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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000290

Case No. 2020-CP-46-02006

Eastwood Construction Partners, LLC and
Eastwood Development Corporation, ... Appellants,

v.

GHD Brooks Creek, AF-Brooks Creek, LLC,
GHD River Falls, LLC, AF-River Falls, LLC,
Greenhawk Corporation, Inc. and TRI Pointe Homes, Inc., ... Respondents.

**Appellant's SCACR 241(d)(7) Petition
List of Exhibits**

Petition Exhibit	Description	Confidential (Highlighted in Yellow)
A	Stay Order	No
B	Briner Dep.	Yes
C	Complaint, Ex. C	No
D	30(b)(6) Deposition	Yes
E	Polite Deposition	Yes
F	Polite Dep., Ex. 23	Yes
G	Complaint, Ex. D – Assignments	No
H	White Dep. Exs. 149, 150 – Settlement Statements	Yes
I	White Dep., Ex. 151 – Eastwood Costs	Yes
J	Briner Dep, Ex. 95 – October Deposit Email	Yes
K	Medlin Dep., Ex. 121	Yes
L	First Am. Compl., Ex. L	No

M	Dority Dep., Exs. 67–68	Yes
N	Polite Dep., Ex. 29	No
O	Briner Dep., Exs. 91–93, 96 (“Pro Formas”)	Yes
P	Jackson Dep., Ex. 139	Yes
Q	Briner Dep., Ex. 94 (“Tega Cay”) Memo	Yes
R	Briner Dep., Ex. 98	Yes
S	Polite Dep., Ex. 7	No
T	Dority Dep., Ex. 70	Yes
U	Am. Compl., Ex. J – Timeline Correspondence from GH	No
V	Helms Settlement Statement, BATES ECP_0012091	Yes
W	Deed from Caroline Helms to Eastwood Development Corp.	No
X	June 10, 2014 Email from Joe Dority to Craig Briner, BATES ECP_0013183	Yes
Y	Helms Purchase and Sales Agreement, BATES GHD_0016151, ¶3	Yes
Z	Quitclaim Deed from Eastwood to Greenhawk, BATES ECP_0005870	Yes
AA	Polite Dep., Exs. 9, 10, 12, 14–16, 17; Briner Dep., Exs. 97–98 (“Eastwood Follow-Up Emails”)	Yes
BB	Polite Dep., Ex. 25	No
CC	Polite Dep., Ex. 27	Yes
DD	Polite Dep., Ex. 26	Yes
EE	Jackson Dep., Ex. 138	Yes
FF	(Deleted from submission/brief)	n/a
GG	Briner Dep., Ex. 105 (“TRI Pointe and GH LPA”)	Yes
HH	White Dep. NEED CITE	Yes
II	Medlin Dep., Ex. 131	Yes
JJ	Eastwood Br. in Opposition to Motions to Lift Stay (“Eastwood Oppo. Br.”)	No
KK	Eastwood Brief in Opposition to Summary Judgment (“Eastwood SJ Br.”)	No
LL	TRI Pointe Partial Summary Judgment Order	No
MM	TRI Pointe Motion to Reconsider Order	No
NN	Greenhawk Partial Summary Judgment Order	No

OO	Greenhawk Motion to Reconsider Order	No
PP	Combined Notices of Appeal	No
QQ	CoA Briefing Order	No
RR	Third Am. Compl.	No
SS	Greenhawk Answer to Third Am. Compl.	No

**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

**IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-02006**

**Eastwood Construction Partners, LLC and
Eastwood Development Corporation,**

Plaintiffs,

v.

**GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-
Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River
Falls, a North Carolina Limited Liability
Company, and AF-River Falls, LLC, a
North Carolina Limited Liability
Company, Greenhawk Corporation, Inc.,
and TRI Pointe Homes Holdings, Inc.,**

Defendants.

**ORDER GRANTING TRI POINTE
HOMES HOLDINGS, INC.'S MOTION
TO LIFT ANY STAY OF THE
COURT'S JANUARY 14, 2022 ORDER**

This matter is before the Court on a Motion filed by Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe") To Lift Any Stay of this Court's January 14, 2022 Order. The Court held a hearing on the Motion on April 4, 2022. Present on behalf of TRI Pointe was Stephen M. Cox of Robinson Bradshaw & Hinson, P.A. Present on behalf of Plaintiffs were James Edward Bradley of Moore Bradley Myers Law Firm and James C. Adams, II and William O. Walker of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Present on behalf of the Defendants other than TRI Pointe were John I. Mabe, Jr.; Andrew A. Mathias; and Konstantine P. Diamaduros of Nexsen Pruet, LLC.

After carefully considering the papers and pleadings of records in this action and the arguments of counsel, and for the reasons set forth below, the Court hereby grants TRI Pointe's Motion, lifts the stay of the January 14, 2022 Order, and, pursuant to that Order, cancels the *lis pendens* encumbering the Brooks Creek property.

I. STATEMENT OF UNDISPUTED FACTS

On January 14, 2022, this Court issued its order granting TRI Pointe partial summary judgment and cancelling the *lis pendens* that Plaintiffs had filed against Brooks Creek. The basis for that Order was that Plaintiffs' claim for specific performance of a contract for the sale of Brooks Creek was not cognizable, and, therefore, that the dispute between the parties was not "an action affecting the title to real property." S.C. Code § 15-11-10. In particular, this Court ruled that Plaintiffs' specific performance claim was not cognizable because: 1) Plaintiffs and the seller of the property ("Greenhawk") never agreed to material terms such as price, takedown schedule, or deposit for the sale of Brooks Creek; and 2) any alleged contract between Plaintiffs and Greenhawk for the sale of Brooks Creek had not been committed to writing and is thus barred by the Statute of Frauds.

Plaintiffs filed a Motion for Reconsideration on January 24, 2022, which was denied by this Court on February 15, 2022. Plaintiffs then filed a Notice of Appeal on March 11, 2022, which automatically stayed the application of the January 14, 2022 Order. TRI Pointe filed a Motion to Lift the Stay on March 15, 2022, arguing that a stay of the January 14, 2022 Order would render that Order moot. The Court agrees with TRI Pointe.

LAW AND ANALYSIS

As a general rule, an appeal of a lower court order automatically stays the application of the order for the duration of the appeal, unless the stay is lifted. SCACR 241(a). SCACR 241(c) allows any party to seek an order lifting an automatic stay—the relief sought by TRI Pointe here. SCACR 241(c)(2) provides that a court reviewing a motion to lift an automatic stay should consider, among other things, whether the motion should be granted "to prevent a contested issue from becoming moot."

When a stay delays the ordered cancellation of a *lis pendens*, it is appropriate to lift the stay, pursuant to SCACR 241(c), to prevent the order from becoming moot. *Carolina Park Assocs., LLC v. Marino*, No. 2010-CP-10-6042, 2011 9369844, at *1 (S.C. Ct. Com. Pl. June 27, 2011). In *Carolina Park Associates*, the court initially entered an order cancelling a *lis pendens* on property owned by the defendant. *Id.* When the plaintiff appealed that order, the defendant moved to lift the automatic stay associated with the plaintiff's appeal, arguing that the stay would render the court's initial order moot. *Id.* The court agreed with the defendant, stating that by imposing a stay, "Plaintiffs will have received exactly what they are not entitled to, namely a *lis pendens* during the course of this litigation that would hinder Defendant CDM in developing its property." *Id.* Indeed, even in appeals in which it was ultimately determined that the *lis pendens* should *not* have been cancelled, South Carolina courts have lifted the *lis pendens* during the pendency of the appeal. *See Lebovitz v. Mudd*, 293 S.E. 49, 52, 358 S.E.2d 698 (1987).

The logic of the *Carolina Park Associates* and *Lebovitz* courts is compelling here. The contested issue on appeal is whether there is a basis for the *lis pendens* to remain in place, thereby encumbering Defendants' ability to market and develop Brooks Creek, even though this Court has already ruled that Plaintiffs are not entitled to a *lis pendens* on the property. By allowing a stay to remain on the ordered cancellation of the *lis pendens* at issue, this Court's January 14, 2022 Order will be mooted because Plaintiffs will have received exactly what the Court has determined they are not entitled to—further hindrance of TRI Pointe's development of Brooks Creek—for a period of time that will likely last years.

Plaintiffs correctly note that not every South Carolina court that has encountered this issue has determined that the automatic stay of the ordered cancellation of a *lis pendens* should be lifted. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002).

However, in *Pond Place Partners*, the court declined to lift the stay “because there appear[ed] to be a legitimate dispute” as to the merits of the claim used to support the *lis pendens*. *Id.* at 11, 886. Here, no such “legitimate dispute” over Plaintiffs’ specific performance claim exists. To support that claim, Plaintiffs alleged in their Complaint that Eastwood Construction had a contract with Greenhawk to purchase Brooks Creek. Yet in discovery, Plaintiffs’ own representatives have repeatedly admitted, both in sworn deposition testimony and in numerous documents—that this “contract” never existed. Indeed, it has been nearly two years since the *lis pendens* was filed, and Plaintiffs have still failed to show that there is any evidence indicating that there is a legitimate dispute over whether they agreed to a contract to purchase Brooks Creek from Greenhawk or that any such agreement was reduced to a writing that satisfies the Statute of Frauds. In the meantime, the *lis pendens* has prevented TRI Pointe from marketing and developing its property. Because the *lis pendens* is groundless and continues to damage TRI Pointe by hindering the free development of Brooks Creek, TRI Pointe is entitled to relief from the automatic stay.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that TRI Pointe’s Motion To Lift Any Automatic Stay of this Court’s January 14, 2022 Order shall be, and the same is hereby, **GRANTED**. The *lis pendens* filed by Plaintiffs against the Brooks Creek tract in Case No. 2020-LP-46-0228 is hereby **CANCELLED**.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Judge of the Sixteenth Judicial Circuit



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Other

So Ordered

s/Daniel D. Hall 2753

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

C/A No. 2020-CP-46-02006

Plaintiffs,

v.

ORDER

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

This matter came before the Court on April 4, 2022, upon Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc.'s ("GreenHawk") (collectively, "GreenHawk Defendants") Verified Motion to Lift Any Automatic Stay of the Court's February 15, 2022 Order or, in the Alternative, to Require Plaintiffs to Post a Bond ("Motion"). Present at the virtual hearing were John I. Mabe, Andrew A. Mathias, and Konstantine P. Diamaduros for GreenHawk Defendants, Stephen M. Cox for Co-Defendant TRI-Pointe Homes, Inc. ("TRI-Pointe"),¹ and James C. Adams, II, William O. Walker, IV, and James Edward Bradley for Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively "Eastwood").

¹ TRI-Pointe also filed a substantially similar motion, which the Court will address in a separate Order.

FACTUAL BACKGROUND

The facts relevant to this Motion are as follows:

On February 15, 2022, this Court issued its Order granting GreenHawk Defendants partial summary judgment and cancelling the two Lis Pendens² Eastwood had filed against Brooks Creek and River Falls subdivisions. The primary basis for the Order was that Eastwood's claims for specific performance as to Brooks Creek and River Falls subdivisions failed because no enforceable contract existed between the Parties whereby Eastwood would purchase Brooks Creek or River Falls from GreenHawk Defendants. In support of this ruling, this Court relied primarily on the following: (1) the Parties never executed a written contract for Brooks Creek or River Falls that would satisfy the Statute of Frauds; (2) various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to the sale of Brooks Creek and River Falls; (3) various Eastwood representatives also acknowledged or admitted in discovery that the Parties never agreed to material terms for the sale of Brooks Creek or River Falls, such as price, takedown schedule, or a deposit amount; and (4) the evidence did not support Eastwood's allegations that Eastwood and GreenHawk were partners or joint venturers. Furthermore, this Court held that because Eastwood's claims for specific performance failed, the dispute between the Parties was no longer "an action affecting the title to real property," which necessitated the cancellation of the Lis Pendens. S.C. Code Ann. § 15-11-10; *see also Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012).

Eastwood filed a Motion for Reconsideration on February 18, 2022, which the Court denied on March 8, 2022. Eastwood then filed a Notice of Appeal on March 11, 2022. Shortly thereafter,

² Unless otherwise specified, "Lis Pendens" as used herein is a collective reference to Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

on March 18, 2022, GreenHawk Defendants filed the instant Verified Motion, and Eastwood filed a memorandum in opposition on March 31, 2022. Oral argument was held on April 4, 2022. As such, this matter is ripe for determination.

CONCLUSIONS OF LAW

Based upon GreenHawk Defendants' Motion and the arguments of counsel, I make the following conclusions of law:

The general rule is that an appeal of a lower court order automatically stays the application of the order for the duration of the appeal, unless the stay is lifted by order of the lower court. SCACR 241(a). As such, notwithstanding this Court's February 15, 2022 Order dismissing Eastwood's claims for specific performance and cancelling the *Lis Pendens*, unless the stay is lifted, Eastwood's subsequent Notice of Appeal will allow the cloud on the titles to the Brooks Creek and River Falls properties to remain in place.

Under SCACR 241(c), any party may seek an order lifting an automatic stay. When a stay delays the ordered cancellation of a *lis pendens*, the stay should be lifted to prevent the order from becoming moot. *See* SCACR 241(c)(2) ("In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot."); *see also Carolina Park Assocs., LLC v. Marino*, No. 2010-CP-10-6042, 2011 9369844, at *1 (S.C. Ct. Com. Pl. June 27, 2011) (recognizing the same).

Carolina Park Associates is particularly instructive on this issue. There, after the court entered an order cancelling a *lis pendens* on property owned by the defendant, the plaintiff appealed the order and the defendant moved to lift the automatic stay associated with the appeal,

arguing that the stay would render the court's initial order moot. *Id.* The court agreed, holding that by imposing a stay, "Plaintiffs will have received exactly what they are not entitled to, namely a *lis pendens* during the course of this litigation that would hinder Defendant . . . in developing its property." *Id.*

The court's reasoning in *Carolina Park Associates* applies with equal force here. The contested issue on appeal is whether there exists a basis for the Lis Pendens to remain in place—namely, contracts giving Eastwood the right to purchase Brooks Creek and River Falls. This Court already carefully considered an extensive record on this issue, and that record was so one-sided that the Court was compelled to grant summary judgment on the issue. It is abundantly clear to the Court that Eastwood has no basis to continue delaying the sales GreenHawk is trying to effectuate with TRI-Pointe (as to Brooks Creek) and with non-party Taylor-Morrison (as to River Falls). Yet, by allowing the stay on the cancellation of the Lis Pendens to remain in place, this Court's February 15, 2022 Order will be mooted because Eastwood will have received exactly what they are not entitled to—further hindrance of GreenHawk's ability to sell River Falls and Brooks Creek for a period of time that could last several more years. Accordingly, because a stay would moot this Court's February 15, 2022 Order, it must be lifted. SCACR 241(c)(2).

With respect to Eastwood's argument that their claim of a right to purchase the subdivision lots will be mooted by sales to third parties, the Court has carefully considered the argument and finds it unavailing. Eastwood is in the business of buying residential real estate lots and building houses for sale into the residential real estate market. In effect, Eastwood does not lose the opportunity to invest in other residential lots. However, the stay prevents the GreenHawk Defendants from recovering their investment from the Brooks Creek and River Falls projects and reinvesting the proceeds in a favorable real estate market.

CONCLUSION

GreenHawk Defendants should be permitted to move forward with the sale of River Falls and Brooks Creek without a cloud remaining on the titles to the properties. Therefore, based on the foregoing, GreenHawk Defendants' Motion is **GRANTED**, and the automatic stay associated with Eastwood's appeal is hereby lifted effective immediately. The Court further directs the York County Clerk of Court to cancel Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

IT IS SO ORDERED.

April __, 2022

Daniel D. Hall
Presiding Judge, York County



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Lift Automatic Stay

So Ordered

s/Daniel D. Hall 2753

ORIGINAL



THE TUTTLE COMPANY

Exhibit C

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between EASTWOOD DEVELOPMENT CORPORATION, a(n) a North Carolina Corporation ("Buyer"), and R & H PROPERTIES, LLC, a(n) South Carolina Limited Liability Company ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** (Address) See Exhibit A

☒ All ☐ A portion of the property in Deed Reference: Book (See Exhibit A), Page No. (See Exhibit A), YORK County; consisting of approximately +/- 10.64 acres.

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ At Page (s) _____, _____ County, consisting of _____ Acres.

☒ If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference, (For information purposes, the tax parcel number of the Property is: 650-00-00-046, and 650-00-00-409.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all property, if any, itemized on Exhibit N/A.

(b) \$50,000.00 per acre "Purchase Price" shall mean the sum of FIFTY THOUSAND and No/100 Dollars, payable on the following terms:

\$See Exhibit B "Earnest Money" evidenced by check ☒ or other ☐, payable to _____ and held uncashed until acceptance and deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations to be held in trust by LOFLIN LAW, LLC, as Escrow Agent. Earnest Money shall be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

\$N/A (ii) **Proceeds of a new loan** in the amount of N/A Dollars for a term of N/A years, at an interest rate not to exceed N/A% of the loan amount, or such other terms as may be set forth on Exhibit N/A. Buyer shall pay all costs associated with any such loan.

\$N/A (iii) **Delivery of a promissory note** secured by a ☐ deed of trust, or ☐ purchase money mortgage, said promissory note in the amount of N/A Dollars being payable over N/A months in equal monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of N/A percent (N/A%) per annum, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on Exhibit N/A. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust or purchase money mortgage given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust or purchase money mortgage given hereunder is

Buyer Initials JRD Seller Initials RR

EXHIBIT

C

subordinated to senior financing, the material terms of such financing must be set forth on Exhibit N/A. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$N/A (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust or purchase money mortgage on the Property, such obligation having an outstanding principal balance of \$N/A and evidenced by a note bearing interest at the rate of N/A percent (N/A%) per annum, or N/A. Buyer shall pay all costs associated with any such assumption, including any assumption fee charged by the lender.

\$SEE EXHIBIT "B" (v) Cash, balance of Purchase Price, at Closing in the amount of SEE EXHIBIT "B" Dollars.

(c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on or before September 19, 2013

(d) "Contract Date" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) "Examination Period" shall mean the period beginning on the Contract Date and extending through See Exhibit "B".
TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

(f) "Broker(s)" shall mean:

COLDWELL-BANKER COMMERCIAL - The Tuttle Company ("Listing Agency"), Deborah W. Weatherby ("Listing Agent" – License #71104) Acting as ☐ Seller's Designated Agent; ☒ Seller's Agent; ☐ Dual Agent; and N/A ("Selling Agency"), N/A ("Selling Agent" – License #N/A) Acting as ☐ Buyer's Designated Agent; ☐ Buyer's Agent ☐ Seller's (Sub) Agent; ☐ Dual Agent

(g) "Seller's Notice Address" shall be as follows: ROBERT C. RUNDE, 16026 Kiki Court, Tega Cay, SC 29708 and DEBBIE WEATHERBY, c/o THE TUTTLE COMPANY, 3014 Southcross Blvd., Suite B, Rock Hill SC 29730, except as same may be changed pursuant to Section 12.

(h) "Buyer's Notice Address" shall be as follows: JOE R. DORITY, c/o EASTWOOD HOMES, 2857 Westport Road, Charlotte, NC 28208, except as same may be changed pursuant to Section 12.

(i) ☒ If this block is marked, additional terms of this Agreement are set forth on Exhibit B, attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities, or any other assumed liabilities as detailed on attached Exhibit B, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or *rollback taxes*, and other conveyance fees or taxes required by law, and the following: (See Exhibit B)

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, and the following: N/A

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to delivery to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer
Buyer Initials QRP Seller Initials Kca

and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit N/A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property on or before _____, 2013. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exception, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than _____, 2013, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money, or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Buyer Initials JB Seller Initials ben

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☐ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on Exhibit N/A;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

Buyer Initials JSJ Seller Initials BA

(e) Seller agrees to deliver an assignment of any Lease at Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppels certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence of disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be paid to Seller as partial damages, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court.

Section 11. Closing: At Closing, Seller shall deliver to Buyer a ☒ general ☐ special warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit N/A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Section 12. Notices:

(a) Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person, deposited with a national private overnight delivery service, or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

(b) The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a facsimile and/or email, and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials, and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

Buyer Initials JB Seller Initials RE

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: N/A.

(Insert "None" or the identification of any matters relating to (i) through (iv) above, if any).

Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows: N/A.

Seller represents that the regular owners' association dues, if any, are \$N/A per N/A.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located.

Section 18. Assignment: Buyer shall have the right to assign Buyer's right, title and interest in and to this Agreement at any time to any party without consent of Seller, provided, however, that Buyer shall remain liable for and shall not be released from liability arising under this Agreement. The term "Buyer" as used herein shall include Buyer's successors or assigns.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Buyer Initials JB Seller Initials RC

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction; and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements enter into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Foreign Investment and Real Property Tax Act (IRS Section 1445). The Foreign Investment and Real Property Tax Act requires a BUYER purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. SELLER agrees to provide Broker with a certification establishing that no federal income tax is required, unless it is established that the transaction is exempt and the BUYER intends to use the property as personal residence due to existing laws at time of closing.

Section 24. SC Code Section 12-8-580. SELLER covenants and agrees to comply with South Carolina Code Section 12-8-580 (as amended from time to time), regarding withholding requirements of SELLERS who are not residents of South Carolina as deferred in this given statute.

Section 25. Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

Section 26. Disclosure: Both Buyer and Seller acknowledge receiving, reading and understanding the South Carolina Real Estate Commission's Agency Disclosure Form(s).

BUYER:
Individual

SELLER:
Individual

Date: _____

Date: _____

Date: _____

Date: _____

Buyer Initials JB Seller Initials LC

BUYER:
Business Entity

SELLER:
Business Entity

EASTWOOD DEVELOPMENT CORPORATION

(Name of Entity)

By: J. R. Dority

Name: JOE R. DORITY

Title: Corporate Vice President of Land

Date: 4/19/13

R & H PROPERTIES, LLC

(Name of Entity)

By: Robert C. Runde

Name: ROBERT C. RUNDE

Title: Managing Member

Date: 4/19/2013

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

(Name of Firm)

Date: _____

By: _____

Buyer Initials CRD Seller Initials RCR



THE TUTTLE COMPANY

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between EASTWOOD DEVELOPMENT CORPORATION, a(n) _____ ("Buyer"), and COLBY H. MOSIER and MW DEVELOPERS, INC., a(n) South Carolina Corporation ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** (Address) _____

☒ All ☐ A portion of the property in Deed Reference: Book (See Exhibit A), Page No. (See Exhibit A), YORK County; consisting of approximately +/- 51 acres.

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ At Page (s) _____, _____ County, consisting of _____ Acres.

☒ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference, (For information purposes, the tax parcel number of the Property is: 645-00-00-001, 645-00-00-038, 646-00-00-017, 646-00-00-022, and 646-00-00-014.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all property, if any, itemized on **Exhibit N/A**.

(b) \$35,000.00 per acre **"Purchase Price"** shall mean the sum of THIRTY-FIVE THOUSAND and No/100 Dollars, *payable on the following terms:*

\$See Exhibit B **"Earnest Money"** evidenced by check ☒ or other ☐, payable to _____ and held uncashed until acceptance and deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations to be held in trust by _____, as Escrow Agent. Earnest Money shall be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

\$N/A (ii) **Proceeds of a new loan** in the amount of N/A Dollars for a term of N/A years, at an interest rate not to exceed N/A% of the loan amount, or such other terms as may be set forth on **Exhibit N/A**. Buyer shall pay all costs associated with any such loan.

\$N/A (iii) **Delivery of a promissory note** secured by a ☐ deed of trust, or ☐ purchase money mortgage, said promissory note in the amount of N/A Dollars being payable over N/A months in equal monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of N/A percent (N/A%) per annum, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit N/A**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust or purchase money mortgage given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust or purchase money mortgage given hereunder is

Buyer Initials _____ Seller Initials _____

subordinated to senior financing, the material terms of such financing must be set forth on Exhibit N/A. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$N/A (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust or purchase money mortgage on the Property, such obligation having an outstanding principal balance of \$N/A and evidenced by a note bearing interest at the rate of N/A percent (N/A%) per annum, or N/A. Buyer shall pay all costs associated with any such assumption, including any assumption fee charged by the lender.

\$SEE EXHIBIT "B" (v) Cash, balance of Purchase Price, at Closing in the amount of SEE EXHIBIT "B" Dollars.

(c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on or before August 5, 2013.

(d) "Contract Date" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) "Examination Period" shall mean the period beginning on the Contract Date and extending through See Exhibit "B".
TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

(f) "Broker(s)" shall mean:

COLDWELL-BANKER COMMERCIAL - The Tuttle Company ("Listing Agency"), Deborah W. Weatherby ("Listing Agent" – License #71104) Acting as ☐ Seller's Designated Agent; ☒ Seller's Agent; ☐ Dual Agent; and N/A ("Selling Agency"), N/A ("Selling Agent" – License #N/A) Acting as ☐ Buyer's Designated Agent; ☐ Buyer's Agent ☐ Seller's (Sub) Agent: ☐ Dual Agent

(g) "Seller's Notice Address" shall be as follows: COLBY H. MOSIER, 988 Cover Point Lane, Tega Cay, SC 29708 and DEBBIE WEATHERBY, c/o THE TUTTLE COMPANY, 3014 Southcross Blvd., Suite B, Rock Hill SC 29730, except as same may be changed pursuant to Section 12.

(h) "Buyer's Notice Address" shall be as follows: JOE R. DORITY, c/o EASTWOOD HOMES, 2857 Westport Road, Charlotte, NC 28208, except as same may be changed pursuant to Section 12.

(i) ☒ If this block is marked, additional terms of this Agreement are set forth on Exhibit B, attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities, or any other assumed liabilities as detailed on attached Exhibit B, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or *rollback taxes*, and other conveyance fees or taxes required by law, and the following: (See Exhibit B)

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, and the following: N/A

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to delivery to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer

Buyer Initials _____ Seller Initials _____

and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit N/A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property on or before May 6, 2013. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exception, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than May 24, 2013, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money, or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Buyer Initials _____ Seller Initials _____

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☐ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not – "Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on Exhibit N/A;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

Buyer Initials _____ Seller Initials _____

(e) Seller agrees to deliver an assignment of any Lease at Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppels certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence of disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be paid to Seller as partial damages, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court.

Section 11. Closing: At Closing, Seller shall deliver to Buyer a ☒ general ☐ special warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personally listed on Exhibit N/A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Section 12. Notices:

(a) Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person, deposited with a national private overnight delivery service, or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

(b) The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a facsimile and/or email, and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials, and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

Buyer Initials _____ Seller Initials _____

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: N/A.

(Insert "None" or the identification of any matters relating to (i) through (iv) above, if any).

Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows: N/A.

Seller represents that the regular owners' association dues, if any, are \$N/A per N/A.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located.

Section 18. Assignment: Buyer shall have the right to assign Buyer's right, title and interest in and to this Agreement at any time to any party without consent of Seller, provided, however, that Buyer shall remain liable for and shall not be released from liability arising under this Agreement. The term "Buyer" as used herein shall include Buyer's successors or assigns.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Buyer Initials _____ Seller Initials _____

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction; and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements enter into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Foreign Investment and Real Property Tax Act (IRS Section 1445). The Foreign Investment and Real Property Tax Act requires a BUYER purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. SELLER agrees to provide Broker with a certification establishing that no federal income tax is required, unless it is established that the transaction is exempt and the BUYER intends to use the property as personal residence due to existing laws at time of closing.

Section 24. SC Code Section 12-8-580. SELLER covenants and agrees to comply with South Carolina Code Section 12-8-580 (as amended from time to time), regarding withholding requirements of SELLERS who are not residents of South Carolina as deferred in this given statute.

Section 25. Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

Section 26. Disclosure: Both Buyer and Seller acknowledge receiving, reading and understanding the South Carolina Real Estate Commission's Agency Disclosure Form(s).

BUYER:
Individual

SELLER:
Individual

COLBY H. MOSIER

Date: _____

Date: _____

Date: _____

Date: _____

Buyer Initials _____ Seller Initials _____

BUYER:
Business Entity

SELLER:
Business Entity

EASTWOOD DEVELOPMENT CORPORATION
(Name of Entity)

MW DEVELOPERS, INC., a SC Corporation
(Name of Entity)

By: _____

By: _____

Name: JOE R. DORITY

Name: COLBY H. MOSIER

Title: Corporate Vice President of Land

Title: President

Date: _____

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

(Name of Firm)

Date: _____

By: _____

Buyer Initials _____ Seller Initials _____



THE TUTTLE COMPANY

FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This **FIRST AMENDMENT**, which is attached to and made a part of the **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (hereinafter the "Agreement"), dated the ____ day of April, 2013; by and between **EASTWOOD DEVELOPMENT CORPORATION** (hereinafter "Buyer"), and **COLBY H. MOSIER and MW DEVELOPERS, INC.** (hereinafter "Seller"), provides for certain additions, clarifications, and conditions of the **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** which was fully executed on March 6, 2013. In the event of a conflict in terms between this **FIRST AMENDMENT** and the terms of the Agreement, the terms of this **FIRST AMENDMENT** shall be deemed superior and prevail.

WHEREAS, Buyer and Seller have entered into an Agreement, for the Property described as 2178 Gold Hill Road and 1903 Southridge Lane, Fort Mill, South Carolina 29708; also being York County Tax Parcels 645-00-00-001, 645-00-00-038, 646-00-00-017, 646-00-00-022, and 646-00-00-014; together consisting of $\pm$ 51 acres; and,

WHEREAS, the parties hereto desire to alter and modify said Agreement in the manner hereinafter set forth:

1. **PROPERTY:** Property shall be amended to include York County Parcel 646-00-00-027 consisting of $\pm$ 2.58 acres attached hereto as "Exhibit A - First Amendment" at an additional cost of **FORTY-FIVE THOUSAND AND NO/100 (\$45,000.00) PER "ACRE"** of land within this parcel.

2. **PURCHASE PRICE:** The estimated Purchase Price shall be amended to **ONE MILLION NINE HUNDRED ONE THOUSAND DOLLARS (\$1,901,000.00)**.

3. **EARNEST MONEY/DEPOSIT:** Buyer and Seller agree that the **INITIAL SIXTY (60) DAY Examination Period** shall be extended by **FORTY-FIVE (45) DAYS** for a total of **ONE HUNDRED FIVE (105) DAYS** which shall end on June 20, 2013. If Buyer elects to continue with its Examination of the Property beyond the **ONE HUNDRED FIVE (105) DAY** period, the **FIFTY THOUSAND DOLLARS (\$50,000.00) INITIAL DEPOSIT** shall be non-refundable and released to Seller within five (5) days thereafter.

All other provisions of the Agreement, not modified in this **FIRST AMENDMENT**, are hereby reaffirmed by Buyer and Seller, and shall remain in full force and effect.

BUYER:

**EASTWOOD DEVELOPMENT
CORPORATION**

By: _____
JOE R. DORITY
Corporate Vice President of Land

Date: _____

SELLER:

**COLBY H. MOSIER and MW
DEVELOPERS, INC.**

By: 
Colby H. Mosier, Owner/President

Date: 4/23/13



THE TUTTLE COMPANY

FOURTH AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This **FOURTH AMENDMENT**, which is attached to and made a part of the **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (hereinafter the "Agreement"), dated the 10th day of April, 2014; by and between **EASTWOOD DEVELOPMENT CORPORATION** (hereinafter "Buyer"), and **COLBY H. MOSIER and MW DEVELOPERS, INC.** (hereinafter "Seller"), provides for certain additions, clarifications, and conditions of the **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (the "Agreement") which was fully executed on March 6, 2013, AND which was amended on April 23, 2013, to include an additional 2.58 acres. In the event of a conflict in terms between this **FOURTH AMENDMENT** and the terms of the Agreement including the First, Second and Third Amendments; the terms of this **FOURTH AMENDMENT** shall be deemed superior and prevail.

WHEREAS, Buyer and Seller have entered into an Agreement, for the Property described as 2178 Gold Hill Road and 1903 Southridge Lane, Fort Mill, South Carolina 29708; also being York County Tax Parcels 645-00-00-001, 645-00-00-038, 646-00-00-017, 646-00-00-022, 646-00-00-027 and 646-00-00-014; together consisting of ±53.828 acres; and,

WHEREAS, the parties hereto desire to alter and modify said Agreement in the manner hereinafter set forth:

1. **EARNEST MONEY/DEPOSIT:** Buyer and Seller agree that at the execution of the Purchase Agreement dated March 6, 2013, Buyer deposited FIFTY THOUSAND DOLLARS (\$50,000.00) Loflin Law, LLC (the "Title Company"), whose address is 2700 Coltsgate Road, Suite 106, Charlotte NC 28211, telephone number: (704) 366-6222.

2. **CLOSING:** Buyer and Seller agree that closing (the "Closing") shall be extended to occur no later than August 1, 2014, based upon the following:

(a) Upon a successful second reading at which the City of Tega Cay approves an ordinance annexing the Property into the City's limits, Buyer shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) to Seller's Agent for disbursement to Seller. All funds released to Seller shall be fully non-refundable, excepting only a Seller default, but shall be applicable to the Purchase Price.

(b) Within ten (10) days following a successful third reading at which the City of Tega Cay approves an ordinance annexing the Property into the City's limits, Closing shall occur at the offices of Buyer's attorney in Charlotte, North Carolina.

(c) Buyer will make every effort to close this transaction on or before Thursday, June 12, 2014. In the event the Closing extends beyond June 12, 2014, then Buyer agrees to pay to Seller ONE HUNDRED SIXTY-SIX DOLLARS (\$166.00) per day for each day through and including the date of closing.



THE TUTTLE COMPANY

(d) Should the City of Tega Cay not annex the property on the third and final successful read, Buyer may terminate this contract.

All other provisions of the Agreement, not modified in this **FOURTH AMENDMENT**, are hereby reaffirmed by Buyer and Seller, and shall remain in full force and effect.

BUYER:

**EASTWOOD DEVELOPMENT
CORPORATION**

By: [Signature]
JOE R. DORITY
Corporate Vice President of Land

Date: 4/10/14

SELLER:

**COLBY H. MOSIER and MW
DEVELOPERS, INC.**

By: [Signature]
Colby H. Mosier, Owner/President

Date: 4/10/14

Exhibit G

ASSIGNMENT OF AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

Whereas, Eastwood Development Corporation ("Eastwood") and R & H Properties, LLC ("Seller") entered into an Agreement For Purchase and Sale of Real Property dated April 19, 2013 (as amended, the "Contract") with respect to 10.64 acres of vacant land, more or less, located along Gold Hill Road, in Fort Mill Township, York County, South Carolina;

Whereas, Eastwood has paid \$100,000.00 in earnest money deposits and examination period extension requests (the "Escrowed Funds") which funds are being held in escrow pending closing of the purchase; and

Whereas, AF-Brooks Creek, LLC, a North Carolina limited liability company ("Assignee"), has requested that Eastwood assign its rights and responsibilities under the Contract to Assignee and Eastwood has agreed to do so on the terms of conditions of this Assignment;

Now, therefor, in consideration of the mutual benefits accruing to the parties to this Assignment, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Eastwood hereby assigns to Assignee all of Eastwood's rights and responsibilities under the Contract, and Assignee accepts and agrees to perform the terms of the Contract.
2. Assignee shall reimburse Eastwood all funds being held as Escrowed Funds such reimbursement to be shown on the Settlement Statement for the purchase of the subject property and to be paid to Eastwood at the time of such closing.
3. Assignee shall also reimburse Eastwood for all out of pocket expenses incurred by Eastwood during the examination of the subject property and other pre-construction related expenses, which expenses shall be paid by Assignee to Eastwood within sixty (60) days after the closing of the subject property.

In Witness Whereof, the parties hereto have executed this Assignment by their duly authorized officers or managers/members effective as of the last date of execution below.

EASTWOOD DEVELOPMENT CORPORATION

By: [Signature]
Name: Joe R. Dority, Vice President

Date: 12/9/13

AF-BROOKS CREEK LLC

By: [Signature]
Name: Craig A. Brewer
Title: MANAGER

Date: 12/9/13



ASSIGNMENT
OF
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS ASSIGNMENT OF AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY is entered into this the _____ day of June, 2014 by EASTWOOD DEVELOPMENT CORPORATION ("Eastwood"), and AF-RIVER FALLS ("Assignee").

WITNESSETH:

WHEREAS, Eastwood, as Buyer, and Colby H. Mosier and MW Developers, Inc., as Sellers, entered into an Agreement For Purchase and Sale Of Real Property dated March 6, 2014 (as amended from time to time, the "Contract") whereby Eastwood agreed to purchase and Sellers agreed to sell parcels of real property located on Gold Hill Road in York County, South Carolina under tax map numbers 645-00-00-001, 645-00-00-38, 646-00-00-017, 646-00-00-022, 646-00-00-014 and 646-00-00-027 (the "Land");

WHEREAS, Eastwood desires to assign its rights and obligations under the Contract to Assignee;

WHEREAS, the terms of the Contract permit Eastwood to make this assignment without the consent of Sellers so long as Eastwood shall remain obligated to Sellers under the Contract notwithstanding the assignment thereof;

NOW, THEREFORE, for valuable consideration, Eastwood and Assignee agree as follows: Eastwood hereby assigns all of its rights and obligations under the Contract to Assignee, and Assignee hereby accepts the assignment and agrees to be bound by, and shall perform all of Eastwood's obligations under, the terms of the Contract from this date forward.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed effective as of the date first set forth above.

Eastwood Development Corporation (Seal)

AF-River Falls, LLC (Seal)

By: _____
Joe R. Dority, Corporate VP

By: _____

Its: _____

ASSIGNMENT OF PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT OF PURCHASE AND SALE AGREEMENT is entered into this the _____ day of June, 2014 by EASTWOOD DEVELOPMENT CORP. ("Eastwood"), AF-RIVER FALLS, LLC ("AF-River Falls"), and CAROLINE HELMS ("Seller").

WITNESSETH:

WHEREAS, Eastwood and Seller entered into a Purchase and Sale Agreement dated April 28, 2014 (as may have been amended heretofore or hereafter, the "Contract") whereby Eastwood agreed to purchase and Seller agreed to sell an approximately 2,316 square foot parcel of real property located on Gold Hill Road in York County, South Carolina which is a portion of tax parcel number 646-00-00-015 (the "Land");

WHEREAS, Eastwood desires to assign its rights and obligations under the Contract to AF-River Falls;

WHEREAS, the terms of the Contract require that the Seller approve any assignment of the Contract by Eastwood and Seller, subject to the terms hereof, has agreed to provide such consent by signing below;

NOW, THEREFORE, for valuable consideration, Eastwood, AF River Falls and Seller agree as follows:

1. Eastwood hereby assigns all of its rights and obligations under the Contract to AF River Falls and AF River Falls hereby accepts the assignment and agrees to be bound by the terms of the Contract from this date forward.
2. Seller hereby consents to this Assignment and hereby releases Eastwood from any and all obligations of the purchaser under the Contract to be performed after the date hereof.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed effective as of the date first set forth above.

Eastwood Development Corp. (Seal)

AF-River Falls, LLC (Seal)

By: _____
Joe R. Dority, Corporate VP

By: _____

Its: _____

Seller:

Caroline Helms (Seal)

Invoice

LandDesign.

PO BOX 36959
CHARLOTTE, NC 28236-6959

JOE DORITY
EASTWOOD HOMES
2857 WESTPORT ROAD
CHARLOTTE, NC 28208

September 6, 2016
Project No: 1013071
Invoice No: 82441

Project 1013071 GOLD HILL ROAD/TEGA CAY SITE
INVOICE DUE UPON RECEIPT, PAST DUE AFTER 30 DAYS FROM INVOICE DATE

Professional Services from July 31, 2016 to August 27, 2016

Phase 031 MODIFICATION TO CONSTRUCTION DOCUMENTS

BILLING SUMMARY:
FINAL REVISIONS PER PLANNING COMMENT/SUBMIT
Hourly Services

	Hours	Amount	
SENIOR ASSOCIATE	31.00	4,960.00	
DESIGNER (CIVIL ENGINEERING)	34.25	3,767.50	
Total Labor			8,727.50
Total Billed This Phase			\$8,727.50

Phase 040 WETLANDS PERMITTING & MITIGATION PLANS

BILLING SUMMARY:
-ADDRESS WETLANAD/NO1 COMMMENTS FROM CITY
-COORD W/L EN RENDNER/ASSOCIATED PLAN REVISIONS
Hourly Services

	Hours	Amount	
SENIOR ASSOCIATE	39.00	6,240.00	
DESIGNER (CIVIL ENGINEERING)	.25	27.50	
Total Labor			6,267.50
Total Billed This Phase			\$6,267.50

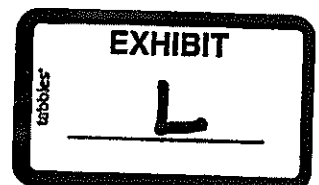
Phase EXP EXPENSE

PROJECT EXPENSES (7% OF LABOR FEES)	1,049.65	
		1,049.65
Total Billed This Phase		\$1,049.65

TOTAL CURRENT INVOICE \$16,044.65

Outstanding Invoices

Invoice Number	Date	Balance
80716	4/13/2016	10,471.03



Project	1013071	GOLD HILL ROAD/TEGA CAY SITE	Invoice	82441
	81016	5/4/2016	17,914.76	
	81371	6/7/2016	29,639.00	
	81747	7/11/2016	28,336.26	
	82079	8/2/2016	21,638.95	
	Total		108,000.00	
			Total Now Due	\$124,044.65

THANK YOU, WE APPRECIATE YOUR BUSINESS!
Please call 704.333.0325/Accounting with any questions

Message

Exhibit S

From: Joe Dority [jdority@eastwoodhomes.com]
Sent: 5/8/2014 5:03:57 PM
To: Jesse Buchanan [/O=GREENHAWK-RAL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JBUCHANAN]; Craig Briner [/O=GREENHAWK-RAL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CBRINER]
Subject: FW: Townhomes

Can you guys look into getting this invoice paid for Brooks Creek?
Thanks

Joe Dority

Corporate Vice President of Land

Eastwood Homes

2857 Westport Rd.

Charlotte, NC 28208

704-399-4673 office

803-381-5921 cell

From: Len Rindner [mailto:len.rindner.pws@gmail.com]
Sent: Wednesday, May 07, 2014 7:02 PM
To: Joe Dority
Subject: Townhomes

Hi Joe:

Our files show this invoice as outstanding. Can you help process this?.

On the single family site – we continue to follow-up with the USACE regarding approving the jurisdictional determination. We did submit the additional information she requested.

GHD_0000047

Thanks. Len

Len Rindner

Leonard S. Rindner, PLLC

Wetlands and Environmental Planning Group

(704) 904-2277

Ward Bradley**Exhibit U**

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Tuesday, June 30, 2020 11:40 AM
To: Ward Bradley; Lynn G. Ivey
Subject: FW: Project Plans for Brooks Creek and River Falls
Attachments: Brooks Creek.pdf; River Falls - Ph 1.pdf

From: Krishnan Iyer <KIyer@greenhawkcorp.com>
Sent: Wednesday, August 5, 2015 11:36 AM
To: Joe Dority <jdority@eastwoodhomes.com>
Cc: Craig Briner <cbriner@greenhawkcorp.com>
Subject: Project Plans for Brooks Creek and River Falls

Hi Joe

As mentioned in the voicemail message left for you by Craig Briner, attached are the project plans for Brooks Creek and River Falls – Phase 1. This is based on a template that we use for all of our development projects. Can you please, look at the dates for all the activities mentioned and confirm that they are OK. If not, can you pencil in your dates and send it back to me. After that I can freeze the plan and start monitoring our progress.

More specifically, can you let me know the status of the permit for Brooks Creek.

I would appreciate it if you can get this back to me by Friday. If that is not possible, can you let me know when I can expect it. Thanks for all your help.

Thanks,

Krishnan S. Iyer
GreenHawk Corporation, Inc.
Cell: (919) 395-0965
Phone: (919) 861-2916



River Falls - Ph 1							
ID		Task Mode	Task Name	Start	Finish	% Complete	Duration
5			Permitting - Grading	6/15/14	9/30/15	35%	339 days
7			Development	8/31/15	2/11/16	0%	119 days
8			Clearing	8/31/15	9/14/15	0%	11 days
9			Grading	9/15/15	11/10/15	0%	41 days
10			Power & Gas Plan Approval	9/15/15	10/15/15	0%	23 days
11			Utilities	10/23/15	12/18/15	0%	41 days
12			Paving	12/21/15	1/25/16	0%	26 days
13			Power & Gas Installation	1/26/16	2/10/16	0%	12 days
14			Plat Recordation	12/4/15	2/11/16	0%	50 days
15			Sale of Lots	3/14/16	8/8/17	0%	367 days

130.00
55.00

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE

Exhibit W

DATE 7-17-14
TAX MAP NO. 646-15
INITIALS CHR/JS

201400263650
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
07-16-2014 At 04:00 PM.
DEED INT 10.00
State Tax 130.00
County Tax 55.00
OR Vol 14248 Page 71 - 75

Prepared by:

Melissa G. Cassell, Esq.
MORTON & GETTYS, LLC
334 Oakland Avenue
Post Office Box 707
Rock Hill, South Carolina 29731

DEED PREPARED ONLY, TITLE NOT SEARCHED BY PREPARER
NO RESPONSIBILITY ASSUMED FOR WITHHOLDINGS

Return to:

Gary Loflin Law, PLLC d/b/a Loflin Law
2700 Coltsgate Road
Suite 106
Charlotte, NC 28211

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made as of the 12th day of June, 2014, by and between **CAROLINE HELMS**, a South Carolina resident, as party of the first part, hereinafter referred to as "Grantor," and **EASTWOOD DEVELOPMENT CORP.**, a North Carolina corporation and its successors and assigns, having a principal mailing address of 2857 Westport Road, Charlotte, NC, 28208, Attn: Joe Dority, Vice President, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the successors and assigns of each of the parties hereto.

KNOW ALL MEN BY THESE PRESENTS THAT, FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, Grantor has and hereby does grant, bargain, sell and convey unto Grantee, and the heirs, legal representatives, successors and assigns of Grantee, all of Grantor's right, title, and interest in and to the real property described upon Exhibit A (attached hereto and incorporated by this reference), together with any and all improvements affixed thereto and lying thereupon, and together with further any and all appurtenances thereto (with the foregoing being, collectively, the "Property")), subject, however, to the terms and provisions of this Special Warranty Deed.

The Property is hereby conveyed to the Grantee subject to ad valorem taxes for the 2014 tax year, which constitute a lien but are not yet due and payable, matters which would be disclosed upon a current and accurate ALTA survey or physical inspection of the Property,

matters of zoning, and easements, restrictions, conditions, and other matters which are of record in the York County, South Carolina, real estate records.

AND IT IS THE INTENT OF THE GRANTOR THAT NONE OF THE ABOVE MATTERS AND EXCEPTIONS SHALL BE DEEMED AS BEING IMPOSED OR RE-IMPOSED UPON THE PROPERTY BY VIRTUE OF THE MAKING HEREOF.

TO HAVE AND TO HOLD the Property, together with any and all improvements, buildings, and fixtures located thereon and all rights, hereditaments, and appurtenance thereunto belonging or appertaining, subject, however, to the above easements, restriction, exceptions, and other matters, unto the Grantee, and its successors and assigns, forever, IN FEE SIMPLE.

AND GRANTOR SHALL WARRANT and defend the right and title to the Property unto the Grantee, and its successors and assigns, forever, against the claims of all persons whomsoever claiming by, through or under Grantor, subject to the limitations and exceptions contained herein, but against no others.

IN WITNESS WHEREOF, Grantor has signed and sealed this deed as of the day and year first above written.

SIGNATURE PAGE TO FOLLOW

GRANTOR:

Signed, sealed and delivered
in the presence of:

Jerry H Baker (W-1)

Caroline Helms
Caroline Helms

Dawn M. Huddle (W-2)

ACKNOWLEDGEMENT

PERSONALLY APPEARED before me Caroline Helms, the
within named Grantor, who, after being duly sworn, acknowledged her execution of the within
Special Warranty Deed in such capacity and for the uses and purposes mentioned therein.

SWORN to before me this 12 day
~~May~~^{June}, 2014.

Gill S. Kimbrell
Notary Public for SC
My Commission Expires: 11/17/2014
[SEAL HERE]

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

All that certain piece, parcel or tract of land lying and being along Gold Hill Road, in Tega Cay, York County, South Carolina, described as follows according to plat of survey entitled "Minor Subdivision Plat & Easement Dedications," prepared by Summit Land Services, dated June 5, 2014, and recorded in the York County, South Carolina, Real Estate records on 6/10/2014, 2014, in Plat Book 149, at Page 20: Beginning at the southeastern corner of the Caroline Helms tract and Gold Hill Road R/W at a rebar and thence running with Gold Hill Road S 32-25-06 W 15.00' to a set rebar, thence with the Max Helms tract N 56-07-02 W 160.19' to a set rebar, then across the Caroline Helms tract to the Colby Mosier tract N 31-06-13 E 15.00', thence along the adjoining line of Helms and Mosier S 56-07-21 E 160.53' to the point of beginning containing 0.055 acres/2,404 sq. ft., reference to the aforesaid plat which is hereby made.

DERIVATION: Being a portion of the property conveyed to Caroline Helms by deed recorded in Book 367, at Page 217, aforesaid records.

YORK COUNTY TMS NUMBERS portion of 646-00-00-015

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

AFFIDAVIT

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is known as 2210 Gold Hill Road, in York County, and was transferred by Carolina Helms on June, 2014.
3. The transaction was (check one):
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.* because the deed is: _____.
4. Check one of the following if either item 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 \$ 50,000.00
 - (b) _____ The fee is computed on the fair market value of this realty which is \$ _____.
 - (c) _____ The fee is computed based on the fair market value of the realty as established for property tax purposes which is _____.
5. Check: YES ___ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is: \$N/A.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ 50,000.00
 - (b) Place the amount listed in item 5 above here: \$
 - (c) Subtract line 6(b) from line 6(a) and place result here: \$50,000.00
7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is: \$185.00
As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as an officer of the Transferor. I further 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.

Caroline Helms
Caroline Helms

SWORN to before me this 12 day of JUNE, 2014.

Phillip K. [Signature]
Notary Public for SC
My commission expires: 11/17/2014
[SEAL]

Message

Exhibit BB

From: Joe Polite [jpolite@eastwoodhomes.com]
Sent: 7/18/2018 8:19:27 PM
To: Craig Briner [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=010138506fb44565896d6f92820b0aca-cbriner]
Subject: FW: The Fort Mill Massacre of July 16, 2018 | Builder Magazine | Local Markets, Land Acquisition, Building Permits, Policy, Hou
Importance: High

The Fort Mill Massacre of July 16, 2018 | Builder Magazine | Local Markets, Land Acquisition, Building Permits, Policy, Housing Policy, Policy and Regulation

Both River Falls and Brooks Springs falls under this new ordinance.
Delays have now cost us another \$18k per unit....
What is the latest update on both projects?
Joe P.

[http://www.builderonline.com/builder-100/the-fort-mill-massacre-of-july-16-2018_o?utm_source=newsletter&utm_content=Article&utm_medium=email&utm_campaign=BP_071818%20\(1\)&he=479db5b81f846461abd5cba3052e3410895f8dee](http://www.builderonline.com/builder-100/the-fort-mill-massacre-of-july-16-2018_o?utm_source=newsletter&utm_content=Article&utm_medium=email&utm_campaign=BP_071818%20(1)&he=479db5b81f846461abd5cba3052e3410895f8dee)
[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.buil...]

The Fort Mill Massacre of July 16, 2018Here's why builders expect regulatory burden to get worse, not better, in the months and years ahead.
ByJohn McManus [/author/john-mcmanus]

BUILDER

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Fort Mill, a township of about 40,000 residents in South Carolina's York County, is considered one of Charlotte, N.C.'s "sleepy suburbs." It boasts a school district with a reputation right up there among South Carolina's very best. Fort Mill is now on the maps of many national, regional, and local builders in the area, pinned with a big red flag and a note-to-self: closed for business.
Here's how BUILDER sibling Metrostudy'sCharlotte [/local-housing-data/charlotte-gastonia-concord-nc-sc] regional director Jennifer Gooch describes the outcome of a York County council meeting on Monday night.

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Just like that, with one swift vote (albeit drawn out into three stages), Fort Mill closed its doors for the homebuilder business. On the evening of July 16th, town council reaffirmed their previous vote to increase impact fees on new residential construction by 726% from \$2,500 per single family dwelling to \$18,158.
And withone swift rap of York County Council chairman J. Britt Blackwell's gavel [https://urldefense.proofpoint.com/v2/url?u=https-3A__www.her...], it is done. Every newly permitted single-family home will carry an additional \$15,000-plus in its price tag, or the builder/ developer will get to eat the added cost. And on and on, in town and city and county and metro area, in an increasing number of jurisdictions around the country, the rap of the chairperson's gavel signals the same conclusion: new homes and new people bear the burden of upgrading and improving a town's infrastructure and services.
For Fort Mill, the consequence is material. Metrostudy's Jen Gooch says this about the virtual panic that immediately preceded the town council's momentous decision this week.

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"A mad rush has been taking place in the Fort Mill Planning Department as builders have pulled as many permits as

GHD_0000388

possible over the past few months. Any vacant developed lot with its sewer and water tap fees paid will no doubt have a building permit linked to it, even if there is not a buyer as of yet. We can expect to see a surge in spec inventory over the next six months, which is the length of time until the permits expire. Some powerhouse communities with substantial future phases are affected by the closing of this door, to name a few; Mason's Bend [local-housing-data/bend-or] – our HBAGC Community of the Year (with 384 SFR and 150 TH futures), Carolina Orchards (365 futures), Massey (365 futures), Waterside at the Catawba (185 futures), and McCullough (138 futures). In fact, at Metrostudy's last count there were 1,154 vacant developed lots and 5,064 future lots in the Fort Mill school district's boundaries. Starts in the second quarter are up 37.7% and now we know why."

Now, builders who have dealt with impact and entitlement fee shock for years in such places as California

[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.buil...], Colorado

[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.buil...], and, more recently, Florida

[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.buil...] have grown to be almost philosophically resigned about such dislocations in costs.

"There's nothing we're going to be able to do about this issue," many of them conclude. In fact, town officials, council men and women, and other local decision makers can get elected based on "no growth" or "slow growth" positions on planning for the future.

It's interesting, though, to think of how it is that Fort Mill got to where it is in the first place. How is it that you have a first-rate local school system were it not for the fact that good school teachers could afford to live near where they work? In York County, S.C., where the median household income, per the Census

[https://urldefense.proofpoint.com/v2/url?u=https-3A__www.cen...], is \$56,482, how many people in that median household income bracket—including, perhaps, some of those very good school teachers and district officials—will be able to shoulder an extra \$15,000 on the price tag of an entry-level home?

Too, what will happen to the affordability levels of existing home stock and of rental apartments and single-family homes in the market as municipalities like Fort Mill slam the breaks on new growth? Gooch concludes:

"Other towns in York County have exhibited the same slow growth mentality. Even the County itself has moved towards changes in its zoning ordinance, specifically the Urban Development designation, to curb residential growth. And, indeed, after the initial rush to permit, slow growth will take over in one of Charlotte's most popular suburban cities."

Now, if men and women get votes and win elections based on their activist advocacy of slow-growth or no-growth local policies, do you think anybody would win an election based on solid planning that would result in a really good teacher's ability to afford to buy a home in the district?

In communities all over the United States, local policy—the single biggest influence on residential development and home building's enormous regulatory burden—homeowners mostly win, while renters mostly lose.

[https://urldefense.proofpoint.com/v2/url?u=https-3A__www.bro...]

And would-be new homeowners always pay more.

Is there a teachable moment here? Or is the massacre at Fort Mill going to continue to play out in county after county after county until they're all too expensive for a young buyer to even think about the American Dream? Then, why bother with the great schools?

Sent from my iPhone

Steve Leach
Division President
919-397-6841

IMG [HEIGHT: 106px; WIDTH: 150px] [http://www.eastwoodhomes.com]

Joe Polite Vice President LandO 704-574-7877 | jpolite@eastwoodhomes.com Corporate Office | 2857 Westport Road, Charlotte, NC 28208

[EastwoodHomes.com](#)[Facebook](#)| [Twitter](#)| [Instagram](#)| [YouTube](#)

STATE OF SOUTH CAROLINA
YORK COUNTY

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2020-CP-46-02006

EASTWOOD CONSTRUCTION
PARTNERS, LLC, and EASTWOOD
DEVELOPMENT CORPORATION,

Plaintiffs,

v.

GHD BROOKS CREEK, AF-BROOKS
CREEK, LLC, GHD RIVER FALLS,
LLC, AF-RIVER FALLS, LLC,
GREENHAWK CORPORATION, INC.,
and TRI POINTE HOMES, INC.,

Defendants.

**EASTWOOD CONSTRUCTION
PARTNERS, LLC AND EASTWOOD
DEVELOPMENT CORPORATION'S
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO LIFT
AUTOMATIC STAY**

Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (“Plaintiffs” or “Eastwood”) offer this memorandum in opposition to Defendants’ motions to lift the automatic stays of the Court’s recent partial summary judgment Orders and cancel Eastwood’s *lis pendens* on the parcels at issue in this suit (the “Properties”).

I. INTRODUCTION

Defendants seek to lift the automatic stay of this Court’s Orders granting their partial summary judgment motions and immediate cancellation of Eastwood’s *lis pendens* on the Properties. If granted, and the parcels of land at issue in this case are sold during the pendency of Eastwood’s appeal, Eastwood will be deprived of its **only** remedy before its legal rights and claims are finally determined. *See Adams v. Willis*, 225 S.C. 518, 526, 83 S.E.2d 171, 175 (1954) (“When land is the subject matter of an agreement the jurisdiction of equity to enforce specific performance is undisputed, and does not depend on the inadequacy of the legal remedy in the particular case.”). By contrast, any compensable harm to Defendants from Eastwood’s appeal can be rectified at a

later time with the awarding of money damages, if needed. Regardless, Defendants urge the Court to ignore this fact and lift the automatic stay without offering any factual basis. In support of their positions, Defendants cite inapposite, nonbinding precedent. The Court should reject Defendants' attempt to end-run Plaintiffs' appellate rights.

II. RELEVANT BACKGROUND¹

The three critical facts for the purposes of Defendants' present motions are these: 1) this suit centers on two parcels of land to which Eastwood claims to have a legal right by virtue of a contract with the owner, Greenhawk,² and by virtue of partial performance of the contract; 2) Greenhawk is under contract to alienate and sell both Properties potentially as soon as the day the stay is lifted; and 3) Eastwood is presently appealing this Court's partial summary judgment Orders which, if enforced, would lift the *lis pendens* Eastwood filed to protect its disputed interest in the Properties.

A. GREENHAWK HAS ENTERED INTO CONTRACTS FOR SALE OF THE PROPERTIES AND IS PREPARED TO CLOSE THOSE SALES AS SOON AS THE STAY IS LIFTED.

Greenhawk is eager and prepared to sell both Properties as soon as the stay is lifted. If the Court lifts the automatic stay while Eastwood's appeal is pending, the Properties will be gone before Eastwood's appeal even starts.

¹ In the interest of brevity, Plaintiffs recite only the relevant facts. Plaintiffs incorporate the factual recitations from their memorandum in opposition to Defendants' Motions for Partial Summary Judgment.

² Eastwood will collectively refer to Defendants GHD Brooks Creek, AF-Brooks Creek, LLC, GHD River Falls, LLC, AF-River Falls, LLC, and Greenhawk Corporation, Inc. as "Greenhawk." Defendant TRI Pointe Homes will be referred to as "TRI Pointe."

The two Properties are located off of Gold Hill Road in Tega Cay. Eastwood claims it has a contract to purchase the property. One parcel was approximately 12 acres and the other is 51 acres. Compl., Ex. C. The Properties are within a few thousand feet of one another, and Eastwood considers them two parts of a single development project. Deposition of Joseph Polite, at 44:13–23, 45:5–12. The larger tract is known as River Falls, and the smaller tract is known as Brooks Springs.³ Eastwood claims it has an enforceable contract with Greenhawk for the purchase of both Properties based on agreements and conduct between Eastwood and Greenhawk over a multi-year period from 2013 through 2018. Pursuant to the contract, Greenhawk was to develop the Properties into residential subdivisions and sell finished lots to Eastwood on which it would construct single-family homes and townhomes.

After working in concert with Eastwood for years to develop the properties, Greenhawk abandoned Eastwood and made other plans. In 2019, as Greenhawk was completing the development of Brooks Springs, Greenhawk entered into a contract with TRI Pointe to sell the 51 Brooks Springs lots. See Contract between GHD-Brooks Creek and TRI Pointe dated August 12, 2019. On May 11, 2020, before Eastwood became aware of the TRI Pointe contract, Greenhawk sold 13 of the 51 lots to TRI Pointe. On June 11, 2020, Eastwood filed a *lis pendens* on the Brooks Creek property incident to the filing of this lawsuit. That *lis pendens* has prevented Greenhawk from transferring the remaining lots to TRI Pointe while this action is litigated to conclusion.⁴

³ “Brooks Springs” was first named “Brooks Creek” before the name was changed. TRI Pointe now refers to the site as “Ashburn.” Eastwood will refer to this site as “Brooks Springs.”

⁴ TRI Pointe previously filed cross-claims against Greenhawk for breach of the contract to sell lots. That claims was voluntarily dismissed without prejudice based upon an agreement with Greenhawk.

Long after this lawsuit was initiated, and after *lis pendens* was on file, on February 22, 2021, Greenhawk entered into a contract with Taylor Morrison of Carolinas, Inc. to sell it the River Falls Property in its undeveloped state. See Greenhawk's Motion to Lift Stay, at 4. Taylor Morrison accepted the contract knowing there was a dispute about Greenhawk's ability to sell the River Falls Property. Ex. 2 to Eastwood's Br. in Opposition. Taylor Morrison is not a party to this action.

As evidenced by TRI Pointe's and Greenhawk's motion, both are eager to consummate the existing contracts. If the *lis pendens* is cancelled, nothing stops Greenhawk from executing deeds and transferring the Properties, eliminating Eastwood's rights to the Properties even if an appellate court or jury conclude Eastwood is entitled to them. The possibility of the Properties being sold is not merely speculative, but virtually assured.

B. NATURE OF EASTWOOD'S APPEAL.

Eastwood is appealing this Court's Orders granting Defendants' motions for partial summary judgment on the grounds that: 1) summary judgment was premature; 2) the record establishes genuine issues of material fact about the existence of a contract between Eastwood and Greenhawk; and 3) even on the disputed facts Defendants are not entitled to judgment as a matter of law.

Greenhawk and TRI Pointe filed motions for partial summary judgment seeking dismissal of Eastwood's claims for specific performance and all other claims directly affecting title to the Properties. Eastwood filed a brief in opposition to both motions, and the Court held a hearing on the motions on December 10, 2021. Eastwood objected to the motions as premature, arguing that Defendants were rushing the summary judgment process to consummate sale of the Properties Eastwood claims it is entitled to purchase before Eastwood—the party with the burden of proof—had completed discovery.

On January 14, 2022, the Court granted TRI Pointe’s motion in a written Order. Eastwood moved the Court to reconsider, and, on February 15, 2022, the Court denied Eastwood’s motion to reconsider the TRI Pointe Order. On February 15, 2022, the Court granted Greenhawk’s motion in a written Order. Eastwood moved the Court to reconsider, and, on March 8, 2022, the Court denied Eastwood’s motion to reconsider the Greenhawk Order. Eastwood timely appealed both Orders on March 11, 2022.

In the Orders—which were substantively identical—the Court did **not** find or hold that Eastwood’s claims were frivolous or legally impossible, only that, in the Court’s judgment, there were no genuine issues of material fact about the existence of a legally enforceable contract between Eastwood and Greenhawk entitling Eastwood to specific performance. Based on its determination that there were no genuine issues of fact, the Court concluded that Defendants were entitled to judgment as a matter of law and that the *lis pendens* on the Properties should be cancelled.

Eastwood has a right to appeal the Court’s partial summary judgment orders. SCACR 201; SCRCP 54(b). Eastwood filed its notices of appeal on March 11, 2022. The South Carolina Court of Appeals consolidated the appeals, and Eastwood’s opening brief is not due until May 11, 2022. It is therefore unlikely that the appeal will be fully briefed until August 2022.

C. IF THE STAY IS LIFTED, EASTWOOD’S ONLY REMEDY FOR ITS SPECIFIC PERFORMANCE CLAIM WILL BE DENIED BEFORE EASTWOOD’S APPEAL IS COMPLETE.

If the Court grants Defendants’ requests to lift the automatic stay, it will not matter if the South Carolina Court of Appeals later agrees with Eastwood and disagrees with this Court, because the *only* remedy for Eastwood’s specific performance claim—the Properties themselves—will be unavailable. Greenhawk will sell the Properties soon after the stay is lifted and long before

Eastwood has had the chance to exercise its legal rights. This unacceptable situation is barred by statute, rule, and case law.

III. ARGUMENT

If the Court grants Defendants' motions, Eastwood will be left without a remedy for its most important claim: specific performance of its contract with Greenhawk for the sale of the Properties. Statutes, rules, and case law all direct the Court to decline the drastic requests Defendants make. Defendants, in contrast, cite inapposite and nonbinding precedent in an attempt to persuade the Court to ignore the enormous weight of authority to the contrary.

A. THE AUTOMATIC STAY IN CASES INVOLVING LAND EXISTS TO PRESERVE THE REMEDY PENDING APPEAL.

Defendants ask the Court to alter the status quo at the beginning of Eastwood's appeal so it can eviscerate and nullify Eastwood's appeal. The Court should deny the request.

1. Statutes and Case Law Support Maintaining the Stay as a Way to Protect the Status Quo During Eastwood's Appeal.

"As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." SCACR 241(a). "[T]he cancellation of a notice of *lis pendens* is directly appealable under § 14-3-330." *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986) ("*Lebovitz I*"). "Because the order cancelling the notices of *lis pendens* is appealable, the appeal acts as an automatic stay of further proceedings upon the order." *Id.* (citing Supreme Court Rule 41, § 1(A)); *see also* S.C. Code Ann. § 18-9-220 ("In cases not provided for in Sections 18-9-130 and 18-9-150 to 18-9-180, the notice of appeal shall stay proceedings in the court below upon the judgment appealed from . . .").

An appellee may move for a lift of the automatic stay only under certain circumstances: the “court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” SCACR 241(c)(2). Defendants do not contend that lifting the stay is necessary to protect jurisdiction, but instead claim that it is necessary to prevent the Court’s partial summary judgment Orders from becoming moot. However, Defendants offer no explanation as to how retaining the stay would in any way moot the Court’s Orders. In fact, Defendants have the situation backwards—lifting the stay will moot Eastwood’s appeal and its specific performance claim. Maintaining the stay merely delays Defendants.

The South Carolina Court of Appeals previously addressed a case almost identical to the present suit, *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002). In that case, both the Court of Appeals and Supreme Court concluded that the stay should remain in place in a real property dispute until the matter was fully and finally resolved, including resolution of the appeal. That case demonstrates the propriety of maintaining the stay during the pendency of Eastwood’s appeal and denying Defendants’ Motions.

In *Pond Place*, a group of homeowners in a subdivision brought a declaratory judgment action against their fellow subdivision lot owners and other entities to void an amendment to restrictive covenants. *Id.* at 7, 567 S.E.2d at 884. The amendment reduced the minimum lot size from five acres to one acre and therefore would allow owners to subdivide their lots and sell the new, smaller lots, to others. *Id.* Incidental to the lawsuit, the group of homeowners also filed a *lis pendens* on the subdivision. *Id.* at 8–9, 567 S.E.2d at 885. The lot owners filed counterclaims for slander of title and frivolous civil action.

The lot owners moved for summary judgment on the homeowner group’s declaratory judgment claim. The Circuit Court granted the motion, and the homeowners appealed. While the appeal was pending:

[The lot owners] applied to the Circuit Court to have the automatic stay lifted, which would **“allow[] them to freely alienate their property during the pendency of the appeal . . . or, alternatively, “require the appellants to post sufficient bond to compensate defendants for any economic damages which they might suffer if they cannot sell the property during the automatic stay, yet ultimately prevail on the appeal.”**

Pond Place, 351 S.C. at 10–11, 567 S.E.2d at 886 (emphasis added). The circuit court denied the request to lift the stay and to require a bond “because neither of the counterclaims had yet been addressed by the court and, in his discretion, the judge did not ‘find bond appropriate in this case.’”

Id. at 10–11, 567 S.E.2d at 886. After the circuit court declined to lift the stay,

[The lot owners] moved for reconsideration of this order because the “stay imposed by the Appeal . . . to the Court of Appeals **effectively enjoins these Defendants from freely selling their land.**” The court disagreed and denied [the lot owners’] motion for reconsideration; however, it granted leave to petition the appellate court for supersedeas. On October 13, 1995, the South Carolina Supreme Court filed its order **refusing** to lift the automatic stay or require a bond.

Id. at 11, 567 S.E.2d at 886 (emphasis added) (alterations in original). Ultimately, the Court of Appeals affirmed the circuit court’s summary judgment order, resulting in the stay being lifted after all appeals had been exhausted. Nevertheless, on the subsequent appeal of the slander of title claims, the Court of Appeals reemphasized the propriety of the stay during the pendency of the original appeal:

not[ing] our Supreme Court inherently agrees with this holding [that the filing of a lis pendens was authorized] in that it refused to dissolve the lis pendens **before a full adjudication of the declaratory judgment action was completed.**

Id. at 29, 567 S.E.2d at 896 (emphasis added).

The lot owners raised the exact same arguments that Defendants now raise in a case with almost the exact same posture—the circuit court, the Court of Appeals, and the Supreme Court all rejected those arguments. This Court should do the same.

2. Greenhawk’s Claimed Desire to Alienate the Properties Does Not Overcome Eastwood’s Right to Pursue Its Appeal.

Defendants’ only argument, under SCAR 421(c), is that maintaining the stay moots the Court’s partial summary judgment Orders. In addition to the logical fallacy of the argument, *Pond Place* likewise demonstrates the error of that position.

The procedural and substantive posture of this case and *Pond Place* are identical. As in *Pond Place*, the summary judgment orders did not resolve all the claims in the suit. Likewise there are still outstanding claims and counterclaims that are unresolved. Thus, even if Eastwood’s appeal is not successful, as in *Pond Place*, the maintenance of the stay would still be proper until it is concluded.

Common sense also reveals the fallacy in Defendants’ mootness argument. Defendants do not explain how failing to lift the stay would render their desired remedy “moot.” Greenhawk owns the Properties. If Eastwood’s appeal fails, Greenhawk will still own the Properties and will be free to consummate the contracts for sale of the Properties by selling lots in Brooks Springs to TRI Pointe and the River Falls property to Taylor Morrison. The ability to alienate and sell the Properties is not mooted by maintaining the stay.

By contrast, ***lifting the stay*** would moot Eastwood’s specific performance claim, because it is Eastwood who would lose the right to specific performance, likely before its appeal is even briefed, let alone decided. Eastwood’s appeal presents multiple grounds for reversal, and none of the grounds are futile as a matter of law.

Greenhawk and TRI Pointe’s argument for lifting the automatic stay is not really about mootness, but instead it is about delay—that Greenhawk should be allowed to sell the Properties now and not have to wait for this Court’s order to be reviewed on appeal. As *Pond Place* clearly demonstrates, Defendants’ desire for the prompt ability to alienate the Properties does not equate to mootness.

Further, SCAR 241(c) requires a party seeking to lift the stay to show that maintaining the stay will cause a “contested issue” to become moot. Defendants’ focus on exercising its property rights should the appeal be unsuccessful does not demonstrate how the contested issue will become moot if the stay is maintained. Rather, because the “contested issue” here is whether Eastwood is entitled to the Properties, lifting the stay would actually moot that issue. That result would be directly contrary to the language and intent of SCAR 241(c).

Defendants have therefore failed to establish that the contested issue will become moot if the stay is not lifted. The Motions should be denied.

B. THE CASES CITED BY THE DEFENDANTS STAND FOR THE PROPOSITION THAT ONLY WHEN A PLAINTIFF’S CLAIM IS A CLEAR, LEGAL IMPOSSIBILITY SHOULD THE STAY BE LIFTED.

The authorities cited by Defendants are inapposite, distinguishable, and one is nonbinding. This is in stark contrast to *Pond Place*, which is almost precisely on point.

Indeed, it is notable that Defendants can cite only two cases to support its arguments. There are approximately 214 South Carolina appellate cases where a *lis pendens* was involved.⁵ In only two of those cases was the stay lifted, the two cited by Defendants. However, the common thread

⁵ This number is reached by searching Westlaw for South Carolina authority for “lis pendens” and then filtering by appellate courts.

in both of those cases is that the courts were faced with situations where the plaintiffs' claims were legal impossibilities; the facts were largely immaterial to the ultimate conclusions. See *Lebovitz v. Mudd*, 293 S.C. 49, 54, 358 S.E.2d 698, 701 (1987) ("*Lebovitz II*") (dismissing fraudulent conveyance claim on plain reading of statute); *Carolina Park Associates, LLC v. Marino*, No. 2010-CP-10-6042, 2011 WL 9369844 (S.C. Com. Pl. June 27, 2011) (dismissing a collateral attack on foreclosure sale). In other words, there is no authority for lifting the stay in the present suit where Eastwood's specific performance claim has not been declared a legal impossibility. In fact, the Court of Appeals has specifically recognized that a *lis pendens* is proper and appropriate where the claim at issue is one for specific performance. *Pond Place*, 351 S.C. at 18, 567 S.E.2d at 890 (citing *Panfel v. Boyd*, 187 Ga. App. 639, 371 S.E.2d 222 (1988); *Hauptman v. Edwards, Inc.*, 170 Mont. 310, 553 P.2d 975 (1976); *Wendy's of South Jersey v. Blanchard Mgmt. Corp. of N.J.*, 170 N.J. Super. 491, 406 A.2d 1337 (Ch. Div. 1979)). Lifting the stay in this case would be contrary to long standing, established precedent.

Carolina Park demonstrates the rare circumstances under which lifting the automatic stay might be appropriate. In *Carolina Park*, plaintiffs brought suit after a foreclosure sale of the property in question, a foreclosure sale that plaintiffs failed to contest. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 5, 732 S.E.2d 876, 878 (2012).⁶ After summary judgment was granted on plaintiffs' constructive trust claims, defendants then moved the circuit court to lift the automatic stay and cancel the *lis pendens*. See generally *Carolina Park*, 2011 WL 9369844 (trial court order). The circuit court granted defendants' motion and lifted the stay, reasoning that:

[s]ince the foreclosure extinguished all of CPA's legal and equitable right, title, and interest in and to the subject property, CPA cannot now legitimately maintain

⁶ Though the South Carolina Supreme Court issued an opinion in the *Carolina Park* case, that opinion did not address the trial court's decision to lift the automatic stay and cancel the *lis pendens*, the proposition for which Defendants cite the case.

“an action affecting the title to real property” as a matter of law, including a constructive trust claim. CPA did not appeal the foreclosure decree and final order. Any effort by CPA to roll back the title of the subject real estate ***is a collateral attack on the foreclosure and an assertion of a legal or equitable right to the property, both of which are statutorily barred.***

Id. (emphasis added). Since ownership of the property in question could not “be challenged under clear statutory law,” the court lifted the stay and extinguished the *lis pendens*. *Id.*

Here, this Court has ruled that there is no genuine dispute of material fact entitling Eastwood to specific performance by Greenhawk, and Greenhawk and TRI Pointe are entitled to judgment as a matter of law. This is a different species of conclusion from that in *Carolina Park*. Whereas the court in *Carolina Park* identified clear, statutory barriers to those plaintiffs’ claims, in this case the Court has ruled that the record does not present a genuine dispute of material fact. The latter conclusion is one of degrees, and one about which reasonable minds may differ. Defendants would like to stretch the Court’s partial summary judgment Orders beyond the legal conclusions actually reached and convert them into declarations about the legal futility of Eastwood’s claims, but this Court’s Orders do not reach so far.

Furthermore, the situation in *Carolina Park* was not going to lead to a change in ownership of the property at issue, because Defendants were going to develop the land they already owned. Here, by contrast, Greenhawk is already under contract to convey the Properties for development by other entities, one of which is a nonparty.

The resolution of Eastwood’s claim to specific performance is not a question of clear statutory law. This Court has ruled only that there is no genuine issue of material fact and, based on these facts, Defendants are entitled to judgment as a matter of law. Eastwood has contested both the propriety of the timing of the Court’s Order, the finding that there were genuine issues of material fact, and the legal conclusions that result from those findings. Reasonable minds may

differ. If they do, but the Court lifts the stay, Eastwood will be deprived of its **only** remedy and, for all intents and purposes, its appellate rights.

C. THERE IS NO BASIS TO REQUIRE A BOND FROM EASTWOOD.

Greenhawk also asks the Court, in the alternative to lifting the stay, to require a bond from Eastwood. Greenhawk offers no authority to support this request when, in fact, statute and common sense suggest it should be Defendants, not Eastwood, who provide a bond if the stay is lifted, because it is Defendants who seek to upset the status quo.

The statutes dealing with the payment of a bond reflect a desire to maintain the status quo during the pendency of an appeal. For example, Section 18-9-130 addresses a plaintiff's sale of a defendant's property during the pendency of the defendant's appeal:

A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed. The plaintiff in such a case may not proceed with a sale of defendant's property if the defendant enters into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.

S.C. Code Ann. § 18-9-130.

By contrast, the appellant is only required by statute to post a bond if the lower court's order specifically directs the sale of land that the appellant occupies. S.C. Code Ann. § 18-9-170. In those circumstances, the appellant is required to post the bond as an assurance that no waste or damage to the land will be committed during the pendency of the appeal.⁷

⁷ Of course, an order granting summary judgment on claims involving specific performance for the sale of land are not orders directing the sale of land. *Cf. C-Sculptures, LLC, No. 3 v. Brown*, 393 S.C. 27, 32, 709 S.E.2d 705, 708 (Ct. App. 2011).

These statutes, taken together, indicate a desire to preserve the status quo during the pendency of an appeal and protect the only resource that truly matters in cases involving real property: the land itself. Asking Eastwood to post a bond would turn this purpose on its head. It is **Greenhawk** who seeks to transfer the land.

Further, there is no method to determine a bond amount that Eastwood should pay, because Defendants cannot forecast any supposed damages with reasonable certainty. If the Court maintains the automatic stay and Greenhawk is prevented from selling the Properties during the appeal, there is no evidence that Defendants will suffer any damages other than the speculative assertion they will have delayed profits. To the extent those damages exist, they are small and uncertain. Finally, since Defendants' counterclaims for damages are still pending, Eastwood would essentially be providing a bond to secure an unresolved, still pending claims for damages.

For these reasons, Eastwood contends that a bond from Plaintiffs is improper.

IV. CONCLUSION

Eastwood respectfully asks the Court to deny Defendants' motions to lift the automatic stay and immediately cancel the lis pendens.

In the alternative, Eastwood requests that the Court delay the effectiveness of any order lifting the stay of its partial summary judgment Orders, or imposing a bond, in order to allow Eastwood to petition the South Carolina Court of Appeals under SCAR 241(d)(7). Further, Eastwood would request that the Court require Defendants to post a bond equal to two times the present appraised value of the Properties, in alignment with S.C. Code. Ann. § 18-9-130.

Respectfully submitted,

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Attorneys for Plaintiffs

West Columbia, South Carolina

March 31, 2022

STATE OF SOUTH CAROLINA

CONTRACT OF SALE

COUNTY OF YORK

THIS CONTRACT OF SALE (this "Contract"), dated August 12, 2019, is entered into between GHD-BROOKS CREEK, LLC, a North Carolina limited liability company ("Seller"); and TRI POINTE HOMES, INC., a Delaware corporation ("Buyer").

RECITALS

A. Seller is the fee simple owner of two adjacent parcels of real property, containing an aggregate of approximately 10.64 acres, and located at 1876 and 1876 Gold Hill Road, in the Town of Fort Mill, York County, South Carolina (the "Entire Parcel"). The Entire Parcel consists of York County Tax Parcels 6500000046 and 6500000049.

B. Seller and Buyer intend to develop the Entire Parcel as a townhome community (the "Project"). Seller has agreed to sell approximately fifty-eight (58) developed townhome lots within the Project (each a "Lot" and collectively, the "Lots") to Buyer, and Buyer has agreed to purchase the Lots, all upon the terms and conditions set forth in this Contract.

C. For purposes of this Contract, the term "Property" shall mean the following:

- The Lots, which will consist of all of the lots within the Project, and which will be developed and preliminarily platted by Seller in the manner provided in this Contract. The Lots are shown on the site plan attached to this Contract as Exhibit A (the "Site Plan"). The actual boundaries of the Lots shall be established by the subdivision plat to be prepared and recorded by Seller as provided in Paragraph 10 (the "Plat"). The form of the preliminary Plat is attached to this Contract as Exhibit B (the "Preliminary Plat").
- All other portions of the Entire Parcel located outside the boundaries of the Lots, as shown on the Plat, including any private streets, common open space areas, buffer areas or tree save areas (collectively, the "Common Areas").
- Any improvements located on the Entire Parcel, including but not limited to any utility lines, storm drainage facilities and similar site improvements installed by Seller as provided in Paragraph 10 (the "Improvements").
- Any easements and other rights and privileges appurtenant to the Entire Parcel (the "Appurtenances").
- Seller's interest in any development rights, licenses, permits, consents, zoning approvals, and authorizations with respect to the Entire Parcel issued by any governmental authority or utility service provider, including without limitation any willingness to serve, capacity, and/or other similar letters and/or documents from the local utility providers relating to the availability of any and all utilities that Seller is required to provide hereunder (the "Licenses and Permits").
- Seller's interest in any engineering plans and specifications prepared in connection with its development of the Entire Parcel (the "Development Plans"). Buyer shall review any existing Development Plans during the Inspection Period.

- Seller's interest in any studies, surveys, and reports (including, without limitation, marketing, engineering, soil, geotechnical, environmental, traffic studies, ALTA surveys, and reports) prepared or obtained by Seller in connection with its development of the Entire Parcel (the "Property Reports").

The Lots, the Common Areas, the Improvements and the Appurtenances are sometimes collectively referred to in this Contract as the "Real Property."

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of an initial earnest money deposit (the "Deposit") in the amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00), to be paid in cash by Buyer to Chicago Title Insurance Company (the "Escrow Agent") within ten (10) days after the date of complete execution of this Contract (the "Effective Date"), Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth in this Contract.

1. **Purchase Price.** The purchase price payable for each Lot (the "Purchase Price") shall be Seventy-Six Thousand and No/100 Dollars (\$76,000.00). Assuming that the Plat reflects the anticipated fifty-eight (58) Lots, even though all Lots may not be finally subdivided on the Plat, the Purchase Price shall be Four Million Four Hundred Eight Thousand and No/100 Dollars (\$4,408,000.00). There shall be no additional Purchase Price payable for the Common Areas. The Purchase Price shall be payable as follows:

(a) The Deposit shall be applied in reduction of the Purchase Price.

(b) The balance of the Purchase Price shall be payable by wire transfer in immediately available federal funds at the Closing.

2. **Due Diligence.** Seller previously has delivered, or shall deliver within five (5) business days after the Effective Date, to Buyer true copies of any of the following items (the "Due Diligence Items") that are in Seller's possession or control:

(a) The most-current owner's policies of title insurance covering the Entire Parcel.

(b) The Licenses and Permits.

(c) The Development Plans.

(d) The Property Reports.

The Due Diligence Items are being delivered to Buyer for informational purposes, and Seller makes no representations or warranties of any kind regarding these materials, except as expressly set forth in this Contract. As Seller continues its planning of the development of the Property, Seller shall promptly deliver copies to Buyer of reports, recommendations, surveys, title commitments, plans and similar matters as and when they are received by Seller, and all such items shall be considered part of the Due Diligence Items.

At any time prior to the Closing Date (as defined in Paragraph 3), Buyer and its agents and representatives shall have the right to go on the Real Property for the purpose of conducting surveys, phase I environmental site assessments and other investigations, and undertaking such other activities as

are appropriate to planning the construction and sale of homes on the Lots; provided, however, that Buyer shall not undertake a phase II environmental site assessment or any other invasive testing without the prior written consent of Seller, which shall not be unreasonably withheld, delayed or conditioned. For avoidance of any doubt, it shall be unreasonable for Seller to withhold, delay, or condition its approval of a phase II environmental site assessment if Buyer's phase I environmental site assessment recommends the same. The results of all surveys, phase I environmental site assessments, and other investigations of the Real Property undertaken by Buyer shall not be disclosed to any third party or governmental entity without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned, or delayed, unless such disclosure is required by law or is required in connection with obtaining any necessary permits or approvals; provided, however, that Buyer shall be permitted to disclose such results to its design professionals, consultants, attorneys, and potential lenders and investors, provided that such parties have been advised of the foregoing confidentiality obligation.

Buyer indemnifies and holds Seller and its managers, officers, employees, agents, members, guests and other invitees (collectively, the "Seller Parties") harmless from any claims, damages or liability (including reasonable attorneys' fees) to the extent resulting from or relating to Buyer's exercise of its right of entry on the Real Property ("Claims"), provided (i) such Claims are not caused by any act or omission of any of the Seller Parties; (ii) such Claims are not due to the discovery by Buyer of latent defects on the Real Property; (iii) such Claims are not related to the diminution in value of the Property arising from or relating to matters discovered by Buyer during its investigation of the Property; or (iv) such Claims are not due to the release or spread of any Hazardous Substances or Wastes (as defined in Paragraph 14) which are discovered (but not deposited) on or under the Real Property by Buyer; and provided further that Seller notifies Buyer of such Claims within one year following the earlier of the last Closing date or the date on which this Contract is terminated. Further, Buyer shall repair any damage to the Real Property resulting from or relating to Buyer's exercise of its right of entry, to the extent reasonably practical. This indemnity and repair obligation shall survive the termination of this Contract.

Any reports, recommendations, surveys, title commitments, plans or similar matters that Buyer receives from environmental consultants, civil and other engineers, surveyors, appraisers, geologists and other third-party experts with whom Buyer has contracted to investigate the Real Property are collectively referred to in this Contract as the "Buyer Due Diligence Items." If this Contract is terminated by either party, other than as a result of a default by Seller, then Buyer shall, within ten (10) days after the termination date: (a) return to Seller all Due Diligence Items it has received from Seller, and (b) deliver to Seller true copies of all Buyer Due Diligence Items that are not confidential or proprietary to Buyer and were obtained by Buyer prior to termination, all without any representations or warranties of any kind as to such Buyer Due Diligence Items.

3. Closing. The closing of the purchase and sale of the Property (the "Closing") shall occur in the offices of Buyer's attorney, or through an escrow closing arrangement as described in Paragraph 4, on a date (the "Closing Date") determined as follows:

(a) During the period (the "Inspection Period") beginning on the Effective Date and ending on the date forty-five (45) days after the Effective Date, Buyer shall: (1) use commercially reasonable efforts to obtain the written approval of the purchase of the Lots, on the terms set forth in this Contract, by its corporate investment committee, (2) investigate the Property as provided in Paragraph 2, and determine the satisfaction, in its sole and absolute discretion, of the conditions precedent set forth in this Contract, provided, however, such final determination shall remain subject to Buyer's right to later (i) update its title examination and obtain the Lot Survey (as set forth in Paragraphs 7 and 8) and (ii) conduct its pre-closing inspection of each Lot (as set forth in Paragraph 10), and (3) otherwise make a determination, in its sole and absolute discretion, as to whether it desires to proceed with the purchase of the

Property. Unless Buyer delivers written notice to Seller (a "Continuation Notice"), prior to the expiration of the Inspection Period, that Buyer has obtained committee approval and is satisfied, in its sole and absolute discretion, with its investigations of the Property, then this Contract shall terminate automatically on the last day of the Inspection Period and the Deposit shall be returned promptly to Buyer. Upon termination under this Paragraph 3(a), this Contract shall be null and void, except for the indemnification obligations of Buyer and Seller under Paragraph 17, the indemnification and other obligations of Buyer under Paragraph 2 and all representations, warranties, obligations and other matters that survive the Closings or earlier termination of this Contract as expressly set forth herein (collectively, the "Surviving Obligations").

(b) If this Contract is not terminated as provided in Paragraph 3(a), then, following the expiration of the Inspection Period, the Deposit shall be non-refundable (except as expressly provided in Paragraphs 7, 8, 9, 10, 13, 14, 19, or elsewhere in this Contract), but shall be applicable against the Purchase Price payable by Buyer for the Lots at the Closing in the manner provided in Paragraph 1(a).

(c) The Closing shall occur on a date selected by the parties, no later than ten (10) days after the Development Completion Date (as defined in Paragraph 10).

4. **Closing Documents.** At the Closing, Seller shall execute and deliver to Buyer the following documents (the "Closing Documents"):

(a) A limited warranty deed (the "Deed"), conveying valid, insurable (at regular title insurance rates), marketable and indefeasible fee simple title to the Lots and the Common Areas, free and clear of all liens and encumbrances except the following items (collectively referred to as the "Permitted Exceptions"): (1) ad valorem real property taxes for the calendar year of sale (to be prorated as of the Closing Date), (2) municipal, zoning and subdivision laws and ordinances, (3) rights-of-way of public streets and other matters shown on the Plat, (4) matters disclosed on the Lot Surveys obtained by Buyer under Paragraph 8 that are not objected to in a timely manner by Buyer under Paragraph 8 (or, if Buyer fails to obtain Lot Surveys, matters which would be disclosed by an accurate survey of the Real Property), (5) commercially reasonable and customary utility service easements to the appropriate utility providers in connection with the performance of the Seller Site Work, at locations that do not limit or restrict Buyer's ability, or increase Buyer's cost, to construct townhomes on the Lots in accordance with Buyer's preferred architectural plans (the "Prototype Plans"), and (6) other matters of record that are not objected to in a timely manner by Buyer under Paragraph 7, except for any Monetary Encumbrances.

(b) An owner's affidavit in form reasonably acceptable to Buyer and Buyer's title insurer affirming that there are no outstanding possessory rights, liens or rights to claim liens against the Real Property, including without limitation mechanics liens, and any other affidavits or waivers of lien rights reasonably required by Buyer's title insurer.

(c) An affidavit in a form complying with law that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act.

(d) Information sufficient for the closing agent to prepare an IRS Form 1099.

(e) A general non-warranty assignment transferring to Buyer all of Seller's right, title and interest, if any, in the Licenses and Permits, the Development Plans and the Property Reports, as they relate to the Lots and the Common Areas.

(f) If applicable, an assignment of Seller's rights under any lease or similar agreement with York Electric relating to the street lights within the Project (the "Street Light Lease"). Prior to entering into a Street Light Lease, Seller shall obtain Buyer's approval for the type of street lights to be provided by York Electric, such approval not to be unreasonably withheld, conditioned, or delayed.

(g) A statement from Seller certifying that all of the representations and warranties contained in Paragraph 14 of this Contract are true and correct as of the Closing Date.

(h) A closing statement reflecting the Purchase Price and all adjustments, prorations and credits thereto, and such disbursements as the parties wish to reflect thereon in connection with the transaction contemplated hereby (the "Closing Statement").

(i) Resolutions, incumbency certificates and such other documentation as may be reasonably required by Buyer's title insurer to confirm Seller's due organization and valid existence in North Carolina, authority to conduct business in South Carolina, and the authority of the designated representatives of Seller to execute and deliver the Closing Documents.

(j) An affidavit of no change with respect to the Plat, if required by Buyer's title company (the "Title Company") to issue a title policy without exception for matters of survey.

(k) Evidence satisfactory to the Title Company that all taxes have been paid to the South Carolina Department of Revenue pursuant to S.C. Code Section 12-54-124 or said taxes are inapplicable (receipt of Transferor Affidavit form promulgated by the SC Department of Revenue may be used to satisfy this requirement).

(l) Evidence satisfactory to the Title Company that all taxes have been withheld and paid to the South Carolina Tax Commission in accordance with South Carolina Code Section 12-8-580 and other as amended (receipt of a Seller's Withholding Affidavit may be used to satisfy this requirement).

At Closing, Buyer shall execute and deliver to Seller the following items:

(a) If applicable, an assumption of Seller's obligations under the Street Light Lease.

(b) The Closing Statement.

(c) Resolutions, incumbency certificates and such other documentation as may be reasonably required by Seller to confirm Buyer's due organization and valid existence in Delaware, authority to conduct business in South Carolina, and the authority of the designated representatives of Buyer to execute and deliver the Closing Documents to which Buyer is a party.

The sale of the Property may be closed into escrow with the Escrow Agent on terms acceptable to the parties and customary for similar closings in South Carolina, it being understood that neither Buyer nor Seller nor their respective counsel need be physically present at the Closing, so long as (1) all Closing Documents are fully executed, delivered in escrow and available to be recorded (if applicable) on or before the Closing Date, and (2) all necessary Closing funds are transferred to the Escrow Agent on or before the Closing Date.

Seller shall deliver exclusive possession of the Real Property on the Closing Date.

5. **Closing Expenses.** Each party shall be responsible for the following closing expenses:

(a) Seller shall be responsible for: (1) the cost of preparing the Deed, (2) the payment of the revenue stamps on the Deed, (3) the cost of curing any title defects that Seller is obligated to cure under Paragraph 7, including the cost of preparing and recording the relocated Emergency Access Easement, (4) the cost of curing any Lot Survey Defects that Seller is obligated to cure under Paragraph 8, (5) the cost of preparing and recording the Plat, (6) any brokerage commissions payable under Paragraph 17, and (7) one-half of any fees and expenses charged by the Escrow Agent for its services as closing escrow agent.

(b) Buyer shall be responsible for: (1) all other recording costs not covered in Paragraph 5(a), (2) the cost of its title examination, (3) any title insurance premiums, (4) the cost of the Lot Surveys (if any), (5) the cost of all other due diligence investigations, (6) all costs of applying for and obtaining any building permits for the Lots being acquired by Buyer, and (7) one-half of any fees and expenses charged by the Escrow Agent for its services as closing escrow agent.

(c) The parties will each be responsible for all of their other closing costs, including their respective attorneys' fees.

6. **Property Taxes and Assessments.** City and/or County ad valorem taxes on the Real Property for the year in which the Closing Date occurs shall be prorated to the applicable Closing Date on a calendar year basis, and Buyer shall assume the responsibility of paying those taxes when the tax bill is submitted. If the actual amount of those taxes and assessments is not known on the Closing Date, they shall be prorated on the basis of the amount of taxes and assessments payable for prior year, and shall be adjusted between the parties when the actual amount of taxes and assessments payable in the year of Closing is known to Buyer and Seller. All personal property taxes and any special assessments or roll-back taxes against the Property shall be paid by Seller on or prior to the Closing Date. The provisions of this Paragraph 6 shall survive Closing.

7. **Title Defects.** On or before the expiration of the Inspection Period, Buyer shall obtain and deliver to Seller a title insurance commitment covering the Real Property (the "Title Commitment"), and shall deliver to Seller a written notice of any title and/or survey objections (the "Objection Notice"). If Buyer fails to deliver the Objection Notice in a timely manner, then Buyer shall be deemed to have accepted all matters of record as of the effective date of the title commitment (or, if Buyer has failed to obtain a title commitment, as of the last day of the Inspection Period), and all such matters shall be deemed Permitted Exceptions. Seller may remedy, or agree to remedy prior to the Closing, Buyer's title objections to the reasonable satisfaction of Buyer and its title insurer by delivering a notice to that effect (the "Objection Response") within five (5) business days after its receipt of the Objection Notice. Notwithstanding the foregoing, Buyer shall not be obligated to object to any title encumbrances that can be removed solely by the payment of money, such as, without limitation, deeds of trust or statutory liens (collectively, "Monetary Encumbrances"), and Seller shall convey title to the Lots free and clear of any such Monetary Encumbrances at the Closing.

If Seller does not timely deliver an Objection Response indicating that it will cure or remedy all of the title objections set forth in the Objection Notice, then Buyer, at its election, shall have the right either to: (a) proceed to Closing, in which case Buyer shall accept title to the Lots and the Common Areas subject to the objections that Seller has not agreed to cure or remedy (and such matters shall be deemed Permitted Exceptions); or (b) terminate this Contract by delivery of written notice to Seller within five (5) business days after its receipt of the Objection Response, or if no Objection Response has been given by Seller, within ten (10) business days after its delivery of the Objection Notice. In addition, if Seller

delivers an Objection Response but subsequently fails (despite the exercise of commercially reasonable good faith efforts) to cure or remedy all of the title objections that it had obligated itself to do so in the Objection Response, then Buyer, at its election, shall have the right either to: (a) proceed to Closing, in which case Buyer shall accept title to the Lots and the Common Areas subject to the objections that Seller has failed to cure or remedy (and such matters shall be deemed Permitted Exceptions); or (b) terminate this Contract by delivery of written notice to Seller on or before the date scheduled for the Closing. Upon any termination by Buyer under this paragraph, Buyer shall be entitled to receive the return of the Deposit, and the parties shall thereupon be released from any further liability or obligation under this Contract, except for the Surviving Obligations.

Except for: (1) the grant of commercially reasonable and customary utility service easements to the appropriate utility providers in connection with the performance of the Seller Site Work, at locations that do not limit or restrict Buyer's ability, or increase Buyer's cost, to construct townhomes on the Lots pursuant to the Prototype Plans, and (2) matters shown on the Plat, Seller shall cause no encumbrances or easements to be placed on or granted with respect to the Property, other than those existing as of the Effective Date, nor shall Seller allow any existing easement to be relocated, in each case without the prior written consent of Buyer. If any such encumbrances or easements arise prior to the Closing Date and Buyer objects, then Seller shall, at its sole expense, cure the objections on or before the Closing Date.

At any time after Buyer's delivery of its original Objection Notice, Buyer shall have the right to update the Title Commitment, and to supplement any Objection Notice previously delivered to Seller by delivering written notice to Seller of any new matters affecting the unsold Lots that were not reflected in a prior Title Commitment, but that are reflected in the updated Title Commitment. If Buyer delivers such a supplemental Objection Notice to Seller, the procedure set forth in this Paragraph 7 with respect to Seller's cure of such title objections shall be followed.

8. Lot Survey and Objection Rights. Notwithstanding anything to the contrary in this Contract but without limiting Buyer's rights and remedies if Seller fails to perform any of the Seller Site Work in accordance with this Contract, at least fifteen (15) days prior to the Closing Date, Seller shall provide Buyer with a copy of the Plat in its final form to be recorded or that has been recorded. Buyer may obtain and provide a survey of the Lots prepared by a South Carolina Registered Land Surveyor (the "Lot Survey"). The Lot Survey may include, without limitation, the spotting and location of all fences, drainage and utility easements (including, but not limited to those identified in the Objection Notice), public or private rights-of-way or center line locations, encroachments, building set back requirements of record or shown on the Plat, other easements, improvements constructed thereon, if any, and all other matters requested by Buyer or required by the applicable standards with respect to such Lot(s). The Lot Survey may also include a flood plain and wetland certification by the surveyor certifying the presence or absence of the same from any portion of a specific Lot. In the event the Lot Survey reflects easements, encroachments, overlaps, or other defects not contained in the Permitted Exceptions to title or shown on the Plat approved by Buyer (as to each Lot, the "Lot Survey Defects") and provided Buyer notifies Seller in writing of such Lot Survey Defects at least ten (10) days prior to the Closing Date under this Contract (each a "Survey Objection Notice"), then Seller shall, within five (5) days of Seller's receipt of the applicable Survey Objection Notice, provide notice to Buyer advising Buyer which, if any, of Buyer's objections in the Survey Objection Notice Seller elects to attempt to cure (the "Seller Survey Response"); it being understood that Seller shall have no obligation to cure any Lot Survey Defects. If Seller fails to deliver a Seller Survey Response within the required time frame, or delivers a notice indicating that it is unable or unwilling to cure or eliminate one or more of such Lot Survey Defects prior to the anticipated Closing Date, then Buyer may, at its option, elect to: (i) complete the applicable Closing, excluding any Lot upon which there are Lot Survey Defects, whereupon the parties shall amend this Contract to reflect the overall reduction in the number of the Lots comprising the Property by the removal of such Lot(s) affected by the uncured Lot Survey Defects, and other adjustments as are

appropriate as a result thereof, and proceed to Closing on the balance of the Lots to be conveyed at such Closing; or (ii) waive such Lot Survey Defects and proceed to Closing as otherwise required herein. Notwithstanding the foregoing, if such designated Lot Survey Defects affect more than twenty-five percent (25%) of the Lot(s) to be purchased under this Contract, Buyer may elect to terminate its obligation to purchase any Lot pursuant to the terms of this Contract by delivering written notice of such election to Seller, whereupon Escrow Agent shall immediately return to Buyer the Deposit, and the parties shall thereupon be released from any further liability or obligation under this Contract, except for the Surviving Obligations. Seller shall be obligated to remove all defects or objections that it agrees to cure in the Seller Survey Response.

9. **Conditions.** Buyer's obligations under this Contract shall be subject to the satisfaction of the following conditions on or before the applicable deadline set forth below (any of which conditions may be waived by Buyer by giving written notice of waiver to Seller):

(a) Prior to the expiration of the Inspection Period, Buyer shall be satisfied with the results of all of its investigations of the Property, including matters of title.

(b) Prior to the expiration of the Inspection Period, Buyer shall have reviewed and approved the most current Development Plans prepared by Seller. Following Buyer's approval of the Development Plans, Seller shall not modify any of the Development Plans in any manner without Buyer's prior consent, such consent not to be unreasonably withheld, conditioned, or delayed.

(c) As of the Closing Date, Seller shall have complied in all respects with its obligations under this Contract, including without limitation its obligations under Paragraph 10, and all representations and warranties of Seller set forth in this Contract shall continue to be accurate in all respects as of the Closing Date.

(d) As of the Closing Date, the condition of the Property shall not have materially changed between the expiration of the Inspection Period and the Closing Date, except as expressly provided in this Contract.

(e) As of the Closing Date, there shall be no general moratorium imposed by any governmental authority or utility supplier with respect to the issuance of plan approvals, building permits, certificates of occupancy, or sanitary sewer, water or electricity connections with respect to the Property.

(f) As of the Closing Date, there shall exist no condition relating to the Property, either on site or off site, that is not within the sole control and responsibility of Buyer, which would result in any governmental authority delaying or denying permits necessary for the construction, use or occupancy of townhomes on the Lots pursuant to the Prototype Plans when application is made therefor.

If any of the foregoing conditions have not been satisfied or waived by the applicable date for satisfaction of that condition, then Buyer shall have the right, exercisable by delivery of written notice to Seller on or before the applicable date, to either (i) terminate this Contract, and upon such termination, the Deposit shall be returned to Buyer and this Contract shall be deemed null and void, except for the Surviving Obligations, or (ii) extend the applicable date for satisfaction, as determined by Buyer in its sole discretion. If Buyer delivers the Continuation Notice, Buyer shall be deemed to have waived the conditions set forth in Paragraphs 9(a) through 9(d); subject, however, to Buyer's right to deliver an

additional Objection Notice as to new title and survey matters, as provided in Paragraph 7 and Paragraph 8.

10. **Seller's Subdivision and Development Obligations.** After the expiration of the Inspection Period, Seller agrees to perform the following obligations with respect to the Real Property (collectively, the "Seller Site Work"):

(a) Seller shall obtain approval from the appropriate governmental authorities for the recording of the Plat, which shall, among other things, establish the boundaries of each block of Lots comprising each separate building group within the Project, and Seller shall record the Plat. The Plat shall be consistent in all respects with the Site Plan and the Preliminary Plat. If Seller modifies the Preliminary Plat prior to Closing in any material respect, Seller shall give Buyer written notice of such modification, whereupon Buyer shall have ten (10) days to review and provide Seller with written notice evidencing Buyer's consent (which shall not be unreasonably withheld), or the specific reasons for withholding its consent to such modification (the "Plat Modification Notice"). If Buyer does not provide Seller with its Plat Modification Notice within said ten (10) day period, Buyer shall be deemed to have consented to the modification. Alternatively, if Buyer's Plat Modification Notice indicates that Buyer withholds its consent to the proposed modification to the Plat and Seller does not agree to revise such modification to Buyer's reasonable satisfaction, Buyer shall have the right to either (a) waive its objection to the modification; or (b) terminate this Contract by delivery of written notice to Seller, in which event Escrow Agent shall be automatically authorized to refund the Deposit to Buyer, and this Contract shall become null and void and of no further force or effect whatsoever, except for the Surviving Obligations. For avoidance of any doubt, any modification to an approved Preliminary Plat that (i) affects the Lot yield of the Property, (ii) changes the location, configuration and/or dimensions of any Lot(s) and/or any easement(s) shown thereon, and/or (iii) increases Buyer's cost in constructing homes on the applicable Lots pursuant to the Prototype Plans shall be deemed a material modification. The parties acknowledge that the Plat shall confirm the total number of Lots that may be created by Buyer. Seller shall be responsible for any bonds, letters of credit or similar forms of financial security, as well as any capacity or impact fees, that may be required by York County or the Town of Fort Mill as a condition to recording the Plat.

(b) Seller shall construct and pave all private streets and internal alleys within the Project as shown on the Site Plan and the Plat, including all pavement, curbs and gutters, street signs and traffic control signs necessary to provide access to the Lots, all in accordance with the Development Plans. For avoidance of any doubt, Seller shall also be responsible for placing the final lift of asphalt on such streets and alleys following the Closing. Seller also shall coordinate the installation of street lights with York Electric, and, if applicable, shall execute any Street Light Lease. Buyer shall be responsible for the installation of any common mailbox facilities, entry feature monument, all landscaping, sidewalks and street trees within the Project that are desired by Buyer, except that Seller shall be responsible for any sidewalks and street trees adjacent to the Common Areas. Following the Closing Date and subject to Seller's Warranty (defined herein), Buyer (or the Association) shall maintain and repair all improvements described in this Paragraph 10(b), unless damages are caused by Seller's agents, employees or contractors, in which case Seller shall be responsible for the repairs.

(c) Seller shall install, maintain, manage and remove (as required for temporary facilities) all storm water structures, pipes, silt fencing and erosion control facilities within the Entire Parcel, in accordance with the Development Plans, and the terms of any Land Disturbance Permit(s) to be issued by York County for the Project (the "Stormwater Permit"). Seller shall cause all such drainage and erosion control improvements to be completed in accordance with the

Stormwater Permit and all applicable laws, ordinances and regulations. Following the Closing Date and subject to Seller's Warranty (defined herein), Buyer (or the Association) shall maintain and repair all improvements described in this Paragraph 10(c), unless damages are caused by Seller's agents, employees or contractors, in which case, but only to the extent so caused, Seller shall be responsible for the repairs. Seller shall remove any temporary drainage or erosion control facilities at the earliest allowable date and shall grade and stabilize the affected area. At the time of the Closing, (i) Seller shall have delivered to Buyer as-built drawings which show that all storm water structures, pipes, silt fencing and erosion control facilities within the Entire Parcel have been installed in accordance with the Development Plans and the Stormwater Permit, (ii) Seller shall be in compliance with the applicable terms of the Stormwater Permit, including the establishment of a stormwater pollution prevention plan and all monitoring obligations; and (iii) all improvements described in this Paragraph 10(c) shall be clean and properly functioning with ample capacity. Notwithstanding anything in this Contract to the contrary, Seller is responsible for all permanent device conversions and all dedications, certifications and acceptance of permanent retention, detention or other storm water quality basins within the Project, the foregoing obligations to survive Closing. All plantings for Ecological Controls or Best Management Practices (BMP's) shall be installed by Seller once the upstream areas are permanently stabilized and at a time so as not to impact obtaining building permits or certificates of occupancy.

(d) Seller shall extend (or cause the appropriate public utility provider to extend) domestic water and sanitary sewer service to within five feet (5') of the boundary of each Lot, sized to meet existing building codes and sufficient for Buyer to obtain a building permit for each of the Lots shown on the Plat, all in accordance with the Development Plans. Such water and sanitary sewer lines shall be tested and approved by York County and ready for immediate activation upon payment by Buyer of the applicable meter fee(s). Buyer agrees pay all meter fees and similar charges necessary to activate the sanitary sewer and water lines for each Lot. Seller shall be responsible for paying fees related to the recordation of the plat.

(e) Seller shall coordinate with the appropriate utility service provider the installation of underground telephone, cable, electrical and natural gas utility services for each Lot. Seller shall ensure that such utility lines are in place and ready for connection on or before the Closing Date.

(f) Seller shall finish grade each Lot to within two-tenths of a foot ($2/10'$) (plus or minus) of the proposed elevations shown on the grading plan included as part of the Development Plans. Seller agrees to use suitable fill material, and all building pads within the Lots (with minimum dimensions as shown on the grading plan) shall be compacted to a minimum of 95% dry density in accordance with ASTM D698 Standard Proctor. Each Lot shall have a pad that is certified by a licensed geotechnical engineer approved in advance by Buyer to have adequate load bearing capacity to support a footing/foundation of the townhomes detailed on the Prototype Plans. In addition, Seller shall seed, and install and maintain silt fencing, on all disturbed areas within the Real Property.

(g) Seller shall install permanent corner markers at the corner of each Lot within the Project at the earliest practical time after final grading in accordance with the subdivision ordinance.

(h) Seller shall remove all existing debris and all construction debris resulting from Seller's site work obligations from the Real Property, or shall bury the same in accordance with

applicable ordinances, in a recorded burial pit location outside the boundaries of the Real Property.

(i) Seller shall ensure that no Lots are located within wetlands under the jurisdiction of the U. S. Army Corps of Engineers. Additionally, the building pads within all Lots shall be located completely outside a Special Flood Hazard Area, as shown on the flood plain maps prepared by FEMA.

Seller shall use commercially reasonable efforts to record the Plat and to complete the site work described in this Paragraph 10, other than items that are specified to be completed by Seller following the Closing, on or before November 1, , 2019 (the "Development Completion Deadline"). Seller shall notify Buyer in writing of the recordation of the Plat and the substantial completion of the site work described in this Paragraph 10. Such notice shall be accompanied by a certificate of substantial completion from LandDesign, Inc. (the "Project Engineer"). Following delivery of the notice of substantial completion, Seller shall afford Buyer an opportunity to examine the site work and cause the creation of a list of the work in place that does not fully comply with the Development Plans or the requirements of this Paragraph 10 (the "Deficiency List"). Buyer shall provide Seller a copy of the Deficiency List within ten (10) days after receiving the notice of substantial completion from Seller, and Seller shall complete each item on the Deficiency List within thirty (30) days after receiving the Deficiency List from Buyer. The date that Seller completes all items on the Deficiency List (as confirmed by both Seller and Buyer during a re-inspection of the Property conducted at a mutually convenient time) shall be deemed the "Development Completion Date" for the Project, for purposes of this Contract; provided, however, that if Buyer fails to deliver the Deficiency List, the Development Completion Date shall be deemed to be the day ten (10) days after Seller delivers the notice of substantial completion referenced above.

If the Development Completion Date has not occurred within thirty (30) days after the Development Completion Deadline set forth above, then in addition to the remedies set forth in Paragraph 19, Buyer shall have the right, exercisable by delivery of written notice to Seller on or before the occurrence of the Development Completion Date, to either (i) terminate this Contract, and upon such termination, the Deposit shall be promptly returned to Buyer and this Contract shall be deemed null and void, except for the Surviving Obligations, or (ii) extend the Development Completion Date, as determined by Buyer in its sole discretion.

11. **Warranty.** For the period set forth below, Seller warrants that all work, materials and improvements performed or to be performed under Paragraph 10 of this Contract shall be of good and workmanlike quality, free of defects, and compliant with all applicable plans, specifications and specific conditions required by this Agreement, and shall be in accordance with and acceptable under the rules, regulations, laws and ordinances of the applicable governmental authorities (the "Warranty"). The Warranty shall expire for all such work one (1) year from the Closing Date (the "Warranty Period"). Seller agrees to repair any breach of the Warranty of which it is notified in writing by Buyer during the Warranty Period, at no cost or expense to Buyer. The provisions of this Paragraph 11 shall not apply to soils conditions on the Lots, which shall be governed by Paragraph 12 below.

12. **Repurchase of Lots.** If, subsequent to the Closing, Buyer's tests reveal that the load bearing characteristics of the soil on any Lot, at the proposed footing subgrade, will not allow for the construction of a residential dwelling on that Lot pursuant to the Prototype Plans with footings at an average depth of 10" or less below the grade of that Lot existing at the time of the Closing, or if any Lot shall contain amounts of rock which will cause Buyer to incur additional expenses for unusual excavation for the construction of foundations or for the installation of utility lines, and the cost to remedy the applicable problem will exceed \$2,000.00, then Buyer shall notify Seller as soon as the problem is

identified and Seller shall investigate possible solutions. The parties acknowledge that soils that are excessively wet due to weather conditions, but otherwise compliant with the terms and conditions of this Contract, shall not be deemed unsuitable soils. Seller shall act diligently in seeking a solution to the soil deficiency or excavation issue, and within ten (10) days following notice from Buyer, Seller will either propose a solution or accept the recommendation of Buyer's engineer. If Seller and Buyer agree on a solution, then Seller shall undertake any required soil remediation and/or excavation work at Seller's expense and with all due diligence.

If Seller and Buyer (or the third engineer appointed as provided below) conclude that the soils are unsuitable, or that the applicable Lot contains rock which will require unusual excavation work as provided above, but are unable to agree on a remediation plan, then Seller shall, at its election, evidenced by written notice to Buyer within ten (10) days after Buyer rejects Seller's proposed solution (or, if later, within ten (10) days after the determination of the third engineer that the soils are unsuitable and/or that unusual excavation work is required), either: (a) reimburse Buyer, within ten (10) days after written demand and delivery of appropriate supporting documentation, for the difference between \$2,000.00 and the actual cost incurred by Buyer in pouring footings and/or the cost of excavating the applicable rock(s), or (b) repurchase the deficient Lot(s) from Buyer at the same purchase price that Buyer paid for such Lot(s) (with Seller paying all closing costs of such reconveyance[s]). If Seller elects to repurchase a Lot, then the closing of such repurchase shall occur within thirty (30) days after the end of such ten (10) day period, and Buyer shall convey such Lot to Seller by special warranty deed, free of any liens or encumbrances other than those encumbrances that were of record at the time that Buyer acquired such Lot from Seller. In addition, at the time of conveyance, Buyer shall have restored such Lot to grade, free of any construction material (above-ground or underground), and shall have re-seeded such Lot so as to prevent any erosion.

Notwithstanding the foregoing, Seller shall have no obligations under this Paragraph 12 if: (x) Seller's engineer determines that the soils are suitable for support of a footing as shown on the Prototype Plans at an average depth of 10" or less below the grade of that Lot and/or that the applicable Lot does not contain amounts of rock which will require unusual excavation costs as provided above and/or the cost to remedy the applicable problem will not exceed \$2,000.00, and such determination is resolved as provided below; (y) Buyer is in default of any of its obligations under this Contract beyond the applicable notice and cure period provided in Paragraph 19 below; or (z) Buyer does not notify Seller in writing of such soil unsuitability or excavation or rock issue on a given Lot on or before the earlier to occur of: (1) three (3) years after the Closing Date for that Lot, or (2) Buyer's commencement of construction of a slab, basement or crawl space on that Lot beyond excavation work. Notwithstanding the terms on subsection (x) above, if Buyer's engineer disputes Seller's engineer's determination that the soils on a given Lot are suitable and/or that the applicable Lot does not contain amounts of rock which will require unusual excavation costs, then the two engineers shall, upon request by either party, jointly select a third engineer to determine whether the soils are suitable for support of a footing as shown on the Prototype Plans at an average depth of 10" or less below the grade of that Lot and/or whether the applicable Lot contains amounts of rock which will require unusual excavation costs and/or whether the cost to remedy the applicable problem will exceed \$2,000.00, and the findings of the third engineer shall be binding on both parties. If the third engineer determines that the soils are suitable and/or that the applicable Lot does not contain rock which will cause unusual excavation for the construction of foundations or for the installation of utility lines, then Buyer shall pay for the cost of the third engineer. Likewise, if the third engineer determines that the soils are not suitable and/or that the applicable Lot contains amounts of rock which will require unusual excavation costs, then Seller shall pay for the cost of the third engineer. Seller's liability with respect to subsurface soil conditions on each Lot shall be limited to that expressly provided in this Paragraph 12.

13. **Condemnation.** If any taking pursuant to the power of eminent domain is threatened or occurs (a "Taking") as to all or any material portion of the Real Property and/or as to access to the Project from any adjoining street or road that, in Buyer's commercially reasonable judgment, materially and adversely affects Buyer's ability to market and sell Lots before the Closing Date, or a sale occurs in lieu thereof, Buyer may elect either to: (a) terminate this Contract by delivery of written notice of termination to Seller within thirty (30) days after written notice from Seller of the Taking; (b) proceed to the Closing, in which event all proceeds, awards and other payments arising from any such Taking or sale shall be assigned to and paid to Buyer, and without any adjustment of the Purchase Price, or (c) exclude from this Contract only such Lots as are affected by the Taking as is determined by Buyer, in its sole discretion and identified by written notice to Seller given not later than fifteen (15) days after receipt of Seller's notice of such Taking. In the event Buyer elects to proceed with the Closing as to any portion of the Real Property affected by the Taking, Buyer shall have the right, but not the obligation, to contest and negotiate the amount of money offered for such Taking as it relates to such portion of the Real Property, as well as any of the terms related thereto. If this Contract is terminated as the result of a Taking, then the Deposit shall be promptly returned to Buyer and neither party shall have any further rights or obligations to the other hereunder except for the Surviving Obligations. The dedication of any rights-of-way shown on any Plat approved by Buyer shall not be deemed a Taking that gives rise to any rights under this Paragraph 13.

14. **Representations and Warranties of Seller.** Seller represents and warrants to Buyer as follows:

(a) Seller is a limited liability company duly created and validly existing under the laws of the State of North Carolina and authorized to conduct business in South Carolina, and has all requisite power and authority to own the Property and to enter into this Contract and perform its obligations hereunder. The person executing this Contract is duly authorized to sign this Contract on behalf of Seller.

(b) The execution and performance of this Contract by Seller, and the Closing contemplated by this Contract, will not conflict with any provision of law applicable to Seller, nor will it result in the breach of any provision of, or constitute a default under, any agreement or instrument to which Seller is a party or by which Seller is bound.

(c) This Contract and the documents to be delivered by Seller at the Closing have been or will be duly authorized by all necessary company action on the part of Seller, and have been or will be duly executed and delivered by Seller.

(d) Except for Seller, there are no parties in possession or with any interest in the Property (marital, homestead, or otherwise), and no other signatures are required to make this Contract fully enforceable against Seller by Buyer.

(e) As of the Effective Date, Seller has not entered into any contract to sell any portion of the Real Property, and Seller shall not enter into any such contracts after the Effective Date.

(f) There are no unrecorded leases, maintenance agreements, brokerage agreements or other contracts affecting the Property in existence as of the Effective Date that will survive the Closing, and no such contracts will be in existence on the Closing Date except for matters (such as the Street Light Lease) expressly contemplated by this Contract.

(g) Except for matters reflected on the Plat, Seller has received no notice of administrative agency action, litigation, condemnation proceeding or proceeding of any kind pending against Seller which relates to or affects the Real Property, including any requests for public dedication or any proposed development moratoria, nor does Seller know of any basis for any such action. In the event Seller receives notice of any of the foregoing prior to the Closing, Seller shall promptly notify Buyer in writing.

(h) Seller has no knowledge of any pending application for changes in the zoning affecting the Real Property. After the Effective Date, Seller shall not enter into, apply for or consent to any rezoning, land use, or development restriction relating to the Real Property or any part thereof, except with Buyer's prior written consent, which consent may be granted or withheld in Buyer's sole discretion.

(i) Except as may be reflected in recorded instruments, Seller has made no commitments to any governmental authority, utility company, school board, church, religious body, homeowner's association, or other organization, group, or individual which would impose an obligation upon Buyer to construct any improvements, to make any contribution of money, to dedicate any land or to maintain any land or improvements.

(j) To the best of Seller's knowledge, except as may be disclosed in the Property Reports delivered to Buyer as part of the Due Diligence Items, (1) no areas on the Real Property exist where Hazardous Substances or Wastes have been generated, disposed of, released or found in violation of applicable Environmental Laws, (2) there are no storage tanks located on the Real Property, either above or below ground, (3) there are no cemeteries, graves, burial grounds or historic artifacts in any of the Lots, (4) the Real Property contains no threatened or endangered species, endangered or protected habitats or items of archaeological significance, as defined by applicable state and federal laws, (5) no portion of the Real Property has been used for a target range, bombing range, or otherwise exposed to ordinance of any kind, whether practice or real, (6) there are no wetlands or state jurisdictional waters located upon any Lot, and (7) the Real Property previously has not been used as a landfill or as a dump for garbage or refuse. Seller has received no notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of Environmental Laws affecting the Real Property, and Seller has no knowledge of any such violations. In the event Seller receives notice of the presence of any such Hazardous Substances or Wastes on the Real Property, or any such violations affecting the Real Property prior to the Closing, Seller shall promptly notify Buyer in writing. For purposes of this Paragraph 14(j), the term "Hazardous Substances or Wastes" means petroleum (including gasoline, crude oil or any crude oil fraction), waste, trash, garbage, industrial by-product, and chemical or hazardous substance of any nature, including, without limitation, radioactive materials, PCBs, asbestos, pesticides, herbicides, pesticide or herbicide containers, untreated sewage, industrial processed sludge and any other substance identified as a hazardous substance or waste, toxic substance or waste, pollutant or contaminant in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA") as amended, the Superfund Amendment and Reauthorization Act (commonly known as "SARA"), the Resource Conservation and Recovery Act (commonly known as "RCRA"), or any other Environmental Law applicable to the Property. For purposes of this Paragraph 14(j), the term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, rule, regulation, permit, directive, license, approval, guidance, interpretation, order, or other legal requirement relating to the protection of safety, human health or the environment (including CERCLA, SARA and RCRA).

(k) The use of the Lots for the construction of single-family residential dwellings in accordance with the Prototype Plans will not violate any private restrictions, zoning or other governmental ordinances or regulations.

References in this Paragraph 14 to the "knowledge" of Seller shall refer only to the current actual knowledge of the Designated Agent (defined below) of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of Seller, or any affiliate of Seller, or to any other member, manager, agent, representative or employee of Seller or any affiliate thereof, or to impose upon such Designated Agent any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "Designated Agent" shall refer to Craig Briner, who is most familiar with the Property and the Project. Seller represents and warrants to Buyer that there are no other members, managers, agents, representatives or employees of Seller or any affiliates thereof who have equal to or greater knowledge of and familiarity with the Property and Project than the Designated Agent.

Seller hereby agrees that the truthfulness of each of the foregoing representations and warranties, and of all other representations and warranties made in this Contract, as of the Effective Date and as of the Closing Date, is a condition precedent to the performance by Buyer of its obligations under this Contract. If any of the foregoing representations and warranties is of a material nature and is not true in any respect when made, or when re-certified at the Closing, Buyer may consider such misrepresentation to be a default under this Contract, entitling Buyer to pursue the remedies set forth in Paragraph 19; provided, however, that with respect to any representation or warranty made to the knowledge of Seller, Buyer shall be entitled to exercise default remedies only if such untruth was known to Seller at the time the representation or warranty was made (or re-certified). If any of the foregoing representations and warranties is true as of the Effective Date, but is not true as of the Closing Date as a result of a matter, circumstance or event beyond the reasonable control of Seller, Seller shall promptly, and prior to the Closing Date, provide written notice of such change to Buyer, in which event Buyer shall not be entitled to consider the untruth of the representation or warranty as an event of default under this Contract, but instead Buyer may, at its election and as its sole remedy, terminate this Contract by delivery of written notice to Seller, and in that event Buyer shall be entitled to a return of the Deposit.

The representations and warranties of Seller set forth in this Paragraph 14 shall survive the Closing for a period of one (1) year. If Buyer discovers after the Closing that any representation and warranty made by Seller that is of a material nature is not true in any material respect, Buyer shall have the right to pursue any available remedy against Seller, including the recovery of actual damages, but excluding any consequential damages. Notwithstanding the foregoing, no claim for a breach of any representation or warranty of Seller shall be actionable or payable: (x) if the breach in question results from or is based on a condition, state of facts or other matter of which Buyer had actual (as opposed to implied or constructive) knowledge prior to the Closing, (y) unless written notice containing a description of the specific nature of such breach shall have been given by Buyer to Seller within one (1) year after the Closing Date, and an action shall have been commenced by Buyer against Seller within sixty (60) days after the notice or within such one (1) year period, and (z) unless the valid claims for all such breaches collectively aggregate at least \$25,000.00.

15. **Property Purchased "AS IS"**. Except as expressly set forth in this Contract and the Closing Documents, the Property is being sold and conveyed "as is" and "with all faults" and Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning of the Real Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Buyer acknowledges that, except as expressly set forth in this Contract and the Closing

Documents, no such representations or warranties, express or implied, have been made. The terms and covenants of this Paragraph 15 shall survive the Closing or any earlier termination of this Contract.

16. **Survival.** The terms, covenants, conditions, representations, warranties and agreements of this Contract shall survive the Closing, except as otherwise expressly provided to the contrary in this Contract.

17. **Real Estate Commissions.** Buyer and Seller represent and warrant to each other that no brokers' or real estate commissions will be due as a result of the sale of the Property from their respective actions. Seller agrees to indemnify, defend and save harmless Buyer from and against any cost and expense (including reasonable attorneys' fees) incurred by Buyer as a result of the untruth of the foregoing representation by Seller, or any claims by a broker for payment of a commission by Buyer based upon the actions of Seller. Buyer agrees to indemnify, defend and save harmless the Seller from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller as a result of the untruth of the foregoing representation by Buyer, or any claims by a broker for payment of a commission by Seller based upon the actions of Buyer. The terms and covenants of this Paragraph 17 shall survive the Closing.

18. **Assignment.** Buyer shall have the right to assign this Contract, and its rights hereunder, without the necessity of obtaining the prior consent of Seller, only to: (a) any entity that is controlled by Buyer (including but not limited to a joint venture in which Buyer is, directly or indirectly, a manager or managing general partner), that controls Buyer or that is under common control with Buyer, or (b) to an entity which succeeds to Buyer in any merger or acquisition, or (c) a "Qualified Intermediary" to facilitate the completion of a tax-free exchange of properties by Buyer as contemplated in Paragraph 27. No other assignment of Buyer's rights under this Contract shall be permitted without first obtaining Seller's written consent, which may be granted, withheld or conditioned in Seller's sole discretion. In each instance, (x) Buyer's permitted assignee under this Paragraph 18 shall assume in writing all obligations of Buyer under this Contract and shall agree to execute all necessary documents which Buyer is obligated to execute pursuant to the terms and provisions of this Contract, provided, however, that in the event of an assignment by Buyer to a "Qualified Intermediary" that does not take title to the Property, the only obligation of Buyer that the Qualified Intermediary shall be obligated to assume is the obligation to pay the Purchase Price, (y) Seller shall receive a fully executed original of the instrument of assignment (which shall expressly state that Seller is a third-party beneficiary with respect to its terms and provisions), and (z) the party named in this Contract as "Buyer" shall continue to be primarily liable for all of Buyer's duties, obligations and liabilities under this Contract.

Seller shall not have the right to assign this Contract, and its rights hereunder, without the necessity of obtaining the prior consent of Buyer, which may be granted, withheld or conditioned in Buyer's sole discretion. In each instance, (x) Seller's permitted assignee under this Paragraph 18 (other than a lender under a collateral assignment) shall assume in writing all obligations of Seller under this Contract and shall agree to execute all necessary documents which Seller is obligated to execute pursuant to the terms and provisions of this Contract, (y) Buyer shall receive a fully executed original of the instrument of assignment (which shall expressly state that Buyer is a third-party beneficiary with respect to its terms and provisions), and (z) the party named in this Contract as "Seller" shall continue to be primarily liable for all of Seller's duties, obligations and liabilities under this Contract.

19. **Default.** If Buyer defaults in its obligations under this Contract for any reason except for a default by Seller, and fails to cure such default within twenty (20) days after written notice from Seller, then Seller shall be entitled to terminate this Contract by delivery of written notice to Buyer, and to receive and retain the Deposit as liquidated and agreed upon damages, as its sole and exclusive remedy against Buyer for Buyer's default. The parties agree that the Deposit is a fair and reasonable measure of

the damages to be suffered by Seller in the event of such default and that the exact amount thereof is incapable of ascertainment.

If Seller defaults in its obligations under this Contract for any reason except for a default by Buyer, then Buyer may, as Buyer's exclusive remedies against Seller for Seller's default, either: (a) terminate this Contract by delivery of written notice to Seller, in which event Buyer shall be entitled to the prompt return of the Deposit, and also to be reimbursed by Seller for the reasonable and documented out-of-pocket expenses incurred by Buyer in connection with this transaction, not to exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00), which shall be construed as full liquidated damages, and neither party shall have any further rights or obligations regarding this Contract other than the Surviving Obligations; (b) obtain specific performance of the obligations of Seller under this Contract (and if Buyer is successful in obtaining such specific performance, Seller agrees to indemnify Buyer for all Buyer's costs and expenses, including without limitation reasonable attorneys' fees and court costs, incurred in such action); or (c) if the default relates to the non-performance of any of Seller's Site Work obligations under Paragraph 10 that are specified in Buyer's notice of default, perform the obligations required of Seller hereunder and, thereafter, collect from Seller, upon demand, the commercially reasonable costs actually incurred in connection with the same.

The foregoing limitations of remedies and liquidated damages provisions shall not apply to: (a) the indemnities of both parties under Paragraph 17, (b) defaults by either party under the Closing Documents or as to obligations, representations or warranties that survive Closing, or (b) a default by Seller that prevents the remedy of specific performance from being fully enforceable by Buyer, in which event the non-defaulting party shall be entitled to pursue any and all remedies and damages available at law or in equity. Notwithstanding the foregoing, in no event shall either party be entitled to recover consequential, speculative, special or punitive damages in connection with the breach of any obligation under this Contract, except as expressly set forth in subsections (b) and (c) of the prior sentence.

20. **Time of the Essence.** Time shall be of the essence in the performance of all obligations under this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required under this Agreement must be performed, or by which Closing must be held, expires on a Saturday, Sunday or a holiday, then such time period shall be automatically extended to the next business day.

21. **Escrow of Earnest Money.** The Escrow Agent shall receive, hold and disburse the Deposit in accordance with the following terms and conditions:

(a) The Deposit shall be invested in Escrow Agent's trust account maintained by a national bank with an office in South Carolina, so as to provide availability of funds on no more than two days' notice.

(b) Escrow Agent shall be under no obligation to place the Deposit in a segregated or interest-bearing account, but if it so elects, any interest earned on the Deposit shall be reinvested for so long as the escrow shall continue, and shall be considered a part of the Deposit.

(c) In the event of a default by Buyer under the terms of this Contract beyond the expiration of any applicable notice and cure period, Escrow Agent is instructed to deliver the Deposit and all interest earned thereon to Seller.

(d) In the event of a default by Seller under the terms of this Contract, Escrow Agent is instructed to deliver the Deposit to Buyer.

(e) In the event of any other termination of this Contract, Escrow Agent is instructed to disburse the Deposit in accordance with the terms of this Contract.

(f) At the Closing, the Deposit shall be applied against the Purchase Price in the manner specified in Paragraph 1(a).

(g) Escrow Agent shall release the Deposit to Seller at the time of its acquisition of the Entire Parcel, in the manner provided in Paragraph 31, and following such release, Escrow Agent shall have no further liability under this Paragraph 21.

(h) Buyer and Seller agree that Escrow Agent shall not be liable for any reason except gross negligence or intentional misconduct.

(i) Escrow Agent shall comply with any specific terms contained in this Contract with respect to the disbursement of escrow funds. Any request for disbursement of the Deposit shall be signed by Buyer and Seller; provided, however, that if either party makes a written request for disbursement to Escrow Agent, with a copy to the other party, and the other party fails to object in writing within ten (10) days, the Escrow Agent shall be authorized to disburse the Deposit to the requesting party. Notwithstanding any provision in this Paragraph 21(i) to the contrary, Escrow Agent is authorized to disburse the Deposit in accordance with the order of judgment of a court of competent jurisdiction.

(j) In connection with this escrow, Buyer and Seller agree to execute such agreements as Escrow Agent may reasonably request. Failing such execution, Escrow Agent may decline to serve in such capacity, and Buyer and Seller shall select a substitute escrow agent by mutual consent.

(k) In the event of any dispute regarding the application of the Deposit, Escrow Agent shall be authorized to disburse the Deposit to a court of competent jurisdiction, to be held pending resolution of that dispute.

(l) If Escrow Agent is required to institute or participate in litigation as a result of this escrow, Seller and Buyer shall be jointly and severally obligated to reimburse it for any costs and expenses (including reasonable attorneys' fees) actually incurred by it.

22. **Captions.** Paragraph headings or captions appearing in this Contract are for convenience only, are not a part of this Contract, and are not to be considered in interpreting this Contract.

23. **Entire Agreement.** The parties acknowledge that this Contract contains the entire agreement between the parties with respect to the Property, and supersedes any prior oral or written understandings. No modification of this Contract and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

24. **Successors and Assigns.** This Contract shall be binding on the parties and their respective successors and permitted assigns.

25. **Notices.** Any notice, consent or other communication permitted or required by this Contract shall be in writing, and shall be given to each party, at the address set forth below, in the following manner: (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) e-mail transmission. Each such notice shall be deemed to have been given upon receipt or refusal to accept

delivery, or, in the case of e-mail transmission, as of the date of the transmission provided that an original of such notice also is sent to the intended addressee by one of the means described in clauses (a), (b) or (c) above. Unless and until changed as provided below, the addresses for notices given pursuant to this Contract shall be as follows:

to Buyer: TRI Pointe Homes, Inc.
3436 Toringdon Way, Suite 210
Charlotte, NC 28277
Attention: Cisco Garcia
Email: Cisco.Garcia@TRIPointeHomes.com

with a copy to: Alexander Ricks PLLC
1420 E. 7th Street, Suite 100
Charlotte, NC 28204
Attention: Mark J. Hanson
Email: mark@alexanderricks.com

to Seller: GHD-Brooks Creek, LLC
1330 Sunday Dr Ste 105
Raleigh, NC 27607-5196
Attention: Jeff White
E-mail: jwhite@greenhawkcorp.com

26. **Controlling Law.** This Contract has been made and entered into under the laws of the State of South Carolina, and those laws shall control the interpretation of this Contract.

27. **Like-Kind Exchange.** Each party has informed the other party that it may desire to have this transaction constitute a like-kind exchange of properties utilizing the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended. Each party agrees to cooperate with the other party in order to effectuate and facilitate such an exchange, provided that: (a) the exchange does not delay the Closing under this Contract, (b) the non-exchanging party does not incur any additional liability as a result of its cooperation, and (c) the non-exchanging party is not required to enter into any contract to purchase any other property, or take title to any property other than the Property. In particular, either party may assign its rights under this Contract prior to Closing to a "Qualified Intermediary," as that term is defined in applicable Treasury Regulations; and Buyer will, upon request of Seller, pay the balance of the Purchase Price to the Qualified Intermediary designated by Seller.

28. **Recording.** Following the expiration of the Inspection Period, the parties shall promptly execute in recordable form a memorandum or short form of this Contract, identifying the Real Property and including any such other provisions of this Contract (exclusive of provisions dealing with monetary terms) as either party may reasonably desire to incorporate therein, and Buyer shall have the right to record such memorandum at its expense. Upon any termination of this Contract, the parties shall promptly execute an agreement in recordable form, confirming such termination.

29. **Counterparts.** This Contract may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties, but all of which shall be construed together as a single instrument. This Contract may be signed by either party via facsimile, provided, however, that an original counterpart of such signature page is promptly forwarded to the other party.

30. **Indemnity.** To the full extent permitted by law, Seller hereby agrees to save, indemnify and keep harmless Buyer, and its affiliates, agents and employees, against all demands, claims, causes of actions, damages, liabilities, penalties, and expenses (including fees and disbursements of counsel) to the extent arising out of or resulting from Seller's performance of (and/or failure to perform) the work described in this Contract, and/or the materials, supplies, or goods provided by Seller, whether caused in part by a party indemnified hereunder. This indemnity obligation shall survive the Closing. In order to ensure the fulfillment of the foregoing, and throughout the term of this Contract, Seller (and all permitted sub-contractors) shall obtain and maintain insurance policies which meet or exceed the requirements set forth below. Seller's policy shall name Buyer as an "additional insured" for both ongoing and completed operations and shall meet or exceed the following requirements: Commercial General Liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence, and Four Million Dollars (\$4,000,000.00) in the aggregate, that is (1) written on an occurrence basis, (2) includes contractual liability coverage insuring the obligations assumed by Seller under this Contract (including, without limitation, the indemnities set forth herein) and referring expressly to this Contract, premises and operations coverage, broad form property damage coverage (including theft, vandalism and malicious mischief, written at replacement cost value, with replacement cost endorsement), Seller's protective liability coverage, independent contractors coverage, completed and ongoing operations coverage, (3) containing endorsement for personal injury, and (4) deleting the "underground exclusion".

31. **Post-Closing Escrow.** From the proceeds of the Purchase Price at Closing, Seller shall escrow funds with the Title Company in an amount equal to \$100,000 for twelve (12) months to secure the payment of Seller's post-Closing obligations set forth in this Contract, which funds shall be held and disbursed pursuant to a mutually satisfactory post-Closing escrow agreement executed by Buyer, Seller, and Title Company at Closing.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written, and Escrow Agent joins in the execution of this Contract for the purposes set forth below.

SELLER:

GHD-BROOKS CREEK, LLC, a North Carolina limited liability company

By: Sajan Kumar Aggarwal
Name: Sajan Kumar Aggarwal
Title: Manager

Date executed: August 12, 2019

BUYER:

TRI POINTE HOMES, INC., a Delaware corporation

By: Gray Shell
Name: Gray Shell
Title: Division President - Carolinas

By: Cisco Garcia
Name: Cisco Garcia
Title: Vice President of Land

Date executed: August __, 2019

CHICAGO Title Insurance Company, as Escrow Agent, joins in the execution of this Contract to acknowledge its agreement to be bound by the terms governing its receipt, investment and disbursement of the Deposit.

ESCROW AGENT:

CHICAGO TITLE INSURANCE COMPANY, a corporation

By: Judith W. Farrell
Name: Judith W. Farrell
Title: V.P.

Date executed: August 14, 2019

EXHIBIT A

SITE PLAN

[see attached]

042354012/00571839911

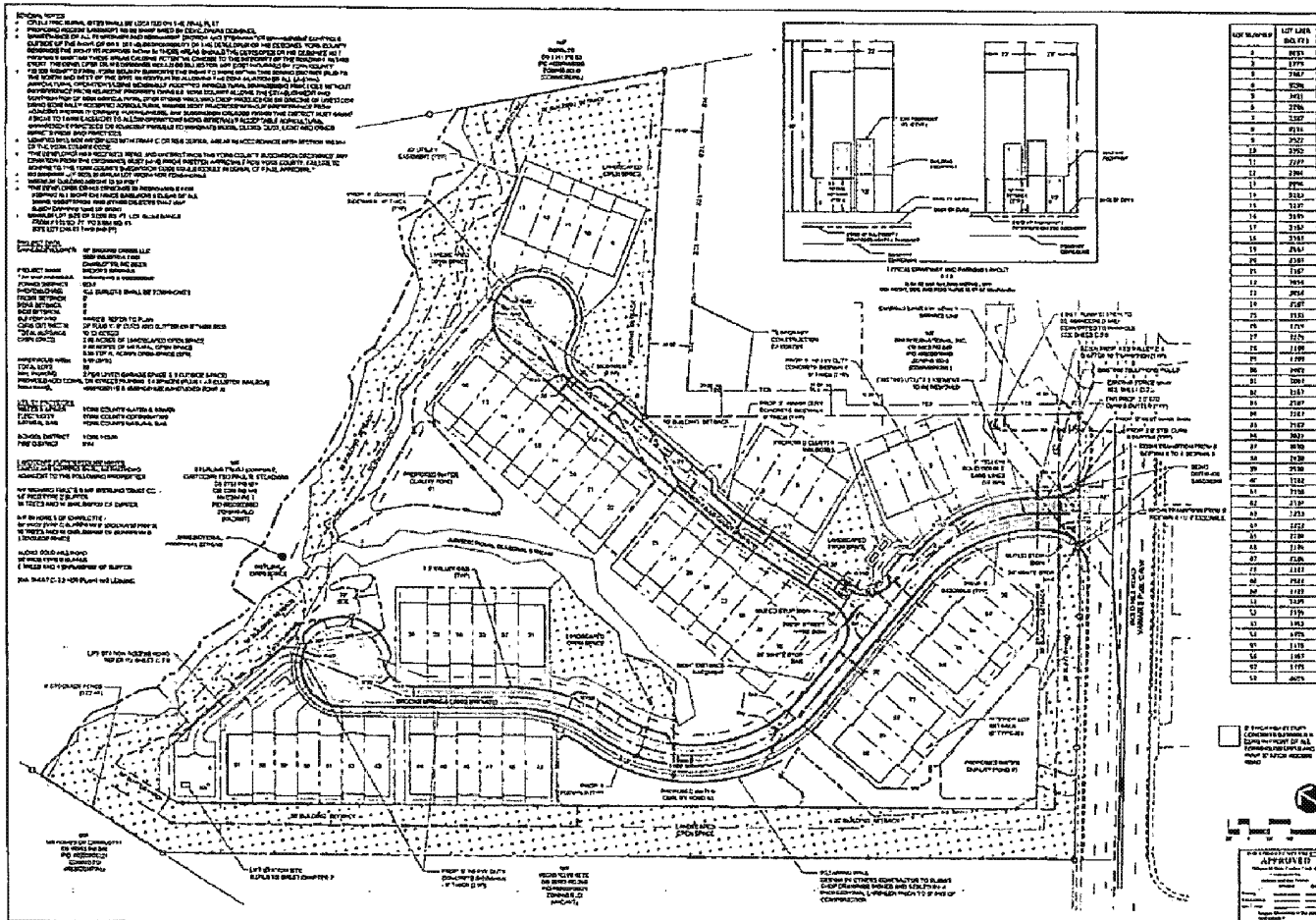


EXHIBIT B

PRELIMINARY PLAT

[see attached]

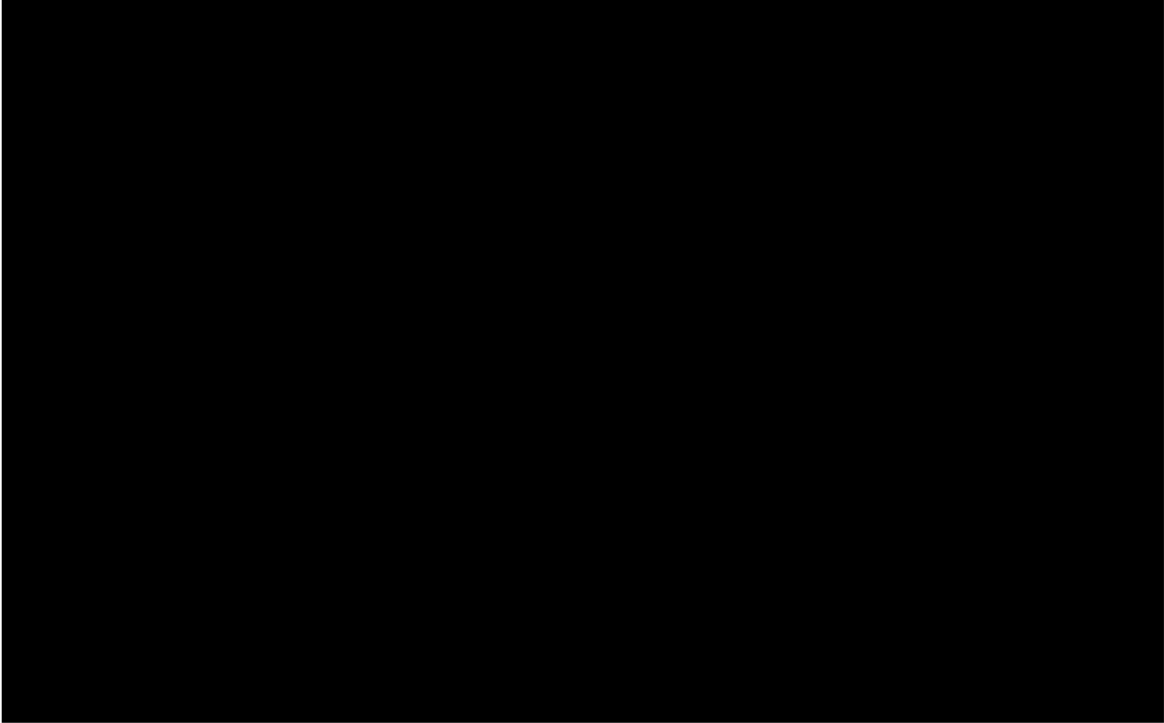
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REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (the "Contract") is made and entered into as of the date last executed below (the "Effective Date") by and between **GHD – RIVER FALLS, LLC**, a North Carolina limited liability company (collectively, "Seller"), and **TAYLOR MORRISON OF CAROLINAS, INC.**, a North Carolina corporation (the "Buyer").

RECITALS

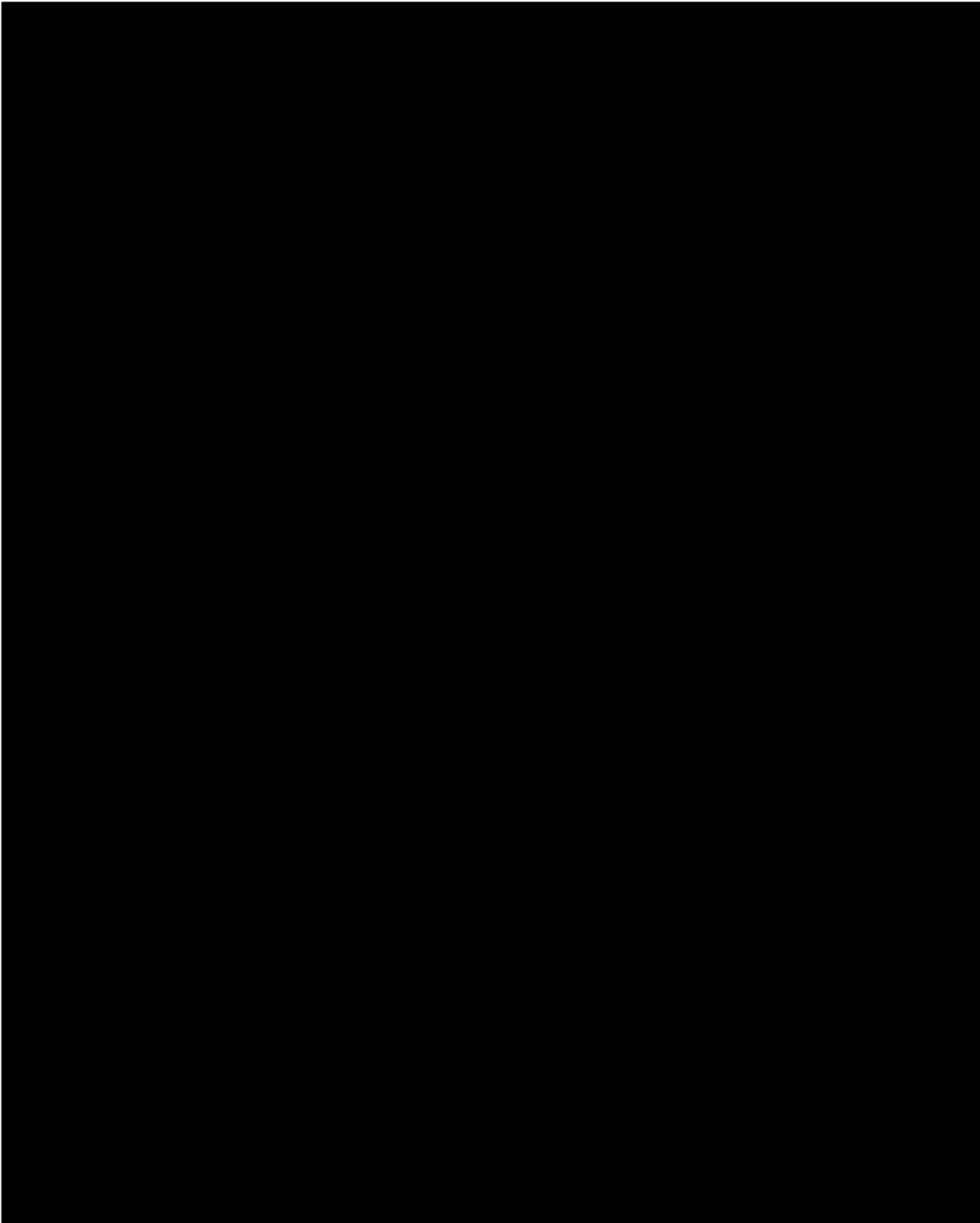
A. Seller is the fee simple owner of that certain real property comprised of approximately 54 (+/-) acres on Gold Hill Road in York County, South Carolina, being all of York County Tax Parcel ID #'s 6440101487, 6440101487, 6440101489, 6440101490, 6440101491, 6440101492, 6440101493, and being more particularly shown and/or described on Exhibit A attached hereto and made a part hereof, together with all improvements, and Seller's interest in, if any, other rights, privileges, licenses, easements, permits, approvals, other development rights, entitlements appurtenant thereto, and all right, title and interest in and to all oil, gas and mineral rights, and all streets and water courses, on, adjacent to, abutting or serving the real property appurtenant thereto (all together, the "Property").



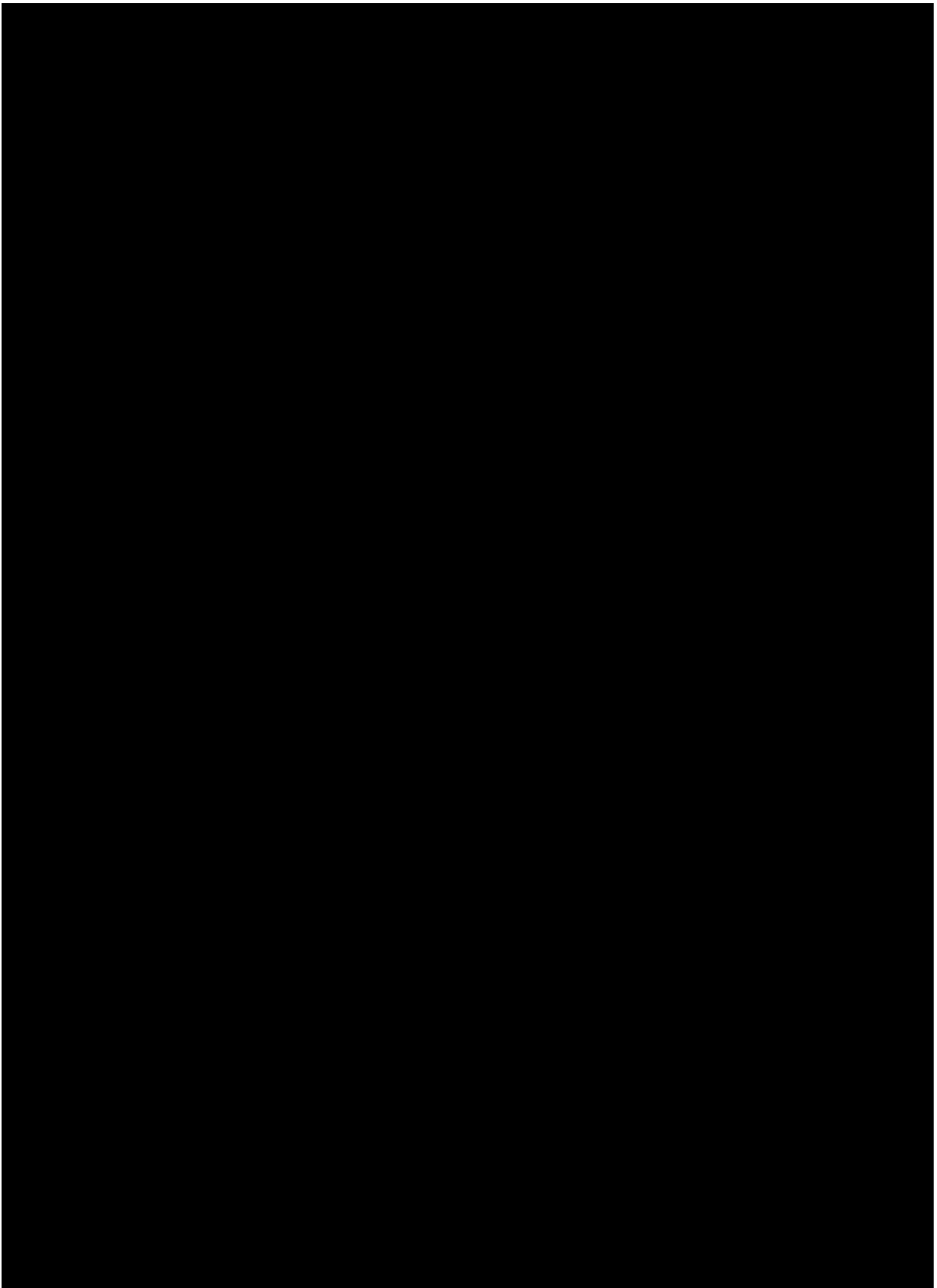
3. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be Five Million Six Hundred Fifty Eight Thousand and No/100 Dollars (\$5,658,000.00). The Purchase Price is payable at Closing (as defined below) as provided herein and subject to all terms hereof.

4. Closing. If Buyer has delivered the Continuation Notice under Section 8 below, then, subject to all terms and provisions herein (including without limitation the Conditions Precedent), closing on the purchase and sale of the Property ("Closing") shall occur on or before that date which is forty-five (45) days after the date that Buyer has obtained all Regulatory Approvals (defined herein), but in no event later than the date which is eighteen (18) months after the Effective Date (the "Closing Date"). Closing shall

occur at/through the office of Buyer's South Carolina licensed attorney unless otherwise agreed in writing by the parties.

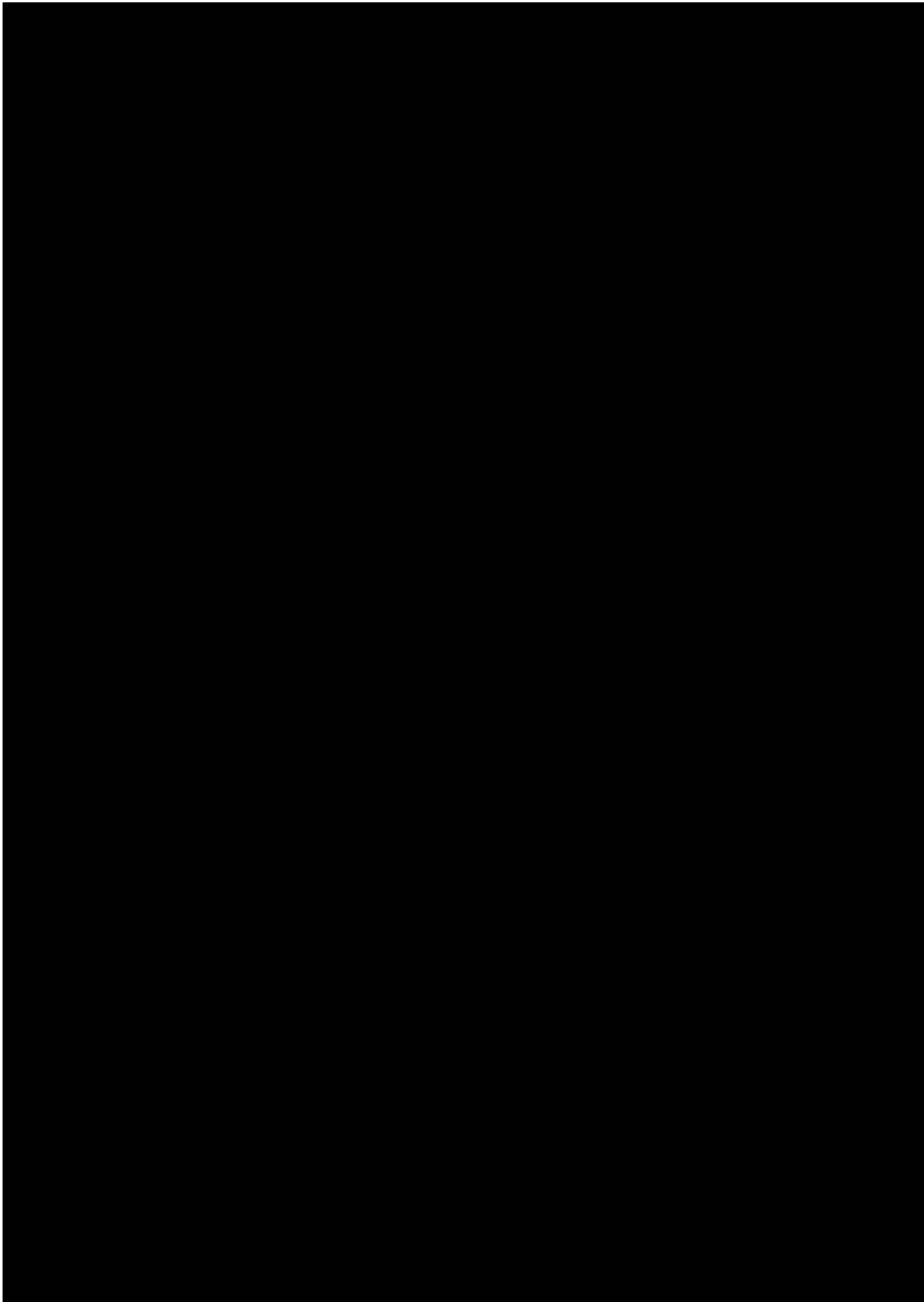


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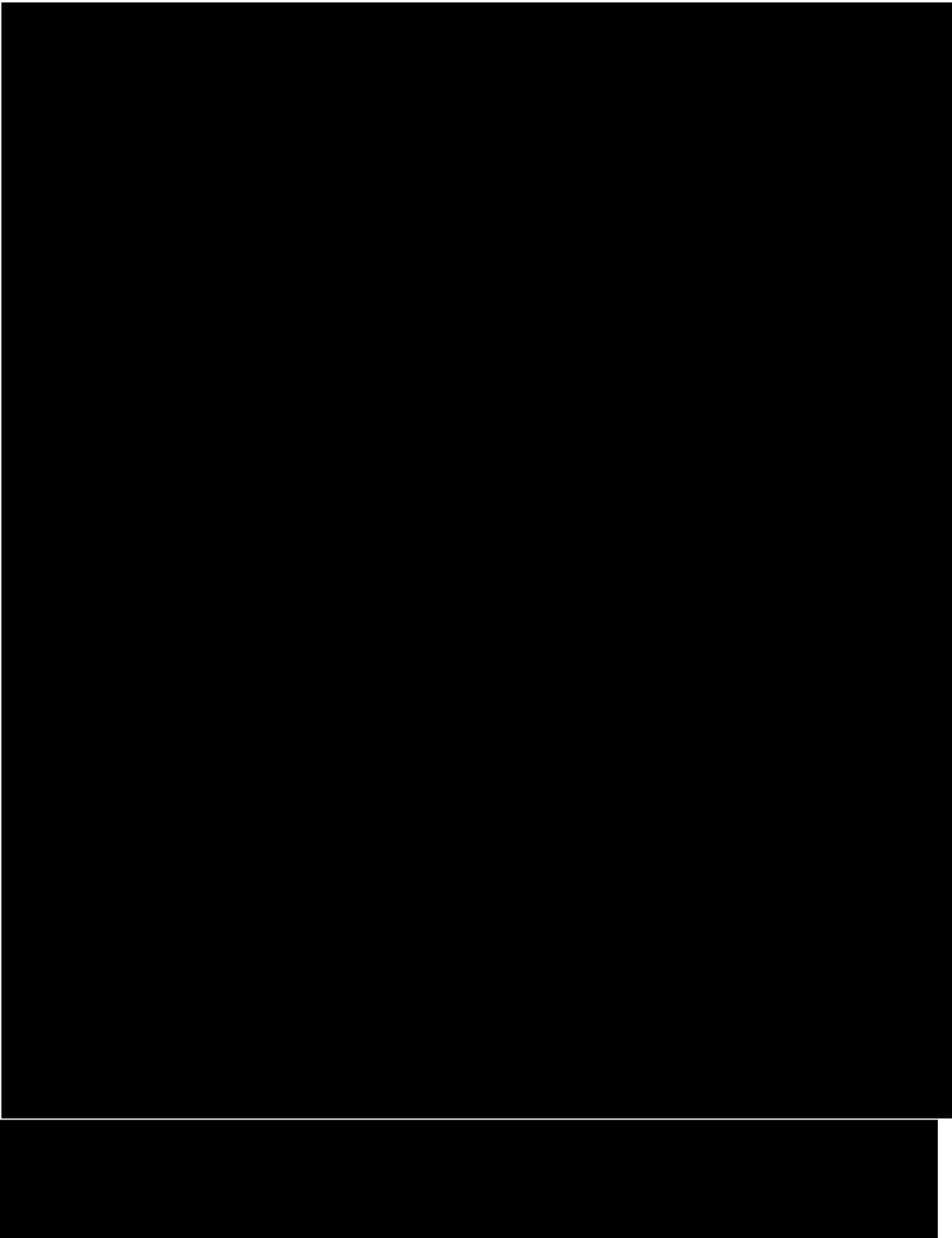


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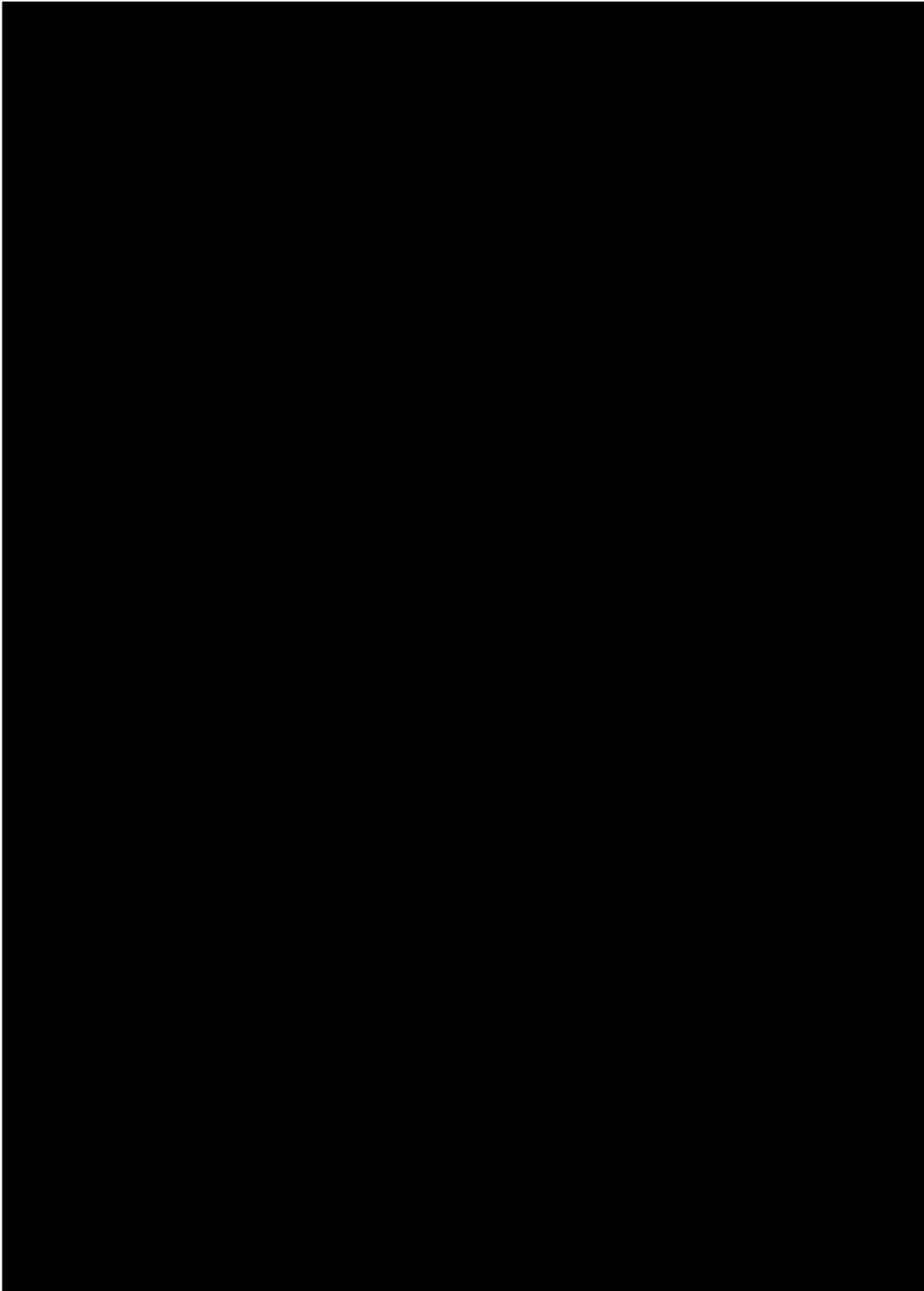
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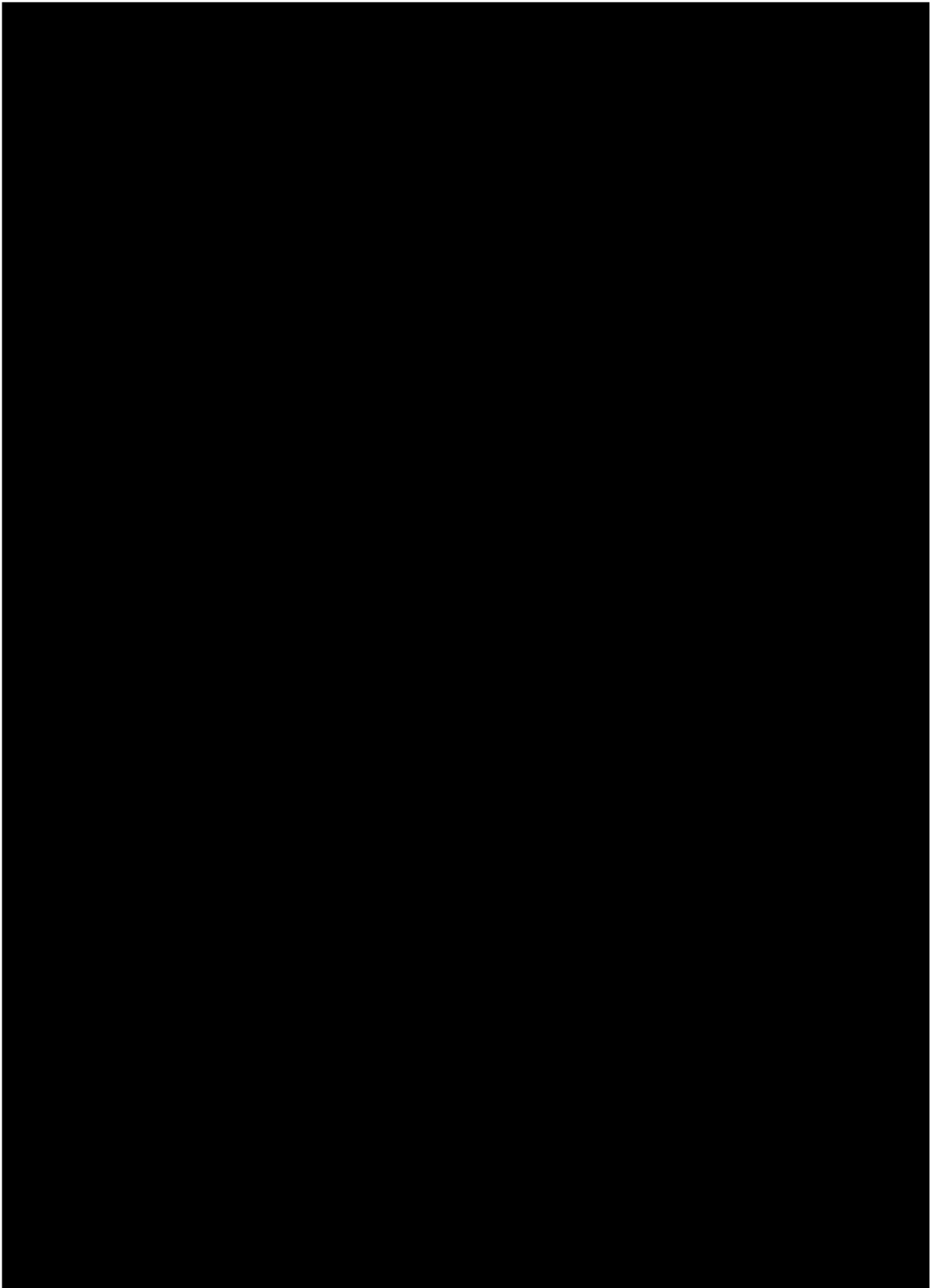
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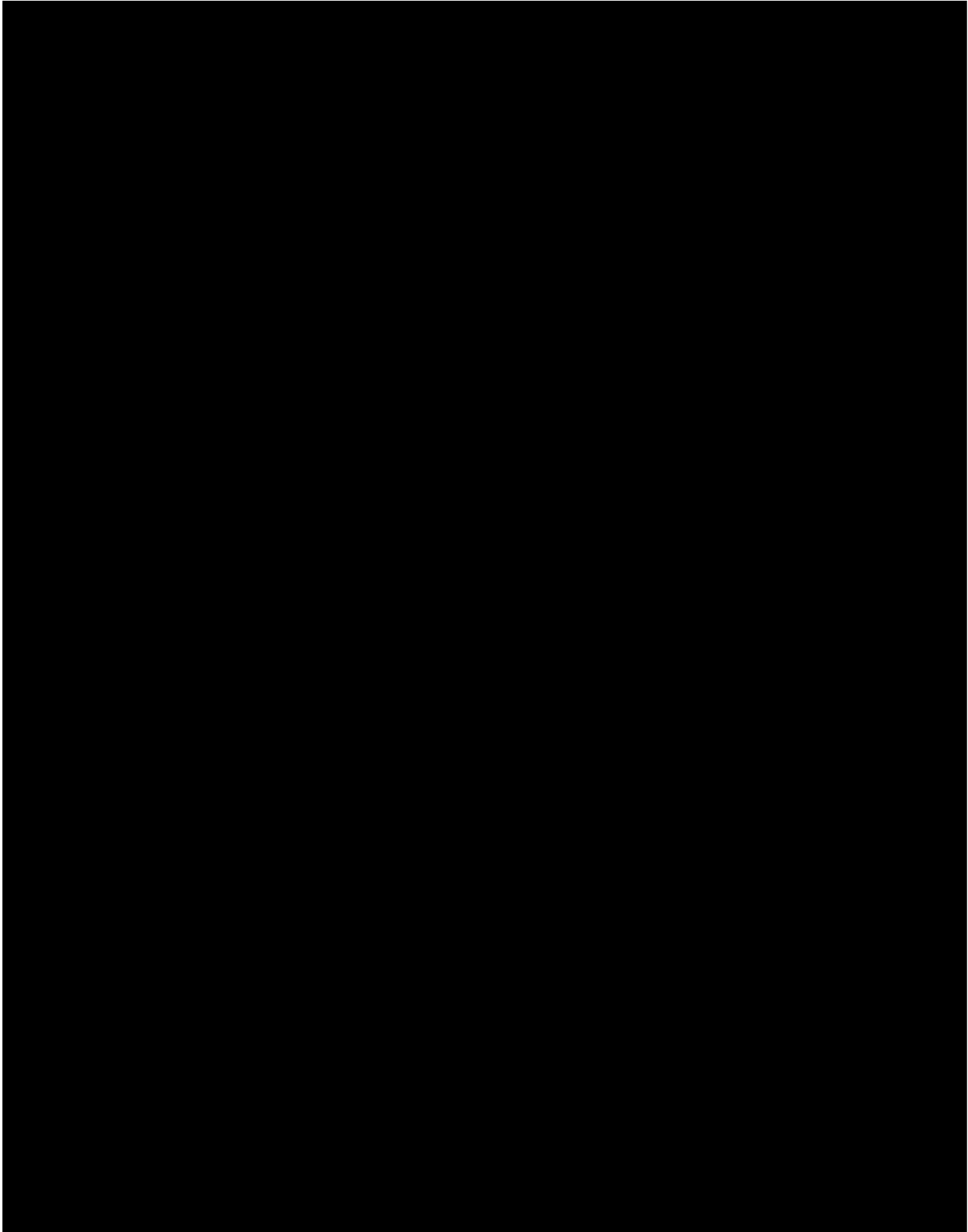
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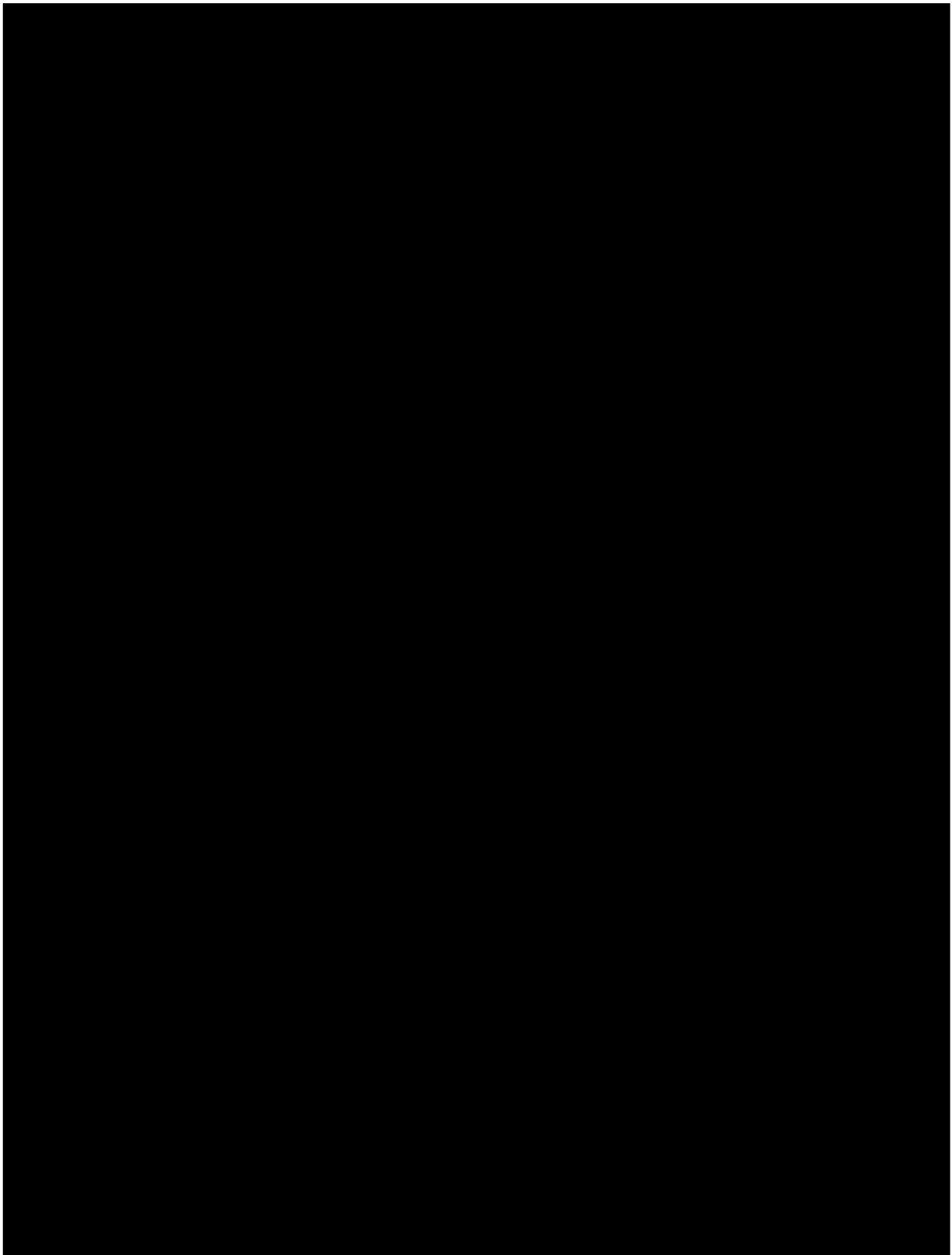
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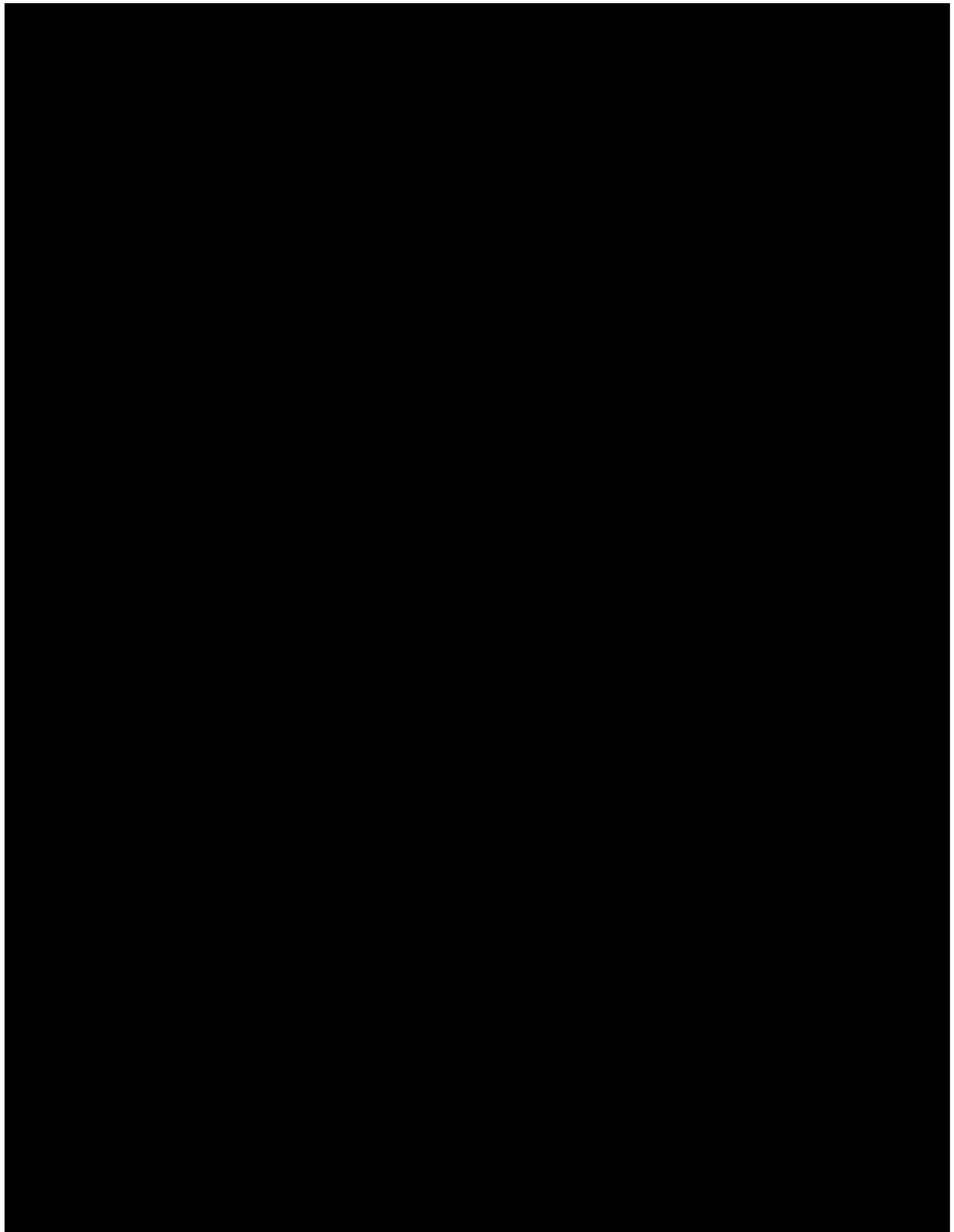
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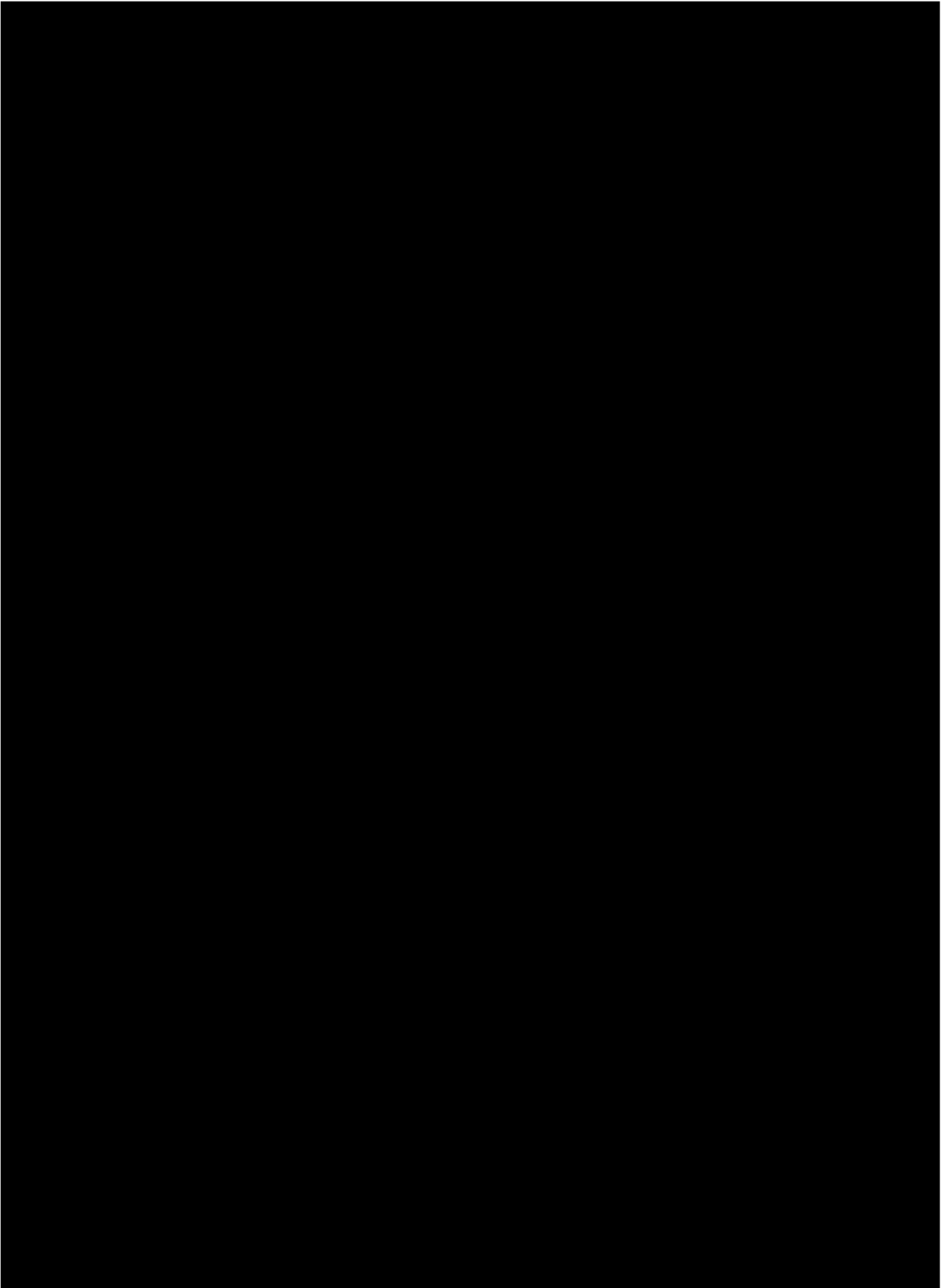


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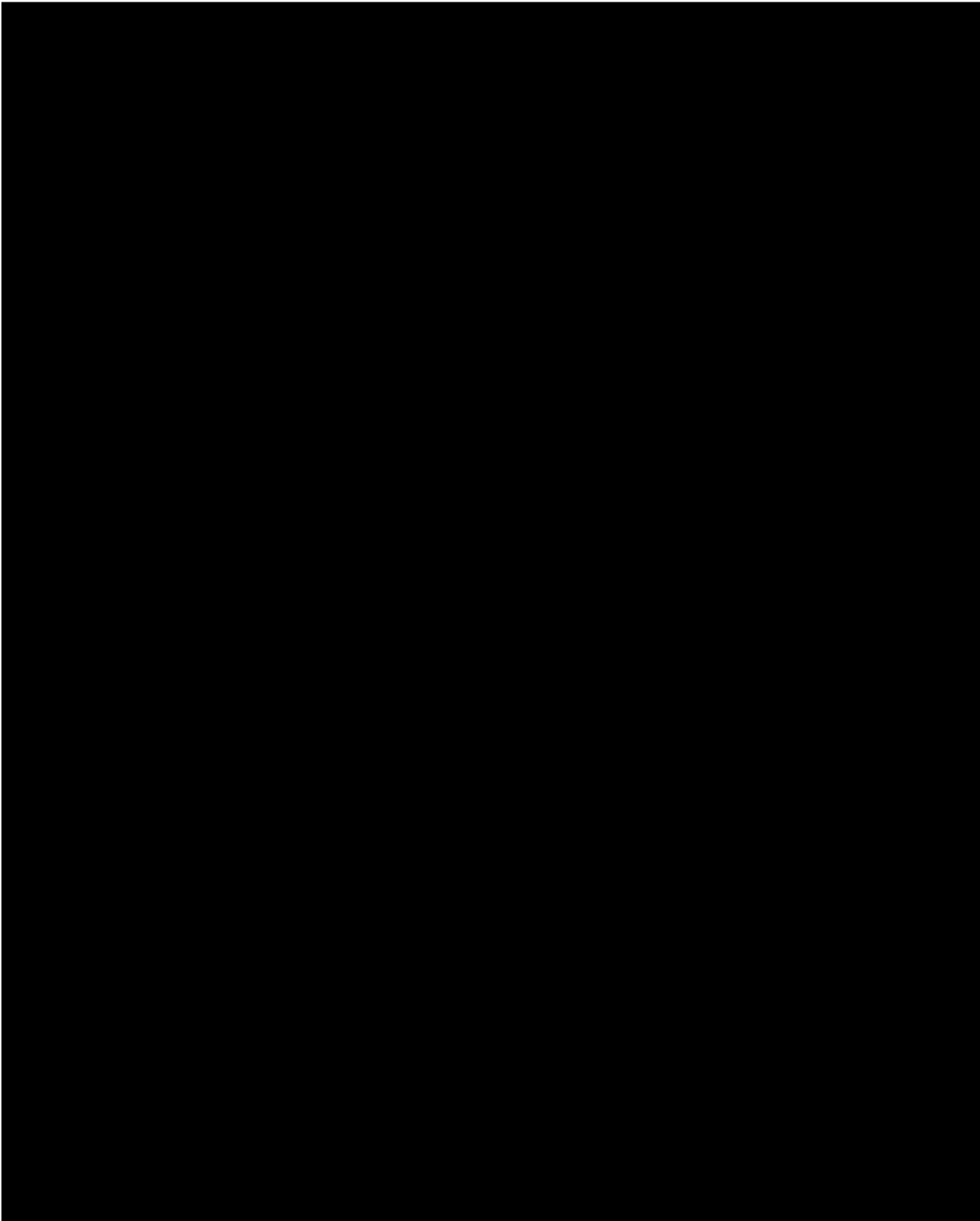


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IN WITNESS WHEREOF, the parties have executed this Contract as of the date and year indicated next to their signatures.

BUYER:

TAYLOR MORRISON OF CAROLINAS, INC., a North Carolina corporation

By: [Signature]
Name: Kerry Gull
Title: DP

By: [Signature]
Name: Alan Kerley
Title: Vice President

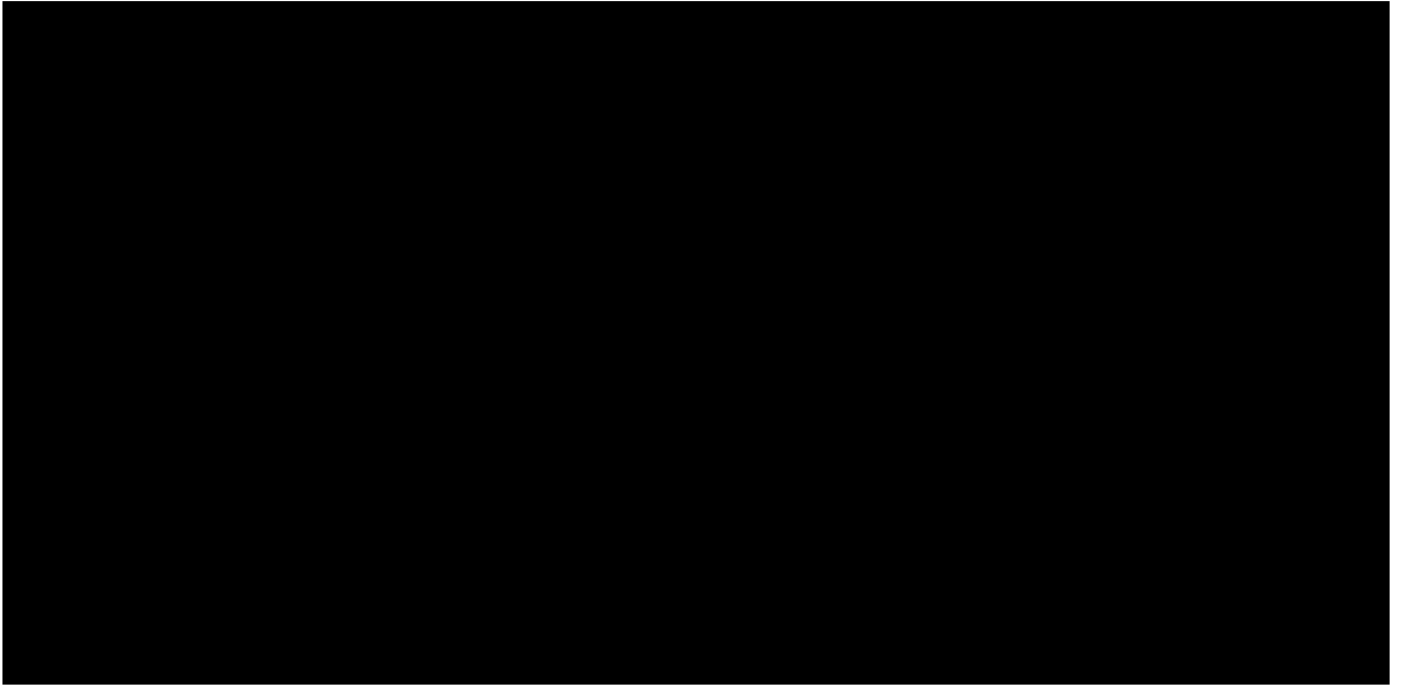
Date of Execution: 2/22/21

SELLER:

GHD-RIVER FALLS, LLC, a North Carolina limited liability company

By: [Signature]
Name: Jeremy B. Moshier
Title: Manager

Date of Execution: 2/16/21





00453-001/00271779-2

STATE OF SOUTH CAROLINA
YORK COUNTY

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2020-CP-46-02006

EASTWOOD CONSTRUCTION
PARTNERS, LLC, and EASTWOOD
DEVELOPMENT CORPORATION,

Plaintiffs,

v.

GHD BROOKS CREEK, AF-BROOKS
CREEK, LLC, GHD RIVER FALLS,
LLC, AF-RIVER FALLS, LLC,
GREENHAWK CORPORATION, INC.
and TRI POINTE HOMES, INC.,

Defendants.

**EASTWOOD CONSTRUCTION
PARTNERS, LLC AND EASTWOOD
DEVELOPMENT CORPORATION'S
BRIEF IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR
PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (together, "Eastwood") respectfully submit this brief, its attached exhibits, and affidavit in opposition to the Motion for Partial Summary Judgment filed by Defendants GHD Brooks Creek, AF-Brooks Creek, LLC, GHD River Falls, LLC, AF-River Falls, LLC, and Greenhawk Corporation, Inc. (collectively, "Greenhawk") and the Motion for Partial Summary Judgment filed by Defendant TRI Pointe Homes, Inc. ("TRI Pointe"). Both motions rely on the same erroneous factual position and should be denied on the merits because there are genuine issues of material fact. They should also be denied for the additional reason that they are premature in that Eastwood has not yet been permitted to complete the discovery needed to effectively rebut the arguments raised by Greenhawk and TRI Pointe. In fact, Greenhawk has actively and affirmatively prevented the completion of discovery. Both Motions should be denied.

I. FACTUAL BACKGROUND

The facts in this case are still undeveloped because discovery is ongoing. What facts are known demonstrate that summary judgment on any claim is not proper at this time. These motions should be denied or deferred until discovery is complete.

A. THE PROPERTIES AND PARTIES

This suit involves a dispute between Eastwood and Greenhawk over a contract and joint venture to purchase residential lots on two tracts of real property in Tega Cay, South Carolina. Eastwood is a residential home builder, building homes in the major metropolitan areas of North and South Carolina. Eastwood is based in the Charlotte, North Carolina area. Greenhawk is a land development company based in Raleigh, North Carolina. Most of Greenhawk's land development activities are in the Raleigh and Greensboro areas of North Carolina, with a few properties in other areas including the properties at issue in this case. Greenhawk has no office or location in York County or the Charlotte area.

Prior to 2013, Greenhawk and Eastwood engaged in multiple business transactions where Greenhawk had either developed land into buildable lots, or taken over existing land developments and completed the development of lots. Once the development work was complete, Greenhawk sold those completed, ready to build lots to Eastwood so Eastwood could construct homes. The transaction at issue in this case was an extension of that ongoing business relationship between Greenhawk and Eastwood.

In 2013, Eastwood, through its then Vice President of Land, Joe Dority, identified the real property at issue in this case and placed all of the affected tracts under contract to purchase, including the payment of earnest money deposits. Deposition of Craig Briner, at 58:2–4 (“Briner Dep.”). The purpose of that effort was to prevent others from gaining access to the property. The

two properties were located off of Gold Hill Road in Tega Cay. One parcel was approximately 12 acres and the other was 51 acres. Compl., Ex. C. In anticipation of their purchase Eastwood began preliminary development work on the properties for the joint benefit of Greenhawk and Eastwood, including engineering, site design, and municipal related permitting. While the preliminary work was ongoing, Eastwood's Dority reached an agreement with Greenhawk's Craig Briner regarding both properties. Pursuant to that agreement, Eastwood would assign its rights to purchase the properties to Greenhawk, Greenhawk would develop the properties in accordance with Eastwood's specifications, and Greenhawk would sell completed lots to Eastwood. Rule 30(b)(6) Deposition of Joseph Polite,¹ at 71:12–22 (“Eastwood 30(b)(6)”); Deposition of Joseph Polite, at 51:1–13 (“Polite Dep.”); *id.*, Ex. 23; Briner Dep., at 58:2–59:25.

Craig Briner was a founding member and at the time was president of Greenhawk Corporation. Briner Dep., at 15:24–16:6, 123:24. He was also one of Greenhawk Development, LLC's three managers with full authority to enter into agreements with Eastwood. Part of the reasoning for deciding to purchase the land and enter the agreement with Eastwood was that Eastwood would be buying the lots, providing a source of income and return on investment. Briner Dep., at 37:7–38:1. In the 2013-2014 time frame, through the middle of 2018, Mr. Briner was the sole person responsible for Greenhawk's land development activities. Once he had authority to proceed from Mr. Agarwal and Mr. DesVerges, Greenhawk's other managers at the time, no one else at Greenhawk had knowledge of what arrangements were made with Eastwood or other developers. Briner Dep., at 18:13–25.

¹ Mr. Polite was deposed first in his individual capacity and later as Eastwood's Rule 30(b)(6) designee.

The two properties are within a few thousand feet of one another, and Eastwood considered them two parts of a single development project. Polite Dep., at 44:13–23, 45:5–12. The larger tract was known as the River Falls site, and the smaller tract was known as the Brooks Creek site (collectively, the “Properties”).² Greenhawk and Eastwood agreed that River Falls would be developed as a single-family subdivision with detached home lots, and Brooks Creek would be developed as a townhome subdivision with groups of attached lots.³ Polite Dep., at 194:19–21, 273:8–11; Eastwood 30(b)(6) Dep., at 71:12–22; Briner Dep., at 58:2–59:25.

Pursuant to the Eastwood-Greenhawk agreement Eastwood assigned both land sale contracts to Greenhawk at roughly the same time. Compl, Ex. D, Combined Assignments.⁴ Greenhawk provided no consideration to Eastwood for the assignments other than the agreement to develop the properties to Eastwood’s specifications and then to sell the lots to Eastwood. *Id.* When Greenhawk closed on the actual purchase, Eastwood received reimbursement of the earnest money it had paid for the Brooks Creek property but nothing related to the River Falls property. Deposition of Jeff White, Exs. 149, 150, Settlement Statements (“White Dep.”)⁵ Both before and after Greenhawk closed on the properties, Eastwood arranged for and paid for development work all for Greenhawk’s benefit. In total, Eastwood spent roughly \$570,000 for development costs at River Falls and Brooks Creek. White Dep., Ex. 151, Eastwood Costs. Of that amount, \$360,000 was never reimbursed. Eastwood 30(b)(6), at 146:9–12. Rather Greenhawk and Eastwood agreed that Greenhawk would treat Eastwood’s early payments as advanced deposits for the purchase of lots in River Falls and Brooks Creek. Briner Dep., Ex. 95, October 12, 2016 Email re Deposit;

² The Brooks Creek site was later known as Brooks Springs.

³ Eastwood picked the names for both developments. Briner Dep., at 66:24–67:11.

⁴ Though the River Falls assignments are unsigned, Greenhawk does not contest that they were signed. Briner Dep., at 63:14–16.

⁵ Since Mr. White was just deposed last week, a transcript of his testimony is not yet available.

Deposition of Jeremy Medlin, Ex. 121 (“Medlin Dep.”).⁶ To date, Greenhawk has not sold lots to Eastwood, nor has it reimbursed Eastwood for the funds paid for its benefit. Eastwood 30(b)(6), at 146:9–12.

After Greenhawk closed on the Properties, Eastwood and Greenhawk worked together to develop the River Falls and Brooks Creek projects. Eastwood contracted with an engineering firm, Land Design, to provide consolidated services for both projects. *See, e.g.*, First Am. Compl., Ex. L, Land Design Invoice. Land Design developed a plan for River Falls that called for the development of 138 individual lots. Dority Dep., Exs. 67, 68. Land Design also created a site plan for Brooks Creek to have 58 townhome lots. Polite Dep., Ex. 29. Eastwood paid all of these engineering and design expenses for the properties. White Dep., Ex. 151, Eastwood Costs. Both sets of plans identify Eastwood as the home builder.

Eastwood also contracted for wetland services with Leonard S. Rindner and for environmental services with Summit ECS, Inc. on both properties. *Id.* Callahan Grading Company provided general contractor services for development work on both Properties. Polite Dep., Ex. 12, October 2016 Email Exchange between Joe Polite and Clark Stewart.

Briner testified unequivocally that he was the person at Greenhawk with the authority to enter the agreement with Eastwood. He confirmed that the terms of the lot purchase agreement with Eastwood were reached in conjunction with the approval by Greenhawk to enter into the transaction, accept the assignment of the land purchase contracts, and close the purchase. Briner Dep., at 18:15–25, 64:2–65:5. Throughout development, Eastwood and Greenhawk agreed that, after all costs were factored in, the lot prices would be calculated such that Greenhawk would

⁶ Since Mr. Medlin was just deposed last week, a transcript of his testimony is not yet available.

receive a 20% return. Briner Dep., at 56:7–20, 70:11–13, 75:7–16, 112:11–16; Eastwood 30(b)(6), at 16:19–21, 23:18–21, 39:6–18, 49:8–12, 101:12–102:10. As Mr. Briner testified:

Q. What was GreenHawk's I would say standard estimated markup over costs for a lot?

THE WITNESS: Typically, we were trying to get sort of a 20 percent IRR number. Some were more, if we both cured it ourself. Some were less, if the risk was assumed to be less or the time frame was shorter than sort of normal takedown. But 20 IRR.

Q. And how would you go about calculating that for any given project?

A. Obviously, you start with the cost, the length of time that it would take to go ahead and sell those, typically in a takedown schedule, over a period of a couple three years, something like that typically.

And use that time frame, and then the sales price, which frequently had escalators in them, given the time that it took to consume them.

Q. And was that part of the analysis that would have been done at the initiation of a project to get Mr. Agarwal's approval and permission to make the acquisition and have it funded?

A. Typically, yes.

Q. To your recollection, was Mr. Dority or anybody else at Eastwood aware of GreenHawk's standard expected 20 percent IRR on its development projects?

A. I think -- I think Joe Dority was aware of what we were trying to target, I'm pretty sure.

Q. And was he aware that costs, you know, that the takedown schedule and price escalators would roughly be pegged so that GreenHawk would get a 20 percent rate of return on its money over the life of the takedown as far as you know?

A. Yes.

Briner Dep., at 55:6–56:20.

After Mr. Dority left Eastwood in late 2016, Joe Polite, became Eastwood's Vice President of Land. Polite Dep., at 34:1–5. Polite concurred with Briner's testimony on the pricing of the lots:

Q. So Eastwood's position right now at this deposition is it will pay whatever the confirmed net costs are that is GreenHawk's costs minus Eastwood's costs and will guarantee a 20 percent rate of return to GreenHawk on that number and it's compelled to accept that price and cannot back out. Is that Eastwood's testimony?

A. I would say yes.

Q. Okay. All right.

A. If –

Q. If what?

A. No, if we all confirm the pricing and the costs, both parties together, we, being GreenHawk, if we confirm those prices, yes, we would be willing to purchase based on those costs.

Q. You said pricing and costs. You said pricing and costs. As I understand your testimony costs determine the price, correct?

A. Plus profit less our investment.

Eastwood 30(b)(6), at 129:12–130:5.

This price agreement was borne out by the numerous “pro formas” sent from Greenhawk to Eastwood that show a projected IRR near 20% for both Properties. Briner Dep., Exs. 91–93, 96. Greenhawk included Eastwood in meetings and discussions where the pro forma analysis was discussed. Briner Dep., at 72:2–8. In other words, after all costs were accounted for, Eastwood would pay a lot price and on a schedule that allowed Greenhawk to reach the 20% IRR mark. Eastwood 30(b)(6), at 129:12–130:5; Briner Dep., at 56:7–20, 70:11–13, 75:7–16, 112:11–16

Greenhawk’s internal documents from 2016 confirmed that Eastwood was the intended buyer of the lots and that the costs, and cost increases were the prohibiting factor in having a final lot sales price. Jackson Dep., Ex. 139. Even after this lawsuit began, Briner confirmed to Greenhawk that lot pricing had been delayed because of increased costs. Medlin Dep. Ex. 121. However, Briner was also clear that the agreement to rice lots at 20% over costs had never changed:

Q. And was there ever any change in the discussion with Eastwood about the 20 percent internal rate of return expectation on the project?

A. Not to my knowledge.

Q. And was there ever a point in time that you recall anyone at Eastwood saying that they would not be willing to accommodate a purchase price for River Falls that would provide GreenHawk with that 20 percent rate of return?

A. I don't think we ever got -- no, no.

Briner Dep., at 75:7-16

B. EASTWOOD AND GREENHAWK WORK JOINTLY ON DEVELOPMENT BUT EXPERIENCE DELAYS

Development at River Falls by Callahan Grading, the general contractor, began in 2014. Briner Dep., Ex. 94, Tega Cay Memo. Due to wetlands incursions and other code violations by Callahan, work was immediately stopped in early 2015 until remediation efforts were approved. *Id.* There were other delays at both Properties due to general contractor errors, licensing problems, sewer connections, and other issues. Briner Dep., Ex. 98, May 12, 2017 Email from Mike Conley.

During this time period, Joe Dority personally monitored the initial development at the River Falls site and worked with Briner. Briner Dep., at 59:11–14, 60:1–6, 99:2–6. Dority served as the primary point of contact for various contractors, and he was listed as the primary contact for the City of Tega Cay's storm water and sediment control plan. Polite Dep., Ex. 7, May 8, 2014 Email re Invoice; Dority Dep., Ex. 70, Tega Cay Contact Sheet. Greenhawk and Eastwood worked closely together on the development timelines for both Properties. Am. Compl., Ex. J, Timeline Correspondence from Greenhawk. After Dority left Eastwood, Eastwood's engineer, Pat Quinn, would occasionally visit the Properties and report back to Mr. Briner. Because this was part of the overall agreement, Eastwood (or Dority or Quinn) was never compensated by Greenhawk for those efforts. Briner Dep., at 78:3–19.

In 2014, Greenhawk and Eastwood were informed by the South Carolina Department of Transportation (“SCDOT”) that the planned entrance to River Falls would have to be moved a few feet down Gold Hill Road. However, the land acquired by Greenhawk did not encompass the area where the SCDOT dictated the entrance had to be. To satisfy the SCDOT, and facilitate development of River Falls, Eastwood paid \$55,741 for the 2316 square feet of land, or .055 acres, needed to move River Falls’ entrance on Gold Hill Road. See Helms Settlement Statement, BATES ECP_ECP_0012091; Deed from Caroline Helms to Eastwood Development Corp. The cost of that sliver of land equated to a cost per acre of over \$900,000. The land owner was apparently aware of the predicament Eastwood and Greenhawk were in and used that to her advantage. See June 10, 2014 Email from Joe Dority to Craig Briner, BATES ECP_0013183. In addition to an exorbitant purchase price, Eastwood also agreed to build the Seller an improved driveway, with a security gate, and granted her an easement to the River Falls entrance road. See Helms Purchase and Sales Agreement, BATES GHD_0016151, ¶3. In 2018, Eastwood transferred the sliver of land to Greenhawk for no cash consideration. Briner Dep., at 61:17–62:8; Eastwood 30(b)(6), at 122:1–4, 141:21–24; Quitclaim Deed from Eastwood to Greenhawk, BATES ECP_0005870. Eastwood gave Greenhawk that vital piece of land for no consideration other than the Greenhawk’s agreement to develop and sell lots to Eastwood.

Throughout the time from 2013 through 2018, Greenhawk experienced numerous development delays. With delays, Greenhawk’s costs could not be finalized so a written lot purchase agreement could be arrived at. However, both Greenhawk and Eastwood consistently understood that Greenhawk was preparing lots to Eastwood’s specifications and that Eastwood would buy those lots.

At multiple times, Eastwood pressed Greenhawk for costs so that the terms could be computed, but Greenhawk's development delays prevented that from happening. Eastwood inquired in April 2016, Polite Dep., Exs. 9, 10; October 2016, Polite Dep., Ex. 12; December 2016, Polite Dep., Exs. 14–16; February 2017, Briner Dep., Ex. 97 (“Mike Conley (of Eastwood) is eager to this these projects started”); March 2017, Polite Dep., Ex. 17 (Eastwood is “anxiously awaiting those lots”); and May 2017, Briner Dep., Ex. 98 (“Good news they [River Falls and Brooks Creek] will be ours!”). Again, Greenhawk understood that the parties were waiting on costs. Jackson Dep., Ex. 139.

Compounding the delays and problems with the Properties, in July 2018, the towns of Fort Mill and Tega Cay both passed new builder “impact fees” that affected pricing. Briner Dep., 132:10–133:12; Polite Dep., Ex. 25, Fort Mill Massacre Email. In July 2018, Eastwood asked Greenhawk to join in the lawsuit that was challenging the impact fees because Eastwood lacked standing to be a plaintiff; it was not a landowner in the affected jurisdiction. Polite Dep., Ex. 27. Greenhawk declined, but both parties knew the impact fee litigation was central to the calculation of final costs. As it turned out, the lawsuit persisted through 2019 and was not resolved initially until January 2020.

1. Brooks Creek: Eastwood is still waiting on lots at the agreed-upon price.

In the wake of the impact fees, on October 31, 2018, Greenhawk sent a draft lot purchase agreement (“LPA”) to Eastwood for the Brooks Creek lots, which it believed were nearing completion. Eastwood 30(b)(6), at 53:7–12. Eastwood did not respond to the October 2018 LPA because there were key cost items that were not yet accounted for. Chief among those were the new impact fees. Polite Dep., at 194:13–195:12; *id.*, Ex. 26, August 2018 Impact Fee Email Exchange.

In fact, it is now clear that the lot price offered by Greenhawk in October 2018 was not in accordance with Greenhawk's and Eastwood agreement that Greenhawk would sell lots at cost plus a 20% markup. Deposition of Linwood Jackson, Ex. 138 ("Jackson Dep.").⁷ Rather the lot price was identical to the price Greenhawk was given in an unsolicited offer from another homebuilder, NVR, an offer Greenhawk declined because of its agreement with Eastwood. Briner Dep., at 125:12–126:23. The draft contract called for lot prices of \$76,000 without regard to the impact fees. However, Greenhawk's internal pro forma for Brooks Creek used an assumed \$77,000 per lot price to yield a 27% profit based on its known and estimated costs. Jackson Dep., Ex. 146. Using those same costs, a \$76,000 lot price would yield a 25.5% return. A 20% return would have the lot price less than \$71,000.⁸ Greenhawk never offered Eastwood a lot price of \$71,000.

These facts show it is dubious whether Greenhawk ever had an intention of complying with the agreement. As Mr. Jackson stated in July 2018, a few days after the unsolicited NVR offer, "at Brooks Creek . . . we have buyers at **substantially higher** prices than what we have in the latest pro forma." Jackson Dep., Ex. 138 (emphasis added).

At no point did Eastwood tell Greenhawk that it no longer wished to buy lots at Brooks Creek. Polite Dep., at 234:6–9. (In fact, the only written record at Greenhawk of the alleged rejection was made in June 2020, after this lawsuit was commenced, and was prepared "for the file.")

Shortly after the impact fee case concluded, Joe Polite called Briner about Brooks Creek and River Falls. During the call, both Briner and Polite agreed that Eastwood and Greenhawk had

⁷ Since Mr. Jackson was just deposed last week, a transcript of his testimony is not yet available.

⁸ The forthcoming transcript from the Jackson deposition will support this calculation.

a lot purchase contract. Polite Dep., at 167:8–24. Polite confirmed the conversation by email, and Briner did not respond or disagree. Polite Dep, Ex. 23; Briner Dep., at 170:4–8. (Briner now says he disagrees. Briner Dep., at 170.)

Unbeknownst to Eastwood, and in breach of the agreement with Eastwood, Greenhawk offered Brooks Creek to other builders and eventually entered into a letter of intent and contract with Defendant TRI Pointe in August 2019. Briner Dep., Ex. 105. Despite an obligation to close in 2019, Greenhawk was not able to deliver lots to TRI Pointe because of continued development issues and costs. Medlin Dep. In other words, Greenhawk elected to enter into a contract with TRI Pointe before its costs were known, the predicate to arriving at lot prices with Eastwood. Further, according to current Greenhawk COO Jeff White, Greenhawk is losing money on the lots it sold to TRI Pointe because it priced them too early. White Dep. Eastwood learned of Greenhawk's sale of the Brooks Spring lots to TRI Pointe only when Mr. Polite and another Eastwood officer drove by the site in and saw ongoing home construction. Eastwood 30(b)(6), at 140:7–13.

In order for a developer to actually deliver lots a final plat must be approved by the governing authorities and it must be recorded. The final Brooks Creek plat was not recorded until May 2020. The final Brooks Creek plat conforms with the Eastwood site plan, which is actually attached as an exhibit to the TRI Pointe-Greenhawk LPA for Brooks Creek. Briner Dep., at 172:14–173:12; *id.*, Ex. 105, TRI Pointe and Greenhawk LPA, Ex. A.

2. River Falls: Greenhawk offers lots to Eastwood in violation of the Agreement.

In June 2020, Greenhawk invited Eastwood to make an offer on River Falls. Medlin Dep., Ex. 120. However, as of September 2020, River Falls' development was not complete, nor was it close to being completed. In fact, most of the entitlements and permits at that point had expired. Medlin Dep., Ex. 131. As of 2018, the job site "was basically abandoned." Jackson Dep., Ex. 138.

Consequently, Greenhawk had no idea of its costs to develop lots. Briner Dep., at 117:1–118:5.

After this lawsuit was initiated, Greenhawk entered into a contract with Taylor Morrison of the Carolinas, Inc. to sell the River Falls property “as is.” Medlin Dep., Exs. 134, 135. Greenhawk has completely abandoned its agreement to develop lots and to sell those to Eastwood.

Greenhawk has also refused to reimburse Eastwood for the \$350,000 it expended for Greenhawk’s behalf from 2013 and 2014 on River Falls and Brooks Creek. Instead, Greenhawk has taken the position that it is entitled to both keep Eastwood’s funds and also not sell Eastwood lots on the properties sourced, named, and designed by Eastwood. The combination of those palpable failures required Eastwood to file this lawsuit.

C. PROCEDURAL HISTORY

After numerous communications with Greenhawk about its contract breaches—both the failure to deliver lots and the failure to reimburse Eastwood for funds expended—Eastwood filed suit against Greenhawk on June 30, 2020, and simultaneously filed *lis pendens* against the Properties. Greenhawk moved to dismiss the Complaint, and Eastwood filed a First Amended Complaint. Judge Hall denied Greenhawk’s motion to dismiss. Greenhawk moved the Court to reconsider its decision—that motion was also denied on September 25, 2020.

On September 4, 2020, TRI Pointe moved to intervene in the suit and was allowed to do so. Eastwood filed a Second Amended Complaint on October 30, 2020. Greenhawk answered and counterclaimed against Eastwood. TRI Pointe cross claimed against Greenhawk, and counterclaimed against Eastwood. TRI Pointe later voluntarily dismissed its cross claim against Greenhawk. Eastwood filed its Third Amended Complaint on January 7, 2021.

Discovery has been tedious as Greenhawk’s behavior has been one of reluctant production. After Greenhawk filed a motion to compel the production of documents on December 11, 2020,

Eastwood labored through the Christmas 2020 holiday season to quickly cull through almost 30,000 documents. Affidavit of James Edward Bradley, ¶6 (“Bradley Aff.”). Eastwood then produced 4762 responsive documents in January 2021 totaling more than 14,000 pages. *Id.*

Greenhawk’s January 2021 production, by contrast, totaled only 572 documents totaling a little more than 1240 pages. *Id.* ¶7. When asked why the production volume was so low, counsel for Greenhawk responded that they would be producing documents on a rolling basis, despite the fact that Greenhawk’s motion to compel sought the production of “all requested documentation.” Bradley Aff., Ex. A, Greenhawk Motion to Compel. Greenhawk’s next productions were made in March, April, May, June, and October 2021. *Id.* ¶8. These later production dates coincided with and came after the first rounds of depositions that Greenhawk insisted upon, despite Eastwood’s protests to the contrary. *Id.* ¶9.

At this time, the depositions of Joe Dority, Joe Polite, Craig Briner, have been taken, as well as a limited Eastwood 30(b)(6) deposition where Joe Polite served as Eastwood’s designee. Last week (November 30–December 3, 2021), Eastwood took the depositions of Jeremy Medlin (VP for Land Development), Jeff White (Chief Operating Officer), and Woody Jackson (Greenhawk CFO). Transcripts for those important depositions are still not available. As discussed more fully *infra*, Eastwood intends to take at least three more depositions and still requires the production of additional documents, some of which were discovered by Greenhawk only last week.

II. STANDARD OF REVIEW

“Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (internal quotations and citations omitted). Summary judgment shall only be rendered “if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” S.C.R.C.P. 56(c); *Ray v. City of Rock Hill*, 434 S.C. 39, 44, 862 S.E.2d 259, 262 (2021). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361–62, 563 S.E.2d 331, 333 (2002). Further, “[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 362, 563 S.E.2d at 333.

III. ARGUMENTS

Both summary judgment motions should be denied for two reasons. First, summary judgment is premature and, under Rule 56(f), the Court can and should defer judgment until discovery on key issues has concluded. Second, the incomplete, undisputed facts demonstrate that judgment as a matter of law is improper both as a matter of law and because there are genuine issues of material fact.

A. DISCOVERY IS ONGOING, AND GREENHAWK STILL HAS SIGNIFICANT DISCOVERY OBLIGATIONS TO FULFILL.

“Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Summary judgment is inappropriate if the “party opposing the motion . . . cannot for reasons stated [in his affidavit] present . . . facts essential to justify his opposition . . .” S.C.R.C.P. 56(f); *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543. “A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case,

and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.” *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009). Where the party opposing summary judgment meets that burden, the court may deny the moving party’s motion or order a continuance to allow “depositions to be taken or discovery to be had or may make such order as is just.” *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543.

Not only is discovery in this matter not complete, but discovery of essential documents and testimony is still outstanding. Specifically, Greenhawk has: 1) failed to produce emails and notes from Sajjan Agarwal, Greenhawk’s founder, president, and financial backer; 2) overly redacted important documents despite Eastwood’s request to produce attorneys’ eyes only versions; and 3) revealed in the past week the identity and role of another key individual heretofore unknown to Eastwood. Finally, several key depositions were only just recently completed and others have yet to be conducted.

1. Agarwal Documents: Eastwood cannot follow the money.

Greenhawk has failed to comply with the terms of its informal agreement with Eastwood to search the email account of Sajjan Agarwal, Greenhawk’s founder and current president,⁹ for responsive documents.

On June 3, 2021, Eastwood issued a subpoena to the Agarwal Family III, LLC. Bradley Aff., Ex. C, Eastwood Subpoena to Agarwal Family III, LLC (“Agarwal”). Greenhawk¹⁰ moved for a protective order and to quash the subpoena, and Judge Hall heard the motion on August 24th,

⁹ Briner Dep., at 15:17–23, 26:6–8.

¹⁰ Though the subpoena was issued to Agarwal Family III, LLC, Greenhawk is the only entity who has responded in any way, further evidence that Agarwal and Greenhawk are so interwoven that no practical distinction can be made.

2021. At Judge Hall's suggestion, Eastwood and Greenhawk entered into an informal agreement. *Id.* ¶16.

It was Eastwood's understanding that Greenhawk would, at a minimum, search Mr. Agarwal's email account for responsive documents. Bradley Aff., Ex. D, Email from Will Walker to John Mabe. Though Greenhawk produced some documents in response to the Agarwal subpoena, it is clear from the limited emails where Mr. Agarwal was included that his emails were not searched for responsive documents. Bradley Aff., Ex. F, Oct. 13, 2021 Letter to John Mabe. In response, Greenhawk did not expressly contest that they failed to search Mr. Agarwal's emails for responsive documents. Bradley Aff., Ex. G, Oct. 20, 2021 Letter from John Mabe. Despite Eastwood's repeated requests and efforts to resolve the dispute with Greenhawk, the parties are at an impasse and are about to re-appear before Judge Hall. Bradley Aff., Ex. H, October Email Chain between James Adams and John Mabe.

There is no dispute that Mr. Agarwal is the final decision maker, financial backer, and leader of Greenhawk. *See, e.g.*, Briner Dep., at 15, 17–20, 16:16–19, 18:20–25. Indeed, even though Mr. Briner was President of Greenhawk in 2013/14, he still had to get approval from Sajjan Agarwal to buy land, including River Falls and Brooks Creek. *Id.* at 19:14–17. Inexplicably, however, Greenhawk continues to minimize Mr. Agarwal's importance in the agreement between Eastwood and Greenhawk, even though Mr. Agarwal was the final approval authority at the time the agreement was reached.

Consistent with its efforts to avoid producing Mr. Agarwal's documents, counsel for Greenhawk informed Eastwood, just last week, that Mr. Agarwal kept handwritten notes during meetings. Bradley Aff., ¶19. Rather than offering to turn over the notes for review, Greenhawk proposed that Eastwood provide specific dates during the relevant time period, and then

Greenhawk will search within a few days of those dates for responsive notes. *Id.* The relevant time period is from 2013 until 2020—7 years, or roughly 2500 days. Even with the information Eastwood has, Greenhawk is essentially asking Eastwood to guess where the needles in the hay stack lie.

Greenhawk’s recalcitrance on the production of Agarwal documents has left a critical gap in Eastwood’s discovery. This gap affects both Properties, as the agreement Mr. Agarwal approved involved both River Falls and Brooks Creek. No party should be entitled to judgment as a matter of law until Eastwood has a full and fair opportunity to review the documents connected to Greenhawk’s leader and the decisions he did or did not make. *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439.

2. Greenhawk has overly redacted important documents.

Further, Greenhawk has overly redacted several important documents and refused to abide by the terms of the parties’ consent confidentiality order (“Confidentiality Order”). In its most recent productions, Greenhawk overly redacted numerous documents. Bradley Aff., Ex. F, Oct. 13, 2021 Letter to John Mabe. Greenhawk counsel erroneously asserted that the Confidentiality Order was not in effect. Bradley Aff., Ex. G, Oct. 20, 2021 Letter from John Mabe. The Confidentiality Order was signed and ordered by Judge McKinnon on January 22, 2021. Confidentiality Order, at 14.

Two examples establish the potential importance of the redacted portions. The first is a January 28, 2014 email exchange between Craig Briner and Sajjan Agarwal. Bradley Aff., Ex. I, BATES GHD_18744. The unredacted¹¹ email exchange with Greenhawk’s leader notes that Joe

¹¹ There are no black redaction blocks in this document, but the formatting and context indicate that portions have been removed.

Dority was doing initial work on the Brooks Creek site and that Greenhawk did not yet have money invested in Brooks Creek. *Id.* It is entirely possible, and likely, that River Falls was also discussed, but it is impossible to know with the redactions applied.

A second example is an October 2016 email from Craig Briner to Sajjan Agarwal. Bradley Aff., Ex. J, BATES GHD_18773. Mr. Briner's update is limited to a portion that is ostensibly helpful to Greenhawk's defense. All other portions of the update are withheld. Furthermore, Mr. Agarwal, or another party who was carbon copied, responded to Mr. Briner's email, but the entirety of that response has been redacted, including the responding party and date. No privilege claim has been made supporting the redaction.¹² Greenhawk has maintained that Mr. Agarwal's emails prior to 2017 have all been lost. Bradley Aff., Ex. G, Oct. 20, 2021 Letter from John Mabe. Because it is very likely that the redacted response was a 2016 email from Greenhawk's leader, Mr. Agarwal, it is unacceptable to redact the response.

These two examples are two of many where Eastwood has been improperly denied the chance to view attorneys' eyes only versions of potentially key documents.

3. Eastwood only just learned about another key Greenhawk decision maker.

As a final example of why summary judgment is premature, Eastwood discovered just last week the existence of one of Greenhawk's three managers at the time the Tega Cay deal was first conceived. During the December 2, 2021 deposition of Woody Jackson, Greenhawk's current CFO, it was revealed that Matt Desvergers was one of the three decision makers in 2013/2014 when the Properties were assigned to Greenhawk and the agreement with Eastwood was reached. Bradley Aff., ¶21. Mr. Desvergers was not named in Greenhawk's responses to Eastwood's

¹² In fact, Greenhawk has not claimed privilege on any of the documents as no privilege log has been provided.

interrogatories, and his significance was not clear from the documents produced.¹³ *Id.* Though Eastwood acknowledges its own scheduling issues delayed the deposition of Mr. Jackson to some extent, this late breaking revelation underscores the impropriety of summary judgment at this time.

4. Defendants' motions come in the midst of depositions and subpoena responses.

Defendants' motions are also coming on the heels of several important Greenhawk depositions. Just last week (November 30–December 3, 2021), Eastwood was able to depose Greenhawk's current CFO, COO, and VP for Land Development. Bradley Aff., ¶22. Transcripts of those depositions will not be available for at least another week.

Of even greater concern, Sajjan Agarwal will not be deposed until after the Court hears the pending motions. Bradley Aff., ¶23. Mr. Agarwal is one of, if not the, most important Greenhawk officials involved in the agreement. Eastwood anticipates that his testimony will support the existence of the agreement between Eastwood and Greenhawk.

Finally, Eastwood is still in the process of negotiating with Taylor Morrison of Carolinas, Inc., for documents responsive to a subpoena Eastwood issued this fall. *Id.*, ¶27. Taylor Morrison has indicated that it will produce documents, but has not yet done so. *Id.* Since the version of the Taylor Morrison contract Greenhawk provided is so redacted, it is almost useless. Taylor Morrison's terms will help Eastwood establish that Greenhawk has not, for some time, intended to comply with the terms of its agreement with Eastwood.

¹³ Sajjan Agarwal was also not listed in Greenhawk's responses, but Eastwood was able to surmise his importance from other sources.

5. Pursuant to Rule 56(f), the Court should deny the motions or defer ruling until the discovery issues identified above are resolved.

Summary judgment at this stage is premature.¹⁴ Eastwood has still not had the chance to review key Greenhawk documents and depose important Greenhawk officers. These issues are not a result of Eastwood's own lack of diligence. For these reasons, Eastwood respectfully asks the Court to deny the pending motions for partial summary judgment.

B. THE INCOMPLETE FACTS SHOW THAT DEFENDANTS ARE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Summary judgment is also improper when considering the incomplete facts. No party disputes that Greenhawk originally agreed to sell finished lots at the Properties to Eastwood after Greenhawk developed them. Briner Dep., at 59:9–14; Polite Dep., Ex. 23. Defendants instead argue that since the agreement was not reduced to a formal written contract, it is not enforceable. However, the terms of that agreement are included in several writings, including the Properties' plats and pro formas. These documents establish that there was a writing that satisfies the statute of frauds.

Furthermore and alternatively, Eastwood's uncompensated improvements to the Properties, its uncompensated efforts to advance the Properties' development, and its uncompensated transfers of property and property rights to Greenhawk constitute partial performance that takes the agreement outside of the statute of frauds.

¹⁴ As a final example of the prematurity of summary judgment, counsel for Greenhawk notified Eastwood late last week that it has an additional document it failed to produce until now. Bradley Aff., ¶13. The document purports to be a text message from Joe Polite to Craig Briner, both individuals who have already been deposed. *Id.* The short text ostensibly supports Greenhawk's legal position in this case. Greenhawk would have the Court accept the evidence without affording Eastwood the opportunity to question Mr. Briner or Mr. Polite about the message's scant content.

Finally, there is a genuine dispute of material fact as to whether Greenhawk and Eastwood were joint venturers for the purpose of developing the River Falls and Brooks Creek properties.

1. The Eastwood/Greenhawk Agreement Satisfies The Statute of Frauds.

“To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled.” *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007). The purpose of the statute of fraud is to prevent fraud by requiring a writing, but, as the U.S. Supreme Court noted, the rule should not be blindly enforced:

There may be cases in which it would be a violation of reason and common sense to ignore a reference which derives its significance from such proof. If there is ground for any doubt in the matter, the general rule should be enforced. ***But where there is no ground for doubt, its enforcement would aid, instead of discouraging, fraud.***

Beckwith v. Talbot, 95 U.S. 289, 292, 24 L. Ed. 496 (1877) (emphasis added), *cited in Cash v. Maddox*, 265 S.C. 480, 489, 220 S.E.2d 121, 125 (1975) (Lewis, C.J., dissenting), and *Speed v. Speed*, 213 S.C. 401, 411, 49 S.E.2d 588, 593 (1948). In enforcing the statute it should be remembered that “[t]he note or memorandum is not the contract, but only the written evidence of it required by statute.” *Cash*, 265 S.C. at 488, 220 S.E.2d at 124 (Lewis, C.J., dissenting) (quoting 37 C.J.S., Frauds, Statute of, s 174).

The rule is not and should not be a rigid one, and for that reason.

[t]he statute of frauds merely requires some memorandum or note of the agreement relating to real estate to be in writing and signed by the party charged therewith or his agent, and does not require a formally executed contract. There must be written ***evidence of the contract***, if there is no written contract

Blocker v. Hundertmark, 204 S.C. 269, 28 S.E.2d 855, 856 (1944) (emphasis added); *accord Young v. Indep. Pub. Co.*, 273 S.C. 107, 110, 254 S.E.2d 681, 683 (1979); *Cash*, 265 S.C. at 484, 220 S.E.2d at 122 (noting, in a dispute involving the sale of land, that the statute “may be satisfied entirely by a written correspondence”). When taken as a whole, the writings must provide all the

essential terms of the agreement. *Young*, 273 S.C. at 111, 254 S.E.2d at 683. Contracts for the sale of land must include essential terms regarding price and an adequate description of the land with reasonable certainty. See *Fici*, 372 S.C. at 346, 642 S.E.2d at 604; *Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc.*, 367 S.C. 108, 115, 623 S.E.2d 853, 856 (Ct. App. 2005).

“Where a contract does not fix a definite price, there must be a definite method for ascertaining it.” *Trident Const. Co. v. Austin Co.*, 272 F. Supp. 2d 566, 576 (D.S.C. 2003), *aff’d sub nom. Trident Constr. Co. v. Austin Co.*, 93 F. App’x 509 (4th Cir. 2004) (quoting *McPeters v. Yeargin Const. Co.*, 290 S.C. 327, 350 S.E.2d 208, 211 (1986)); *Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978). “If the contract is silent on price, for instance, the agreement is not indefinite if a formula or method for ascertaining the price is understood and agreed upon.” *Trident*, 272 F. Supp. 2d at 576 (quoting *S. Fire & Cas. Co. v. Teal*, 287 F. Supp. 617, 621–22 (D.S.C.1968)).

A percentage of profits is a definite method of determining price. See *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010) (“Here, the parties agreed on a price term: \$20,000 and 50% of the ‘net profits’ generated by each supply contract.”). Courts in other states, analyzing contracts for the sale of land, have approved of pricing mechanisms such as agreements to allow appraisers, arbitrators, or auctioneers to set the price. *Barry v. Liddle, O’Connor, Finkelstein & Robinson*, 98 F.3d 36, 40 (2d Cir. 1996) (analyzing New York law); *Ross v. Ross*, 170 N.H. 331, 339, 172 A.3d 1069, 1076–77 (2017) (“For example, a writing that does not explicitly state the agreed-upon price may satisfy the statute of frauds if the contract prescribes a method, such as a future appraisal, which will necessarily result in the determination of the price.”); *Headstart Bldg., LLC v. Nat’l Centers for Learning Excellence, Inc.*,

2017 WI App 81, ¶ 20, 379 Wis. 2d 346, 360, 905 N.W.2d 147, 154; *Wakelam v. Hagood*, 151 Idaho 688, 693, 263 P.3d 742, 747 (2011) (“[A] seller can agree that, rather than stating a definite purchase price, the land sale contract provide a definite method to determine the purchase price, such as being established by an appraiser, by arbitrators, or by the successful bidder at an absolute auction.”).

As for the description of the land, “a description of the property must be in a signed writing; parol evidence cannot supply this essential element.” *Fici*, 372 S.C. at 346, 642 S.E.2d at 604. “A decree for specific performance operates as a deed. Hence, the land must be described so as to indicate with reasonable certainty what it to be conveyed.” *Cash*, 265 S.C. at 484, 220 S.E.2d at 122.

a. Here, multiple writings satisfy the statute of frauds.

Beginning with price, though the agreement between Eastwood and Greenhawk does not contain an exact price for each lot, it does include a method for determining the price: 20% IRR for Greenhawk. Briner Dep., at 56:7–20, 70:11–13, 75:7–16, 112:11–16; Eastwood 30(b)(6), at 16:19–21, 23:18–21, 39:6–18, 49:8–12, 101:12–102:10. The numerous “pro formas” sent from Greenhawk to Eastwood show a projected IRR near 20% for both Properties. Briner Dep., Exs. 91–93, 96 (pro formas and emails discussing pro formas). As Mr. Polite, Eastwood’s 30(b)(6) designee, summarized when asked:

Q. So Eastwood's position right now at this deposition is it will pay whatever the confirmed net costs are that is GreenHawk's costs minus Eastwood's costs and will guarantee a 20 percent rate of return to GreenHawk on that number and it's compelled to accept that price and cannot back out. Is that Eastwood's testimony?

A. I would say yes.

Eastwood 30(b)(6), at 129:12–19. Greenhawk understood this pricing method as well. As Craig Briner testified, Greenhawk and Eastwood had a meeting of the minds on this essential term:

Q. To your recollection, was Mr. Dority or anybody else at Eastwood aware of GreenHawk's standard expected 20 percent IRR on its development projects?

A. I think –

THE WITNESS: I think Joe Dority was aware of what we were trying to target, I'm pretty sure.

Q. And was he aware that costs, you know, that the takedown schedule and price escalators would roughly be pegged so that GreenHawk would get a 20 percent rate of return on its money over the life of the takedown as far as you know?

A. Yes.

Briner Dep., at 56:7–20; *see also* Briner Dep., at 75:7–15.

The method for pricing was understood by Greenhawk and Eastwood. It was reflected in the pro formas sent by Greenhawk to Eastwood. This method is similar to pricing based on projected profits, *Consignment Sales*, 391 S.C. at 271, 705 S.E.2d at 76, and arguably more definite than other accepted methods, such as appraisal, auction, or arbitration. The price was definite.

The description of the land is also certain. Both the River Falls and Brooks Creek properties have definite boundaries. Polite Dep., Ex. 29, Brooks Creek Plat; Dority Dep., Ex. 68, River Falls Plat. The LPA between TRI Pointe and Greenhawk for Brooks Creek actually included the plat bearing Eastwood's name. Briner Dep., Ex. 105, TRI Pointe and Greenhawk LPA, Ex. A. There would be no guesswork for the Court in a specific performance order. *See Cousar v. Shepherd-Will, Inc.*, 300 S.C. 366, 369, 387 S.E.2d 723, 724 (Ct. App. 1990) (finding description of 15 acres of a 100 acre tract to imprecise to enforce since the precise 15 acres were not defined).

Finally, summary judgment should not be granted on the basis that the takedown schedule for either Property may be ill-defined. First, the timing of a property sale is not, as a matter of law, an essential term. The essential terms are price and description. *Fici*, 372 S.C. at 346; 642 S.E.2d at 604; *Honorage Nursing Home*, 367 S.C. at 115, 623 S.E.2d at 856. Second, as Greenhawk and

Eastwood's agreements in other developments shows, the takedown schedules are often changed in circumstances occur. Eastwood 30(b)(6), at 153:1–17; Dority Dep., Exs. 60–61, Amendments to Lindley LPA. Indeed, the only true determining factor for the timing of lot sales is the recording of a plat, something that may be delayed due to governmental issues unrelated to the parties own plans.¹⁵ “[A] contract [will not] fail for indefiniteness when the gaps that the parties have left ‘may be implied from custom and usual forms and former course of dealing.’” *S. Fire & Cas. Co. v. Teal*, 287 F. Supp. 617, 622 (D.S.C. 1968), *aff'd*, 406 F.2d 1330 (4th Cir. 1969) (quoting *Carolina Aviation v. Glens Falls Ins. Co.*, 214 S.C. 222, 230, 51 S.E.2d 757, 761 (1949)). Take down schedules between Greenhawk and Eastwood changed in the past, and that customary gap should not doom the agreement here.

b. Eastwood did not Decline the Brooks Creek or River Falls contracts.

Eastwood and Greenhawk had an agreement. Greenhawk repudiated it, not Eastwood. Any argument to the contrary ignores the genuine issues of material fact that exist in this case.

First, according to Eastwood's 30(b)(6) designee, Eastwood never told Greenhawk it no longer wished to buy the lots in Brooks Creek:

·Q. Why is it that Eastwood didn't talk to GreenHawk about Brooks Creek and GreenHawk didn't talk to Eastwood about Brooks Creek?

·A. It was the unknown on this whole impact thing. We talk about the Halloween contract.

Q. Right.

A. We still had a huge uncertainty of the Fort Mill massacre which was the title of the impact fees. That was just unresolved at that time.

¹⁵ Greenhawk was not able to deliver lots to TRI Pointe on the agreed schedule for that very reason. Further, the original agreement called for a single takedown, not multiple takedowns. Briner Dep., Ex. 105.

Q. And did anyone from GreenHawk ever say to Eastwood we are terminating our relationship with you and we are now going to sell this property – the Brooks Creek property to another home builder?

A. No.

Q. Did they ever tell you that they had entered into discussions with another home builder?

A. No. Not about selling them.

Eastwood 30(b)(6), at 144:11–21.

When Greenhawk sent Eastwood the October 2018 LPA for Brooks Creek, there was no way for the parties to calculate the lot price since the impact fees were still uncertain. A law suit challenging the impact fees had just been filed in September 2018. The constitutionality of the impact fees was not even resolved until March of this year. Eastwood is still waiting on the lots.

Likewise, Eastwood was never given the chance to buy finished lots at River Falls, and now, inexplicably, Greenhawk claims that Eastwood failed to make an offer on raw land.

* * * * *

Taking the incomplete facts as they stand, there is, at a minimum, a genuine dispute of material fact about whether the writings create an enforceable contract for the sale of the Properties. The essential terms of the contract are clear: The pricing method is definite, the description of the Properties is definite, the Parties are definite, and any lack of a takedown schedule is not essential or dispositive. For those reasons, the Court should deny Defendants' Motions for Partial Summary Judgment.

2. Eastwood's relinquishment of its contract rights and its investments in and improvement to the Properties constitute partial performance removing the contract from the statute of frauds.

Through sufficient writings exist to satisfy the statute of frauds, Eastwood's relinquishment of its contract rights, the conveyance of land for no consideration, and multiple and valuable initial

investments in the Properties, to include the uncompensated work of Joe Dority, remove the contract from scope of the statute of frauds.

“An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other.” *Graham v. Prince*, 293 S.C. 77, 81, 358 S.E.2d 714, 717 (Ct. App. 1987); *accord Parr v. Parr*, 268 S.C. 58, 65, 231 S.E.2d 695, 698 (1977) (“Sufficient part performance of a parol contract to convey or devise real estate will, in equity, remove the agreement from the [Statute of Frauds].”) In short, conduct by one party to the agreement which enriches the other party excuses any Statute of Fraud failings. *Id.*

The courts will require specific performance of an oral contract for the conveyance of land, where the terms of the contract are clear, definite and certain and are established by competent and satisfactory proof, and where the party seeking to rescue it from the statute shows such acts of performance or part performance on his part, **clearly and unequivocally referable to such agreement**, as would render application of the statute unconscionable.

Fesmire v. Digh, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009) (emphasis in original) (quoting *Scurry v. Edwards*, 232 S.C. 53, 61, 100 S.E.2d 812, 816 (1957)); *see also Parr*, 268 S.C. at 66, 231 S.E.2d at 698 (noting that the doctrine of part performance rests on the related doctrine of equitable estoppel); *Scurry*, 232 S.C. at 62, 100 S.E.2d at 817 (discussing the equitable origins of the doctrine of partial performance and noting its purpose in protecting plaintiffs who “had so altered [their] position in reliance on the agreement that a refusal to enforce it would amount to a fraud upon [them]”); *Honorage Nursing Home*, 367 S.C. at 115, 623 S.E.2d at 857 (noting that defendant’s relinquishment of its property rights, in the form of tenancy, was evidence of partial performance).

The Supreme Court’s decision in *Parr v. Parr* is instructive and on point. In *Parr*, a father conveyed several hundred acres of land to his son, relinquishing possession of the whole other than a small portion where the family home was located. *Parr*, 268 S.C. at 63, 231 S.E.2d at 696. The purpose of the conveyance was to allow the son to obtain a loan secured by the property. After the loan was obtained, the son was to convey back to the father that small portion of the total where his father lived. *Id.* The conveyance back to the father was to be in fee simple, but the son instead signed a deed conveying back only a life estate, and the father sued for specific performance. *Id.* Addressing the son’s assertion of the statute of frauds as a defense, the Court found that the father’s relinquishment of the more than 400 acres to his son, in conjunction with the father’s continued occupation of the portion that was to be conveyed back by the son, was sufficient performance to bring the verbal agreement outside the statute of frauds. *Id.* at 66, 231 S.E.2d at 698. The Court relied on two simple facts—(1) that the father deeded the land, and (2) that he relinquished possession of the entire tract except the portion with the home on it—“as evidence of the agreement.”

Eastwood’s actions in this case are “clearly and unequivocally” tied to its agreement with Greenhawk to assign the right to purchase the Properties and then buy back finished lots for construction. As in *Parr*, Eastwood relinquished its right to purchase both River Falls and Brooks Creek tracts and develop them on their own. In the case of River Falls, it relinquished the right for no compensation. In the case of Brooks Creek, it did so for only a return of its earnest money deposit without any additional consideration. Compl., Ex. D, Combined Assignments. Eastwood’s relinquishment of these contractual rights, without compensation, are sufficient performance to remove the agreement from the statute of frauds. Like in *Parr*, they are actions that make enforcement of the statute of frauds unconscionable when Eastwood has already performed to its

detriment. The assignment of the contract rights and are also actions Eastwood would not have taken without the agreement Greenhawk acknowledges. The assignments are therefore clearly and unequivocally connected to that agreement.

And Eastwood did not just assign contractual rights to purchase land: it gave additional land to Greenhawk to advance the agreement. For no consideration from Greenhawk, Eastwood transferred a sliver of land for which it paid \$55,741. *See* Helms Settlement Statement, BATES ECP_ECP_0012091; Deed from Caroline Helms to Eastwood Development Corp; Quitclaim Deed from Eastwood to Greenhawk, BATES ECP_0005870. Not only did Eastwood pay dearly for the sliver of land, Eastwood also agreed to build the Seller an improved driveway, with a security gate, and granted her an easement to the River Falls entrance road. *See* Helms Purchase and Sales Agreement, BATES GHD_0016151, ¶3. Eastwood is not in the habit of giving away land—it made this transfer because it expected Greenhawk to comply with the agreement and sell Eastwood developed lots.

Beyond the transfer of property interests, Eastwood made other significant investments in the Properties. Over the initial course of the agreement, Eastwood expended over \$570,000 and was not compensated for almost \$360,000 in predevelopment and entitlement costs. Eastwood 30(b)(6), at 146:9–12. Those costs were to be treated as a deposit—i.e., a down payment—on the finished lots that were returned to Eastwood. Briner Dep., Ex. 95, October 12, 2016 Email re Deposit; Eastwood 30(b)(6), at 146:9–12. Eastwood’s former Vice President for Land Acquisition, Joe Dority, spent significant time monitoring and driving the River Falls project. Mr. Dority was never compensated for that work by Greenhawk, because Greenhawk and Eastwood understood the benefit his work brought to both of them in the form of finished lots.

Eastwood's actions are evidence of its agreement with Greenhawk to buy finished lots at River Falls and Brooks Creek. Its actions also make it unconscionable to allow Greenhawk to assert a statute of frauds defense. For these reasons, the Court should find that Eastwood's actions take its agreement with Greenhawk outside of the statute of frauds. *Graham*, 293 S.C. at 81, 358 S.E.2d at 717. At a minimum, the facts adduced above reflect a genuine issue of material fact as to whether Eastwood provided sufficient partial performance to take the contract outside of the statute of frauds.

3. There is a genuine dispute of material fact as to whether Eastwood and Greenhawk were joint venturers.

The facts, as they are presently known, also create a genuine dispute of material fact as to Eastwood's joint venture claim.

"A joint enterprise exists where there are two or more persons united in the joint prosecution of a common purpose under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means and the agencies employed to execute such common purpose." *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 147, 425 S.E.2d 764, 774 (Ct. App. 1992) (citing *Long v. Carolina Baking Co.*, 190 S.C. 367, 3 S.E.2d 46 (1939)). "Further, in order to constitute a joint enterprise, there must be a common purpose and community of interest in the object of the enterprise and an equal right to direct and control the conduct of each other with respect thereto." *Id.* (citing *Spradley v. Houser*, 247 S.C. 208, 146 S.E.2d 621 (1966)). Joint venturers also share in profits and losses. *See Mid-S. Mgmt. Co. Inc. v. Sherwood Dev. Corp.*, No. 2004-UP-611, 2004 WL 6337256, at *1 (S.C. Ct. App. Dec. 7, 2004) (noting that agreement provided for allocation of profits and losses).

Here, the incomplete record establishes that Eastwood and Greenhawk were working for a common purpose. Eastwood made what was essentially gratuitous assignment of the contracts to

buy both Properties to Greenhawk. Eastwood later transferred land it paid a high price for without asking for anything in return from Greenhawk. Joe Dority was Greenhawk's uncompensated man on the ground in Tega Cay. He worked to coordinate engineering services, wetland services, and meeting with Tega Cay officials. Pro formas were regularly exchanged between Greenhawk and Eastwood as they worked to finalize pricing and costs.

There was also an agreement to share profits and losses. Greenhawk and Eastwood agreed that Greenhawk would receive a 20% return for the lots after factoring in their costs. This equation would ensure that both parties shared in the financial burden or windfall in a way that was predetermined.

For these reasons, there is, at a minimum, a genuine dispute of material fact as to whether Greenhawk and Eastwood were joint venturers as to the River Falls and Brooks Creek properties.

IV. CONCLUSION

For the aforementioned reasons, Eastwood respectfully asks the Court to deny Defendants' motions for partial summary judgment. Alternatively, Eastwood asks the Court to defer ruling on the motions until such time that discovery can be completed.

Respectfully submitted,

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December 9, 2021

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-02006

Eastwood Construction Partners, LLC and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-
Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River
Falls, a North Carolina Limited Liability
Company, and AF-River Falls, LLC, a
North Carolina Limited Liability
Company, Greenhawk Corporation, Inc.,
and TRI Pointe Homes Holdings, Inc.,

Defendants.

**ORDER GRANTING TRI POINTE
HOMES HOLDINGS, INC.'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

This matter is before the Court on a Motion for Partial Summary Judgment filed by Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe") against Plaintiffs Eastwood Construction Partners, LLC ("Eastwood Construction") and Eastwood Development Corporation ("Eastwood Development"). In its Motion, TRI Pointe asks this Court: (i) to enter summary judgment in favor of TRI Pointe on Plaintiffs' claims for specific performance of a contract for a tract of real property known as "Brooks Creek" and (ii) to cancel the *lis pendens* that TRI Pointe has filed against Brooks Creek.

The Court held a hearing on TRI Pointe's Motion on December 10, 2021. Present on behalf of TRI Pointe were Stephen M. Cox, Amanda Pickens Nitto and Timothy P. Misner of Robinson Bradshaw & Hinson, P.A. Present on behalf of Plaintiffs were James Edward Bradley of Moore Bradley Myers Law Firm and James C. Adams, II and William O. Walker of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Present on behalf of the Defendants other than TRI

Pointe were John I. Mabe, Jr.; Andrew A. Mathias; and Konstantine P. Diamaduros of Nexsen Pruet, LLC.

After carefully considering the papers and pleadings of records in this action and the arguments of counsel, and for the reasons set forth below, the Court hereby grants TRI Pointe's Motion, dismisses Plaintiffs' claims for specific performance with respect to Brooks Creek with prejudice, and cancels the *lis pendens* filed by Plaintiffs against Brooks Creek.

I. STATEMENT OF UNDISPUTED FACTS

Plaintiffs' claims for specific performance are based on Plaintiffs' contention that Eastwood Construction is entitled to the ownership of Brooks Creek—a 10.6 acre tract of land in Tega Cay, South Carolina. In April 2013, Eastwood Development signed a contract to purchase Brooks Creek from an unrelated third party. In December 2013, Eastwood Development assigned that contract to Defendant AF-Brooks Creek, LLC ("AF-Brooks Creek"), an affiliate of Defendant Greenhawk Corporation, Inc. ("Greenhawk"). At the time of the assignment by Eastwood Development, it was the parties' general understanding that AF-Brooks Creek would prepare the Brooks Creek tract for development by, among other things, securing all of the necessary zoning and planning approvals and plats for development. Once that was done, it was Plaintiffs' general understanding that the Brooks Creek tract would be conveyed to Eastwood Construction (a separate entity from Eastwood Development) via a written lot purchase agreement, the terms of which would require further negotiation and discussion between the parties.

Ultimately, however, the material terms of the sale of Brooks Creek from Greenhawk's affiliate to Eastwood Construction were neither agreed to nor memorialized in a writing. In particular, despite protracted, desultory negotiations between the parties—over a period of years—neither Greenhawk nor any of its affiliates ever agreed with Eastwood Construction to a particular

lot price, deposit amount, or takedown schedule for the lots in Brooks Creek. Although a Greenhawk affiliate sent a draft contract for the sale of Brooks Creek to Eastwood Construction in October 2018, Plaintiffs conceded in the sworn deposition testimony of their Rule 30(b)(6) representative that Eastwood Construction never accepted that draft contract. Nor did Eastwood Construction make a written counter-proposal. Greenhawk's affiliate eventually conveyed Brooks Creek to TRI Pointe in August 2019.

In support of its Motion for summary judgment, TRI Pointe included in the record a number of internal and external communications to and from Plaintiffs, over a period of years, that explicitly stated that there was never a contract for Eastwood Construction to purchase the Brooks Creek tract. Among the latest of these communications was an email from Eastwood Construction's Vice-President of Land dated June 8, 2020—just a month before this lawsuit was filed.

In July 2020, Plaintiffs filed this action claiming, among other things, a right to specific performance of a contract for the sale of Brooks Creek to Eastwood Construction. Plaintiffs also filed a *lis pendens* based on the same alleged contract with the Court, which has encumbered TRI Pointe's title to the Brooks Creek tract and made it impossible for TRI Pointe to develop, market, and sell the property.

TRI Pointe's motion seeks summary judgment on Plaintiffs' claims for specific performance on the following grounds: (i) there is no enforceable contract for Eastwood Construction's purchase of the Brooks Creek tract because certain material terms were left open for further negotiation; and (ii) any alleged unwritten agreement is unenforceable by application of the Statute of Frauds. TRI Pointe also seeks cancellation of the *lis pendens* on the Brooks Creek

tract on the grounds that none of Plaintiffs' claims (other than claims for specific performance) affect the title to the Brooks Creek tract. The Court agrees with TRI Pointe.

LAW AND ANALYSIS

- I. **Any alleged contract for Eastwood Construction's purchase of the Brooks Creek tract is unenforceable because the parties left material terms open for further negotiation.**

In order to compel specific performance of a contract, a court must find that there is clear evidence of a valid agreement. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). To have a valid and enforceable contract, the parties must have agreed to all essential terms of the agreement, which include, among other things, price, time, and place. *See McPeters v. Yeargin Const. Co.*, 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986) ("Certain terms, such as price, time and place, are considered indispensable."). What constitutes a "material term" may also go beyond price, time, and place, depending on the relationship between the contracting parties. *See Mullins v. Benton*, 309 S.C. 85, 90, 419 S.E.2d 838, 840-41 (Ct. App. 1992) (stating that method for determining price, amount of down payment, interest rate, and length of a purchase money mortgage may be material terms to a contract for the transfer of real property). When negotiating parties leave material terms open for future agreement, the contract is void for indefiniteness, even if the parties initially intended to be bound. *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994); *Rose Elec., Inc. v. Cooler Erectors of Atlanta, Inc.*, 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016). It is "well recognized and has been repeatedly affirmed" that the requirement of definiteness is more exacting when the remedy sought is specific performance of a contract. *Craven v. Williams*, 302 F.Supp. 885, 891 (D.S.C. 1969).

Here, there exists no issue of material fact as to whether Eastwood Construction and a Greenhawk affiliate ever agreed to a particular lot price, deposit amount, or time for the sale of the Brooks Creek lots. To the contrary, Plaintiffs and their employees repeatedly admitted, both in

the documents they produced and in their sworn deposition testimony, that Eastwood Construction and Greenhawk never reached an agreement on the foregoing material terms. The parties instead opted to keep these terms open for future negotiation. Such an arrangement is a mere “agreement to agree,” which does not constitute a valid, enforceable contract in South Carolina. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

Plaintiffs are correct in their contention that a contract need not set an exact price for a transfer of land if there is an agreed upon and definite method for ascertaining the price. Plaintiffs claimed that the parties had agreed to a purchase price formula that would generate a 20% profit for Greenhawk and its affiliates. The only evidence that Plaintiffs adduced in support of this claim, however, were two pro formas exchanged between Plaintiffs and Greenhawk. Neither of these pro formas actually project a twenty percent profit. Even if they did, neither pro forma shows that Greenhawk or its affiliates agreed to use such a pro forma projection as a binding contract lot price. And finally, even if Plaintiffs were able to overcome these crippling evidentiary defects, they offered no evidence to show that the parties had agreed to other material terms, such as deposit amount and the timing of lot purchases. Accordingly, because the undisputed facts show that Plaintiffs and Defendants never agreed on material terms, there exists no valid, enforceable contract on which Plaintiffs can base their claim for specific performance.

II. Any alleged contract for Eastwood Construction’s purchase of the Brooks Creek tract was not committed to writing and is thus barred by the Statute of Frauds.

Plaintiffs’ claims for specific performance also fail because there is no written contract memorializing the alleged lot purchase agreement for the Brook Creek tract. In South Carolina, a contract for the transfer of land is unenforceable unless it is written and signed by the party to be charged. S.C. Code § 32-3-10(4). “To satisfy the Statute of frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled.” *Fici v. Koon*, 372

S.C. 341, 346, 642 S.E.2d 602, 604 (2007). Here, the Plaintiffs cannot produce a satisfactory written contract for the sale of the Brooks Creek tract because, by Plaintiffs' own admission, no such contract exists. Accordingly, the agreement alleged by Plaintiffs is barred by the Statute of Frauds.

Plaintiffs are correct in their contention that the terms of a contract can be ascertained from multiple writings; the Statute of Frauds does not require a single document with the word "CONTRACT" across the top. However, none of the writings in the record, even taken together, memorialize the material contract elements necessary to transfer the Brooks Creek tract. First, Plaintiffs have failed to point to any document signed by Greenhawk or its affiliates memorializing the contract price or method of determining that price. (As explained above, the conflicting pro formas produced by Plaintiffs fall short of this requirement.) Nor is there any writing in the record, signed by Greenhawk or its affiliates, memorializing the timing of the lot purchases (also known as a "takedown schedule"). Accordingly, the Statute of Frauds renders any potential agreement between Greenhawk and Eastwood Construction to transfer the Brooks Creek tract unenforceable.

Plaintiffs further contend that their conduct constitutes "part performance" of the alleged Brooks Creek lot purchase agreement, so that the Statute of Frauds no longer applies. For the "part performance" doctrine to apply, however, all of the following elements must be present: 1) clear evidence of the contract's terms by proof that is clear, definite, and certain; 2) the party's partial execution clearly and unequivocally relates to the agreement; and 3) the party who requests performance had completed or was willing to complete its part of the oral contract. *Fesmire v. Digh*, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009). As this test indicates, part performance is one way (other than a writing) of revealing contract terms *that already exist*. The part performance doctrine cannot create material contract terms that do not exist in the first place.

For this reason alone, the part performance doctrine does not apply here and cannot help Plaintiffs over the insuperable barrier posed by the Statute of Frauds. Plaintiffs cannot use the “part performance” doctrine to show clear evidence of the contract’s terms because critical material terms—such as price, deposits, and timing—had never been agreed to by the parties. Accordingly, any alleged contract for the sale of the Brooks Creek tract is unenforceable.

III. Because none of Plaintiffs’ remaining claims affect the title to the Brooks Creek tract, the *lis pendens* on the property must be cancelled.

South Carolina permits the filing of a *lis pendens* only when the corresponding action “affect[s] the title to real property.” S.C. Code § 15-11-10. Consequently, once it is determined that a plaintiff’s claim cannot affect the title to real property, the *lis pendens* must be cancelled. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012). A party’s claim for money damages associated with a contract for real property does not affect the title to real property and thus cannot serve as the sole basis for a *lis pendens*. *Id.* at 8-9, 879-880.

All of Plaintiffs’ claims associated with the Brooks Creek contract—other than its specific performance claims—are for money damages. Those claims do not affect the title to the Brooks Creek property, and the *lis pendens* must be cancelled.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that TRI Pointe’s Motion for Summary Judgment shall be, and the same is hereby, **GRANTED**. The *lis pendens* filed by Plaintiffs against the Brooks Creek tract in Case No. 2020-LP-46-0228 is hereby **CANCELLED**.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Judge of the Sixteenth Judicial Circuit



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Other

So Ordered

s/Daniel D. Hall 2753



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp:	01-14-2022 03:54:21 PM
Court:	CIRCUIT COURT Common Pleas York
Case Caption:	Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted:	Order/Partial Summary Judgment Granted Order/Other
Filed by or on behalf of:	Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River
Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development
Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd
River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602006

Eastwood Construction Partners, Llc et al
PLAINTIFF(S)

Ghd Brooks Creek et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration, Eastwood Construction Partners, LLC Motion for Reconsideration of the January 14, 2022 Order Granting Tri Pointe Homes, Inc.'s Motion for Partial Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/15/2022 .

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 02-15-2022 11:55:06 AM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Order/Electronic Form 4/Motion Denied Order/Electronic Form 4
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

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River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

ORDER

This matter came before the Court on December 10, 2021, upon Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc.'s ("GreenHawk") (collectively, "Defendants") Motion for Partial Summary Judgment and Cancellation of Lis Pendens¹ ("Motion"). Present at the hearing were John I. Mabe, Andrew A. Mathias, and Konstantine P. Diamaduros for Defendants, Stephen M. Cox, Amanda P. Nitto, and Tim Misner for Co-Defendant TRI-Pointe Homes, Inc. ("TRI-Pointe"),² and James C. Adams, II, William O. Walker, IV, and James Edward Bradley for

¹ Unless otherwise specified, "Lis Pendens" as used herein is a collective reference to Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

² TRI-Pointe also filed a Motion for Partial Summary Judgment, which is addressed in a separate Order.

Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively “Eastwood”).

UNDISPUTED FACTS

Based upon Defendants’ Motion and the memorandum in support thereof (“Memorandum”), including supporting exhibits, as well as the arguments of counsel, I find that the following facts are not in dispute:

I. Background

This dispute arises out of a failed negotiation to purchase land in York County. As a land developer, GreenHawk purchases raw land and contracts for construction of improvements for residential or commercial purposes. In this instance, Eastwood identified two separate parcels of land that would ultimately become Brooks Creek³ and River Falls. Prior to closing on these assembled parcels, Eastwood assigned the contracts for purchase to GreenHawk, and GreenHawk entities purchased them.⁴ The parties do not dispute that the initial intention was for GreenHawk to develop the land; then, after GreenHawk completed development, the parties would enter into contracts whereby GreenHawk would sell the lots in the River Falls and Brooks Creek subdivisions to Eastwood. Despite negotiations that spanned several years, this initial intention never came to fruition.

³ GreenHawk formed two LLC’s, AF-Brooks Creek, LLC and GHD-Brooks Creek, LLC, to purchase and to develop the Brooks Creek subdivision. Eastwood sometimes referred to Brooks Creek as “Brooks Springs,” and TRI-Pointe later changed the name to Ashburn. However, Brooks Creek, Brooks Springs, and Ashburn all refer to the same property.

⁴ The contracting parties were AF-Brooks Creek, LLC and AF-River Falls, LLC, which were GreenHawk affiliates formed for the specific purpose of purchasing these tracts of land.

Prior to this litigation, GreenHawk sold part of Brooks Creek to TRI-Pointe.⁵ Shortly thereafter, Eastwood filed the Lis Pendens on June 11, 2020. On July 1, 2020, Eastwood filed its initial Complaint, which has since been amended three times, on July 31, 2020, October 30, 2020, and February 25, 2021. At issue in this Motion are Eastwood's claims for specific performance.

II. No Enforceable Contract Existed Between the Parties Whereby Eastwood Would Purchase River Falls or Brooks Creek From GreenHawk

In their Memorandum and at the hearing on this Motion, Defendants submitted a substantial amount of evidence, including documents and deposition testimony primarily from Eastwood's own representatives, which conclusively established that no enforceable contract, written or otherwise, has ever existed between the parties whereby Eastwood would purchase River Falls or Brooks Creek from GreenHawk. This undisputed evidence included, but was not limited to, the following:⁶

- The parties never executed a written contract for Brooks Creek or River Falls that would satisfy the statute of frauds.
- Joe Dority and Joe Polite, Eastwood's former and current Vice President of Land,⁷ each testified at deposition that Eastwood's standard practice was to have a written contract in place for land sale agreements. *See* Defs.' Mem. at 6, 8.
- Regarding the parties' course of dealing, Mr. Polite testified that all prior lot purchase agreements between Eastwood and GreenHawk involved the use of a signed, written contract. *Id.* at 12. Moreover, all prior dealings between the parties – as identified and

⁵ Although the remainder of Brooks Creek is still under contract for sale to TRI-Pointe, GreenHawk's efforts to consummate that sale have been stymied by Eastwood's filing of the Brooks Creek Lis Pendens. In addition, River Falls is currently under contract for sale to non-party Taylor Morrison Homes, but this sale similarly cannot go forward as long as the River Falls Lis Pendens remains in effect.

⁶ For a full overview of the documents and deposition testimony submitted by Defendants, *see* Defs.' Mem. at 4-13.

⁷ Mr. Polite succeeded Mr. Dority as Eastwood's Vice President of Land. Mr. Polite was also designated as Eastwood's 30(b)(6) witness.

submitted by GreenHawk – regarding the purchase and sale of land involved the use of a written contract. *Id.* at 17 n.10. Eastwood never disputed this fact.

- Various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to purchase and sale of Brooks Creek. *See generally id.* at 4-13.
- Various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to purchase and sale of River Falls. *Id.*
- Various Eastwood representatives repeatedly acknowledged or admitted that Eastwood and GreenHawk never agreed on material terms (i.e., lot price, takedown schedule, or deposit amount) with respect to the alleged contract concerning the purchase and sale of Brooks Creek. *Id.*
- Various Eastwood representatives repeatedly acknowledged or admitted that Eastwood and GreenHawk never agreed on material terms (i.e., lot price, takedown schedule, or deposit amount) with respect to the alleged contract concerning the purchase and sale of River Falls. *Id.*

III. The Evidence Does Not Support Eastwood's Allegations that Eastwood and GreenHawk Were Partners or Joint Venturers.

Deposition testimony from Eastwood witnesses directly contradicts Eastwood's partnership and joint venture allegations.⁸ First, Mr. Polite admitted that no joint profit or loss agreement existed between the parties. *See Defs.' Mem.* at 18. Second, Mr. Dority admitted that the parties never discussed becoming partners or joint venturers. *Id.* Third, and perhaps most importantly, Mr. Polite, while testifying as Eastwood's 30(b)(6) designee, stated the following after being asked whether there was an agreement to share the net profit or loss with GreenHawk: "We [Eastwood] were not anticipating sharing the net profit with GreenHawk." *Id.*

CONCLUSIONS OF LAW

Based upon Defendants' Motion and Memorandum, including supporting exhibits, as well as the arguments of counsel, I make the following conclusions of law:

⁸ These allegations appeared, for the first time, in Eastwood's Third Amended Complaint.

I. Standard of Review

Summary Judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). “[O]nce the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255 (S.C. Ct. App. 2004).

“Where a motion for summary judgment is made and supported by proper affidavits, a plaintiff cannot rest on allegations in his pleadings that are controverted by affidavits and/or depositions submitted by defendants.” *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 542, 608 S.E.2d 440, 447 (Ct. App. 2004). Furthermore, “[a] party may not create a genuine issue of material fact through speculation or guesswork.” *In re Eleanor McCarthy Lenahan Tr. under agreement Dated July 12, 2001*, 428 S.C. 598, 605, 836 S.E.2d 793, 797 (Ct. App. 2019) (recognizing that one may not create a genuine issue of material fact by speculation or an “inferential leap”). And, “mere bald assertions uncorroborated by any other evidence” are likewise insufficient. *See Noorai v. Sch. Dist. of Pickens Cty.*, No. 2014-001282, 2016 WL 1367066, at *2 (S.C. Ct. App. Apr. 6, 2016); *see also Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) (holding that “assertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact”).

II. Analysis

A. Specific Performance

“Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” *Ingram v. Kasey’s Assocs.*,

340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) (citations omitted). In order to compel specific performance, a court must find:

(1) *there is clear evidence of a valid agreement*; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Id. at 106, 531 S.E.2d at 291 (emphasis added).

Here, the documentary evidence produced in discovery *by Eastwood*, together with the testimony of Eastwood's own representatives, indisputably established that the parties never had a valid agreement for the purchase and sale of River Falls or Brooks Creek. It is undisputed that the parties never executed a written contract for either property that would satisfy the statute of frauds. *See Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007) ("To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled."). At most, the parties had an unenforceable, oral agreement to agree on the material terms of a contract at some undetermined point in the future. *See id.* at 347, 642 S.E.2d at 605 (holding that an agreement to agree is not enforceable under the statute of frauds); *see also Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 579, 762 S.E.2d at 701-02 (holding that an agreement to execute further agreements is unenforceable when there is no meeting of the minds on material terms).

At deposition, Eastwood's own executives who were in charge of land acquisition, one of whom was Eastwood's 30(b)(6) designee, testified to as much and repeatedly confirmed that the parties never agreed to material terms of the contract, such as lot price, takedown schedule, and a deposit amount for River Falls or Brooks Creek. *See* Defs.' Mem. at 15 (Mr. Polite, as Eastwood's 30(b)(6) designee, testifying that the parties had an "*agreement in principle*" with respect to how they would arrive at an agreed-upon lot price) (emphasis added); *see also id.* (Mr. Polite, as

Eastwood's 30(b)(6) designee, confirming that as of October 20, 2021, there was no agreement between Eastwood and GreenHawk with respect to the Brooks Creek lot price, takedown schedule, or deposit amount); *id.* (Mr. Polite, as Eastwood's 30(b)(6) designee, confirming that "there was no acceptance or rejection of" the draft contract Eastwood received for Brooks Creek on October 31, 2018, and further noting that there was no need for Eastwood's land acquisition committee to meet about Brooks Creek at that point "[b]ecause *there was no agreed upon terms by both [Eastwood's] Charlotte division or GreenHawk at the time*") (emphasis added); *Id.* (Mr. Polite, as Eastwood's 30(b)(6) designee, Q: "Just for clarity, I'm asking for the company's knowledge. I'm asking if there is a term of any agreement by which the company has the right to buy the River Falls project undeveloped?" A: "*Not to my knowledge.*") (emphasis added); *Id.* (Mr. Dority testifying that the parties had a "*verbal understanding*" and that the "*exact terms [of the contracts] would have had to be nailed down*") (emphasis added); *Id.* at 15-16 (Mr. Dority testifying, "*I don't remember any specific terms for Brooks Springs, Brooks Creek, River Falls. . . . I remember I talked to the GreenHawk folks about terms. Okay, we need to get the terms . . .*") (emphasis added).

To the extent Eastwood attempts to sidestep these glaring contractual deficiencies through an alleged course of dealing between the parties, *see, e.g.*, Third Am. Compl. at ¶¶ 10-11, those allegations were directly contradicted by the evidence. While testifying as Eastwood's 30(b)(6) designee, Mr. Polite confirmed that Eastwood has *never* closed on a property sale with GreenHawk without a signed, written contract, and further confirmed that if this Court were to order specific performance with respect to River Falls or Brooks Creek, that "*[i]t would be the first time that . . . Eastwood would buy a lot from a GreenHawk entity without a signed written contract.*" *See* Defs.' Mem. at 16 (quoting Mr. Polite's deposition testimony) (emphasis added). This testimony,

as well as the prior written contracts between the parties,⁹ run entirely contrary to Eastwood's course of dealing allegations.

The overwhelming amount of testimony and documents reviewed and considered by the Court only lead to one conclusion. There is no genuine issue of material fact that no "valid agreement" existed between Eastwood and GreenHawk with respect to the purchase and sale of River Falls or Brooks Creek. Accordingly, Defendants are entitled to summary judgment on Eastwood's specific performance claims. *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. To the extent Eastwood argued that enforceable contracts existed under the part performance exception to the statute of frauds, that argument likewise fails without the presence of a valid agreement. *See Gibson v. Hrysikos*, 293 S.C. 8, 15, 358 S.E.2d 173, 176 (Ct. App. 1987).¹⁰

B. Lis Pendens

Eastwood's specific performance claims are the only causes of action that affect the title to River Falls and Brooks Creek. Accordingly, because GreenHawk is entitled to summary judgment on those claims, the Lis Pendens must be cancelled. *See Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (affirming the cancellation of a lis pendens

⁹ See Defs.' Mem. at 17 n.10.

¹⁰ Eastwood's partnership and joint venture allegations fare no better. Even if this Court were to assume that the Supreme Court of South Carolina would recognize a partnership or joint venture exception to the statute of frauds, Eastwood's partnership and joint venture allegations were also repeatedly contradicted by the evidence. *See Trexler v. McIntyre*, 216 S.C. 469, 473-474, 58 S.E.2d 887, 889 (1950) ("[T]he true test of a copartnership is that there must be a communion of profits and losses."); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990) ("To establish a partnership there must be an association of two or more persons to carry on as co-owners of a business for profit.").

after the plaintiffs no longer had a claim affecting the title to real property because the lis pendens was no longer authorized by S.C. Code Ann. § 15-11-10).

CONCLUSION

Without a valid agreement, a claim for specific performance cannot lie under South Carolina law. *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. Defendants are entitled to summary judgment on Eastwood's specific performance claims because there is no genuine issue of material fact that no valid agreement existed between Eastwood and GreenHawk with respect to the purchase and sale of River Falls or Brooks Creek. Accordingly, Defendants' Motion is **GRANTED**. Eastwood's specific performance claims are hereby dismissed with prejudice, and the Lis Pendens are hereby cancelled.

IT IS SO ORDERED.

February __, 2022

Daniel D. Hall
Presiding Judge, York County



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-02-15 11:28:53 page 10 of 10



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
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A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 02-15-2022 01:27:17 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Order/Summary Judgment Order/Summary Judgment
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
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Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

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River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
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Eastwood Construction Partners, Llc for Case Party Info Protected

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602006

Eastwood Construction Partners, Llc et al
PLAINTIFF(S)

Ghd Brooks Creek et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration. Eastwood Construction Partner's, LLC and Eastwood Development Corporation's MOTION FOR RECONSIDERATION of the Court's February 15, 2022 Order Granting GHD Brooks Creek, AF-Brooks Creek, LLC, GHD River Falls, AF-River Falls, LLC, and Greenhawk Corporation's Motion for Partial Summary Judgement is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/07/2022 .

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753



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A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 03-08-2022 07:56:06 AM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Form 4 Order/Motion For Reconsideration Denied Order/Electronic Form 4
Filed by or on behalf of: Daniel D. Hall

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Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River
Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

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Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development
Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd
River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02006

Eastwood Construction Partners, LLC and
Eastwood Development Corporation, ... Appellants,

v.

GHD Brooks Creek, AF-Brooks Creek, LLC,
GHD River Falls, LLC, AF-River Falls, LLC,
Greenhawk Corporation, Inc. and TRI Pointe Homes, Inc., ... Respondents.

NOTICE OF APPEAL

Eastwood Construction Partners, LLC and Eastwood Development Corporation appeal the order of the Honorable Daniel D. Hall signed on January 14, 2022, and filed by the Clerk on that same date as to TRI Pointe Homes. Appellants received written notice of the entry of this order on January 14, 2022. Appellants timely filed a motion to reconsider pursuant to Rule 59. Appellants received notice on February 15, 2022, of the denial of the motion for reconsideration by Order of the Honorable Daniel D. Hall dated February 15, 2022, and filed with the Clerk of Court's Office on that same date. A copy of the Order appealed from is attached as Exhibit A to this notice of appeal. A copy of the Order denying the motion for reconsideration is attached as Exhibit B to this notice of appeal.

March 11, 2022

Respectfully submitted,

s/James Edward Bradley
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Brooks Creek, AF-Brooks Creek,
LLC, GHD River Falls, LLC, AF-
River Falls, LLC, and Greenhawk
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Attorneys for Respondent TRI Pointe
Homes, Inc.

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GHD Brooks Creek, AF-Brooks Creek, LLC,
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Greenhawk Corporation, Inc. and TRI Pointe Homes, Inc., ... Respondents.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Bradley Myers Law Firm, P.A., certify that I have served the Notice of Appeal on the Respondents by depositing a copy of same in the United States Mail, postage prepaid, on March 11, 2022, and by electronic mail, addressed to their attorneys of record as follows:

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West Columbia, South Carolina
March 11, 2022


Lynn G. Ivey

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-02006

Eastwood Construction Partners, LLC and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-
Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River
Falls, a North Carolina Limited Liability
Company, and AF-River Falls, LLC, a
North Carolina Limited Liability
Company, Greenhawk Corporation, Inc.,
and TRI Pointe Homes Holdings, Inc.,

Defendants.

ORDER GRANTING TRI POINTE
HOMES HOLDINGS, INC.'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

RECEIVED

Mar 11 2022

SC Court of Appeals

This matter is before the Court on a Motion for Partial Summary Judgment filed by Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe") against Plaintiffs Eastwood Construction Partners, LLC ("Eastwood Construction") and Eastwood Development Corporation ("Eastwood Development"). In its Motion, TRI Pointe asks this Court: (i) to enter summary judgment in favor of TRI Pointe on Plaintiffs' claims for specific performance of a contract for a tract of real property known as "Brooks Creek" and (ii) to cancel the *lis pendens* that TRI Pointe has filed against Brooks Creek.

The Court held a hearing on TRI Pointe's Motion on December 10, 2021. Present on behalf of TRI Pointe were Stephen M. Cox, Amanda Pickens Nitto and Timothy P. Misner of Robinson Bradshaw & Hinson, P.A. Present on behalf of Plaintiffs were James Edward Bradley of Moore Bradley Myers Law Firm and James C. Adams, II and William O. Walker of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Present on behalf of the Defendants other than TRI



Pointe were John I. Mabe, Jr.; Andrew A. Mathias; and Konstantine P. Diamaduros of Nexsen Pruet, LLC.

After carefully considering the papers and pleadings of records in this action and the arguments of counsel, and for the reasons set forth below, the Court hereby grants TRI Pointe's Motion, dismisses Plaintiffs' claims for specific performance with respect to Brooks Creek with prejudice, and cancels the *lis pendens* filed by Plaintiffs against Brooks Creek.

I. STATEMENT OF UNDISPUTED FACTS

Plaintiffs' claims for specific performance are based on Plaintiffs' contention that Eastwood Construction is entitled to the ownership of Brooks Creek—a 10.6 acre tract of land in Tega Cay, South Carolina. In April 2013, Eastwood Development signed a contract to purchase Brooks Creek from an unrelated third party. In December 2013, Eastwood Development assigned that contract to Defendant AF-Brooks Creek, LLC ("AF-Brooks Creek"), an affiliate of Defendant Greenhawk Corporation, Inc. ("Greenhawk"). At the time of the assignment by Eastwood Development, it was the parties' general understanding that AF-Brooks Creek would prepare the Brooks Creek tract for development by, among other things, securing all of the necessary zoning and planning approvals and plats for development. Once that was done, it was Plaintiffs' general understanding that the Brooks Creek tract would be conveyed to Eastwood Construction (a separate entity from Eastwood Development) via a written lot purchase agreement, the terms of which would require further negotiation and discussion between the parties.

Ultimately, however, the material terms of the sale of Brooks Creek from Greenhawk's affiliate to Eastwood Construction were neither agreed to nor memorialized in a writing. In particular, despite protracted, desultory negotiations between the parties—over a period of years—neither Greenhawk nor any of its affiliates ever agreed with Eastwood Construction to a particular

lot price, deposit amount, or takedown schedule for the lots in Brooks Creek. Although a Greenhawk affiliate sent a draft contract for the sale of Brooks Creek to Eastwood Construction in October 2018, Plaintiffs conceded in the sworn deposition testimony of their Rule 30(b)(6) representative that Eastwood Construction never accepted that draft contract. Nor did Eastwood Construction make a written counter-proposal. Greenhawk's affiliate eventually conveyed Brooks Creek to TRI Pointe in August 2019.

In support of its Motion for summary judgment, TRI Pointe included in the record a number of internal and external communications to and from Plaintiffs, over a period of years, that explicitly stated that there was never a contract for Eastwood Construction to purchase the Brooks Creek tract. Among the latest of these communications was an email from Eastwood Construction's Vice-President of Land dated June 8, 2020—just a month before this lawsuit was filed.

In July 2020, Plaintiffs filed this action claiming, among other things, a right to specific performance of a contract for the sale of Brooks Creek to Eastwood Construction. Plaintiffs also filed a *lis pendens* based on the same alleged contract with the Court, which has encumbered TRI Pointe's title to the Brooks Creek tract and made it impossible for TRI Pointe to develop, market, and sell the property.

TRI Pointe's motion seeks summary judgment on Plaintiffs' claims for specific performance on the following grounds: (i) there is no enforceable contract for Eastwood Construction's purchase of the Brooks Creek tract because certain material terms were left open for further negotiation; and (ii) any alleged unwritten agreement is unenforceable by application of the Statute of Frauds. TRI Pointe also seeks cancellation of the *lis pendens* on the Brooks Creek

tract on the grounds that none of Plaintiffs' claims (other than claims for specific performance) affect the title to the Brooks Creek tract. The Court agrees with TRI Pointe.

LAW AND ANALYSIS

- I. **Any alleged contract for Eastwood Construction's purchase of the Brooks Creek tract is unenforceable because the parties left material terms open for further negotiation.**

In order to compel specific performance of a contract, a court must find that there is clear evidence of a valid agreement. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). To have a valid and enforceable contract, the parties must have agreed to all essential terms of the agreement, which include, among other things, price, time, and place. *See McPeters v. Yeargin Const. Co.*, 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986) ("Certain terms, such as price, time and place, are considered indispensable."). What constitutes a "material term" may also go beyond price, time, and place, depending on the relationship between the contracting parties. *See Mullins v. Benton*, 309 S.C. 85, 90, 419 S.E.2d 838, 840-41 (Ct. App. 1992) (stating that method for determining price, amount of down payment, interest rate, and length of a purchase money mortgage may be material terms to a contract for the transfer of real property). When negotiating parties leave material terms open for future agreement, the contract is void for indefiniteness, even if the parties initially intended to be bound. *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994); *Rose Elec., Inc. v. Cooler Erectors of Atlanta, Inc.*, 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016). It is "well recognized and has been repeatedly affirmed" that the requirement of definiteness is more exacting when the remedy sought is specific performance of a contract. *Craven v. Williams*, 302 F.Supp. 885, 891 (D.S.C. 1969).

Here, there exists no issue of material fact as to whether Eastwood Construction and a Greenhawk affiliate ever agreed to a particular lot price, deposit amount, or time for the sale of the Brooks Creek lots. To the contrary, Plaintiffs and their employees repeatedly admitted, both in

the documents they produced and in their sworn deposition testimony, that Eastwood Construction and Greenhawk never reached an agreement on the foregoing material terms. The parties instead opted to keep these terms open for future negotiation. Such an arrangement is a mere “agreement to agree,” which does not constitute a valid, enforceable contract in South Carolina. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

Plaintiffs are correct in their contention that a contract need not set an exact price for a transfer of land if there is an agreed upon and definite method for ascertaining the price. Plaintiffs claimed that the parties had agreed to a purchase price formula that would generate a 20% profit for Greenhawk and its affiliates. The only evidence that Plaintiffs adduced in support of this claim, however, were two pro formas exchanged between Plaintiffs and Greenhawk. Neither of these pro formas actually project a twenty percent profit. Even if they did, neither pro forma shows that Greenhawk or its affiliates agreed to use such a pro forma projection as a binding contract lot price. And finally, even if Plaintiffs were able to overcome these crippling evidentiary defects, they offered no evidence to show that the parties had agreed to other material terms, such as deposit amount and the timing of lot purchases. Accordingly, because the undisputed facts show that Plaintiffs and Defendants never agreed on material terms, there exists no valid, enforceable contract on which Plaintiffs can base their claim for specific performance.

II. Any alleged contract for Eastwood Construction’s purchase of the Brooks Creek tract was not committed to writing and is thus barred by the Statute of Frauds.

Plaintiffs’ claims for specific performance also fail because there is no written contract memorializing the alleged lot purchase agreement for the Brook Creek tract. In South Carolina, a contract for the transfer of land is unenforceable unless it is written and signed by the party to be charged. S.C. Code § 32-3-10(4). “To satisfy the Statute of frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled.” *Fici v. Koon*, 372

S.C. 341, 346, 642 S.E.2d 602, 604 (2007). Here, the Plaintiffs cannot produce a satisfactory written contract for the sale of the Brooks Creek tract because, by Plaintiffs' own admission, no such contract exists. Accordingly, the agreement alleged by Plaintiffs is barred by the Statute of Frauds.

Plaintiffs are correct in their contention that the terms of a contract can be ascertained from multiple writings; the Statute of Frauds does not require a single document with the word "CONTRACT" across the top. However, none of the writings in the record, even taken together, memorialize the material contract elements necessary to transfer the Brooks Creek tract. First, Plaintiffs have failed to point to any document signed by Greenhawk or its affiliates memorializing the contract price or method of determining that price. (As explained above, the conflicting pro formas produced by Plaintiffs fall short of this requirement.) Nor is there any writing in the record, signed by Greenhawk or its affiliates, memorializing the timing of the lot purchases (also known as a "takedown schedule"). Accordingly, the Statute of Frauds renders any potential agreement between Greenhawk and Eastwood Construction to transfer the Brooks Creek tract unenforceable.

Plaintiffs further contend that their conduct constitutes "part performance" of the alleged Brooks Creek lot purchase agreement, so that the Statute of Frauds no longer applies. For the "part performance" doctrine to apply, however, all of the following elements must be present: 1) clear evidence of the contract's terms by proof that is clear, definite, and certain; 2) the party's partial execution clearly and unequivocally relates to the agreement; and 3) the party who requests performance had completed or was willing to complete its part of the oral contract. *Fesmire v. Digh*, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009). As this test indicates, part performance is one way (other than a writing) of revealing contract terms *that already exist*. The part performance doctrine cannot create material contract terms that do not exist in the first place.

For this reason alone, the part performance doctrine does not apply here and cannot help Plaintiffs over the insuperable barrier posed by the Statute of Frauds. Plaintiffs cannot use the “part performance” doctrine to show clear evidence of the contract’s terms because critical material terms—such as price, deposits, and timing—had never been agreed to by the parties. Accordingly, any alleged contract for the sale of the Brooks Creek tract is unenforceable.

III. Because none of Plaintiffs’ remaining claims affect the title to the Brooks Creek tract, the *lis pendens* on the property must be cancelled.

South Carolina permits the filing of a *lis pendens* only when the corresponding action “affect[s] the title to real property.” S.C. Code § 15-11-10. Consequently, once it is determined that a plaintiff’s claim cannot affect the title to real property, the *lis pendens* must be cancelled. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012). A party’s claim for money damages associated with a contract for real property does not affect the title to real property and thus cannot serve as the sole basis for a *lis pendens*. *Id.* at 8-9, 879-880.

All of Plaintiffs’ claims associated with the Brooks Creek contract—other than its specific performance claims—are for money damages. Those claims do not affect the title to the Brooks Creek property, and the *lis pendens* must be cancelled.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that TRI Pointe’s Motion for Summary Judgment shall be, and the same is hereby, **GRANTED**. The *lis pendens* filed by Plaintiffs against the Brooks Creek tract in Case No. 2020-LP-46-0228 is hereby **CANCELLED**.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Judge of the Sixteenth Judicial Circuit



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Other

So Ordered

s/Daniel D. Hall 2753



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 01-14-2022 03:54:21 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Order/Partial Summary Judgment Granted Order/Other
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River
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James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

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John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd
River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

Mar 11 2022

SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602006

Eastwood Construction Partners, Llc et al
PLAINTIFF(S)

Ghd Brooks Creek et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration, Eastwood Construction Partners, LLC Motion for Reconsideration of the January 14, 2022 Order Granting Tri Pointe Homes, Inc.'s Motion for Partial Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/15/2022 .

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



ELECTRONICALLY FILED - 2022 Feb 15 11:55 AM - YORK - COMMON PLEAS - CASE#2020CP4602006

Court Reporter:

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

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York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-02-15 11:49:01 page 3 of 3

ELECTRONICALLY FILED - 2022 Feb 15 11:55 AM - YORK - COMMON PLEAS - CASE#2020CP4602006



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 02-15-2022 11:55:06 AM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Order/Electronic Form 4/Motion Denied Order/Electronic Form 4
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

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Stephen M. Cox for Tri Pointe Homes
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Daniel D. Hall, Circuit Court Judge

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NOTICE OF APPEAL

Eastwood Construction Partners, LLC and Eastwood Development Corporation appeal the order of the Honorable Daniel D. Hall signed on February 15, 2022 as to GHD Brooks Creek, AF-Brooks Creek, LLC, GHD River Falls, LLC, AF-River Falls, LLC, and Greenhawk Corporation, Inc. The Order was filed by the Clerk on February 15, 2022. Appellants timely filed a motion to reconsider pursuant to Rule 59. Appellants received notice on March 8, 2022, of the denial of the motion for reconsideration by Order of the Honorable Daniel D. Hall dated March 7, 2022, and filed with the Clerk of Court's Office on March 8, 2022. A copy of the Order appealed from is attached as Exhibit A to this notice of appeal. A copy of the Order denying the motion for reconsideration is attached as Exhibit B to this notice of appeal.

March 11, 2022

Respectfully submitted,

s/James Edward Bradley
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Greenhawk Corporation, Inc. and TRI Pointe Homes, Inc., ... Respondents.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Bradley Myers Law Firm, P.A., certify that I have served the Notice of Appeal on the Respondents by depositing a copy of same in the United States Mail, postage prepaid, on March 11, 2022, and by electronic mail, addressed to their attorneys of record as follows:

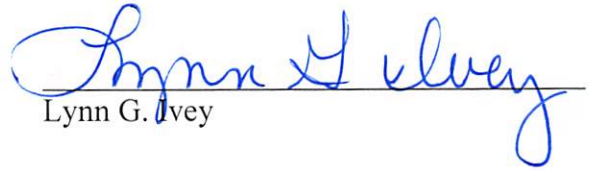
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West Columbia, South Carolina
March 11, 2022


Lynn G. Ivey

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

ORDER

RECEIVED

Mar 11 2022

SC Court of Appeals

This matter came before the Court on December 10, 2021, upon Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc.'s ("GreenHawk") (collectively, "Defendants") Motion for Partial Summary Judgment and Cancellation of Lis Pendens¹ ("Motion"). Present at the hearing were John I. Mabe, Andrew A. Mathias, and Konstantine P. Diamaduros for Defendants, Stephen M. Cox, Amanda P. Nitto, and Tim Misner for Co-Defendant TRI-Pointe Homes, Inc. ("TRI-Pointe"),² and James C. Adams, II, William O. Walker, IV, and James Edward Bradley for

¹ Unless otherwise specified, "Lis Pendens" as used herein is a collective reference to Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

² TRI-Pointe also filed a Motion for Partial Summary Judgment, which is addressed in a separate Order.



Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively “Eastwood”).

UNDISPUTED FACTS

Based upon Defendants’ Motion and the memorandum in support thereof (“Memorandum”), including supporting exhibits, as well as the arguments of counsel, I find that the following facts are not in dispute:

I. Background

This dispute arises out of a failed negotiation to purchase land in York County. As a land developer, GreenHawk purchases raw land and contracts for construction of improvements for residential or commercial purposes. In this instance, Eastwood identified two separate parcels of land that would ultimately become Brooks Creek³ and River Falls. Prior to closing on these assembled parcels, Eastwood assigned the contracts for purchase to GreenHawk, and GreenHawk entities purchased them.⁴ The parties do not dispute that the initial intention was for GreenHawk to develop the land; then, after GreenHawk completed development, the parties would enter into contracts whereby GreenHawk would sell the lots in the River Falls and Brooks Creek subdivisions to Eastwood. Despite negotiations that spanned several years, this initial intention never came to fruition.

³ GreenHawk formed two LLC’s, AF-Brooks Creek, LLC and GHD-Brooks Creek, LLC, to purchase and to develop the Brooks Creek subdivision. Eastwood sometimes referred to Brooks Creek as “Brooks Springs,” and TRI-Pointe later changed the name to Ashburn. However, Brooks Creek, Brooks Springs, and Ashburn all refer to the same property.

⁴ The contracting parties were AF-Brooks Creek, LLC and AF-River Falls, LLC, which were GreenHawk affiliates formed for the specific purpose of purchasing these tracts of land.

Prior to this litigation, GreenHawk sold part of Brooks Creek to TRI-Pointe.⁵ Shortly thereafter, Eastwood filed the Lis Pendens on June 11, 2020. On July 1, 2020, Eastwood filed its initial Complaint, which has since been amended three times, on July 31, 2020, October 30, 2020, and February 25, 2021. At issue in this Motion are Eastwood's claims for specific performance.

II. No Enforceable Contract Existed Between the Parties Whereby Eastwood Would Purchase River Falls or Brooks Creek From GreenHawk

In their Memorandum and at the hearing on this Motion, Defendants submitted a substantial amount of evidence, including documents and deposition testimony primarily from Eastwood's own representatives, which conclusively established that no enforceable contract, written or otherwise, has ever existed between the parties whereby Eastwood would purchase River Falls or Brooks Creek from GreenHawk. This undisputed evidence included, but was not limited to, the following:⁶

- The parties never executed a written contract for Brooks Creek or River Falls that would satisfy the statute of frauds.
- Joe Dority and Joe Polite, Eastwood's former and current Vice President of Land,⁷ each testified at deposition that Eastwood's standard practice was to have a written contract in place for land sale agreements. *See* Defs.' Mem. at 6, 8.
- Regarding the parties' course of dealing, Mr. Polite testified that all prior lot purchase agreements between Eastwood and GreenHawk involved the use of a signed, written contract. *Id.* at 12. Moreover, all prior dealings between the parties – as identified and

⁵ Although the remainder of Brooks Creek is still under contract for sale to TRI-Pointe, GreenHawk's efforts to consummate that sale have been stymied by Eastwood's filing of the Brooks Creek Lis Pendens. In addition, River Falls is currently under contract for sale to non-party Taylor Morrison Homes, but this sale similarly cannot go forward as long as the River Falls Lis Pendens remains in effect.

⁶ For a full overview of the documents and deposition testimony submitted by Defendants, *see* Defs.' Mem. at 4-13.

⁷ Mr. Polite succeeded Mr. Dority as Eastwood's Vice President of Land. Mr. Polite was also designated as Eastwood's 30(b)(6) witness.

submitted by GreenHawk – regarding the purchase and sale of land involved the use of a written contract. *Id.* at 17 n.10. Eastwood never disputed this fact.

- Various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to purchase and sale of Brooks Creek. *See generally id.* at 4-13.
- Various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to purchase and sale of River Falls. *Id.*
- Various Eastwood representatives repeatedly acknowledged or admitted that Eastwood and GreenHawk never agreed on material terms (i.e., lot price, takedown schedule, or deposit amount) with respect to the alleged contract concerning the purchase and sale of Brooks Creek. *Id.*
- Various Eastwood representatives repeatedly acknowledged or admitted that Eastwood and GreenHawk never agreed on material terms (i.e., lot price, takedown schedule, or deposit amount) with respect to the alleged contract concerning the purchase and sale of River Falls. *Id.*

III. The Evidence Does Not Support Eastwood's Allegations that Eastwood and GreenHawk Were Partners or Joint Venturers.

Deposition testimony from Eastwood witnesses directly contradicts Eastwood's partnership and joint venture allegations.⁸ First, Mr. Polite admitted that no joint profit or loss agreement existed between the parties. *See Defs.' Mem.* at 18. Second, Mr. Dority admitted that the parties never discussed becoming partners or joint venturers. *Id.* Third, and perhaps most importantly, Mr. Polite, while testifying as Eastwood's 30(b)(6) designee, stated the following after being asked whether there was an agreement to share the net profit or loss with GreenHawk: "We [Eastwood] were not anticipating sharing the net profit with GreenHawk." *Id.*

CONCLUSIONS OF LAW

Based upon Defendants' Motion and Memorandum, including supporting exhibits, as well as the arguments of counsel, I make the following conclusions of law:

⁸ These allegations appeared, for the first time, in Eastwood's Third Amended Complaint.

I. Standard of Review

Summary Judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). “[O]nce the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255 (S.C. Ct. App. 2004).

“Where a motion for summary judgment is made and supported by proper affidavits, a plaintiff cannot rest on allegations in his pleadings that are controverted by affidavits and/or depositions submitted by defendants.” *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 542, 608 S.E.2d 440, 447 (Ct. App. 2004). Furthermore, “[a] party may not create a genuine issue of material fact through speculation or guesswork.” *In re Eleanor McCarthy Lenahan Tr. under agreement Dated July 12, 2001*, 428 S.C. 598, 605, 836 S.E.2d 793, 797 (Ct. App. 2019) (recognizing that one may not create a genuine issue of material fact by speculation or an “inferential leap”). And, “mere bald assertions uncorroborated by any other evidence” are likewise insufficient. *See Noorai v. Sch. Dist. of Pickens Cty.*, No. 2014-001282, 2016 WL 1367066, at *2 (S.C. Ct. App. Apr. 6, 2016); *see also Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) (holding that “assertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact”).

II. Analysis

A. Specific Performance

“Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” *Ingram v. Kasey’s Assocs.*,

340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) (citations omitted). In order to compel specific performance, a court must find:

(1) *there is clear evidence of a valid agreement*; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Id. at 106, 531 S.E.2d at 291 (emphasis added).

Here, the documentary evidence produced in discovery *by Eastwood*, together with the testimony of Eastwood's own representatives, indisputably established that the parties never had a valid agreement for the purchase and sale of River Falls or Brooks Creek. It is undisputed that the parties never executed a written contract for either property that would satisfy the statute of frauds. *See Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007) ("To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled."). At most, the parties had an unenforceable, oral agreement to agree on the material terms of a contract at some undetermined point in the future. *See id.* at 347, 642 S.E.2d at 605 (holding that an agreement to agree is not enforceable under the statute of frauds); *see also Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 579, 762 S.E.2d at 701-02 (holding that an agreement to execute further agreements is unenforceable when there is no meeting of the minds on material terms).

At deposition, Eastwood's own executives who were in charge of land acquisition, one of whom was Eastwood's 30(b)(6) designee, testified to as much and repeatedly confirmed that the parties never agreed to material terms of the contract, such as lot price, takedown schedule, and a deposit amount for River Falls or Brooks Creek. *See* Defs.' Mem. at 15 (Mr. Polite, as Eastwood's 30(b)(6) designee, testifying that the parties had an "*agreement in principle*" with respect to how they would arrive at an agreed-upon lot price) (emphasis added); *see also id.* (Mr. Polite, as

Eastwood's 30(b)(6) designee, confirming that as of October 20, 2021, there was no agreement between Eastwood and GreenHawk with respect to the Brooks Creek lot price, takedown schedule, or deposit amount); *id.* (Mr. Polite, as Eastwood's 30(b)(6) designee, confirming that "there was no acceptance or rejection of" the draft contract Eastwood received for Brooks Creek on October 31, 2018, and further noting that there was no need for Eastwood's land acquisition committee to meet about Brooks Creek at that point "[b]ecause *there was no agreed upon terms by both [Eastwood's] Charlotte division or GreenHawk at the time*") (emphasis added); *Id.* (Mr. Polite, as Eastwood's 30(b)(6) designee, Q: "Just for clarity, I'm asking for the company's knowledge. I'm asking if there is a term of any agreement by which the company has the right to buy the River Falls project undeveloped?" A: "*Not to my knowledge.*") (emphasis added); *Id.* (Mr. Dority testifying that the parties had a "*verbal understanding*" and that the "*exact terms [of the contracts] would have had to be nailed down*") (emphasis added); *Id.* at 15-16 (Mr. Dority testifying, "*I don't remember any specific terms for Brooks Springs, Brooks Creek, River Falls. . . . I remember I talked to the GreenHawk folks about terms. Okay, we need to get the terms . . .*") (emphasis added).

To the extent Eastwood attempts to sidestep these glaring contractual deficiencies through an alleged course of dealing between the parties, *see, e.g.*, Third Am. Compl. at ¶¶ 10-11, those allegations were directly contradicted by the evidence. While testifying as Eastwood's 30(b)(6) designee, Mr. Polite confirmed that Eastwood has *never* closed on a property sale with GreenHawk without a signed, written contract, and further confirmed that if this Court were to order specific performance with respect to River Falls or Brooks Creek, that "*[i]t would be the first time that . . . Eastwood would buy a lot from a GreenHawk entity without a signed written contract.*" *See* Defs.' Mem. at 16 (quoting Mr. Polite's deposition testimony) (emphasis added). This testimony,

as well as the prior written contracts between the parties,⁹ run entirely contrary to Eastwood's course of dealing allegations.

The overwhelming amount of testimony and documents reviewed and considered by the Court only lead to one conclusion. There is no genuine issue of material fact that no "valid agreement" existed between Eastwood and GreenHawk with respect to the purchase and sale of River Falls or Brooks Creek. Accordingly, Defendants are entitled to summary judgment on Eastwood's specific performance claims. *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. To the extent Eastwood argued that enforceable contracts existed under the part performance exception to the statute of frauds, that argument likewise fails without the presence of a valid agreement. *See Gibson v. Hrysikos*, 293 S.C. 8, 15, 358 S.E.2d 173, 176 (Ct. App. 1987).¹⁰

B. Lis Pendens

Eastwood's specific performance claims are the only causes of action that affect the title to River Falls and Brooks Creek. Accordingly, because GreenHawk is entitled to summary judgment on those claims, the Lis Pendens must be cancelled. *See Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (affirming the cancellation of a lis pendens

⁹ See Defs.' Mem. at 17 n.10.

¹⁰ Eastwood's partnership and joint venture allegations fare no better. Even if this Court were to assume that the Supreme Court of South Carolina would recognize a partnership or joint venture exception to the statute of frauds, Eastwood's partnership and joint venture allegations were also repeatedly contradicted by the evidence. *See Trexler v. McIntyre*, 216 S.C. 469, 473-474, 58 S.E.2d 887, 889 (1950) ("[T]he true test of a copartnership is that there must be a communion of profits and losses."); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990) ("To establish a partnership there must be an association of two or more persons to carry on as co-owners of a business for profit.").

after the plaintiffs no longer had a claim affecting the title to real property because the lis pendens was no longer authorized by S.C. Code Ann. § 15-11-10).

CONCLUSION

Without a valid agreement, a claim for specific performance cannot lie under South Carolina law. *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. Defendants are entitled to summary judgment on Eastwood's specific performance claims because there is no genuine issue of material fact that no valid agreement existed between Eastwood and GreenHawk with respect to the purchase and sale of River Falls or Brooks Creek. Accordingly, Defendants' Motion is **GRANTED**. Eastwood's specific performance claims are hereby dismissed with prejudice, and the Lis Pendens are hereby cancelled.

IT IS SO ORDERED.

February __, 2022

Daniel D. Hall
Presiding Judge, York County



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602006

Eastwood Construction Partners, Llc et al
PLAINTIFF(S)

Ghd Brooks Creek et al
DEFENDANT(S)

Mar 11 2022

SC Court of Appeals

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

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

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

After careful consideration. Eastwood Construction Partner's, LLC and Eastwood Development Corporation's MOTION FOR RECONSIDERATION of the Court's February 15, 2022 Order Granting GHD Brooks Creek, AF-Brooks Creek, LLC, GHD River Falls, AF-River Falls, LLC, and Greenhawk Corporation's Motion for Partial Summary Judgement is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/07/2022 .

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Court Reporter:

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



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 03-08-2022 07:56:06 AM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Form 4 Order/Motion For Reconsideration Denied Order/Electronic Form 4
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River
Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development
Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd
River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected

The South Carolina Court of Appeals

Eastwood Construction Partners, LLC and Eastwood
Development Corporation, Appellants,

v.

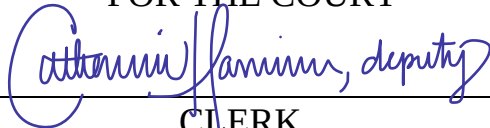
GHD Brooks Creek, a North Carolina Limited Liability
Company, and AF-Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River Falls, a North
Carolina Limited Liability Company, and AF-River
Falls, LLC, a North Carolina Limited Liability Company,
Greenhawk Corporation, Inc., and TRI Pointe Homes,
Inc., Respondents.

Appellate Case No. 2022-000290

The Honorable Daniel Dewitt Hall
York County
Trial Court Case No. 2020CP4602006

ORDER

The time for serving and filing the appellant's initial brief and designation of matter
is hereby extended until May 11, 2022.

FOR THE COURT
BY  deputy
CLERK

Columbia, South Carolina

cc:

James Edward Bradley, Esquire

James C. Adams, II, Esquire

Andrew A. Mathias, Esquire

Konstantine Peter Diamaduros, Esquire

John I. Mabe, Esquire

Amanda Pickens Nitto, Esquire

Stephen M. Cox, Esquire

FILED
Mar 24 2022

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Eastwood Construction Partners, LLC, and)
Eastwood Development Corporation,)
Plaintiffs,)

C/A No. 2020-CP-46-02006

vs.)

GHD Brooks Creek, a North Carolina)
Limited Liability Company, and AF-Brooks)
Creek, LLC, a North Carolina Limited)
Liability Company, GHD River Falls, a)
North Carolina Limited Liability Company,)
and AF-River Falls, LLC, a North Carolina)
Limited Liability Company, Greenhawk)
Corporation, Inc. and TRI Pointe Homes,)
Inc.,)
Defendants.)

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Third Amended Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Third Amended Complaint upon the subscriber at his office, 1700 Sunset Boulevard (29169), P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Third Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third Amended Complaint.

MOORE TAYLOR LAW FIRM, P.A.

By: s/James Edward Bradley

James Edward Bradley, SC Bar # 66130
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mttlaw.com
Attorney for Plaintiffs

West Columbia, South Carolina
February 5, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
Eastwood Construction Partners, LLC, and	)	
Eastwood Development Corporation,	)	C/A No. 2020-CP-46-02006
	)	
Plaintiffs,	)	
vs.	)	THIRD AMENDED COMPLAINT
	)	
GHD Brooks Creek, a North Carolina	)	
Limited Liability Company, and AF-Brooks	)	
Creek, LLC, a North Carolina Limited	)	
Liability Company, GHD River Falls, a	)	
North Carolina Limited Liability Company,	)	
and AF-River Falls, LLC, a North Carolina	)	
Limited Liability Company, Greenhawk	)	
Corporation, Inc. and TRI Pointe Homes,	)	
Inc.,	)	
Defendants.	)	

The Plaintiffs amend their complaint of the Defendants as follows:

FOR A FIRST CAUSE OF ACTION

1. Eastwood Construction Partners, LLC, is a North Carolina limited liability corporation d/k/a Eastwood Construction, LLC, and Eastwood Development Corporation is a North Carolina corporation (“Eastwood”).
2. AF-Brooks Creek is a North Carolina limited liability company, and GHD Brooks Creek is a North Carolina limited liability company (“Brooks Creek” or “Tega Cay Singles”).
3. AF-River Falls is a North Carolina limited liability company, and GHD River Falls is a North Carolina limited liability company (“River Falls” or “Tega Cay Towns”).
4. Greenhawk Company, Inc., n/k/a Greenhawk Corporation, Inc., is a North Carolina Corporation which, upon information and belief, wholly owns Brooks Creek and River Falls, and is therefore referred to as “Greenhawk” and whose principals exercise all applicable controls over the Brooks Creek and River Falls subsidiaries.

5. TRI Pointe Homes, Inc. (“TRI Pointe”) is a foreign corporation doing business and developing property in South Carolina.

6. Eastwood and Greenhawk have jointly accomplished numerous projects over almost decade across North and South Carolina all involving land entitlement, land inspection and due diligence, land acquisitions, land development, and finished lot sales all without dispute.

7. This dispute concerns another of such projects and involves two adjacent portions of property, comprising one intended residential community, owned by Brooks Creek and River Falls in which Eastwood holds an interest. Cumulatively, Brooks Creek and River Falls constitute a single project with a townhome section (known as “Tega Cay Towns”) and a single family residential section (known as “Tega Cay Singles”), and is referred to as the “Property.”

8. To protect its interest in the Property, Eastwood has filed two lis pendens on the Property subject to this action bearing numbers 2020LP4600228 and 2020LP4600229. Copies of these lis pendens are attached to this Complaint as Exhibits A and B.

9. TRI Pointe has in the past purchased and is attempting to purchase land which is to be sold to Eastwood.

10. Eastwood and Brooks Creek and River Falls, as well as Brooks Creek’s and River Falls’ principals at Greenhawk, engaged in a pattern and course of dealing over time pursuant to which Eastwood located appropriate property for development, entered contracts to purchase the property, expended funds for the improvement of the property and the preparation of the property for development (whether before or after Greenhawk or any of its subsidiaries acquired the property via assignment or agreement), and assigned the purchase agreements to Brooks Creek or River Falls and its principals under the agreement that Brooks Creek and River Falls and its principals would purchase the property, reimburse Eastwood for its costs, develop the property, and eventually sell lots to Eastwood for the construction of homes.

11. Under the pattern, practice and course of dealing, Eastwood located land for purchase, assembled parcels, performed initial due diligence, assembled easements and related property rights and had the land titled with York County.

12. Greenhawk in turn functioned as a private money partner with Eastwood. It was to take assignment of the property and close and hold the property until completion of development.

13. Eastwood entered a contract for the purchase and sale of real property with R & H Properties, LLC, and Mosier Company care of Tuttle Real Estate. Copies of these contracts are attached as Exhibit C to this Complaint.¹

14. Eastwood entered these contracts for the purpose of having Greenhawk, or one of its wholly-owned subsidiaries (as was customarily the process), acquire the contracts for the property, acquire the property, inspect, develop and ultimately sell finished lots back to Eastwood's building entity Eastwood Construction Partners, LLC f/k/a Eastwood Construction, LLC d/b/a Eastwood Homes so that Eastwood Homes could construct townhomes or single family homes upon the property and ultimately sell them to homeowners.

15. Pursuant to its course of dealing and agreement with Greenhawk, Eastwood entered assignments of agreement to Brooks Creek and River Falls. Copies of these documents are attached as Exhibit D to this Complaint. Greenhawk principals acknowledged in writing that a River Falls assignment would be substantially similar to the written Brooks Creek's assignment, but the Property closed to River Falls from Eastwood and no fully executed assignment has since been located.

16. Eastwood established two limited liability companies for Greenhawk's use.

17. The parties jointly approved invoices and strategy.

¹ The Mosier Company contract is an amendment. The closing attorney who performed the assignments and closings for Brooks Creek and River Falls is deceased.

18. After acquiring the contracts and Property Greenhawk was to develop the Property and then sell buildable lots back to Eastwood.

19. There is **clear evidence of an agreement between the parties** to convey the land.
In particular:

- a) Exhibit F is an email between Eastwood and Greenhawk showing the proposed development;
- b) Exhibit G is an email between Eastwood and Greenhawk showing the lots and costs;
- c) Exhibit H is an email between Eastwood and Greenhawk showing costs and payments for the development;
- d) Exhibit I is an email between Eastwood and Greenhawk showing the properties assembled for development;
- e) Exhibit J is an email between Eastwood and Greenhawk showing the development timeline and dates for development; and
- f) Exhibit K is an email between Eastwood and Greenhawk showing takedown schedule.

20. The Agreement to purchase property has been **partially carried into execution by the Plaintiffs with** the consent of the Defendants as shown by the exhibits referenced above. In addition, Eastwood has improved the property for development by expending approximately \$300,000 on developing the property including, but not limited to, approximately \$125,000 in engineering fees. The invoice for engineering fees is attached as Exhibit L. The Plaintiffs have also expended significant sums on permitting, development fees and compliance with The Town of Tega Cay, York County and The State of South Carolina regarding the property. In addition, the Plaintiffs performed their obligation by locating the property, assembling the property from different tracts, obtaining agreements to purchase the property, and assigning these agreements to the Defendants.

21. **The Plaintiffs have performed the first part of the agreement and are able and willing to perform their remaining obligations under the contract, to wit, purchasing the buildable lots.**

22. Pursuant to the agreement and course of conduct and performance between the parties, Eastwood expended funds to prepare the property for development including, but not limited to engineering costs, survey costs, compliance costs, entitlement costs, wetlands costs, and other expenses to prepare the property for development.

23. Brooks Creek and River Falls were to repay these expenses, develop the property, and convey the lots to Eastwood pursuant to the agreement and course of conduct and performance between the parties.

24. Brooks Creek and River Falls have failed to repay the funds to Eastwood, failed to convey the property to Eastwood, and have attempted to sell the property to a competitor of Eastwood all in violation of the agreement between the parties and the course of conduct, prior performance and dealing between the parties.

25. Brooks Creek's and River Falls' actions amount to breaches of contract.

26. As a direct and proximate result of Brooks Creek's and River Falls' breaches of contract, Eastwood has been damaged including, but not limited to, funds expended, lost reimbursements, lost profits, lost time and energy, harassment and aggravation, lost market share, advantage given to a competitor, loss of use of money, lost security for Eastwood's expended funds, and other damages all to its actual damage.

27. Eastwood is entitled to an order of this Court awarding it actual damages as requested above, specific compliance with the contract, and specific performance including the sale of land.

FOR A SECOND CAUSE OF ACTION

28. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

29. Brooks Creek's and River Falls' actions above are inequitable in that they have taken the investment, time, energy, and intellectual capital of Eastwood and converted it to their own use.

30. Eastwood has an investment in the property such that it is entitled to be sold the Property pursuant to the agreements, course of conduct, prior performance and dealing between the parties.

31. As alleged above, **there is clear evidence of an agreement to sell the land, the agreement has been carried into execution by the Plaintiffs with the agreement of the Defendants, and the Plaintiffs are able and willing to complete the purchase of buildable lots.**

32. Eastwood is entitled to purchase the Property and asks for an order of specific performance enforcing the agreement between the parties, and in the alternative, if specific performance is not adjudicated, then Eastwood is entitled to reimbursement of all expenses, plus statutory interest.

FOR A THIRD CAUSE OF ACTION

33. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

34. Brooks Creek's and River Falls' actions as alleged above amount to a breach of contract accompanied by a fraudulent act.

35. In particular, Brooks Creek's and River Falls' fraudulent acts include, but are not limited to:

- a. Various assurances to Eastwood regarding the purchase of the property and the repayment of funds expended to develop the property;

- b. Brooks Creek's and River Falls' dealing with an ex-employee of Eastwood now employed by TRI Pointe to clandestinely bring in a competitor of Eastwood to purchase the property without notice to Eastwood and without allowing Eastwood to purchase the property and in derogation of Eastwood's right to be repaid the money invested in the property; and
- c. Refusing to honor Eastwood's investment in the property or repay the money as indicated in the agreement between the parties.

36. As a direct and proximate result of Brooks Creek's and River Falls' breach of contract accompanied by a fraudulent act, Eastwood has been damaged as alleged above.

37. Eastwood is entitled to recover its actual damages as alleged above as well as punitive damages as a result of Brooks Creek's and River Falls' breach of contract accompanied by a fraudulent act.

FOR A FOURTH CAUSE OF ACTION

38. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

39. Allowing Brooks Creek, River Falls and TRI Pointe to retain the benefit of Eastwood's investments into the project would be unjust, particularly as to Property that has experienced significant price appreciation since 2013.

40. In particular, Brooks Creek, River Falls and TRI Pointe were aware Eastwood had assembled at least eight separate parcels² together over a course of years to create a new Property which could be inspected, put through various municipal processes to entitle and bring assembled value to the Property, utilized Eastwood's engineered home plans as the basis for all Property approvals, invested funds into the project, took advantage of Eastwood's funds, represented that

² York County, South Carolina PINs 650-00-00-046, 650-00-00-409, 645-00-00-038, 646-00-00-017, 646-00-00-014, 646-00-00-027, 646-00-00-022, 645-00-00-001, and certain easements/property slivers additionally assembled by Eastwood utilizing its acquisition experience, reputation, and other resources. (Survey attached as Exhibit E).

the money would be paid back, represented that Eastwood would be entitled to purchase the property, and made other representations to its benefit and to Eastwood's detriment.

41. As a result, Brooks Creek and River Falls would be unjustly enriched if they are not required to repay the investment into the property.

42. Eastwood requests that the Court exercise the doctrine of unjust enrichment to prevent Brooks Creek, River Falls and TRI Pointe from unjustly profiting off of their wrongful acts and to reimburse Eastwood for the amounts invested in the Property as well as the value of those investments.

FOR A FIFTH CAUSE OF ACTION

43. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

44. Brooks Creek's, River Falls' and TRI Pointe's actions as alleged above amount to a violation of the South Carolina Unfair Trade Practices Act.

45. In particular, these actions have an adverse effect upon the public as they drive up costs for housing the in area.

46. In addition, these acts can be repeated and have been repeated with other developers to the detriment of the housing market.

47. In addition, these actions directly involve using a former Eastwood employee who developed particularized knowledge of the Greenhawk-Eastwood process while in Eastwood's employ to benefit a competitor of Eastwood to Eastwood's detriment.

48. As a result, Brooks Creek's, River Falls' and TRI Pointe's actions as alleged above are unfair trade practices in violation of the South Carolina Unfair Trade Practices Act capable of repetition and having an adverse effect on the public.

49. As a result, Eastwood is entitled to recover its damages as alleged above, treble damages as provided by statute, and attorney fees and costs as provided by statute.

FOR A SIXTH CAUSE OF ACTION

50. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

51. TRI Pointe knew of the contract and agreements between Eastwood, Brooks Creek and River Falls.

52. TRI Pointe acquired knowledge of the agreements by hiring an Eastwood employee who disclosed Eastwood's confidential trade information.

53. The confidential trade information includes, but is not limited to: land acquisition research; competitive market data; pricing models; business strategy; developer contracts; developer agreements; due diligence; engineering information and data; related expert data; and correspondence with developers regarding land acquisition.

54. TRI Pointe intentionally procured breaches of the contracts between Eastwood, Brooks Creek and River Falls.

55. TRI Pointe had no justification for procuring the breaches of contract.

56. Eastwood has been damaged as alleged above by TRI Pointe's interference with its contractual relationships.

57. Eastwood is entitled to both actual damages and punitive damages as a result of TRI Pointe's interference with Eastwood's contractual relationships.

FOR A SEVENTH CAUSE OF ACTION

58. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

59. TRI Pointe hired Eastwood's employee and used confidential trade information known by that employee to interfere in Eastwood's contractual relationships and unfairly compete with Eastwood.

60. Eastwood took reasonable steps to protect its confidential trade information including but not limited to: not disclosing the information to competitors; educating employees regarding confidential information; safeguarding the information by way of locks and firewalls; and including employee handbook and policies regarding confidential information.

61. Eastwood has been damaged as alleged above by TRI Pointe's misappropriation of its confidential trade information and trade secrets as alleged above.

62. Eastwood is entitled to a judgment against TRI Pointe for misappropriation of its trade secrets and an injunction barring further disclosure of its trade secrets pursuant to the South Carolina Trade Secrets Act.

63. Eastwood is also entitled to receive its attorney fees pursuant to the South Carolina Trade Secrets Act.

FOR AN EIGHTH CAUSE OF ACTION

64. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

65. Eastwood and Greenhawk were united in the joint prosecution of a common purpose which was to develop property.

66. Eastwood and Greenhawk had authority both expressed and implied to act for all in respect to control of the means and agencies employed to execute their common purpose.

67. Eastwood and Greenhawk had a common purpose and community of interest in the object of their enterprise.

68. Eastwood and Greenhawk had an equal right to direct and control the conduct of each other with respect to their common enterprise.

69. As joint venturers, Eastwood and Greenhawk had fiduciary duties to one another.

70. Greenhawk has violated the common enterprise and its fiduciary duties by selling and attempting to sell property to TRI Pointe and in refusing to develop the remaining property and convey it to Eastwood.

71. As a result of Greenhawk's actions, Eastwood has been damaged as alleged above.

72. Eastwood is entitled to recover its damages as alleged above.

FOR A NINTH CAUSE OF ACTION

73. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

74. Eastwood and Greenhawk were partners carrying on as co-owners a business for profit.

75. By their acts, conduct and agreement, Eastwood and Greenhawk intended to combine their property, skill, expenses, and labor to carry on as co-owners of a common business venture as a communal enterprise.

76. Greenhawk was to hold the property as a land bank and receive a guaranteed profit conveying lots to Eastwood. Eastwood's share of the profit was to come from building and selling homes.

77. Eastwood and Greenhawk intended to share profits and losses, had a community of interest in the property and a community of intent in control and management.

78. As a result, Eastwood and Greenhawk were partners.

79. By its acts alleged above, Greenhawk breached its duties to its partner Eastwood including fiduciary duties.

80. Eastwood has been damaged as alleged above by Greenhawk's breach of its partnership duties including its fiduciary duties

81. Eastwood is entitled to recover its damages as alleged above for Greenhawk's violation of its partnership duties including fiduciary duties.

FOR A TENTH CAUSE OF ACTION

82. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

83. TRI Pointe interfered with Eastwood's contractual relations as follows:

- a. A contract: as alleged above Eastwood had contracts to purchase the Property;
- b. Knowledge of the contract: TRI Pointe had knowledge of the contracts through the hiring of Eastwood's employee and by the use of Eastwood's plat in TRI Pointe's purchase documents;
- c. Intentional procurement by the tortfeasor of the contracts breach: TRI Pointe intentionally entered a contract with Greenhawk and its subsidiaries to purchase the property despite Eastwood's interest;
- d. Absence of justification: TRI Pointe did not have a justification to interfere in the contractual relationship;
- e. Damages: as a result of TRI Pointe's actions as alleged above, Eastwood has been damaged as alleged above.

84. As a result of TRI Pointe's interference with contractual relationships, Eastwood is entitled to recover both actual and punitive damages as alleged above.

FOR AN ELEVENTH CAUSE OF ACTION

85. Each and every allegation set forth above is hereby reasserted and realleged as fully as set forth verbatim.

86. TRI Pointe interfered with Eastwood's prospective business advantage and contractual relations as follows:

- a. Intentional interference with prospective business advantage and potential contractual relations: TRI Pointe negotiated, entered in agreements, and purchased lots which Eastwood had the right to purchase. TRI Pointe intentionally interfered in Eastwood's relations as it was aware of Eastwood's interest in the property by use of Eastwood's development plan and the hiring of Eastwood's employee.
- b. An improper purpose of improper method: TRI Pointe hired Eastwood's employee, made use of Eastwood's information and development plan, and did not consult Eastwood when purchasing and agreeing to purchase property that Eastwood had invested into and had the right to purchase.
- c. Injury: Eastwood was damaged as alleged above as a result of TRI Pointe's interference with Eastwood's prospective business advantage and contractual relations as alleged above.

87. Eastwood is entitled to an order of this court awarding it both actual and punitive damages as alleged above.

WHEREFORE, Eastwood having complained of the Defendants asks that the Court award the relief requested above as well as such other relief as the Court deems fair and equitable.

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West Columbia, South Carolina

February 5, 2021



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 02-05-2021 10:44:33 AM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Amended/Amended Summons And Complaint
Filed by or on behalf of: James Edward Bradley

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development Corporation
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

**GREENHAWK DEFENDANTS'
ANSWER AND COUNTERCLAIMS
TO PLAINTIFFS'
THIRD AMENDED COMPLAINT**

(Jury Trial Demanded)

Defendants GHD-Brooks Creek, LLC (“Brooks Creek”), AF-Brooks Creek, LLC (“AF-Brooks Creek”), GHD-River Falls, LLC (“River Falls”), AF-River Falls, LLC (“AF-River Falls”), and Greenhawk Corporation, Inc. (“Greenhawk”),¹ by and through their undersigned counsel, hereby respond to Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation’s (collectively, “Plaintiffs” or “Eastwood”) Third Amended Complaint as follows:

¹ Brooks Creek, AF-Brooks Creek, River Falls, AF-River Falls, and Greenhawk may be collectively referred to as “GreenHawk Defendants.” Unless otherwise specified herein, “Defendants” refers only to these answering defendants and not to TRI Pointe Homes, Inc. (“TRI Pointe”).

RESPONSE TO FIRST CAUSE OF ACTION

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore deny the same.

2. Defendants admit only that AF-Brooks Creek is a North Carolina limited liability company, and that Brooks Creek is a North Carolina limited liability company. Defendants deny the remaining allegations, express or implied, contained in Paragraph 2.

3. Defendants admit only that AF-River Falls is a North Carolina limited liability company, and that River Falls is a North Carolina limited liability company. Defendants deny the remaining allegations, express or implied, contained in Paragraph 3.

4. Defendants admit only that Greenhawk owns interests in Brooks Creek and River Falls, and that the managers of Brooks Creek and River Falls are also affiliated with Greenhawk. Defendants deny the remaining allegations, express or implied, contained in Paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore deny the same.

6. The allegations contained in paragraph 6 are denied.

7. Defendants admit only that this dispute concerns two separate, distinct, and non-adjacent portions of property, one of which is owned by Brooks Creek and the other by River Falls. Defendants deny the remaining allegations, express or implied, contained in Paragraph 7.² These defendants specifically deny that Plaintiffs hold any claim of title interest in either the BC Property or the RF Property.

² Defendants reject Plaintiffs' use of the term "Property" to signify both separate subdivisions together. Herein, "RF Property" shall signify the River Falls Subdivision and "BC Property" shall signify the Brook Creek Subdivision.

8. Defendants admit only that Eastwood filed two notices of *lis pendens* bearing numbers 2020LP4600228 and 2020LP4600229. The *lis pendens* numbers 2020LP4600228 and 2020LP4600229 are attached to the original Complaint as Exhibits A and B and the terms of those notices of *lis pendens* speak for themselves. Defendants specifically crave reference to those notices for their complete contents. Defendants deny the remaining allegations, express or implied, contained in Paragraph 8.

9. Defendants admit only that TRI Pointe has purchased and is attempting to purchase land, which is to be sold to TRI Pointe. Defendants deny the remaining allegations, express or implied, contained in Paragraph 9.

10. The allegations contained in Paragraph 10 are denied.

11. The allegations contained in Paragraph 11 are denied.

12. The allegations contained in Paragraph 12 are denied.

13. It is admitted upon information and belief that Eastwood entered into a contract for the purchase and sale of real property with R & H Properties, LLC, and Mosier Company, and that a purported copy of the contract between Eastwood, R & H Properties, LLC, and Mosier Company, in care of Tuttle Real Estate, was attached as Exhibit C to the original Complaint. The terms of that purported contract speak for themselves. Defendants specifically crave reference to that contract for its complete contents.

14. The allegations contained in Paragraph 14 are denied.

15. Upon information and belief, Defendants admit that Eastwood entered into separate agreements to assign the rights to purchase the BC Property and the RF Property. Copies of the purported assignment agreements are attached to the original Complaint as Exhibit D and the terms of those assignments speak for themselves. Defendants specifically crave

reference to those assignments for their complete contents. Further responding, upon information and belief, Defendants admit that no fully executed assignment has been located with respect to River Falls. Defendants deny the remaining allegations, express or implied, contained in Paragraph 15.

16. The allegations contained in Paragraph 16 are denied.

17. The allegations contained in Paragraph 17 are denied.

18. The allegations contained in Paragraph 18 are denied.

19. Defendants deny the allegations contained in Paragraph 19, including that the Exhibits detailed in subparagraphs a) through f) show “clear evidence of an agreement between the parties to convey the land.” Copies of certain emails between Eastwood representatives and Greenhawk representatives are attached to the Second Amended Complaint as Exhibits F through K and the terms of those emails speak for themselves. Defendants specifically crave reference to those emails for their complete contents.

20. Defendants admit only that Eastwood incurred expenses associated with preparation for the development of the properties now owned by Brooks Creek and River Falls, including engineering fees. A copy of a purported invoice for engineering fees is attached to the Second Amended Complaint as Exhibit L and the terms of that purported invoice speak for themselves. Defendants specifically crave reference to that invoice for its complete contents. Defendants deny the remaining allegations, express or implied, contained in Paragraph 20.

21. Defendants deny the allegations contained in Paragraph 21.

22. Upon information and belief, Defendants admit only that Eastwood incurred expenses associated with preparation for the development of the properties now owned by

Brooks Creek and River Falls. Defendants deny the remaining allegations, express or implied, contained in Paragraph 22.

23. Defendants deny the allegations contained in Paragraph 23.

24. Responding to the allegations contained in Paragraph 24, it is admitted that Brooks Creek and River Falls have not conveyed any part of the BC Property and the RF Property to Eastwood and that Brooks Creek has entered into a valid and partially fulfilled contract to sell lots in Brooks Creek Subdivision to Defendant TRI-Pointe Homes. Defendants deny the remaining allegations, express or implied, contained in Paragraph 24.

25. Defendants deny the allegations contained in Paragraph 25.

26. Defendants deny the allegations contained in Paragraph 26.

27. Defendants deny the allegations contained in Paragraph 27.

RESPONSE TO SECOND CAUSE OF ACTION

28. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 27 as if fully set forth herein.

29. Defendants deny the allegations contained in Paragraph 29.

30. Defendants deny the allegations in contained Paragraph 30.

31. Defendants deny the allegations in contained Paragraph 31.

32. Defendants deny the allegations contained in Paragraph 32.

RESPONSE TO THIRD CAUSE OF ACTION

33. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 32 as if fully set forth herein.

34. Defendants deny the allegations contained in Paragraph 34.

35. Defendants deny the allegations in Paragraph 35, including subparagraphs a. through c.

36. Defendants deny the allegations contained in Paragraph 36.

37. Defendants deny the allegations contained in Paragraph 37.

RESPONSE TO FOURTH CAUSE OF ACTION

38. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 37 as if fully set forth herein.

39. To the extent the allegations in Paragraph 39 are directed at TRI Pointe, Defendants lack knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore deny the same. Defendants deny the remaining allegations in Paragraph 39.

40. To the extent the allegations in Paragraph 40 are directed at TRI Pointe, Defendants lack knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore deny the same. Defendants deny the remaining allegations in Paragraph 40. Further responding, to the extent an alleged survey is attached as Exhibit E, the terms of that survey speak for themselves, and Defendants specifically crave reference to that survey for its complete contents.

41. Defendants deny the allegations in Paragraph 41.

42. The allegations in Paragraph 42 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny that they have been unjustly enriched.

RESPONSE TO FIFTH CAUSE OF ACTION

43. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 42 as if fully set forth herein.

44. To the extent the allegations in Paragraph 44 are directed at TRI Pointe, Defendants lack knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore deny the same. Defendants deny the remaining allegations in Paragraph 44.

45. Defendants deny the allegations contained in Paragraph 45.

46. Defendants deny the allegations contained in Paragraph 46.

47. Defendants deny the allegations contained in Paragraph 47.

48. To the extent the allegations contained in Paragraph 48 are directed at TRI Pointe, Defendants lack knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore deny the same. Defendants deny the remaining allegations in Paragraph 48.

49. Defendants deny the allegations contained in Paragraph 49.

RESPONSE TO SIXTH CAUSE OF ACTION

50. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 49 as if fully set forth herein.

51. The allegations in Paragraph 51 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51, and therefore deny the same.

52. The allegations in Paragraph 52 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52, and therefore deny the same.

53. The allegations in Paragraph 53 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, and therefore deny the same.

54. The allegations in Paragraph 54 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54, and therefore deny the same.

55. The allegations in Paragraph 55 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55, and therefore deny the same.

56. The allegations in Paragraph 56 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56, and therefore deny the same.

57. The allegations in Paragraph 57 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 57, and therefore deny the same.

RESPONSE TO SEVENTH CAUSE OF ACTION

58. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 57 as if fully set forth herein.

59. The allegations in Paragraph 59 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59, and therefore deny the same.

60. The allegations in Paragraph 60 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60, and therefore deny the same.

61. The allegations in Paragraph 61 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61, and therefore deny the same.

62. The allegations in Paragraph 62 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62, and therefore deny the same.

63. The allegations in Paragraph 63 are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants lack knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 63, and therefore deny the same.

RESPONSE TO EIGHTH CAUSE OF ACTION

64. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 63 as if fully set forth herein.

65. Defendants deny the allegations contained in Paragraph 65.

66. Defendants deny the allegations contained in Paragraph 66.

67. Defendants deny the allegations contained in Paragraph 67.

68. Defendants deny the allegations contained in Paragraph 68.

69. Defendants deny the allegations contained in Paragraph 69.

70. Defendants deny the allegations contained in Paragraph 70.

71. Defendants deny the allegations contained in Paragraph 71.

72. Defendants deny the allegations contained in Paragraph 72.

RESPONSE TO NINTH CAUSE OF ACTION

73. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 72 as if fully set forth herein.

74. Defendants deny the allegations contained in Paragraph 74.

75. Defendants deny the allegations contained in Paragraph 75.

76. Defendants deny the allegations contained in Paragraph 76.

77. Defendants deny the allegations contained in Paragraph 77.

78. Defendants deny the allegations contained in Paragraph 78.

79. Defendants deny the allegations contained in Paragraph 79.

80. Defendants deny the allegations contained in Paragraph 80.

81. Defendants deny the allegations contained in Paragraph 81.

RESPONSE TO TENTH CAUSE OF ACTION

82. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 81 as if fully set forth herein.

83. The allegations contained in Paragraph 83 are not directed at these Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 83 and each subpart.

84. The allegations contained in Paragraph 84 are not directed at these Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 84.

RESPONSE TO ELEVENTH CAUSE OF ACTION

85. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 84 as if fully set forth herein.

86. The allegations contained in Paragraph 86, including subparagraphs a. through c., are not directed at these Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 86 and each subparagraph.

87. The allegations contained in Paragraph 87 are not directed at these Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 87.

RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF

Responding to the WHEREFORE Paragraph that follows Paragraph 87 of the Third Amended Complaint, Defendants deny any and all liability and further deny that Plaintiffs are

entitled to any damages, whether actual, statutory, treble, or punitive. Further responding, Defendants deny that Plaintiffs are entitled to specific performance, and also deny that Plaintiffs are entitled to any attorney's fees or costs.

JURY DEMAND

Defendants demand a trial by jury on all claims asserted by Plaintiffs.

GENERAL DENIAL

Defendants deny all allegations contained in the Third Amended Complaint that are not specifically admitted herein, including, but not limited to, Plaintiffs' demands and prayers for relief.

AFFIRMATIVE AND OTHER DEFENSES

In further response to the Third Amended Complaint, Defendants hereby raise, assert, and preserve the following affirmative and other defenses. By pleading the following as affirmative defenses, Defendants do not concede that they bear the burden to establish the factual bases therefor and do not intend to shift the burden of proof under applicable law or otherwise to relieve Plaintiffs of any burden to establish the elements of their prima facie case.

FIRST DEFENSE

1. Plaintiffs' Third Amended Complaint fails, in whole or in part, to state a claim for relief and should be dismissed, in toto, pursuant to SCRCP 12(b)(6).

SECOND DEFENSE

2. Plaintiffs' Third Amended Complaint fails, in whole or in part, to state a claim for relief and should be dismissed, in toto, pursuant to SCRCP 12(c).

THIRD DEFENSE

3. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations, jurisdictional time limits, or any other limitations on the period of time within which to file suit, including S.C. Code Ann. § 15-3-530 and § 36-2-725.

FOURTH DEFENSE

4. Plaintiffs' claims are barred, in whole or in part, by the statute of frauds. Plaintiffs fail to allege the actual existence of *any* written contract for the purchase by Plaintiffs from any defendant of any part of the real property, referred to herein as Brooks Creeks Subdivision or River Falls Subdivision, sufficient to satisfy the requirements of the statute of frauds as it exists and has been applied in the State of South Carolina. Furthermore, Defendants deny the existence of any such writing.

FIFTH DEFENSE

5. To the extent that Plaintiffs are alleging fraud or similar conduct, Plaintiffs have failed to plead fraud with sufficient particularity as required by SCRCP 9(b).

SIXTH DEFENSE

6. Plaintiffs' claims are barred, in whole or in part, because Defendants acted lawfully and in good faith at all relevant times, and have not violated any statutory or legal right of Plaintiffs.

SEVENTH DEFENSE

7. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

EIGHTH DEFENSE

8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

NINTH DEFENSE

9. Plaintiffs' claims are barred, in whole or in part, by the doctrine of *in pari delicto*.

TENTH DEFENSE

10. Plaintiffs' claims are barred, in whole or in part, by the doctrines of estoppel, ratification, and waiver.

ELEVENTH DEFENSE

11. Plaintiffs' claims are barred, in whole or in part, by the doctrines of acquiescence, settlement, and release.

TWELFTH DEFENSE

12. Plaintiffs' claims seeking equitable relief are barred because Plaintiffs have an adequate remedy at law.

THIRTEENTH DEFENSE

13. Plaintiffs' claims are barred, in whole or in part, by the doctrine of impossibility.

FOURTEENTH DEFENSE

14. Plaintiffs' contract-based claims are barred, in whole or in part, because no contract existed between the parties.

FIFTEENTH DEFENSE

15. Plaintiffs' contract-based claims are barred, in whole or in part, because there was no meeting of the minds between the parties with regard to all essential and material terms of the alleged agreement.

SIXTEENTH DEFENSE

16. Plaintiffs' contract-based claims are barred, in whole or in part, because no course of dealing existed between the parties.

SEVENTEENTH DEFENSE

17. Plaintiffs' contract-based claims are barred, in whole or in part, by the doctrine of mistake.

EIGHTEENTH DEFENSE

18. Plaintiffs' specific performance claim is barred, in whole or in part, because there is no clear evidence of a valid agreement between the parties.

NINETEENTH DEFENSE

19. Plaintiffs' specific performance claim is barred, in whole or in part, because the alleged agreement has not been partly carried into execution on one side with the approbation of the other.

TWENTIETH DEFENSE

20. Plaintiffs' specific performance claim is barred, in whole or in part, because Plaintiffs have not performed their part of the alleged contract.

TWENTY-FIRST DEFENSE

21. Plaintiffs' specific performance claim is barred, in whole or in part, because Plaintiffs have not been, nor do they remain able and willing, to perform their part of the alleged contract.

TWENTY-SECOND DEFENSE

22. Plaintiffs' specific performance claim is barred, in whole or in part, because sufficient part performance has not occurred in order to remove the alleged agreement from the operation of the statute of frauds.

TWENTY-THIRD DEFENSE

23. Plaintiffs' breach of contract accompanied by a fraudulent act claim is barred, in whole or in part, because Defendants did not breach a contract with Plaintiffs. In the alternative, Plaintiffs have failed to plead with sufficient particularity (1) fraudulent intent relating to the breaching of the alleged contract and (2) a fraudulent act accompanying the alleged breach.

TWENTY-FOURTH DEFENSE

24. Plaintiffs' unjust enrichment claim is barred, in whole or in part, because a non-gratuitous benefit has not been conferred upon Defendants by Plaintiffs.

TWENTY-FIFTH DEFENSE

25. Plaintiffs' unjust enrichment claim is barred, in whole or in part, because Defendants did not receive and retain any alleged benefit from Plaintiffs.

TWENTY-SIXTH DEFENSE

26. Plaintiffs' unjust enrichment claim is barred, in whole or in part, because Defendants did not realize any alleged benefit.

TWENTY-SEVENTH DEFENSE

27. Plaintiffs' SCUTPA claim is barred, in whole or in part, because Defendants' conduct was not misleading, unfair, or deceptive.

TWENTY-EIGHTH DEFENSE

28. Plaintiffs' SCUTPA claim is barred, in whole or in part, because Plaintiffs cannot demonstrate that Defendants engaged in an unfair or deceptive act in the conduct of trade or commerce.

TWENTY-NINTH DEFENSE

29. Plaintiffs' SCUTPA claim is barred, in whole or in part, because even if Defendants engaged in an unfair or deceptive act in the conduct of trade or commerce, which they did not, Plaintiffs cannot demonstrate that such unfair or deceptive act affected the public interest.

THIRTIETH DEFENSE

30. Plaintiffs' SCUTPA claim is barred, in whole or in part, because even if Defendants engaged in an unfair or deceptive act in the conduct of trade or commerce, which they did not, Plaintiffs cannot demonstrate that they suffered monetary or property loss as a result of the unfair or deceptive act.

THIRTY-FIRST DEFENSE

31. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate damages. Plaintiffs may have failed or refused to exercise reasonable care and diligence to avoid loss and minimize damages and, therefore, may not recover for losses that could have been prevented by reasonable efforts on their part, or by expenditures which might reasonably have been made.

THIRTY-SECOND DEFENSE

32. Some or all of Plaintiffs' claims may be barred by the doctrine of spoliation of evidence, and Defendants reserve the right to raise the spoliation doctrine as a defense to Plaintiffs' claims if some or all of the physical evidence has not been properly preserved.

THIRTY-THIRD DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have suffered no damages.

THIRTY-FOURTH DEFENSE

34. Plaintiffs' Third Amended Complaint fails to state facts sufficient to support an award of actual or compensatory damages.

THIRTY-FIFTH DEFENSE

35. Plaintiffs' claim for punitive damages is barred by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, the excessive fines clause of the Eighth Amendment to the United States Constitution, pursuant to *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), by Article I, § 3 of the South Carolina Constitution, and by Article I, § 15 of the South Carolina Constitution.

THIRTY-SIXTH DEFENSE

36. Plaintiffs' claims for punitive or treble damages are barred because Plaintiffs cannot prove that Defendants have acted or failed to act in a manner that entitles Plaintiffs to recover punitive or treble damages.

THIRTY-SEVENTH DEFENSE

37. To the extent Plaintiffs seek punitive damages, Defendants plead the application of S.C. Code § 15-32-530 to this action.

THIRTY-EIGHTH DEFENSE

38. Plaintiffs' claims are barred, reduced, or limited pursuant to the applicable South Carolina statutory and common law regarding limitations of awards, caps on recovery, and setoffs.

THIRTY-NINTH DEFENSE

39. Plaintiffs' claims are barred to the extent that Plaintiffs' alleged damages are speculative, uncertain, and hypothetical.

FORTIETH DEFENSE

40. Defendants are entitled to, and claim the benefit of, all defenses and presumptions set forth in or arising from any rule of law or statute of the State of South Carolina.

FORTY-FIRST DEFENSE

41. Defendants assert the defense of election of remedies.

FORTY-SECOND DEFENSE

42. Plaintiffs are not entitled to any attorney's fees or costs associated with this action because Plaintiffs' SCUTPA claim fails, and because no contract exists that would give Plaintiffs the right to recover such fees or costs.

FORTY-THIRD DEFENSE

43. Eastwood and Defendants were never united in the joint prosecution of a common purpose or enterprise.

FORTY-FOURTH DEFENSE

44. Eastwood and Defendants were never partners carrying on as co-owners of a business for profit.

FORTY-FIFTH DEFENSE

45. Eastwood and Defendants were never joint venturers or partners.

FORTY-SIXTH DEFENSE

46. Defendants assert all applicable defenses under South Carolina Rules of Civil Procedure 8(c) and 12(b) as investigation and discovery proceeds.

RESERVATION OF RIGHTS

Defendants hereby give notice that they may rely upon other applicable defenses of which they become aware during discovery in this case and hereby reserve the right to amend this Answer to assert any such defenses.

FIRST COUNTERCLAIM **Tortious Interference with Contract**

1. Defendants repeat and reassert their answers and denials to Paragraphs 1 through 87 of the Third Amended Complaint as if fully set forth herein.

2. Brooks Creek entered into a valid and binding written contract of purchase and sale between Brooks Creek and TRI Pointe Homes, Inc. ("TRI Pointe") for the purchase by TRI Pointe of the residential lots developed on the BC Property.

3. Prior to the instigation of the present action, Plaintiffs were aware of the existence of the purchase and sale agreement between Brooks Creek and TRI Pointe.

4. Indeed, the purpose of the present action brought by the Plaintiffs is to impair or to denigrate Brooks Creek's title in and to the Brooks Creek Subdivision, in order to prevent the purchase by TRI Pointe of lots in the Brooks Creek Subdivision, and to cause Brooks Creek to be unable to deliver title to lots, free and clear of the purported claim of Plaintiffs.

5. Plaintiffs, by the instigation of this action and the imposition of a notice of *lis pendens* on the BC Property, did in fact impair and denigrate Brooks Creek's title in and to the lots in Brooks Creek Subdivision, as Plaintiffs wrongfully intended to do.

6. There is no legal justification for the derogation, denigration, and impairment of Brooks Creek's title to the BC Property, in that there exists no valid written contract for the purchase by Plaintiffs, or any of them, of the BC Property, nor of any of the lots in the Brooks Creek Subdivision.

7. By their actions, Plaintiffs have intentionally caused and procured the breach of the contract of purchase and sale between Brooks Creek and TRI Pointe for the purchase by TRI Pointe of the remaining lots in Brooks Creek Subdivision. On or about September 29, 2020, TRI Pointe declared that Brooks Creek's failure to convey clear title on September 28, 2020, as required by the terms of the parties' contract, constituted a breach of the purchase and sale contract between TRI Pointe and Brooks Creek.

8. Brooks Creek and AF-Brooks Creek have been damaged by Plaintiffs' intentional and tortious interference with the contract of purchase and sale between Brooks Creek and TRI Pointe for the purchase by TRI Pointe of lots in the Brooks Creek Subdivision, in an amount to be shown at trial.

SECOND COUNTERCLAIM
Tortious Interference with Prospective Advantage

9. The affirmative allegations set forth in the First Counterclaim above are incorporated herein and made a part of this claim by reference.

10. By their actions, Plaintiffs have intentionally interfered with the prospective contractual advantage for which Brooks Creek bargained in its dealings with TRI Pointe, thereby preventing Brooks Creek from enjoying its contractual advantage.

11. Defendants Brooks Creek and AF-Brooks Creek have been damaged by Plaintiffs' intentional and tortious interference with Brooks Creek's contractual advantage, for which Defendant is entitled to recover damages in an amount to be shown at trial.

THIRD COUNTERCLAIM
Slander of Title-Brooks Creek

12. The affirmative allegations set forth in the First Counterclaim above are incorporated herein and made a part of this claim by reference.

13. By the filing of the notice of *lis pendens* herein against the BC Property, Plaintiffs have published a false claim of right, title, or interest in the BC Property.

14. Plaintiffs acted with actual malice in their publication of a false claim of right, title, or interest in BC Property, in that Plaintiffs and their counsel knew at the time of the publication, that Plaintiffs had and continue to have no written, enforceable contract for the purchase of the BC Property, and that Plaintiffs therefore have no right to the remedy of specific performance.

15. Plaintiffs' false claim of right, title, or interest in the BC Property is in derogation of Brooks Creek's title.

16. Brooks Creek has been damaged by Plaintiffs' slander of title in the following respects:

- a. Loss of the benefit of contractual sales to TRI Pointe;
- b. Loss of standing in the real estate development community as a consequence of its failure to deliver on its contract for the sale of lots in the Brooks Creek Subdivision;
- c. Diminution in the value of the lots in the Brooks Creek Subdivision;
- d. The attorney's fees and costs associated with this action; and
- e. Such other and further expenses, losses, and damages as to be shown at trial.

FOURTH COUNTERCLAIM
Slander of Title-River Falls

17. The affirmative allegations set forth in the First Counterclaim above are incorporated herein and made a part of this claim by reference.

18. By the filing of the notice of *lis pendens* herein against the RF Property, Plaintiffs have published a false claim of right, title, or interest in the RF Property.

19. Plaintiffs acted with actual malice in their publication of a false claim of right, title, or interest in RF Property, in that Plaintiffs and their counsel knew at the time of the publication, that Plaintiffs had and continue to have no written, enforceable contract for the purchase of the RF Property, and that Plaintiffs therefore have no right to the remedy of specific performance.

20. Plaintiffs' false claim of right, title, or interest in the RF Property is in derogation of River Falls' title.

21. River Falls has been damaged by Plaintiffs' slander of title in the following respects:

- a. Impairment of River Falls' title to the RF Property, which has the effect of depressing the sales value of the land;
- b. Loss of standing in the real estate development community as a consequence of its inability to convey clear title to the RF Property, after offering the property for sale to the development community;
- c. Diminution in the value of the RF Property;
- d. The attorney's fees and costs associated with this action; and
- e. Such other and further expenses, losses, and damages as to be shown at trial.

FIFTH COUNTERCLAIM
Abuse of Process

22. The affirmative allegations set forth in the First Counterclaim above are incorporated herein and made a part of this claim by reference.

23. With full knowledge that they had no right to purchase either the BC Property or the RF Property, Plaintiffs filed notices of *lis pendens* against those properties for the ulterior purposes, upon information and belief, of (i) causing Defendants to be unable to market and sell

the properties, (ii) preventing Plaintiffs' competitor TRI Pointe from competing in the marketplace with Plaintiffs, (iii) damaging Defendants' business reputation and standing in the real estate development community, and (iv) for such other illegal and improper purposes as may be shown through discovery and trial in this action.

24. The use of the *lis pendens* mechanism is improper in the context of Plaintiffs' stale and unsecured claim for reimbursement of alleged expenses incurred by Plaintiffs associated with the properties.

25. By reason of Plaintiffs' abuse of legal process, Defendants have sustained damages in an amount to be established at trial.

SIXTH COUNTERCLAIM
Negligent Misrepresentation

26. The affirmative allegations set forth in the First Counterclaim above are incorporated herein and made a part of this claim by reference.

27. Prior to the assignment by Plaintiffs to River Falls, of the right to acquire the RF Property from other owners from whom Plaintiffs had procured options for its purchase, Plaintiffs, through their authorized agents, made the following material misrepresentations regarding the status of the RF Property:

- a. The RF Property was under development, with infrastructure improvements already approved;
- b. Plaintiffs had commenced construction of subdivision improvements in the RF Property and construction of those improvements was underway;
- c. A contract between Plaintiffs and a qualified site improvements contractor had been partially performed and the contractor was due payments in the amount of \$1,000,000; and

- d. There were no impediments to the prosecution of the construction of the subdivision improvements in the RF Property and River Falls would be able to proceed with construction after purchase of the land.

28. The representations made by Plaintiffs were materially false. The only work in place on the RF Property was woefully deficient and violated numerous permits and regulations. Indeed, the contractor whom Plaintiffs represented to be prosecuting the work and entitled to payment of \$1,000,000 was incompetent. The contractor was unauthorized to enter onto and commence grading improvements on the land, which Plaintiffs knew when they told River Falls otherwise. The contractor was in violation of US Corps of Engineers wetlands regulations, which, upon information and belief, Plaintiffs knew when they told River Falls otherwise.

29. Plaintiffs misrepresented the condition of the RF Property for the purpose of inducing River Falls to acquire the RF Property. Among other reasons for the misrepresentations, Plaintiffs had a pecuniary purpose to avoid the difficulty and expense of developing the RF Property. Plaintiffs knew or should have known that the project was technically difficult to build and fraught with regulatory and compliance violations caused by the contractor engaged by Plaintiffs to commence construction activities without required, valid authorizations, approvals, and permits.

30. Plaintiffs owed Defendants a duty not to misrepresent the status of the development of the RF Property, because Plaintiffs had superior knowledge of the facts and knew that River Falls was relying upon Plaintiffs to provide truthful information regarding the status of the subdivision's development.

31. Plaintiffs' misrepresentations of the state of the River Falls Subdivision entitlements and construction did in fact induce River Falls to acquire the RF Property.

32. River Falls acquired the RF Property with the understanding that it would remit approximately \$1,000,000 to Eastwood's site improvements contractor for work which Plaintiffs' agent represented was in place on the land before the purchase.

33. After acquiring the RF Property, River Falls did indeed remit approximately \$1,000,000 to Eastwood's site improvements contractor for work which Plaintiffs' agent represented was in place on the land before the purchase.

34. River Falls incurred additional expenses to rectify the conditions of the RF Property. River Falls paid for consultants, paid for extensions or renewals of permits, paid for new plans and designs to remediate and correct violations of wetlands regulations, and paid Eastwood's contractor for work which proved to be incomplete and unacceptable.

35. River Falls incurred expenses exceeding one million dollars (\$1,000,000) to correct conditions which Plaintiffs misrepresented as an inducement for the purchase by River Falls of the RF Property.

36. Defendants River Falls and AF-River Falls are entitled to have judgment against Plaintiffs in an amount to be proven at trial in excess of \$1,000,000 by reason of the Plaintiffs' misrepresentation of the condition of the RF Property.

WHEREFORE, having fully answered Plaintiffs' Third Amended Complaint, Defendants respectfully pray for the dismissal of Plaintiffs' Third Amended Complaint with prejudice, damages in an amount to be proven at trial, the attorney's fees and costs associated with this action, and such other and further relief as this Court may deem just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

NEXSEN PRUET, LLC

s/Andrew A. Mathias

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Attorneys for Defendants

February 19, 2021
Greenville, South Carolina



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 02-19-2021 04:21:22 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Answer/Answer To Amended Complaint
Filed by or on behalf of: Andrew A. Mathias

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development Corporation
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
Eastwood Development Corporation for Case Party Info Protected
Tri Pointe Homes, Inc.
Eastwood Construction Partners, Llc for Case Party Info Protected