark Hammond, Secretary of State

Note: This certificate does not contain any representation concerning fees or taxes owed by the Corporation to the South Carolina Tax Commission or whether the Corporation has filed the annual report with the Tax Commission. It is important to know whether the Corporation has paid all taxes due to the State of South Carolina, and has filed the annual report, a certificate of compliance may be obtained from the Tax Commission.

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Exhibit H

Phasing

Declarant reserves the right to build Building 2 at a future date as follows: (i) containing a maximum of 8 Townhouse Units; (ii) to be built within three years from the recording of the Master Deed; (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

A chart showing the percentage interest in the Common Areas of each original Unit Owner at the point at which the additional 8 Units are built is as follows:

2 Bedroom Townhouse Units	From .81	To .76
2 Bedroom Garden Units	From .73	To .69
1 Bedroom Garden Units	From .64	To .60

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Nelson Mullins Riley & Scarborough
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CHARLESTON, S.C. 29402

Nelson Mullins Riley & Scarborough
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CHARLESTON, S.C. 29402

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Fee 72.00

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County —

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TOTAL 72.00

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CHARLES L. BEARD
REGISTER
CHARLESTON COUNTY SC

**PID VERIFIED
BY ASSESSOR**

REPTPR

DATE 5/10/04

RECEIVED FROM RMC

MAY 10 2004

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

EX R 495PG385

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FIRST AMENDMENT TO MASTER DEED

WHEREAS, RIVERS POINT ROW, LLC has heretofore executed and recorded that certain Master Deed for Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded at Book G493, Page 001 (the "Master Deed") wherein it submitted that certain property known as Rivers Point Row to the Rivers Point Row Horizontal Property Regime under the terms of the Master Deed; and

WHEREAS, the undersigned Rivers Point Row, LLC is the owner of all the units in said Horizontal Property Regime and wishes to amend said Master Deed as set forth herein.

KNOW ALL MEN BY THESE PRESENTS that RIVERS POINT ROW, LLC does hereby amend that certain Master Deed of Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded May 4, 2004 in Book G493, Page 001, Charleston County RMC Office (the "Master Deed") as follows:

1. Article II Section 1 (q) is deleted in its entirety and replaced with the following:

(q) "Majority of Co-owners" or "Majority of Owners" means fifty one percent (51%) or more of the Common Interests, as calculated on the basic value of the Property as a whole, computed in accordance with the provisions of Section 27-31-60 of the Act, and as shown in Exhibit "D" to this Master Deed. "Value" as shown herein is set forth for the sole purpose of the Act and does necessarily relate to current or future property value or sales price.

2. Article IV Section 7 is deleted in its entirety and replaced with the following:

Section 7. Working Capital. At the time that title is conveyed to an owner by the Declarant, the Owner shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for initial operating and capital expenses of the Regime.

EXHIBIT "D"

forth in the Bylaws, by Unit Owners that represent at least two thirds (2/3rds) of the Common Interests and by eligible Unit Mortgagees who represent at least 51% of the votes of the Unit Owners that are subject to Unit Mortgages; provided, however, that no amendment which imposes a greater economic or legal burden on Declarant than exists under the current provisions of this Master Deed shall be valid unless it is approved, in writing, by Declarant and that Unit Mortgagees must reply to any request for an amendment to the Master Deed within thirty days or be deemed to have approved the request.

9. Bylaws Section 11.2 is deleted in its entirety and replaced with the following:

11.2 Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Member or any mortgagee if, in Declarant's opinion, such amendment is necessary to; (i) bring any provision of the Bylaws or the Master Deed into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Master Deed or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Master Deed; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Master Deed; (iv) enable any governmental agency or private mortgage insurance company to insure mortgages on the Units subject to the Master Deed; (v) enable any insurer to provide insurance required by the Master Deed; (vi) comply with any regulation of a Federal Home Loan Bank Board, Veterans Administration, Department of Housing and Urban Development and/or the Federal Housing Administration; or (vii) clarify any provision of the Bylaws or the Master Deed or eliminate any conflict between provisions of the Bylaws or the Master Deed. Otherwise, any action to amend the Bylaws must be agreed upon by Unit Owners that represent at least two thirds (2/3rds) of the Common Interests and by eligible Unit Mortgagees who represent at least 51% of the votes of the Unit Owners that are subject to Unit Mortgages.

10. Exhibit H is deleted in its entirety and replaced with the following:

(X) Declarant reserves the right to build Building 2 at a future date as follows: (i) containing a maximum of 8 Townhouse Units; (ii) to be built within three years from the recording of the Master Deed; (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

A chart showing the percentage interest in the Common Areas of each original Unit Owner at the point at which the additional 8 Units are built is as indicated in Exhibit D showing the % after Building 2 and the proposed Townhouse units 2 A-H.

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Nelson Mullins Riley & Scarborough
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CHARLESTON, S.C. 29402

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CIVIL & LAND BRAND
REGISTER
CHARLESTON COUNTY SC

RECEIVED FROM DMC

MAY 26 2004

PEGGY A. MOSELEY
CHARLESTON COUNTY VAULT

**PID VERIFIED
BY ASSESSOR**

REP LMG

DATE 5/26/04

(843) 958-4900 2 Courthouse Square Charleston, SC 29401

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) SECOND AMENDMENT TO MASTER DEED

WHEREAS, RIVERS POINT ROW, LLC has heretofore executed and recorded that certain Master Deed for Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded at Book G 493, Page 001 (the "Master Deed") wherein it submitted that certain property known as Rivers Point Row to the Rivers Point Row Horizontal Property Regime under the terms of the Master Deed, which Master Deed was amended by that certain First Amendment to Master Deed dated May 24, 2004 and recorded at Book R 495, Page 385 (the "First Amendment"); and

WHEREAS, the undersigned Rivers Point Row, LLC wishes to clarify certain provisions of this Master Deed and therefore wishes to amend said Master Deed, as amended, as set forth herein in this Second Amendment.

KNOW ALL MEN BY THESE PRESENTS that RIVERS POINT ROW, LLC does hereby amend that certain Master Deed of Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded Book G 493, Page 001, Charleston County RMC Office (the "Master Deed"), as amended, as follows:

1. Article IV Section 7 is deleted in its entirety and replaced with the following:

Section 7. Capital Contributions

- a. At the time that title is conveyed to a Buyer by the Declarant, the Buyer shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for initial operating and capital expenses of the Regime.

- b. Subsequent to the initial sale of a Unit, any and every time that title is conveyed by an Owner to a subsequent owner, the subsequent Owner shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for the capital expenses of the Regime.

2. The following provisions of the Master Deed including (i) Section 4. Description of Rivers Point Row (a) General Description and Phasing, (ii) Exhibit D, % After Building 2, and (iii) Exhibit H, Phasing are hereby clarified by confirming that Declarant shall cause the building of Building 2 as follows: (i) containing a maximum of 8 Townhouse Units ("New Townhouse Units"); (ii) built within three years from the recording of the Master Deed; and (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

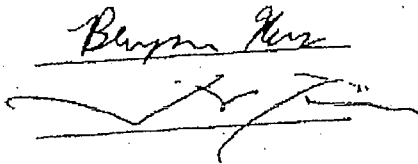
The following chart shows the percentage interest in the Common Areas of each original Unit Owner as well as the Owners of the New Townhouse Units at the point at which the additional 8 Units are built and added to the Regime:

2 Bedroom Townhouse Units	From .81	To .76
2 Bedroom Garden Units	From .73	To .69
1 Bedroom Garden Units	From .64	To .60
8 New Townhouse Units	.76	

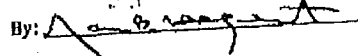
3. Except as specifically amended herein, said Master Deed shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to Master Deed this 12th day of May, 2005.

WITNESSES:



RIVERS POINT ROW, LLC, a
South Carolina limited liability company

By: 
Its: manager

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Hand Low Offices, LLC
105 Wappoo Creek Drive Suite 38
Charleston, SC 29412



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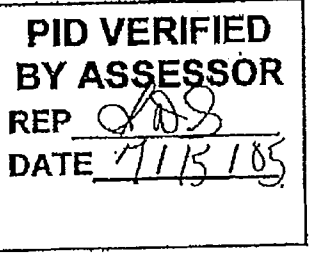
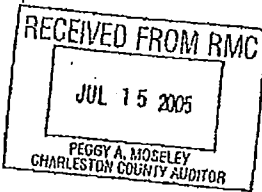
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2005 JUN 22 PH 3:39

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC



(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

CORPORATE RESOLUTION
OF
RIVERS POINT ROW, LLC

The following resolution is adopted by the consent of Rivers Point Row, LLC ("Company") pursuant to the authority granted in the South Carolina Code.

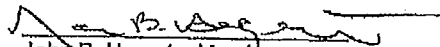
At a special meeting of the Members of the Company called pursuant to proper notice and at which time all members were present and acting throughout, the following resolutions were unanimously adopted:

RESOLVED, that the Company execute any and all documents necessary to complete the sale of a 0.36 acre site designated as tract B2 on a revised survey dated February 16, 2005 pursuant to that Agreement to Buy and Sell by and between Rivers Point Row, LLC as Seller and Greg Beall-Palms Properties LLC as Buyer; and

FURTHER RESOLVED that John B. Hagerty, the Manager of the Company, be authorized to execute any and all agreements and documents required of the Company in order to effectuate each of the transactions contemplated by the above resolutions, including any amendments he deems necessary to any such agreements.

There being no further business the meeting was adjourned.

The undersigned hereby certifies that the above Resolution was duly adopted by the Company on the 11th day of May, 2005, and that the Resolution is still in full force and effect and has not been rescinded, amended or modified.


John B. Hagerty, Member

ACTION
OF
THE DIRECTORS
OF
RIVERS POINT ROW PROPERTY OWNERS ASSOCIATION, INC.
WITHOUT A MEETING

Charleston, South Carolina
May 12, 2005

The undersigned, being all of the directors of Rivers Point Row Property Owners Association, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-31-821 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the directors duly called and held for such purpose and at which the following resolutions were unanimously adopted:

WHEREAS, Declarant, executed and recorded the Master Deed for Rivers Point Row Horizontal Property Regime dated May 4, 2004 and recorded at Book G-493, Page 001, Charleston County RMC Office (the "Master Deed"); and

WHEREAS, the Declarant executed and recorded the First Amendment to Master Deed dated May 24, 2004 and recorded at Book R-495, Page 385, Charleston County RMC Office; and

WHEREAS, the Declarant and the Corporation desire to further amend the Master Deed;

IT IS HEREBY RESOLVED, that the Declarant further clarify the Master Deed as follows:

1. Article IV Section 7 is deleted in its entirety and replaced with the following:

Section 7. Capital Contributions

- a. At the time that title is conveyed to a Buyer by the Declarant, the Buyer shall contribute to a working capital reserve established by the Association a sum equal to three (3) times that Unit's monthly Assessment. Such funds shall be used solely for initial operating and capital expenses of the Regime.
- b. Subsequent to the initial sale of a Unit, any and every time that title is conveyed by an Owner to a subsequent owner, the subsequent Owner shall contribute to a working capital reserve established by the Association a sum equal to three (3)

times that Unit's monthly Assessment. Such funds shall be used solely for the capital expenses of the Regime.

2. The following provisions of the Master Deed including (i) Section 4. Description of Rivers Point Row (a) General Description and Phasing, (ii) Exhibit D, % After Building 2, and (iii) Exhibit H, Phasing are hereby clarified by confirming that Declarant shall cause the building of Building 2 as follows: (i) containing a maximum of 8 Townhouse Units ("New Townhouse Units"); (ii) built within three years from the recording of the Master Deed; and (iii) making use of the existing Common Areas without substantial increase to the proportionate share amount of the Common Expenses payable by existing Unit Owners.

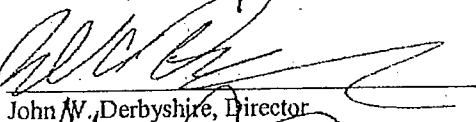
The following chart shows the percentage interest in the Common Areas of each original Unit Owner as well as the Owners of the New Townhouse Units at the point at which the additional 8 Units are built and added to the Regime :

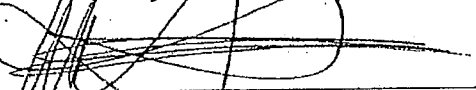
2 Bedroom Townhouse Units	From .81	To .76
2 Bedroom Garden Units	From .73	To .69
1 Bedroom Garden Units	From .64	To .60
8 New Townhouse Units	.76	

FURTHER RESOLVED, that the Association approves the Building 2 lot contract dated January 26, 2005 with Palms Properties, LLC with Addendum C dated February 18, 2005, Addendum D dated March 18, 2005 and Addendum E dated May 12, 2005 ("Beall Contract"). The Deed under the Beall Contract is to specifically require that the property is to be sold subject to the Master Deed, as amended.

No further action was taken on this date.


John B. Hagerty, Director


John W. Derbyshire, Director


Linda L. Derbyshire, Director

**Rivers Point Row
Homeowners Association
Annual Meeting
June 27, 2005**

Owners Present

Fred & Eloise Holland 1B-15F, Eric Ortigoza 1E, DeAnna Baker 1F, Kelly Roark 3B, Neale Young 3E, Dorothy Kennedy 3F, Sharlene Moulton 3H, Thomas Baker 4B-15A-15B, William Windham 4C, Iya Znoyko 6E, Donald Helsel 6H, Carol Bachewicz 7C, Pamela Sisson 7F, Dorothy Ross 8G, Matthew Poole 9B, Mark Weeks 9D-17A-17E, Robin LeClair 10A, Timothy Fletcher 10C, Mario Exhavarria 10E, James Sawers 10G-10H, Sarah Hazel 11C, Jennifer Burwell 11H, Susan Black 12B, Natalie Rankin 12G, Kristin Roark 13B, William Harvey 13F, James Fralix 15C, Paula Brady 16C, Toni & George Jordan 17C, Diane Amrhein 18A, Julia DuMars 18D, Jacqueline Glover 18F

Others Present

Mike Parades, Collin Bruner, CCM Management, Inc.

Call to Order

With a quorum not present for the meeting an informal meeting was called to order at 6:30 PM.

Financial Report

- Mike Parades reported that as of May 31, 2005, Rivers Point Row HOA had \$53,312.12 cash on hand.
- He also reported that assessment receivables were only \$2,264.75 on May 31, 2005.
- The Rivers Point Row HOA is \$3,153.58 under budget as of May 31, 2005.
- Mike reported \$16,500 in the Maintenance Reserve Fund as of May 31, 2005. He will advise the Board to do a capital reserve study.

Election of Directors

Because there was not a quorum present for the meeting the elections could not be held. The following five people have volunteered to serve on the Board of Directors.

- Carol Bachewicz 7C
- Fred Holland 1B, 15F
- Toni Jordan 17C
- Donald Helsel 6H
- Sharlene Moulton 3H

The election will be held by mail ballots. Please return the enclosed ballot in the envelope provided.

**Rivers Point Row Owners Association
Informal Owner Meeting
June 27, 2005**

The will be a total of five directors elected to the Board.

- 2 Directors elected for 3-year terms
- 2 Directors elected for 2-year terms
- 1 Director elected for a 1 year term

Owner Issues, Questions and Comments

There were many complaints about the abuse to the property by the rental units in Rivers Point Row. Once the Board of Directors has been established they will be able to set rules and regulations, applicable fines, and other standards for Rivers Point Row. If there are problems with renters, other owners, or guest disturbing the peace you may call the police. Once rules and regulations have been approved by the Board and sent to all homeowners, CCM Management will have the authority to enforce them.

Mike reported that according to the Master Deed, the developer reserved the right to sell the land adjacent to buildings #1 and #3 to re-build building #2. The developer has sold the land and plans have been submitted to the City of Charleston ARB for approval. In the future there will be a new building #2 which will be built to match the existing buildings.

Mike reminded the homeowners that any exterior modifications to the building must be submitted in writing to the Board of Directors for approval.

There being no further business, the meeting adjourned at 8:15 PM.

Respectfully submitted,

Collin Bruner
CCM Management, Inc.

I

FACSIMILE TRANSMITTAL**Date: January 16, 2007****To: Greg Beall
C/O Palm Properties, LLC****Fax No.: 843-406-1494
Phone No.:****Re: Rivers Point Row****File No. 4384.0001
Number of Pages: 2
(Including Coversheet)****MESSAGE:**

In accordance with our discussion of last evening, attached is the position of the Board as to Building 2. I will be contacting Dan David on your behalf to explain these matters.

FROM: J. Thomas Mikell **Dan David 843-571-5062
Fred Holland 843-588-2562
COPY TO:****Law Office of
J. Thomas Mikell, PC
Post Office Box 1727
Beaufort, South Carolina 29901****Fax Number: 843-524-4995
Phone Number: 843-524-2110
14 Professional Village Circle
Beaufort, South Carolina 29907**

TOTAL P.03

1. The 2005 deed by the developer to Palms Properties, LLC is illegal per the Horizontal Regime Act and the case law of South Carolina.

Once the original total parcel of land was converted to a horizontal property regime by the recording of the Master Deed on May 4, 2004, the only two things that existed were Apartments (defined as Units) and Common Elements.

From the recording of the Master Deed the developer no longer had the ability to convey away any part of the land as the land had become a Common Element and it was then owned in percentage interests by all the owners in the Regime. To sell any portion of the Common Elements after the recording of the Master Deed would require an approval of 100% of all the percentage interests and an amendment to the Master Deed amending the definition of the Common Elements.

2. Without any waiver of rights, the Board is willing to accept Building 2 if the correct procedure is followed. This means the deed in 2005 to Palms Properties, LLC has to be rescinded and an Assignment of the developer rights has to be made to Palms Properties, LLC.
3. What is stated in the Master Deed to be constructed is Building 2. So, only Building 2 as it was originally constructed (not some deviation) can be constructed now.
4. The time for full completion of the building is May 4, 2007. The definition of "built" by several case decisions means fully completed. That date will be extended by the Board until December 31, 2007 and an amendment to the Master Deed will be sought from the owners. They will have to amend the Master Deed as the Board can not.
5. Palm Properties, LLC has to pay all attorney fees and costs already incurred and to be incurred by the Board in the completion of this project.
6. The Board shall have all architectural control over the building to be built so that they control parking, water, sewer, landscaping, exterior design and materials, etc.
7. There is about to be a special assessment for certain items. Palms Properties, LLC will pay their share of that portion of the assessment applicable to the new building.

January 16, 2007

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-213155

Rivers Point Row Horizontal Property Regime a/k/a Rivers Point
Row Property Owners Association, Inc.....Respondents,

v.

Palms Properties, LLC

Defendant.

Palms Properties, LLC

Third-Party Plaintiff,

v.

Rivers Point Row, LLC, John Hagerty, John Derbyshire, and Linda Derbyshire

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal Volumes I-VI contains all materials proposed to be included by any of the parties and not any other material, in compliance with Rule 211(b), SCACR.

April 16, 2013



John A. Massalon, Esquire SC Bar #010279
I. Ryan Neville, Esquire SC Bar # 76513
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-213155

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MAR 29 2013

SC Court of Appeals

Rivers Point Row Horizontal Property Regime a/k/a Rivers Point
Row Property Owners Association, Inc. Respondents,

v.

Palms Properties, LLC

Defendant.

Palms Properties, LLC

Third-Party Plaintiff,

v.

Rivers Point Row, LLC, John Hagerty, John Derbyshire, and Linda Derbyshire

Appellants.

PROOF OF SERVICE

I certify that I served the Record on Appeal Volumes I - VI on Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property Owners Association, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2013, addressed to it attorneys of record, Michael J. Buhmeyer, Esquire, PO Box 81138, Charleston, SC 29416-1138.

March 27, 2013



John A. Massalon, Esquire SC Bar #010279

I. Ryan Neville, Esquire SC Bar # 76513

WILLS MASSALON & ALLEN LLC

Post Office Box 859

Charleston, South Carolina 29402

(843) 727-1144

ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 17 2013

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

SC Court of Appeals

Mikell R. Scarborough, Master-in-Equity

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Rivers Point Row Horizontal Property Regime a/k/a Rivers Point
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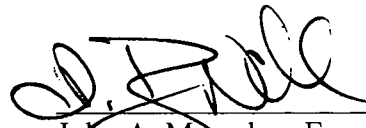
Rivers Point Row, LLC, John Hagerty, John Derbyshire, and Linda Derbyshire

Appellants.

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April 16, 2013



John A. Massalon, Esquire SC Bar #010279
I. Ryan Neville, Esquire SC Bar # 76513
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Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR APPELLANTS