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May 24 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Charleston County
Court of Common Pleas in the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2022-000038
Circuit Court Case No. 2021-CP-10-00562

Clam Farm Partnership, LLC……RESPONDENT,

v.

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, Charleston County, and The City of Folly Beach,

Of which The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management and the City of Folly Beach are ……...APPELLANTS

RESPONDENT'S MOTION FOR RELIEF FROM AUTOMATIC STAY TO FILE MOTION FOR TEMPORARY INJUNCTION

Pursuant to Rule 241, SCACR, Appellant hereby moves for relief from the automatic stay to file a motion for temporary injunction in the trial court. The requested temporary injunction would enjoin the July 10, 2020 expiration of a vested rights deadline for rights conferred by Appellant City of Folly Beach pursuant to a subdivision plat approved by the City of Folly Beach ("***City***") on July 10, 2020. Given the time considerations, Appellant requests that a decision on this motion be expedited.

FACTUAL BACKGROUND

This matter involves development of Charleston County TMS Numbers 331-00-00-336 through 331-00-00-349 (the "***Subject Property***"), which form a portion of a larger development located in The Preserve at Clam Farm (the "***Development***"). On September 29, 2016, Appellant The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("***OCRM***") approved a recorded plat which certified the OCRM critical line for the Development ("***2016 Critical Line***"), including the Subject Property. The plat is entitled "OCRM Critical Line Drawing Clam Farm." ("***OCRM Plat***"). *Exhibit 1*, OCRM Plat. Appellant contends that the OCRM Plat established the OCRM critical line for five years, such that the Appellant had statutory rights under S.C. Code § 48-39-210 to develop landward of that critical line prior to the expiration of the five-year period.

Following establishment of the 2016 Critical Line, Appellant began preparing development plans for the Subject Property for submittal to the City for approval. On April 9, 2019, the City passed Amended Ordinance 05-19, which, among other things, amended Folly Beach Code § 166.04-03, "Marsh Buffers," to require a 15-foot buffer landward of the OCRM critical line. Appellant's engineers then platted the development tract, including the Subject Property, to conform with the required 15' marsh buffer landward of the 2016 Critical Line. The subdivision plat showing the marsh buffer landward of the 2016 OCRM critical line was approved by the City on July 10, 2020, and recorded in the Office of the Register of Deeds at Plat Book L20 Page 0259. ("***Subdivision Plat***"). *Exhibit 2*, Subdivision Plat.

Upon recording the Subdivision Plat, Appellant entered into a purchase and sale agreement with Stanley Martin Homes in the amount of $4,038,000.00**.** Appellant's obligation under the terms of the purchase and sale agreement was to deliver 26 buildable residential lots (including the Subject Property) to Stanley Martin Homes. *Exhibit 3*, Stanley Martin Contract. Appellant

commenced preparing the property for sale to Stanley Martin Homes by grading the lots for construction and installing or adjusting utility lines. However, all activities were brought to a halt when OCRM entered the site, flagged a new proposed critical line less than five years after the OCRM Plat was filed, and issued cease and desist communications. *Exhibit 4*, Cease and Desist Notices. This had the effect of precluding further site work, and further precluded Appellant from selling the Subject Property to Stanley Martin Homes.

ORDER ON APPEAL

On November 18, 2021, the circuit court entered an Order Granting Plaintiff's Motion for Partial Summary Judgment and Preliminary Injunction ("Summary Judgment Order"). *Exhibit 5*, Summary Judgment Order. In the Summary Judgment Order, the court granted summary declaratory judgment as to the claims against OCRM. The court held, as a matter of law, that the 2016 Critical Line did not expire until September 29, 2021, OCRM violated S.C. Code Ann. § 48-39-210 by issuing cease and desist notices prior to that date, and that OCRM may not prohibit or impede site grading activities landward of the 2016 Critical Line. Order at pp. 10-11. The court further issued an injunction precluding the expiration of the 2016 Critical Line while lot grading continued. Order at p. 15.

As to the claims against the City, the court ordered that the Subdivision Plat provided the Appellant with a two-year vested right to complete site grading (among other things) pursuant to S.C. Code § 6-29-1560. *Exhibit 5*, Summary Judgment Order at 12-13. That vested rights period will expire on July 10, 2022 unless enjoined.

The Summary Judgment Order was appealed by OCRM and the City. Appellant seeks to lift the automatic stay to pursue a motion for temporary injunction precluding the expiration of the vested rights period.[1]

ARGUMENT

1. An Order Lifting the Automatic Stay is Necessary to Carry Out the Purpose of the Summary Judgment Order to Preserve Jurisdiction of This Appeal.

As set forth above, the Summary Judgment Order on appeal held, among other things, that Appellant has vested rights in the July 10, 2020 Subdivision Plat:

> Plaintiff has a vested right to complete site grading and to construct buildings on the Subject Property, so long as those buildings are within the buildable footprint outlined in the Subdivision Plat and such buildings conform in all other respects to the applicable requirements for obtaining a building permit.

Exhibit 5, Summary Judgment Order at p. 13. Those vested rights last for two years unless enjoined. S.C. Code § 6-29-1560. Therefore, the vested rights will arguably expire on July 10, 2022, and the Appellant needs to obtain a temporary injunction from the circuit court to preclude that expiration while the lawsuit is pending (including during the pendency of this appeal). This is precisely the circumstance contemplated by Rule 241(c)(2), SCACR. Therefore, Appellant is entitled to a relief from the automatic stay to pursue the injunction in circuit court, and requests an order to that effect.

[1] Given the time constraints at play, Appellant has already filed its Motion for Temporary Injunction and will seek to have it heard upon receipt of an order lifting the automatic stay.

CONCLUSION

For the reasons set forth above, the Appellant requests an expedited order lifting the automatic stay in the circuit court and permitting Appellant to file a motion for temporary injunction of the expiration of its vested rights in the Subdivision Plat.

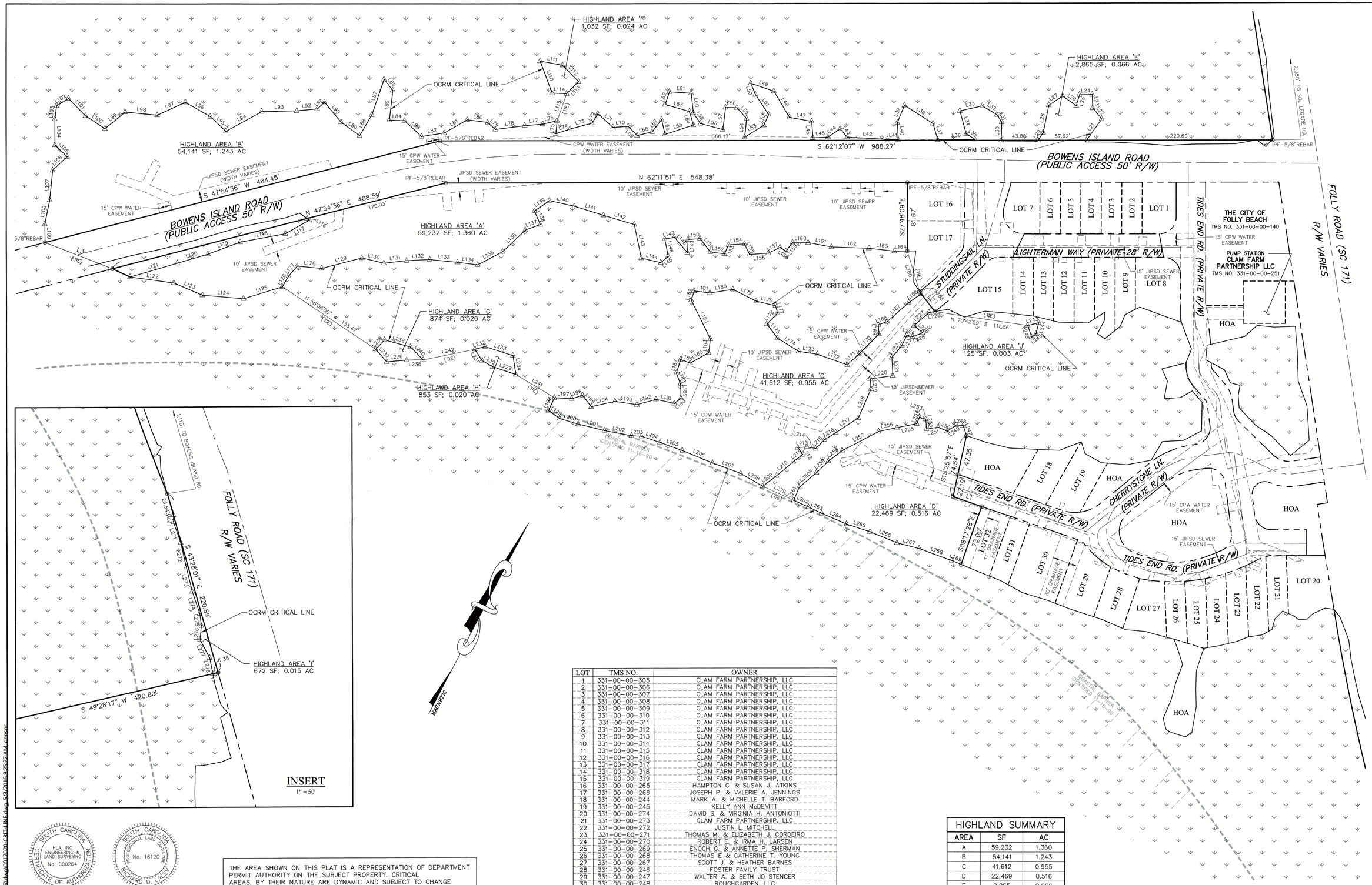
WOMBLE BOND DICKINSON (US) LLP

s// Matt Tillman

Matthew Tillman, SC Bar No. 70338
Daniel Q. Orvin, SC Bar No. 13744
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Attorneys for the Respondent

Charleston, South Carolina
May 24, 2022

EXHIBIT “1”



LOT	TMS NO.	OWNER
1	331-00-00-305	CLAM FARM PARTNERSHIP, LLC
2	331-00-00-306	CLAM FARM PARTNERSHIP, LLC
3	331-00-00-307	CLAM FARM PARTNERSHIP, LLC
4	331-00-00-308	CLAM FARM PARTNERSHIP, LLC
5	331-00-00-309	CLAM FARM PARTNERSHIP, LLC
6	331-00-00-310	CLAM FARM PARTNERSHIP, LLC
7	331-00-00-311	CLAM FARM PARTNERSHIP, LLC
8	331-00-00-312	CLAM FARM PARTNERSHIP, LLC
9	331-00-00-313	CLAM FARM PARTNERSHIP, LLC
10	331-00-00-314	CLAM FARM PARTNERSHIP, LLC
11	331-00-00-315	CLAM FARM PARTNERSHIP, LLC
12	331-00-00-316	CLAM FARM PARTNERSHIP, LLC
13	331-00-00-317	CLAM FARM PARTNERSHIP, LLC
14	331-00-00-318	CLAM FARM PARTNERSHIP, LLC
15	331-00-00-319	CLAM FARM PARTNERSHIP, LLC
16	331-00-00-265	HAMPTON C. & SUSAN J. ATKINS
17	331-00-00-266	JOSEPH P. & VALERIE A. JENNINGS
18	331-00-00-244	MARK A. & MICHELLE T. BARFORD
19	331-00-00-245	KELLY ANN McDEVITT
20	331-00-00-274	DAVID S. & VIRGINIA H. ANTONIOTTI
21	331-00-00-273	CLAM FARM PARTNERSHIP, LLC
22	331-00-00-272	JUSTIN L. MITCHELL
23	331-00-00-271	THOMAS M. & ELIZABETH J. CORDEIRO
24	331-00-00-270	ROBERT E. & IRMA H. LARSEN
25	331-00-00-269	ENOCH G. & ANNETTE P. SHERMAN
26	331-00-00-268	THOMAS E & CATHERINE T. YOUNG
27	331-00-00-267	SCOTT J. & HEATHER BARNES
28	331-00-00-246	FOSTER FAMILY TRUST
29	331-00-00-247	WALTER A. & BETH JO STENGER
30	331-00-00-248	ROUGHGAROEN, LLC
31	331-00-00-249	TYLER BICKERSTAFF
32	331-00-00-250	BRANDI D. HARDIN
	331-00-00-253	
H.O.A.	331-00-00-275	CLAM FARM PARTNERSHIP, LLC
	331-00-00-320	
H.O.A.	331-00-00-252	THE PRESERVE AT THE CLAM FARM HOMEOWNERS ASSOCIATION, INC.

HIGHLAND SUMMARY		
AREA	SF	AC
A	59,232	1.360
B	54,141	1.243
C	41,612	0.955
D	22,469	0.516
E	2,865	0.066
F	1,032	0.024
G	874	0.020
H	853	0.020
I	672	0.015
J	125	0.003
TOTAL	183,875	4.222

SOUTH CAROLINA
HLA, INC
ENGINEERING & LAND SURVEYING
No. C00264
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
PROFESSIONAL LAND SURVEYOR
No. 16120
RICHARD D. LACEY

THIS CERTIFIES THAT THE CRITICAL LINE, AS SHOWN HEREON, REPRESENTS A FIELD SURVEY PREPARED UNDER MY DIRECTION.

RICHARD D. LACEY S.C.P.L.S. 16120

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.

9/29/16

THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

811 Know what's below. Call before you dig.

SUBJECT TO REGULATORY AGENCY REVIEW AND APPROVAL

HLAINC
LAND PLANNING
LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
SURVEYING

29 Leinbach Drive, A2
Charleston, SC 29407-6988
tel 843.763.1166
fax 843.763.1909

www.hlainc.com

NORTH

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR No. 16120 RICHARD D. LACEY

SOUTH CAROLINA HLA, INC ENGINEERING & LAND SURVEYING No. C00264 CERTIFICATE OF AUTHORIZATION

OCRM CRITICAL LINE DRAWING

CLAM FARM

CITY OF FOLLY BEACH
CHARLESTON COUNTY, SOUTH CAROLINA

PROJECT # 00170.20

DATE: MAY 3, 2016
SCALE: 1" = 50'
DESIGN:
DRAWN: WDE
CHECK:

REVISIONS

SHEET 2 of 2

F:\Data\Active\ACAD2004\00170.20\Sdwg\00170.20\Sdwg\CRIT_LINE.dwg, 5/3/2016 9:25:27 AM, denser

EXHIBIT “2”

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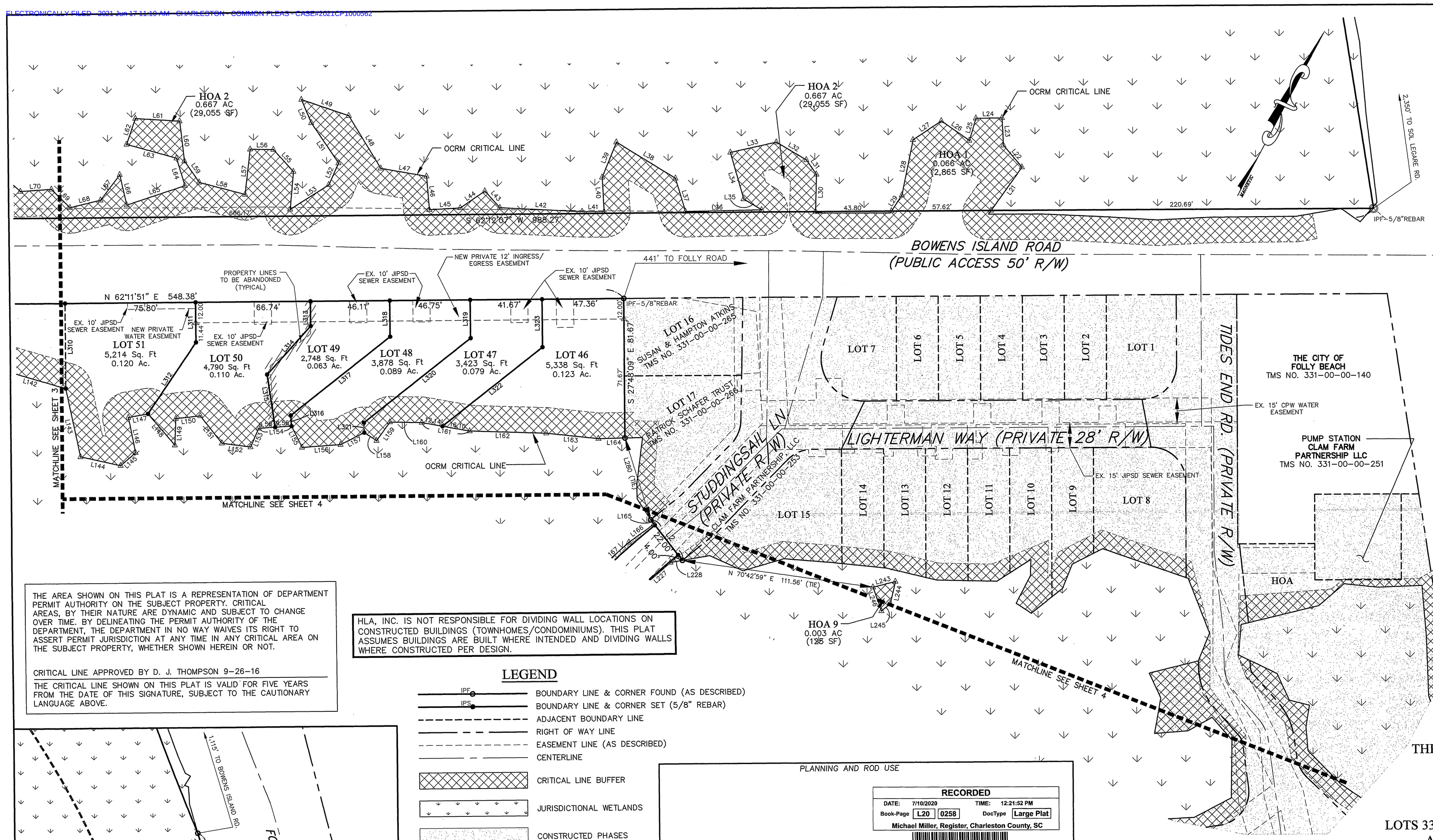
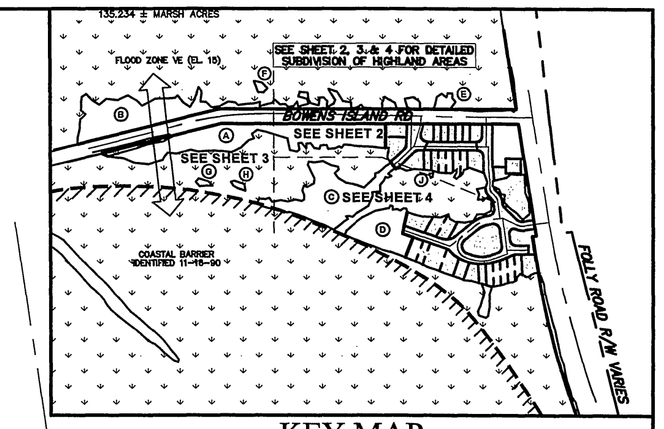




KEY MAP

SCALE: 1" = 400'±

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.

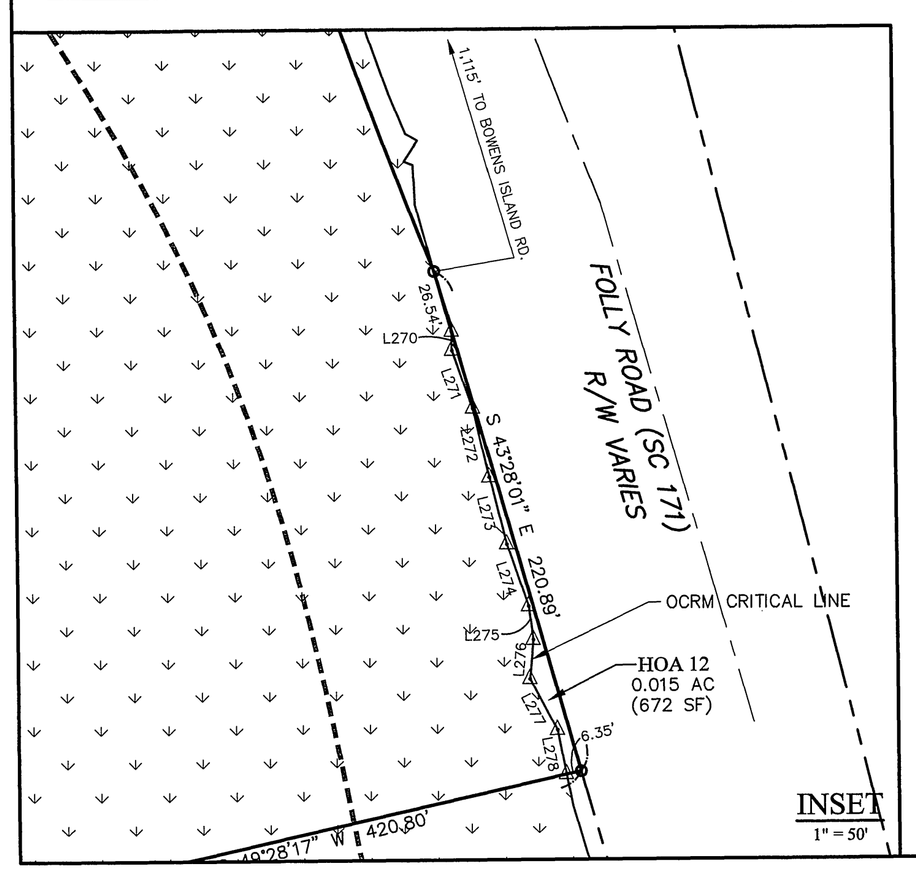
CRITICAL LINE APPROVED BY D. J. THOMPSON 9-26-16

THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

HLA, INC. IS NOT RESPONSIBLE FOR DIVIDING WALL LOCATIONS ON CONSTRUCTED BUILDINGS (TOWNHOMES/CONDOMINIUMS). THIS PLAT ASSUMES BUILDINGS ARE BUILT WHERE INTENDED AND DIVIDING WALLS WHERE CONSTRUCTED PER DESIGN.

LEGEND

- IPF — BOUNDARY LINE & CORNER FOUND (AS DESCRIBED)
- IPS — BOUNDARY LINE & CORNER SET (5/8" REBAR)
- ADJACENT BOUNDARY LINE
- RIGHT OF WAY LINE
- EASEMENT LINE (AS DESCRIBED)
- CENTERLINE
- CRITICAL LINE BUFFER
- JURISDICTIONAL WETLANDS
- CONSTRUCTED PHASES
- PP — POWER POLE
- UP — UTILITY POLE



PLANNING AND ROD USE

RECORDED

DATE: 7/10/2020 TIME: 12:21:52 PM
Book-Page L20 0258 DocType Large Plat
Michael Miller, Register, Charleston County, SC

		Filed By:
Record Fee	$25.00	HLA INC
Postage	$2.00	0
TOTAL	$27.00	29 LEINBACH DRIVE BLDG A
Drawer	Drawer 2	CHARLESTON SC 29407
Clerk	JBA	

Location: FOLLY RD 2/5

APPROVED PLAT CITY OF FOLLY BEACH 7/14/20

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE STATE OF SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

RICHARD D. LACEY S.C.P.L.S. 16120

SOUTH CAROLINA HLA, INC ENGINEERING & LAND SURVEYING No. C00264 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR No. 16120 RICHARD D. LACEY

SEE SHEET 5 FOR TMS NUMBERS AND PROPERTY OWNERS, FOR LOTS 33 - 58 AND HOMEOWNERS ASSOCIATION AREAS

SEE SHEET 5 FOR CURVE & LINE TABLES

SEE SHEET 1 FOR REFERENCES, NOTES, DEVELOPMENT SUMMARY, ADJACENT PROPERTY OWNERS & NEW TMS NUMBERS

GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)
1 inch = 30 ft.

FINAL PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINES BETWEEN LOTS 36 THROUGH 45, 49 AND 50, 54 AND 55, 57 AND 58 AND SHOWING LOTS 33 - 35, 46 - 48, 51 - 53, 56 AND HOA AREAS 1 - 12, A NEW 12' INGRESS/EGRESS EASEMENT, (2) TWO NEW FIRE ACCESS EASEMENTS, A NEW PRIVATE INGRESS/EGRESS EASEMENT AND A NEW 28' INGRESS/EGRESS PRIVATE ACCESS EASEMENT

PROPERTY OF

CLAM FARM PARTNERSHIP, LLC

LOCATED IN
THE CITY OF FOLLY BEACH
CHARLESTON COUNTY SOUTH CAROLINA
DATE: JUNE 22, 2020 SCALE: 1" = 30'

SHEET 2 OF 5

HLA
THE SITE EXPERTS
SURVEYING CIVIL ENGINEERING
LAND PLANNING LANDSCAPE ARCHITECTURE
29 Leinbach Drive, A2. Charleston SC 29407-6988
tel: 843.763.1166 fax: 843.763.1909 web: www.hlainc.com

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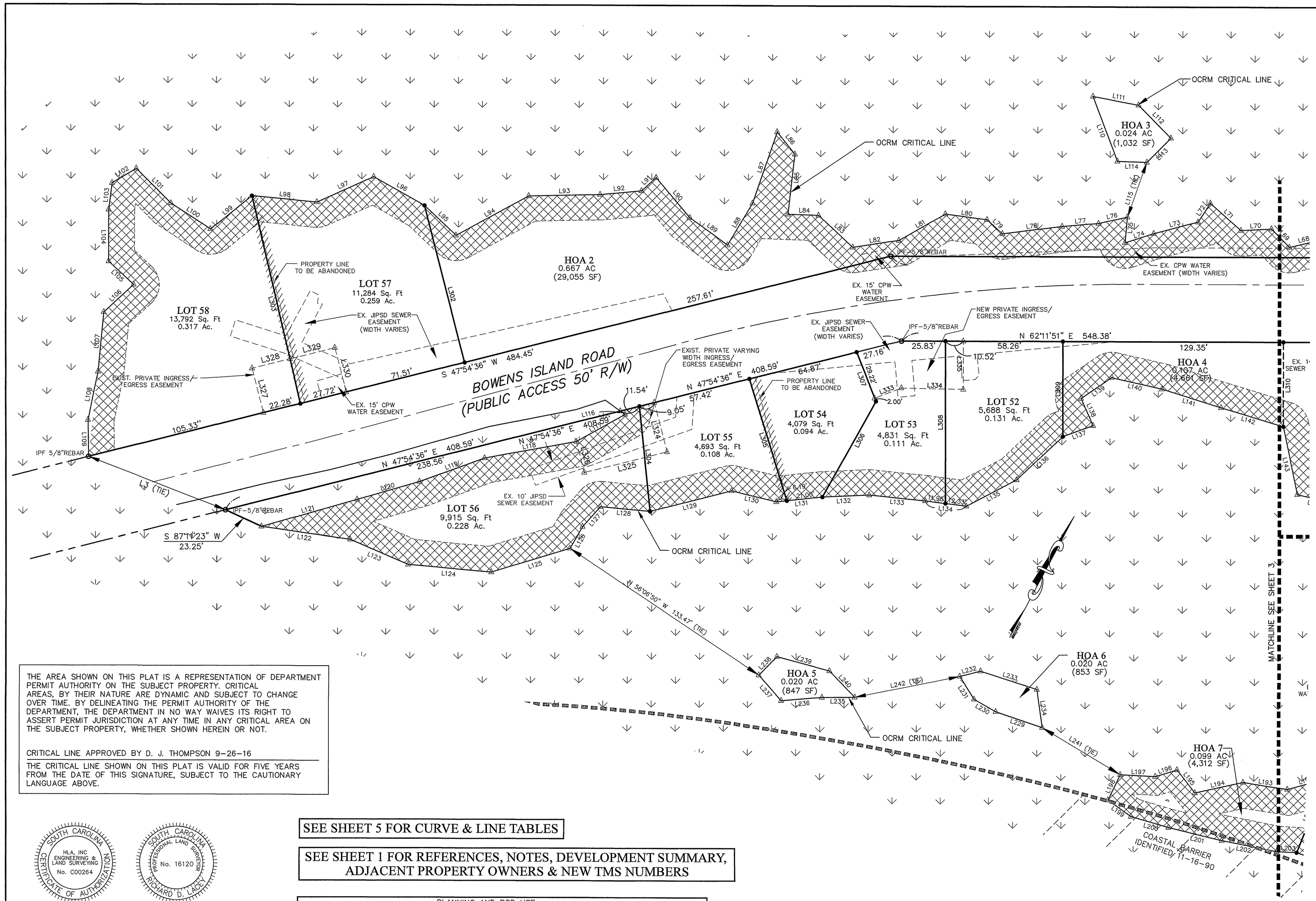

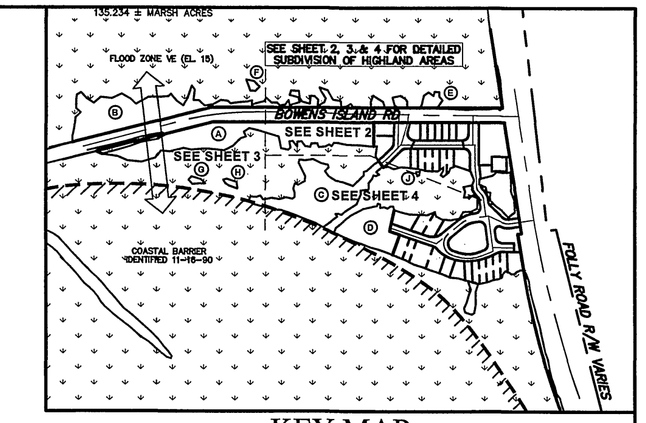

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SOUTH CAROLINA — HLA, INC ENGINEERING & LAND SURVEYING — No. C00264 — CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA — PROFESSIONAL LAND SURVEYOR — No. 16120 — RICHARD D. LACEY

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RICHARD D. LACEY S.C.P.L.S. 16120

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PLANNING AND ROD USE

APPROVED BY: CITY OF FOLLY BEACH — Admin 7/14/20

RECORDED

DATE: 7/10/2020 TIME: 12:22:26 PM
Book-Page L20 0259 DocType Large Plat
Michael Miller, Register, Charleston County, SC

Record Fee	$25.00	Filed By: HLA INC
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TOTAL	$27.00	29 LEINBACH DRIVE BLDG A
Drawer	Drawer 2	CHARLESTON SC 29407
Clerk	JMA	

Location: FOLLY RD 3/5

SEE SHEET 5 FOR TMS NUMBERS AND PROPERTY OWNERS, FOR LOTS 33 - 58 AND HOMEOWNERS ASSOCIATION AREAS

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LOCATED IN
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DATE: JUNE 22, 2020 SCALE: 1" = 30'

SHEET 3 OF 5

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EXHIBIT “3”

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DRAFT 05/26/2020

AMENDED AND RESTATED CONTRACT OF SALE

THIS AMENDED AND RESTATED CONTRACT OF SALE (hereinafter referred to as the "Contract") is hereby entered into as of the Effective Date of this Contract, by and between **STANLEY MARTIN COMPANIES, LLC**, a Maryland limited liability company (the "Buyer"), and **CLAM FARM PARTNERSHIP, LLC**, a South Carolina limited liability company ("Seller").

RECITALS:

A. Seller is the owner of property located in the Charleston County, South Carolina (the "County"), as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (said real property, together with all improvements and fixtures thereon and all rights, privileges, easements, benefits and agreements appurtenant thereto, are hereinafter collectively referred to as the "Property").

B. Buyer and Seller heretofore entered into that certain Contract of Sale having an effective date of September 18, 2019, pursuant to which Seller agreed to sell, and Buyer agreed to buy, the Property in accordance with the terms, conditions and provisions contained therein, and which Contract of Sale was subsequently amended by the following amendments executed by Buyer and Seller (said original Contract of Sale having an effective date of September 18, 2019, as amended by the following amendments, being referred to herein as the "Original Agreement"):

Document Name	Date	Defined Term
First Amendment to Contract of Sale	November 6, 2019	First Amendment
Second Amendment to Contract of Sale	January 9, 2020	Second Amendment
Third Amendment to Contract of Sale	January 29, 2020	Third Amendment
Fourth Amendment to Contract of Sale	February 13, 2020	Fourth Amendment
Fifth Amendment to Contract of Sale	March 12, 2020	Fifth Amendment
Sixth Amendment to Contract of Sale	March 18, 2020	Sixth Amendment
Seventh Amendment to Contract of Sale	April 2, 2020	Seventh Amendment
Eighth Amendment to Contract of Sale	April 15, 2020	Eighth Amendment
Ninth Amendment to Contract of Sale	April 30, 2020	Ninth Amendment

C. Buyer and Seller now desire to amend and restate the Original Agreement in its entirety as hereinafter set forth below.

AGREEMENT:

ELECTRONICALLY FILED - 2021 Jun 17 11:10 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000562

NOW, THEREFORE, in consideration of the mutual rights and obligations hereunder and the Deposit (as hereinafter defined), Buyer and Seller hereby agree (and hereby amend and restate the Original Agreement in its entirety) as follows. Buyer hereby agrees to buy and Seller hereby agrees to sell the Property upon the terms and conditions hereinafter set forth.

1. Deposit.

1.1 Buyer delivered to Buist Byars & Taylor, LLC, a South Carolina limited liability company (the "Escrow Agent") a deposit (the "Initial Deposit") in the amount of $100,000.00 on September 26, 2019.

1.2 On or before 10 days after the Effective Date of this Contract, Buyer shall deposit with Escrow Agent an additional $500,000.00 (the "Second Deposit"). Such deposit shall be held and disbursed in accordance with the terms of Escrow Agreement. The Initial Deposit and Second Deposit shall collectively be referred to as the "Deposit."

1.3 Escrow Agent shall hold the Deposit in a separate interest-bearing account reasonably acceptable to Seller and Buyer at a bank or other financial institution reasonably acceptable to Seller and Buyer, and all accrued interest on the Deposit shall be deemed to be a part of the Deposit for all purposes under this Contract. Escrow Agent shall hold and disburse the Deposit in accordance with the terms of the amended and restated escrow agreement attached hereto as Exhibit "B" and incorporated herein by reference, which amended and restated escrow agreement shall be executed by Buyer, Seller and Escrow Agent contemporaneously with the execution of this Contract. The Deposit shall: (a) be credited against the Purchase Price at the First Closing; (b) be nonrefundable as of the Effective Date of this Contract, except in the following events: (i) a Seller default, as defined herein, (ii) Seller breaches any representations, warranties or covenants contained herein, (iii) Seller is unable to satisfy the requirements regarding title and conveyance described herein, (iv) a condemnation of the Property occurs, and/or (v) failure of a condition to Closing as set forth in Paragraph 11 herein.

2. Purchase Price; Payment. The purchase price for the Property shall be **$4,038,000.00**, subject to adjustment for Market Conditions (as hereafter defined) as set forth in this Paragraph ("Purchase Price") and shall be paid at the applicable Closing as described below. The Buyer shall purchase the Property described in Exhibit "A" from Seller at two separate closings and the Purchase Price shall be apportioned between each Closing as described below.

A. First Closing. At the first closing (the "First Closing") Buyer shall purchase from Seller the portion of the Property described in the chart below (the "First Closing Property"). The First Closing shall occur on or before the later of the following dates (the later of the following dates being referred to herein as the "First Closing Date"): (i) August 30, 2020; or (ii) the date that is 30 days after all of Seller's Work (as defined herein) is complete and each Lot (as defined herein) within the Property is a Developed Lot (as defined herein). The portion of the Purchase Price allocated to the First Closing Property shall be calculated by multiplying the number of single family lots, townhome lots, and condominium dock units by the applicable purchase price for each and adding the cost of Seller's Work, as outlined below:

Property Type	Size	Garage Orientation	Number of Lots	Other Units	Per Lot or Unit Purchase Price	Portion of Purchase Price for First Closing Property

Single Family Lots Lots 37, 50-58 (Less one to be conveyed at the Second Closing)	TBD	Drive Under	9	--	$150,000.00	$1,350,000.00
Townhome Lots Lots 33-36 & 38-49	TBD	Drive Under	16	--	$125,000.00	$2,000,000.00
HPR Boat Docks Units 1, 2, 3, 4, 7, and 10	TBD	N/A	--	6	$16,667.00	$100,000.00
Total for Land	--	--	25	--	-	$3,450,000.00

Cost of Seller's Work	--	N/A	--	--	-	$538,000.00
Total Portion of Purchase Price Allocated to First Closing Property	--	N/A	--	--	-	$3,988,000.00

Notwithstanding anything contained in the Contract to the contrary, Buyer and Seller acknowledge that the actual cost of Seller's Work may change based on changes in construction and development costs and other market variables (collectively, the "Market Conditions"). Buyer and Seller agree that if the cost of Seller's Work increases due to Market Conditions, the Purchase Price shall automatically increase to an amount equal to the increased cost of Seller's Work, not to exceed 10% of the original $538,000.00 cost of Seller's Work. Likewise, if the cost of Seller's Work decreases due to Market Conditions, the Purchase Price shall automatically decrease to an amount equal to the decreased cost of Seller's Work, not to exceed 10% percent of the original $538,000.00 cost of Seller's Work.

B. Second Closing. At the second closing (the "Second Closing") Buyer shall purchase from Seller the tenth and final single family lot (one of the Single Family Lot numbers described in the chart above) and being the remainder portion of the Property (the "Second Closing Property"). The Second Closing shall occur on or before the earlier of the following dates (the earlier of the following dates being referred to herein as the "Second Closing Date"): (i) the date that is 30 days after the payment, cancellation and satisfaction of record of the judgment issued related to the Action (as hereinafter defined); or (ii) the date that is 30 days after all 9 single family lots referenced above have been improved and subsequently sold by Buyer to third-party purchasers. The portion of the Purchase Price allocated to the Second Closing Property shall be $50,000.00. The First Closing and the Second Closing being collectively referred to herein as the "Closings", and each of the Closings being individually referred to herein as a "Closing".

The Purchase Price shall be payable to Escrow Agent pursuant to Paragraph 4 below in cash or by certified or bank cashier's check or by wire transfer of immediately payable funds at each Closing, and such funds shall be disbursed to Seller (net of Seller's closing expenses and other charges and adjustments contemplated hereunder) following recordation of the Deed (as hereinafter defined) in the County land records. The provisions of this Paragraph 2 shall survive each Closing.

3. Entry onto Property. Commencing on the Effective Date hereof and for the entire term of this Contract, Buyer, at its sole cost and expense, and Buyer's agents, employees and independent contractors shall have the right to enter the Property and complete access to the Property during normal

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business hours for the purpose of conducting such surveys, site inspections, plat review, title research and reviews, soil borings, soil analyses, engineering tests and studies, geotechnical tests and studies, wetlands studies, environmental tests and studies, economic and/or topographic tests, feasibility studies, zoning and jurisdictional research, meetings with relevant government officials, and any other tests, studies, reports, and/or investigations with respect to the Property, as Buyer may deem necessary in order to determine whether the Property is suitable for Buyer's intended use thereof, provided that Buyer repairs any damage to the Property caused in connection with such tests and studies. Seller has previously delivered to Buyer, for informational purposes and without any representations or warranties, express or implied, true and complete copies of any studies, reports, surveys, title reports, construction drawings, quotes, engineering materials, permits, approvals, consents, authorizations, evidence of zoning of the Property, evidence of sanitary and storm sewer, water, electricity, gas, and telephone service availability, covenants, restrictions and easements that burden or benefit the Property, agreements affecting the Property, all information regarding access to the Property, all governmental approvals obtained, and other documents and materials relating to the Property or the development or subdivision of the Property which are within Seller's possession or control, and any and all items in the possession of Seller which Buyer may reasonably request in connection with Buyer's inspection of the Property. Seller will make available at no cost to Buyer any documents and other information to which Seller has access regarding the Property. Seller will also instruct any engineers and consultants to cooperate with Buyer in the disclosure of any information related to the Property, including, but not limited to, site conditions, approvals, site plans, permit obligations or concurrency impacting the development of the Property.

Buyer shall indemnify, defend and hold Seller harmless from and against all costs, expenses and liabilities incurred by Seller in connection with the tests and studies conducted by Buyer and Buyer's or Buyer's agents, employees and independent contractors' entry upon the Property pursuant to this Paragraph 3. Any inspection, examination or test shall not interfere with Seller's use of the Property and shall not violate any law or regulation of any governmental entity having jurisdiction over the Property. Upon the completion of any inspection, examination or test, if any, Buyer shall restore the Property to its former condition. Notwithstanding anything contained herein to the contrary, Buyer's repair and indemnification obligations under this Paragraph 3 shall survive each Closing or termination of this Contract (regardless of the reason for termination), as the case may be.

Seller and Buyer each acknowledge that Buyer will expend time, money, and other resources in connection with the examination and investigation of the Property and that, notwithstanding the fact that Buyer may terminate this Contract pursuant to this Paragraph, such time, money and other resources expended, both Seller and Buyer have incurred certain expenditures and expended other resources in connection with this transaction, and that any payments described herein, in the event of such termination, constitute good, valuable, sufficient and adequate consideration for each party's execution of and entry into this Contract.

4. Closing.

4.1 Provided that all conditions precedent to Buyer's obligations hereunder have been satisfied or waived in writing by Buyer, each Closing shall be held at the offices of Escrow Agent, or such other location selected by Buyer. Each Closing shall be an escrow closing where the parties do not have to physically attend the closing. In the event the First Closing does not occur on or before December 31, 2020 for any reason, this Contract shall terminate and the parties shall have no further obligations to one another except as specifically set forth herein.

4.2 This Contract is contingent upon Buyer simultaneously closing on all property comprising the First Closing Property. Notwithstanding any provision to the contrary contained herein, in the event Buyer is unable to acquire and simultaneously close all property comprising the First Closing Property, Buyer shall have the right, but not the obligation to, terminate this Contract and in such event, Escrow Agent shall immediately refund Buyer all Deposits paid by Buyer hereunder. Buyer shall have the express right to waive this contingency and close on such portion of the Property as it deems appropriate.

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4.3 Notwithstanding any provision to the contrary contained herein, in the event Buyer is unable to close (for any reason) after notice has been provided that all conditions precedent to Buyer's obligations hereunder have been satisfied, Seller shall have the right, but not the obligation to, terminate this Contract and in such event, Escrow Agent shall immediately refund Buyer all Deposits paid by Buyer hereunder.

5. Conveyance. At each Closing, Seller shall convey, subject to the Permitted Exceptions (as hereafter defined) good, marketable and Insurable title to that highlands portion of the Property by Limited Warranty Deed (the "Deed"), to Buyer or to such person or entity as Buyer may designate to take title to the Property prior to or at the Closing. Notwithstanding anything contained in this Contract to the contrary, Seller shall only quit-claim Seller's interest in any portion of the Property constituting marsh, marshlands, or tidelands, or lying at or below the mean high water mark of abutting tidal waters ("Wetlands") to Buyer, and Seller makes no representations or warranties whatsoever regarding the title to, or ownership of, the Wetlands or the insurability of the same. The lack of good, marketable and Insurable title to such Wetlands shall be deemed a Permitted Exception. Such conveyance shall be free of all monetary liens whatsoever, including, without limitation, broker lien claims of which notice has been received but for which a lien has not yet been filed of record, and which shall expressly be made subject only to matters deemed waived or approved by Buyer pursuant to this Contract. In addition to the execution and delivery of the Deed by Seller to Buyer, at each Closing Seller shall transfer and assign to Buyer, to the extent assignable (the "Assignment"), all of Seller's right, title and interest in and to all subdivision approvals and all other approvals, permits, consents, authorizations, plans, architectural drawings and engineering materials relating to the Property (collectively, the "Engineering Materials"), and deliver to Buyer originals of all such Engineering Materials within Seller's possession or control (or true and complete copies of such Engineering Materials to the extent that Seller does not have originals thereof within its possession or control). Prior to each Closing, Seller shall obtain and deliver to Buyer the written consent of any engineers or other parties that prepared any of the Engineering Materials for such Assignment of the Engineering Materials by Seller to Buyer. Seller hereby expressly represents and warrants to Buyer (and such representation and warranty shall be included in the Assignment described above to be executed and delivered by Seller to Buyer at each Closing) that Seller has paid all amounts payable to any engineers or other parties that prepared any of the Engineering Materials. At or prior to each Closing, each party shall deliver to the other party appropriate evidence to establish the authority of such party to enter into and close the transaction. Seller shall also deliver to Buyer by each Closing, an affidavit of title with respect to the Property in a form satisfactory to enable the title insurer to issue title insurance without exception for mechanic's, materialmen's or other statutory liens or for the rights of parties in possession. The parties shall also execute and deliver at each Closing any other documents reasonably necessary or appropriate to complete and evidence the transaction contemplated hereby.

6. Expenses. In addition to the allocation between Seller and Buyer of other expenses under this Contract, transfer taxes, intangible taxes, the cost of obtaining releases of all monetary liens or lis pendens encumbering the Property, the cost of preparing and recording any corrective instruments, costs of updates to the Survey (if any), closing costs incurred by Seller, and Seller's attorneys' fees will be paid by Seller. Buyer shall pay all expenses of examination of title, the title insurance premium, all reasonable fees charged by the party conducting each Closing, any special title insurance endorsements, impact fees, Buyer's attorneys' fees, closing costs incurred by Buyer, any and all costs related to the Rezoning, LDP, PUD, and all other recording fees.

7. Taxes and Other Charges. Real estate taxes, and utility charges and assessments are to be prorated at each Closing for the Property being conveyed at each respective Closing, and paid by Buyer thereafter. Any special assessments applicable to the Property for the period prior to each Closing shall be paid by Seller prior to or at each Closing even in the event that the improvements applicable to such special assessments have not been completed as of the Closing for each portion of the Property. Any special assessments applicable to improvements completed prior to each Closing which are assessed after each Closing but apply to the period prior to the Closing shall be paid by Seller, and an allowance for such special assessments required to be paid by Seller shall be made at the time of each Closing.

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If the current year's taxes and/or other applicable assessments have not been determined at the time of each Closing, proration shall be based upon the previous year's taxes and/or assessments, and Buyer and Seller shall adjust between themselves any difference in the proration after the actual amount for the year of each Closing has been determined. All prorations shall be made on a calendar year basis. If, at the time of either Closing, the Property is subject to or affected by any assessment for water, sewer or other utilities which is or shall be a charge or lien against the Property, such assessment, regardless of when due and payable, shall be deemed then due and payable and shall be paid in full at the Closing by Seller. Seller shall also pay each Closing, without any contribution from Buyer, any agricultural, land, rezoning, recapture or roll-back tax due in connection with the conveyance or Deed for the Property being settled under any law, regulation or ordinance (or any similar tax or assessment).

8. Title. Title to the Property is to be good of record and in fact, fully marketable and Insurable by a recognized title insurance company of Buyer's selection authorized to do business in the State of South Carolina at regular rates without exception, except for such matters which Buyer determines, in its sole discretion, would not prevent, materially impair or materially increase the cost of Buyer's intended development and construction on the Property and the conveyance of completed dwelling units on the Property to homebuyers. "Insurable" shall mean title insurable at standard rates from a nationally recognized title insurance company for an owner's title insurance policy on the most recent American Land Title Association form issued without exceptions, except for those matters deemed waived by Buyer pursuant to this Contract or approved by Buyer in writing. Buyer previously obtained a title report or title commitment covering the Property (the "Title Commitment") and delivered to Seller notice of matters reflected on the Title Commitment which are not permitted and are unacceptable to Buyer in accordance with the provisions herein (the "Title Objections"). Buyer shall identify in writing to Seller any new matters which may appear between the Effective Date and each Closing within 5 days after Buyer obtains actual knowledge of the existence thereof (the "Updated Title Objections"). Any title exceptions reflected on the Title Commitment which are not identified by Buyer as Title Objections or Updated Title Objections shall be conclusively deemed to be acceptable to Buyer (the "Permitted Exceptions").

Within 5 business days after the Effective Date (the "Response Period"), Seller shall deliver written notice to Buyer advising Buyer whether or not Seller will attempt to cure all or any of the Title Objections identified by Buyer (the "Response Notice"). Seller's failure to deliver the Response Notice to Buyer within the Response Period shall be conclusively deemed to constitute an election by Seller to not attempt to cure the Title Objections. Notwithstanding the foregoing, Seller shall be required to cause to be released all monetary liens encumbering the Property on or before each Closing, at Seller's sole cost and expense, except for any monetary liens arising as a result of Buyer's tests, studies or other activities conducted by Buyer on the Property (all of which shall be Buyer's responsibility). If Seller elects not to attempt to cure any Title Objections identified by Buyer prior to the First Closing, then within 5 business days after the expiration of the Response Period (the "Election Period"), Buyer shall deliver written notice to Seller (the "Election Notice") electing to either (i) terminate this Contract, in which event the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer, or (ii) waive any Title Objections which Seller has elected not to attempt to cure, in which event such waived Title Objections shall be deemed to be Permitted Exceptions for all purposes under this Contract. Buyer's failure to deliver the Election Notice within the Election Period shall be conclusively deemed to constitute Buyer's election to terminate this Contract pursuant to clause (i) above.

Buyer reserves the right to identify as Updated Title Objections any matters (i) not reflected on the Title Commitment, (ii) shown on any survey of the Property (the "Survey"), (iii) arising after the effective date of the Title Commitment or the Survey, which are not permitted and are unacceptable to Buyer in accordance with the foregoing provisions of this Paragraph 8. Buyer must deliver written notice to Seller of any Updated Title Objections within 5 days after Buyer obtains actual knowledge of the existence thereof (any such new matters which are not identified as Updated Title Objections by delivery of written notice by Buyer to Seller within such 5 day period shall thereafter be conclusively deemed to be Permitted Exceptions for all purposes under this Contract). If Buyer delivers written notice to Seller of

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Updated Title Objections as set forth above, then Seller shall deliver written notice to Buyer advising Buyer whether or not Seller will attempt to cure all or any of the Updated Title Objections identified by Buyer within 5 business days of Seller's receipt of the written notice of the Updated Title Objections from Buyer, and all other elections, procedures and time periods as set forth above in the immediately preceding paragraph of this Paragraph 8 with respect to Title Objections (including, without limitation, the Election Period and Buyer's right to terminate this Contract or waive the Updated Title Objections) shall also apply to such Updated Title Objections.

In the event that Seller elects to attempt to cure any Title Objections or Updated Title Objections pursuant to this Paragraph 8 but is unable to cure the same in a manner acceptable to Buyer and to Buyer's title insurance company on or before the First Closing, then Buyer shall, at its option, either (i) terminate this Contract by delivery of written notice thereof to Seller, and the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer, (ii) waive such Title Objections or Updated Title Objections and proceed to close the transaction contemplated by this Contract, in which event such waived Title Objections or Updated Title Objections shall be deemed to be Permitted Exceptions for all purposes under this Contract, or (iii) extend the First Closing (by giving written notice to Seller by the First Closing) for a period of time not exceeding 90 days for Seller to attempt to remedy such Title Objections or Updated Title Objections, without Buyer waiving its right to exercise either of the options described in clauses (i) or (ii) above in the event that Seller is unable to remedy such Title Objections or Updated Title Objections prior to such extended date of the First Closing. Notwithstanding the foregoing, in the event that the uncured Title Objections or Updated Title Objections arise as a result of Seller's breach of Seller's representations, warranties and covenants in Paragraph 9.A.(i) below, then Buyer shall be entitled to exercise its rights and remedies as set forth in Paragraph 9.C. below.

Buyer shall have the right, but not the obligation, to cure any title defects identified on or before each Closing that Seller has elected to cure but is unable or unwilling to cure prior to each Closing at Buyer's sole cost and expense. Buyer shall not be entitled to any reduction in the Purchase Price or reimbursement for any costs related to curing such title defects.

9. Representations, Warranties, and Covenants of Seller and Buyer.

A. Seller Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer as follows:

(i) After the Effective Date hereof, Seller shall not (a) grant any easements and/or rights-of-way and/or other encumbrances over or through the Property, (b) enter into any agreements or any proffers or other commitments affecting the Property, (c) further encumber the Property, or (d) construct, allow or install any improvements, except for Seller's Work or allow any existing improvements or natural deposits to be wasted, removed, sold or in any way encumbered, except as agreed herein without in each instance obtaining the prior written consent of Buyer, which consent may be withheld by Buyer in its sole discretion.

(ii) Seller has not received notice of any violations of law or municipal ordinances, orders, rules, regulations, or requirements noted or issued by any governmental department or authority having jurisdiction over or affecting the Property, nor notice of any violations of any private restrictions, nor does Seller have any actual knowledge of any such violations. Seller shall be required to comply with any such notices, orders or requirements noted or issued prior to the First Closing and the Second Closing, unless any such notices, orders or requirements arise as a result of Buyer's tests, studies or other activities on the Property (all of which shall be the responsibility of Buyer). Seller shall promptly deliver any such notice, whether received prior to or after either Closing to Buyer.

(iii) All bills and claims for labor performed and materials furnished to or for the benefit of the Property for all periods prior to the Effective Date have been (and prior to the First Closing will be) paid in full, and on the First Closing and Second Closing there shall be no mechanics'

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liens or materialmen's liens, whether or not perfected, on or affecting any portion of the Property, and if there shall be any such liens, Seller shall obtain the release of the same on or before each Closing so that Buyer's owner's policy of title insurance shall contain no exception for such liens. However, any bills, claims or liens relating to or arising from Buyer's pre-closing activities on the Property are expressly excluded from the provisions of this warranty. In connection therewith, Seller agrees, at each Closing, to execute any affidavits and/or customary agreements which may be required by Buyer's title insurance company in order for Buyer to obtain from such title insurance company an owner's policy of title insurance covering the Property being conveyed at each Closing without exception for mechanics' liens or rights of parties in possession.

(iv) To Seller's best information, knowledge and belief, there is no pending, threatened or instituted foreclosure, condemnation or similar action or proceeding affecting the Property or any part thereof.

(v) Seller is a limited liability company duly organized and validly existing under the laws of the State of South Carolina. Seller has the power to enter into this Contract and to consummate the transaction contemplated by this Contract. The execution of this Contract and the consummation of the transaction contemplated herein do not violate any of the terms and provisions of the organizational documents of Seller or any agreement, contract or other instrument to which Seller is a party or is bound. The party executing this Contract and any documents contemplated to be executed by Seller under this Contract on behalf of Seller has, or will have as of each Closing, the authority to execute this Contract and such documents on Seller's behalf and to bind Seller hereunder and under such documents. Seller owns fee simple title to the Property, is the sole owner of the Property, and shall continue to be the sole owner of the Property during the entire term of this Contract and as of each Closing. Seller's execution, delivery, and/or performance of this Contract is not prohibited by and will not constitute a default under any other agreement, covenant, document or instrument. There are no other contracts of any kind with respect to the Property, except for those that shall be delivered to Buyer pursuant to this Contract.

(vi) Seller has no actual knowledge of any: (a) special assessments having been levied, threatened or pending against all or any part of the Property, (b) unpaid assessments or intended special assessments against all or any part of the Property, or (c) recapture or roll-back taxes relating to the Property.

(vii) There are no legal actions, suits, zoning or rezoning actions, or other legal or administrative proceedings pending or, to Seller's actual knowledge, threatened or instituted against Seller (including, without limitation, any voluntary or involuntary actions or suits pursuant to state or federal bankruptcy or other creditors' rights laws, statutes, rules or regulations) which might adversely affect Seller's ability to consummate the transaction contemplated by this Contract, or affecting the Property, or affecting title to the Property, before any federal, state, County or municipal department, commission, board, bureau, agency or other governmental instrumentality, and Seller has no actual knowledge of any facts which might result in any such action, suit or other proceedings, except Case No.: 2019-CP-10-5277 currently pending in Charleston County (the "Action").

(viii) There are no parties in possession of any portion of the Property as lessees, tenants at will or at sufferance, trespassers or otherwise.

(ix) Seller has not entered into any contracts, agreements, commitments, letters of intent or other agreements of any kind with any party other than Buyer relating to the sale of all or any portion of the Property which are still in effect.

(x) To Seller's actual knowledge, there are no contracts, commitments, proffers, obligations, leases or other agreements of any kind which relate to the Property which are not recorded among the land records of the County or are not otherwise a matter of public record.

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(xi) To Seller's actual knowledge, there are no cemeteries or other burial plots located on the Property.

(xii) Seller is not on the list of "specially designated nationals" or "blocked persons" compiled by the U.S. Treasury Department Office of Foreign Assets Control, as such lists may be modified, updated or supplemented from time to time.

(xiii) Seller is in open, notorious, and undisputed possession of the Property and knows of no claim of possession by any other party.

(xiv) No person, firm, or entity has any rights in or to acquire the Property or any part thereof.

(xv) Intentionally omitted.

(xvi) After the Effective Date and as of each Closing, Seller shall not accept or authorize a sale or lease of all or any portion of the Property, without the express prior written consent of Buyer, which consent may be withheld in the sole discretion of Buyer.

(xvii) Seller shall maintain in force until possession of the Property is granted to Buyer any existing casualty and general liability insurance with respect to the Property.

(xviii) The Property is presently or will be served by public sewer and water, natural gas, electricity and telephone service adequate to serve the Property through public easements.

(xix) No drainage of surface or other water from the Property across land of others is required, or if required, such drainage is provided for through public easements.

(xx) To the best of Seller's knowledge, there are no encroachments on the Property.

(xxi) To the best of Seller's knowledge, there are no impacts on the Property regarding threatened and endangered species or archeological limitations.

(xxii) To the best of Seller's knowledge, no improvements nor any other part of the Property encroaches upon any adjoining property.

(xxiii) Seller has received no notice from any insurance company of any defects or any inadequacies in connection with the Property or the operation of the Property.

(xxiv) There are no mobile homes on the Property.

(xxv) No agricultural, timber or farming operations, agreements, licenses or leases affect the Property.

(xxvi) Seller represents that this property is fully approved, partially developed, and that all approvals are in place for the remainder of the development process to be completed for the lots being purchased by Buyer. Seller agrees to cooperate with Buyer and work diligently to ensure that any and all such approvals necessary for the Buyer's purchase of the Property shall be obtained prior to each Closing.

(xxvii) Other than the information and materials which Seller provides to Buyer pursuant to Paragraph 3 herein, Seller is not in possession of or in control of any other studies, reports, surveys, title reports, engineering materials, permits, approvals, consents, authorizations, evidence of zoning of the Property, evidence of sanitary and storm sewer, water, electricity, gas, and telephone service availability, covenants, restrictions and easements that burden or benefit the Property, agreements affecting

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the Property, information regarding access to the Property, governmental approvals, and other documents and materials relating to the Property or the development or subdivision of the Property.

Buyer's obligations hereunder are subject to all of the above warranties and representations being true in every material respect. If, prior to the either Closing, any of the foregoing prove to be untrue, Buyer may elect to terminate this Contract, in which case, the Deposit shall be immediately refunded to Buyer and the parties shall have no further obligations hereunder. As used in this Contract, the phrase "to Seller's knowledge" or "to Seller's actual knowledge" or words of similar import means the actual knowledge, without independent inquiry or duty of investigation, of Timothy W. Stewart, whom Seller represents and warrants is the individual with the most current, specific knowledge of the Property and its operations (notwithstanding anything to the contrary set forth in this Contract, the foregoing individual shall not have any personal liability with respect to any matters set forth in this Contract or any of Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete).

B. Buyer Representations and Warranties. Buyer warrants and represents to Seller as follows:

(i) Buyer is a limited liability company duly organized and validly existing under the laws of the State of Maryland. Buyer has the power to enter into this Contract and to consummate the transaction contemplated herein, and the execution of this Contract and the consummation of the transaction contemplated herein do not violate any of the terms and provisions of the organizational documents of Buyer or any agreement, contract or other instrument to which Buyer is a party or is bound. The party executing this Contract and any documents contemplated to be executed by Buyer under this Contract on behalf of Buyer has the authority to execute this Contract and such documents on Buyer's behalf and to bind Buyer hereunder and under such documents.

(ii) Buyer has not received any actual notice of any legal actions, suits, claims, or other legal or administrative proceedings pending or threatened against Buyer which might adversely affect Buyer's ability to consummate the transaction contemplated by this Contract.

C. Breach of Representations and Warranties. It shall be a condition precedent to Seller's and Buyer's obligation to close hereunder that all of the representations and warranties of the other party contained in this Paragraph 9 and in Paragraph 10 below shall be true and correct in all material respects at each Closing, just as though the same were made at such time. If at any time during the term of this Contract Buyer or Seller learns or becomes aware of the fact that any of its respective representations and warranties set forth herein are no longer true and correct in any material respect, then such party agrees to promptly provide written notice thereof to the other party. Buyer's and Seller's right to enforce such representations and warranties of the other party shall survive both Closings shall not be merged into the Deed executed and delivered by Seller at each Closing.

In the event that prior to either Closing hereunder Buyer or Seller learns or is informed that any of the representations and warranties of the other party (the "Breaching Party") set forth in this Paragraph 9 or in Paragraph 10 below are not true and correct in any material respect, then the non-Breaching Party, at its option, may either (a) terminate this Contract by delivery of written notice thereof to the Breaching Party and thereupon (x) the Deposit shall be delivered to Seller and retained by Seller as liquidated damages pursuant to Paragraph 12.A. below (if Buyer is the Breaching Party), or (y) the Deposit shall be returned to Buyer (if Seller is the Breaching Party), and the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder, or (b) proceed to the First Closing or Second Closing, as applicable, hereunder. Notwithstanding clauses (a) and (b) above to the contrary, in the event that Seller is the Breaching Party and the representation or warranty of Seller which is the basis for such breach was either (x) not true in a material respect on the Effective Date of this Contract, or (y) was true on the Effective Date of this Contract but was not true in a material respect at the time of either Closing as a result of a default or breach hereunder by Seller (rather than as a result of a change in circumstances or the occurrence of

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events which are beyond the reasonable control of Seller), then in addition to the right of Buyer to elect either of the options set forth in clauses (a) or (b) above, Buyer shall also be entitled to recover from Seller the reimbursement of all out-of-pocket costs and expenses incurred by Buyer in connection with this transaction for attorneys' fees, engineers' fees, consulting fees, title examination fees, Survey fees, and all costs and expenses related to environmental, soil and feasibility tests and examinations (collectively, "Buyer's Expenses") in an amount not to exceed $50,000.00.

Seller and Buyer agree that to the extent that any of the representations and warranties set forth in this Paragraph 9 or in Paragraph 10 below are made by Seller to "Seller's actual knowledge" or to "Seller's knowledge" or other similar language, Buyer shall have the right to exercise its rights as set forth in clauses (a) and (b) above (but not recover Buyer's Expenses from Seller) if the actual content and subject matter of the particular representation or warranty is factually inaccurate or incorrect in any material respect, even if Seller does not have any knowledge that the same is factually inaccurate or incorrect in any material respect.

10. Environmental Matters. Seller hereby expressly represents and warrants to Buyer that to Seller's actual knowledge no hazardous substances or hazardous materials have been released, deposited, stored or placed in, on, under or above the Property during Seller's ownership of the Property or prior to Seller's ownership thereof in violation of any applicable laws, ordinances, statutes or regulations, and to Seller's actual knowledge no such hazardous substances or hazardous materials currently exist in, on, under or above the Property such that their existence would violate applicable laws, ordinances, statutes or regulations. As used herein, all references to hazardous materials and raw materials, products or waste of a toxic or hazardous nature shall mean and refer to hazardous waste as that term is defined in the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Paragraph 6901, et seq.), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Paragraph 9601, et seq.), or under any other federal, state or local law, ordinance, statute, rule or regulation, including, without limitation, any asbestos or asbestos-related products and any oils or pesticides. Notwithstanding anything contained herein to the contrary and in addition to any of Buyer's other remedies hereunder, Seller agrees to indemnify, defend and hold Buyer harmless from and against all costs, expenses, liabilities and causes of action which may be incurred by Buyer or asserted against Buyer (including, without limitation, clean-up costs, court costs, reasonable attorneys' fees and claims and fines imposed by any governmental agencies or third parties) in the event of a breach of Seller's representations and warranties contained in this Paragraph 10 which is first discovered by Buyer after either Closing hereunder.

To the best of Seller's knowledge regarding the Property: (i) no Hazardous Materials are present or have been Released in, on, under or around the Property or have migrated onto or from the Property; (ii) there are not and have not been any underground or aboveground storage tanks at, on, under or around the Property; (iii) the Property is not and has never been used as a dump or landfill; (iv) the Property is and has been in compliance with all applicable Environmental Laws; (v) there are no actions, suits, claims, proceedings, investigations or enforcement actions pending or, to Seller's knowledge, threatened under any Environmental Law with respect to the Property; and (vi) Seller has not received any notice, claim or demand from any governmental entity or other person regarding the presence of Hazardous Materials at, on, under or around the Property or alleging that the Property is in violation of any Environmental Laws.

Seller agrees to indemnify, defend and hold harmless Buyer and Buyer's parents, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any and all claims, demands, notices, liabilities, causes of action, damages (including, without limitation, multiple and natural resources damages), fines, penalties, assessments, costs and expenses whatsoever (including, without limitation, reasonable attorneys' and consultants' fees and the reasonable cost of any Remedial Work) (collectively "Losses") arising out of or related directly or indirectly to: (i) the presence or suspected presence of any Environmental Condition in, on, under or around the Property or the improvements thereon on or prior to the date of each Closing; (ii) any migration on, under or from the Property, before or after the date of each Closing, of any Environmental Condition existing in, on, under

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or around the Property on or before the date of each Closing; (iii) any actual or alleged violation of any Environmental Law with respect to the Property on or before the date of each Closing.

For purposes of this Contract:

"Environmental Condition" means any condition, contamination, constituent(s) or set of circumstances that requires any Remedial Work pursuant to any Environmental Law, or otherwise gives rise to liability under any Environmental Law, including, without limitation, the presence or Release, or threatened Release, or any Hazardous Material in, on or into the air, soil, surface water, groundwater or other media.

"Environmental Laws" shall include, without limitation, any present and future local, state and federal laws, statutes, regulations, rules, ordinances and common law, and all judgments, decrees, orders, agreements or permits issued, promulgated, approved or entered thereunder by any governmental agency or authority, relating to the use, storage, handling or release of Hazardous Materials, protection of the environment and/or protection of human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

"Hazardous Materials" means any substance, waste or material that is regulated by, forms the basis of liability under, or is defined as hazardous, extremely hazardous or toxic under, any Environmental Law, including, without limitation, petroleum or any byproducts or fractions thereof, any form of natural gas, asbestos, polychlorinated biphenyls, radon or other radioactive substances, infectious, carcinogenic, mutagenic or etiologic agents, pesticides, defoliants, explosives, flammables, corrosives, urea formaldehyde, alcohols, chemical solvents, pollutants or contaminants.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing (including, without limitation, the abandonment or discarding of barrels, containers or other open or closed receptacles).

"Remedial Work" means any and all investigation, assessment, cleanup, containment, restoration, removal, monitoring, or other remedial or treatment, or post-remedial or post-treatment, work or services concerning Environmental Conditions.

The provisions set forth in this Paragraph 10 shall survive each Closing for a period of 6 months after each Closing.

11. Buyer's Additional Conditions to Closing. In addition to all other precedent set forth contained in this Contract, Buyer's obligation to close hereunder shall be and is expressly contingent upon the satisfaction of the following conditions (collectively, "Buyer's Additional Conditions to Closing"):

A. Prior to each Closing, no action (such as the imposition of a sewer, water or building moratorium) shall have been taken or shall have been publicly announced to be taken or threatened to be taken by any applicable governmental authority which materially and adversely affects obtaining building or occupancy permits or the installation of water and sewer facilities or other utilities to serve the dwellings and other improvements to be constructed on the Property, or which materially and adversely changes the procedures or extends the period of time for obtaining such permits or facilities or in any other manner prevents or materially delays construction of Buyer's intended dwellings or other improvements on the Property or prevents or materially delays such dwellings and other improvements from being effectively connected to a private or public sewer and water system and other private or public utilities.

B. If, prior to either Closing, any federal, state, county or municipal authority, or any agency or subdivision thereof, takes any action (including a moratorium) which precludes the issuance of

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permits for the construction of dwellings on, and/or sewer, water or utility connections or taps for, all or any portion of the Property for a period in excess of 45 days, Buyer, at its sole option, shall have the right to (i) extend the Closing for the same length of time as the action is in effect or (ii) if such action is to be in effect for a period in excess of 6 months, terminate this Contract and receive a refund of the Deposit. Buyer shall have 30 days after receipt by Buyer of any formal notification from any such authority of any such actual or proposed action affecting any portion of the Property to notify Seller in writing of its intent to exercise its rights hereunder.

C. On or before each Closing, Buyer shall have reasonably assured itself that all utilities necessary for Buyer's intended development and construction on the Property (including, without limitation, adequate outfall and sewer) are available with sufficient access, availability and capacities and on terms and at a cost acceptable to Buyer (in its sole discretion) to support such development and construction and all off-site easements necessary for the development and construction on the Property as intended by Buyer have been obtained and recorded among the County land records.

D. Notwithstanding anything to the contrary herein, Buyer shall not be obligated to close on the First Closing Property and the Second Closing Property until each residential lot ("Lot") within the Property is a "Developed Lot". For the purposes hereof, a lot shall be a "Developed Lot" when all of the following requirements are met (and Seller warrants to Buyer in writing that all Lots shall satisfy the following requirements) (the "Seller's Work"):

(i) The Lot has been staked out accurately with iron pins and has been clearly marked on all corners;

(ii) The final subdivision plat showing the Lot has been reasonably approved by buyer and by all applicable governmental entities and has been recorded;

(iii) All roads providing access to the Lot: (1) include GRAVELPAVE2 system per approved plans; (2) have been constructed in accordance with the standards of applicable governmental entitles; (3) have been dedicated to and accepted by such entities subject to normal maintenance bonds to be posted by Seller;

(iv) All road rights-of-way providing access to the Lot have been graded up from the curb and have been stabilized and seeded;

(v) All debris on the Lot and on roads and rights-of-ways providing access to the Lot has been removed, and all such roads and rights-of-way have been cleaned.

(vi) Storm water sewers for surface water drainage for all roads providing access to the Lot and for the Lot shall have been installed in accordance with plans approved by the applicable governmental authorities;

(vii) Water and sewer laterals are installed and ready to be immediately used for their intended purpose at the lot line of the Lot and are available to Buyer solely upon payment by buyer of tap-on fees and user charges imposed by the entities supplying such services;

(viii) All utilities have been marked as to location;

(ix) No condition related to Seller's development of the lot will prevent (1) a building permit being issued immediately for the Lot and (2) upon completion of construction of the home on the Lot, a certificate of occupancy being issued immediately;

(x) All impact fees levied by any governmental entity have been paid in full by Seller;

(xi) The Seller shall have removed all stored fill dirt from the Lot; and

(xii) Ten (10) Lots will be usable as a Lot upon which a single-family residence can be constructed and used for residential purposes;

(xiii) Sixteen (16) Lots will be usable as a lot upon which townhomes can be constructed and used for residential purposes; and

(xiv) All that certain work, as further described in the Three Oaks Contractors, Inc. Bid attached hereto as Exhibit "C" and incorporated herein, is completed.

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E. On or before the First Closing, Seller shall have recorded the final version of a supplement (the "Supplemental CCRs") to that certain Declaration of Covenants, Conditions, Easements, and Restrictions for the Preserve at the Clam Farm dated March 17, 2010 and recorded March 28, 2010 in Book 0116, Page 909 in the records of the Charleston County Register of Deeds (the "Master CCRs"), governing development of the Property, which Supplemental CCRs shall incorporate terms pertaining to architectural guidelines and use restrictions and provisions, shall allow for Buyer's intended development of the Property, and shall provide shared access to any and all amenities and common areas incorporated in the Master CCRs. Further, on or before the First Closing, Seller shall have recorded the final version of a supplement (the "Master Deed Supplement") to that certain Master Deed of The Preserve at The Clam Farm Marina Horizontal Property Regime dated January 20, 2012 and recorded January 23, 2012 in Book 0229, at Page 088 in the records of the Charleston County Register of Deeds (the "Master Deed"), governing the marina and Boat Docks incorporated as part of the the Property to be conveyed at the First Closing in order to assign those certain Boat Docks to specific Lots within the First Closing Property at the First Closing.

No later than 45 days after the Effective Date hereof, Buyer shall provide Seller with a draft of the proposed Supplemental CCRs and Master Deed Supplement for final review. The Seller shall then notify Buyer of any proposed revisions of the Supplemental CCRs and Master Deed Supplement no later than 10 days after receipt thereof from Buyer. If Seller's proposed revisions to the Supplemental CCRs and Master Deed Supplement are not acceptable to Buyer, then Buyer shall notify Seller in writing within 10 days after receipt thereof from Seller and the parties shall thereafter negotiate the terms thereof with due diligence prior to the First Closing. If Buyer and Seller are unable to agree to the terms of the Supplemental CCRs and Master Deed Supplement on or before First Closing, then Buyer, in its sole discretion, may terminate this Contract by delivery of written notice thereof to Seller, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer.

F. Seller shall provide an indemnification agreement to Buyer, in form satisfactory to Buyer and Seller, indemnifying and holding Buyer harmless for any and all liability, related to that certain Action and pending litigation referenced in Paragraph 9.A.(vii) (the "Indemnification Agreement").

G. Buyer's obligations hereunder are contingent upon Seller's assignment of all requisite approvals and permits required for Buyer's intended development ("Approvals"). Buyer shall have full review and approval rights of any and all permit applications necessary prior to each submission by Seller.

Seller hereby authorizes Buyer to file all necessary additional applications, petitions and documents in connection with obtaining the Approvals, and Seller shall at any and all times after the Effective Date, including, without limitation, after each Closing, support Buyer's efforts to obtain the Approvals which Buyer is obtaining, cooperate with Buyer in obtaining the Approvals which Buyer is obtaining, and execute and deliver to Buyer such authorizations, powers of attorney and other documents and letters as Buyer may reasonably request in connection with Buyer's efforts to obtain the Approvals which Buyer is obtaining. Buyer shall have full review and approval rights over the plans prior to any and all submissions of such plans to Charleston County, South Carolina. Buyer shall be responsible for all costs and expenses related to the Approvals.

The Approvals shall be "final" upon a final decision of the appropriate governmental authority(ies) and the lapse of any appeal period without any challenge thereto having been filed. It shall not be necessary for Buyer to file any applications, petitions, documents or materials whatsoever, or to take any action whatsoever, in order for Buyer to make a determination in its sole discretion that all or any such Approvals meeting the requirements of this Paragraph 11.G are not feasible or possible to obtain within a timeframe acceptable to Buyer in its sole discretion.

H. Seller shall provide any and all easements necessary for Buyer's intended construction of development of the Property in accordance with Paragraph 15.

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In the event that any of the foregoing Buyer's Additional Conditions to Closing remain unsatisfied at the First Closing, then Buyer, at its option, may either (i) terminate this Contract by delivery of written notice thereof to Seller, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer, or (ii) waive the satisfaction of such condition(s) and proceed to the First Closing under this Contract for the non-affected Property.

12. Defaults and Remedies.

A. Buyer's Default; Seller's Remedy. In the event that all of the conditions precedent to Buyer's obligations hereunder have been satisfied or waived and Seller performs all of Seller's obligations hereunder and Buyer fails to close on the Property pursuant to the terms hereof in breach of the terms of this Contract or otherwise defaults prior to each Closing hereunder, and fails to cure such default within 10 business days after receipt by Buyer of written notice of such default from Seller (provided, however, that if the breach or default cannot reasonably be cured within such period and diligent efforts to cure promptly commence, then the cure period shall continue as long as diligent efforts to cure continue, but not beyond 30 days), then Seller, as Seller's sole and exclusive remedy, shall be entitled to terminate this Contract by delivery of written notice to Buyer and thereupon the Deposit shall be delivered to Seller and retained by Seller as full liquidated damages, in lieu of any other claims or causes of action which may be available to Seller at law or in equity by reason of such default hereunder by Buyer. The foregoing forfeiture of the Deposit to Seller is agreed upon as liquidated damages by the parties hereto because (i) of the difficulty or impossibility of ascertaining the actual damages Seller may suffer by reason of Buyer's breach of this Contract, (ii) the foregoing is the parties' best estimate of such damages, and (iii) the foregoing shall not constitute a penalty. Seller hereby expressly waives the right to seek specific performance or other damages.

B. Seller's Default; Buyer's Remedies. In the event that Buyer performs all of its obligations hereunder and Seller fails to proceed to either Closing pursuant to the terms hereof in breach of the terms of this Contract or otherwise defaults prior to either Closing hereunder, and fails to cure such default within 10 business days after receipt by Seller of written notice of such default from Buyer (provided, however, that if the breach or default cannot reasonably be cured within such period and diligent efforts to cure promptly commence, then the cure period shall continue as long as diligent efforts to cure continue, but not beyond 30 days), then Buyer, at its option and as its sole remedies, may either (i) terminate this Contract by delivery of written notice to Seller, and thereupon the Deposit shall be returned to Buyer and the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder, and except that Buyer shall be entitled to recover Buyer's Expenses (and pursue a cause of action to recover Buyer's Expenses), or (ii) seek to obtain specific performance of Seller's obligations hereunder, and the costs, including reasonable attorney fees, required to obtain such specific performance (provided, however, if the remedy of specific performance is unavailable to Buyer due to Seller having sold the Property, or any portion thereof, to a third party, and Buyer does not elect to terminate this Agreement as set forth in clause (i) above, then Buyer may pursue any and all remedies available to it at law or in equity, including, but not limited to, the right to sue Seller for damages and the costs, including reasonable attorney fees, required to obtain such remedies).

13. Parties Bound. Subject to Paragraph 24 below, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

14. Commission. Seller and Buyer each warrant to the other that they have dealt with no agent, broker, finder or other person or entity with respect to the transaction contemplated by this Contract. In the event that any claim for commission, referral fee, or finder's fee is brought by any person or entity whatsoever as a consequence of the transaction contemplated hereby and as a result of any action or omission of either Seller or Buyer, then Seller or Buyer (whichever party is alleged to have

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committed the act or omission which is the basis of such claim), as the case may be, shall indemnify, defend and hold harmless the other party against any loss, cost, or expense of any nature, including, but not limited to, court costs and reasonable attorneys' fees, arising as a consequence of such claim for the commission or fee, whether or not such claim is meritorious.

15. Easements.

15.1 Seller shall grant to Buyer (at no charge) such easements (including, without limitation, easements for surface water detention and access easements) as may be reasonably necessary for an orderly and logical development and construction of the Property. Seller and Buyer shall mutually agree upon the nature, location, terms and conditions of such easements on or before each Closing or at a later date as may be appropriate for a particular easement.

15.2 If the installation of utility lines and related facilities, including, without limitation, sanitary or storm sewer, water, gas, telephone, cable television, surface water drainage or pooling and electricity (hereinafter referred to as the "Utility Facilities"), is necessary in order to provide utility service to the Property, Seller agrees to cooperate in the furnishing of necessary easements, at no charge to Buyer, as part of Seller's Work.

16. Assignment of Contracts. At each Closing, Seller shall assign all rights and interest in and to any construction, architectural, management, service, operations, maintenance, materialmen, trade or supply contracts or permits affecting the Property.

17. Marketing. Prior to the First Closing, but after the Second Deposit has been made, Buyer shall be permitted to install signage and sales trailer(s) on the Property for the purpose of marketing and sales, but in no event shall such installation occur prior to ten (10) days before the First Closing. Seller shall cooperate with Buyer in obtaining necessary permits for such installation. Buyer may use the name "Clam Farm" to indicate the location of the Property and to otherwise identify any of its sales, marketing, advertising, construction, development or other activities or operations.

After the Second Deposit has been made by Buyer and during the pendency of this Contract, Seller agrees to negotiate exclusively with Buyer, remove the Property from the market, and update all open multiple listing service listings of the Property to reflect an "Active Contingent Status".

18. Applicable Law. This Contract shall be construed and interpreted in accordance with the laws of the State of South Carolina.

19. FIRPTA. Seller hereby represents and warrants to Buyer that Seller is not a "foreign person" within the meaning of Paragraph 1445 of the Internal Revenue Code of 1986, as amended, and Seller further agrees, at each closing, to furnish Buyer an affidavit to this effect complying with the provisions of Paragraph 1445 of the Internal Revenue Code of 1986, as amended. In addition, at each closing Seller agrees to execute all customary reporting forms required in order to comply with state, local and/or federal reporting requirements for this transaction.

20. Possession. Possession of the Property shall be given to Buyer at each closing, free and clear of all tenancies and other possessory rights whatsoever and subject only to the Permitted Exceptions.

21. Non-Merger. The provisions of this Contract shall survive each closing hereunder and the execution and delivery of the Deed covering the Property and shall not be merged therein.

22. Total Agreement. This Contract (including all Exhibits hereto) contains the full and final agreement between the parties hereto with respect to the sale and purchase of the Property. Buyer and Seller shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein. No change or modification of this Contract shall be valid unless the same is

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in writing and is signed by the parties hereto. No waiver of any of the provisions of this Contract shall be valid unless the same is in writing and is signed by the party against which it is sought to be enforced. The exhibits referred to in and attached to this Contract are incorporated herein in full by reference.

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24. Assignment. Buyer may assign this Contract in whole or in part without the prior consent of Seller. Upon any such assignment by Buyer of this Contract and the assumption by the assignee of all obligations of Buyer hereunder, Buyer hall promptly deliver a copy thereof to Seller and Buyer shall have no further liabilities or obligations hereunder.

25. No Joint Venture. It is hereby acknowledged by Buyer and Seller that the relationship between them created hereby is not intended to be and shall not in any way be construed to be that of a partnership, joint venture, or principal and agent.

26. Time. Time is of the essence with respect to all matters set forth in this Contract.

27. Risk of Loss. The risk of loss for damage to the Property or any improvements or fixtures located thereon by fire or other casualty is hereby assumed by Seller until each Closing hereunder and recordation of the Deed covering the Property.

28. Condemnation. Seller agrees to give Buyer immediate notice of any actual or threatened taking of all or any portion of the Property by condemnation or eminent domain prior to each Closing hereunder. In the event that prior to either Closing hereunder there shall occur a taking by condemnation or eminent domain of all or any portion of the Property or a proposed conveyance to a condemning authority in lieu of condemnation, then Buyer, at its option, may either (i) terminate this Contract by delivery of written notice thereof to Seller, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer, or (ii) proceed to the applicable Closing hereunder, in which event Seller shall assign to Buyer at each Closing all of Seller's right, title and interest in and to any condemnation proceeds that may be payable in connection with such condemnation (Buyer shall receive a credit against the Purchase Price at each Closing in the amount of any such condemnation proceeds paid to Seller prior each Closing), and thereafter Buyer shall control all negotiations with the condemning authority. During the term of this Contract, Seller shall not enter into any negotiations, litigation, settlement, appraisals, appeals, or agreements with the condemning authority without obtaining Buyer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

29. Casualty. If all or any material part of the trees on the Property are destroyed or damaged (excluding natural wear and tear) prior to either Closing, Seller shall deliver written notice to Buyer of such damage or destruction and of Seller's insurance coverage. Buyer shall elect within 5 days of receipt of such notice, by delivering written notice to Seller, to either (a) not purchase the Property, in which event the Deposit shall be refunded to Buyer and the parties shall be relieved of any further obligations hereunder; or (b) close the transaction contemplated hereunder, in which case the Purchase Price shall not be reduced, but Seller shall assign to Buyer Seller's rights in any insurance proceeds paid or payable to Seller in connection with such damage or destruction. If Buyer does not so notify Seller, Buyer shall be deemed to have elected to close the transaction contemplated hereby in accordance with clause (b) of this Paragraph. Seller agrees

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until the Second Closing to maintain any trees and improvements in their existing condition, natural wear and tear excepted.

30. Headings. The paragraph titles, captions or headings contained in this Contract are inserted only as a matter of convenience and for reference purposes only, and in no way define, limit, extend or describe the scope, meaning or interpretation of this Contract or the intent of any provisions hereof. References to the singular shall mean, where applicable, the plural.

31. Weekends and Holidays. Any date specified in this Contract for the performance of an obligation or expiration of a time period which is a Saturday, Sunday or a legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or a legal holiday. For purposes of this Paragraph, the day following Thanksgiving shall be deemed to be a legal holiday.

32. Counterpart Originals; Delivery of Contract. This Contract may be executed in multiple original counterparts, each of which shall be an original, but all of which together shall constitute one and the same Contract. For purposes of execution and delivery of this Contract, a signature by any party which is delivered by such party to the other party by facsimile or by electronic mail transmission shall be binding upon the delivering party as an original signature to this Contract.

33. Litigation. In the event that any party is required to resort to litigation to enforce its rights under this Contract, Seller and Buyer agree that any judgment awarded to the prevailing party shall include all litigation expenses of the prevailing party, including (without limitation) actual attorneys' fees and court costs.

34. Severability. No determination by any court or other governmental authority that any provision of this Contract is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other provision of this Contract, or (ii) such provision of this Contract in any circumstance not controlled by such determination. Each provision of this Contract shall be valid and enforceable to the fullest extent allowed by, and shall be construed whenever possible as being consistent with, all applicable laws.

Buyer and Seller acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to the effect of, each and every one of the terms, conditions and restrictions of this Contract, and Buyer and Seller agree to the enforcement of any and all of these provisions and execute this Contract with full knowledge of these. Should any provision of this Contract require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. This Contract constitutes the parties' entire agreement and supersedes all prior written and oral understandings of the parties' regarding the Property. The parties shall be bound only by the provisions contained herein and by any subsequent modifications agreed to in writing by Buyer and Seller. If any provision of this Contract is found to be unenforceable, the parties shall be bound by the remaining provisions of this Contract in the same manner as if such unenforceable provision had not been included herein, it being the intention of the parties that all provisions of this Contract are severable.

35. Confidentiality. Seller and Buyer agree to keep the terms and conditions of this Contract confidential except as permitted by this Paragraph. Accordingly, neither party shall disclose the terms and conditions of this Contract to any other person or entity other than (i) such party's attorneys, accountants, lenders, investors, consultants, engineers, representatives, assignees, employees, advisors, and agents, and (ii) such other parties as are required by law or by court or administrative order or the Securities and Exchange Commission, without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; however, the person(s) to whom the information is disclosed is(are) made aware of and agree to the confidentiality provisions of this Contract and thereby agree not to further disclose the information.

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36. Tax-Free Exchange. Should either party desire to have this transaction constitute a tax-free exchange of properties utilizing the provisions of Paragraph 1031 of the Internal Revenue Code of 1986, as amended, the parties agree to cooperate with each other in order to effectuate and facilitate such an exchange, provided that: (a) the exchange does not delay either Closing under this Agreement, (b) the parties do not incur any additional liability as a result of their cooperation, and (c) the parties are not required to enter into any contract to purchase any other property, or take title to any property other than the Property. In particular, the parties agree that their rights under this Agreement may be assigned its rights under this Agreement prior to either Closing to a "Qualified Intermediary," as that term is defined in applicable Treasury Regulations. Neither Closing shall not be extended as a result of the Exchange.

37. Original Agreement. This Contract supersedes and replaces the Original Agreement in its entirety.

[SIGNATURES FOLLOW ON NEXT PAGES]

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EXHIBIT “4”

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dhec
Healthy People. Healthy Communities.

November 2, 2020

CERTIFIED MAIL ARTICLE NO.: 9489 0090 0027 6188 0125 96

Clam Farm Partnership, LLC
c/o Timothy Stewart
171 Monroe Lane
Lexington, SC 29072

Re: **NOTICE TO COMPLY**
Compliance Action AI-0003434
Unauthorized activity

Dear Mr. Stewart:

On October 23, 2020, an inspection was conducted by staff of the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) at properties owned by Clam Farm Partnership, LLC at The Preserve at Clam Farm located on and adjacent to King Flats Creek on Bowens Island Road, Charleston, Charleston County, SC (PINs 331-00-00-336 through -349) (Sites). Department staff observed the following in the tidelands critical area without authorization from the Department:

- Portions of silt fencing

The South Carolina Coastal Zone Management Act (Act) and Critical Area Permitting Regulations (Regulations) require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.[1] By way of this notice, the Department is asserting a violation of the Act. In order to be in compliance with the Act and Regulations, you must remove all portions of silt fencing located in the tidelands critical area at the Sites.

Tidelands critical areas are dynamic environments and they are often subject to change over time. The Department recommends that Clam Farm Partnership, LLC requests to have a new critical area line set for the Sites in order to determine the current location of the critical area lines for the properties at The Preserve at Clam Farm (please see included form D-3902).

Please contact me at (843) 953-1021 or kowalckv@dhec.sc.gov within 30 days of receipt of this letter. Failure to timely resolve this matter may result in an enforcement action being initiated by the Department which can include the assessment of civil penalties.[2] Thank you for your cooperation in this matter and I look forward to hearing from you regarding the resolution of this matter.

Respectfully,

Kathy V. Kowalchick
Compliance Project Manager
Office of Ocean and Coastal Resource Management

[1] S.C. Code Ann. §48-39-130(A) & 23A S.C. Code Ann. Regs. 30-2(B)
[2] S.C. Code Ann. §48-39-170

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[redacted]

From: Flake, Morgan <flakemh@dhec.sc.gov>
Sent: Monday, November 9, 2020 10:53 AM
To: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: Re: [EXTERNAL] RE: Preserve at the Clam Farm

Good morning again,

The Department was just made aware that construction activities are currently ongoing at this development site. Please cease and desist any activities that are adjacent to/near the silt fencing since these are the specific areas to be evaluated by the Department and discuss as part of our meeting tomorrow.

Respectfully,
Morgan

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0234
Mobile: (843) 214-5184
Connect: www.scdhec.gov Facebook Twitter

From: Flake, Morgan <flakemh@dhec.sc.gov>
Sent: Monday, November 9, 2020 10:24 AM
To: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: Re: [EXTERNAL] RE: Preserve at the Clam Farm

Sounds great. Thank you for your flexibility. I'll be onsite at 11AM tomorrow.

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management

S.C. Dept. of Health & Environmental Control
Office: (843) 953-0234
Mobile: (843) 214-5184
Connect: www.scdhec.gov Facebook Twitter

From: Timothy W. Stewart <TStewart@msahealthcare.com>
Sent: Monday, November 9, 2020 10:09 AM
To: Ron Felkel <rfelkel@hlainc.com>; Flake, Morgan <flakemh@dhec.sc.gov>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: RE: [EXTERNAL] RE: Preserve at the Clam Farm

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This works for me as well. Thank you and see you there (Bowen's Island Rd.) tomorrow.

Timothy W. Stewart, Esq.
General Counsel
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Lexington, SC 29072
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Fax (803) 358-5746
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From: Ron Felkel <rfelkel@hlainc.com>
Sent: Monday, November 9, 2020 10:06 AM
To: Flake, Morgan <flakemh@dhec.sc.gov>; Timothy W. Stewart <TStewart@msahealthcare.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: RE: [EXTERNAL] RE: Preserve at the Clam Farm

11 AM tomorrow will work for me.

Thanks,
Ron

From: Flake, Morgan <flakemh@dhec.sc.gov>
Sent: Monday, November 09, 2020 10:04 AM
To: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>;

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Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: Re: [EXTERNAL] RE: Preserve at the Clam Farm

Good morning,

As a follow-up to our communications last Friday, Department representatives are unable to meet onsite today. I am available tomorrow and can meet with you as early as 11AM but will need to be back to the office around 2PM for another meeting. Please let me know if that works on your end. If not, we can look at times for Thursday or Friday.

Respectfully,
Morgan

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0234
Mobile: (843) 214-5184
Connect: www.scdhec.gov Facebook Twitter

From: Timothy W. Stewart <TStewart@msahealthcare.com>
Sent: Friday, November 6, 2020 3:05 PM
To: Flake, Morgan <flakemh@dhec.sc.gov>; Ron Felkel <rfelkel@hlainc.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: Re: [EXTERNAL] RE: Preserve at the Clam Farm

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Thank you for the follow up, we are standing by.

Timothy W. Stewart, Esq.
General Counsel
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171 Monroe Lane
Lexington, SC 29072
Phone (803) 358-6789
Fax (803) 358-5746
https://link.zixcentral.com/u/f94e75a2/qJB6MZ0i6xGCD13fhnsoMg?

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u=http%3A%2F%2Fwww.msahealthcare.com

From: Flake, Morgan <flakemh@dhec.sc.gov>
Sent: Friday, November 6, 2020 2:58:55 PM
To: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>
Cc: John A. Lester <jalester@hlainc.com>; Jacqie Maynard <jmaynard@msahealthcare.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Subject: Re: [EXTERNAL] RE: Preserve at the Clam Farm

Mr. Felkel and Mr. Stewart,

Thank you all for your expeditious responses to the Department's communications and your willingness to meet onsite to discuss the current location of silt fencing and associated critical area impacts. The goal of this meeting will be to discuss the location of the critical area and where the silt fencing will need to be relocated to accommodate this area. One of our staff has been out of the office the latter part of this week so we are still working internally to determine availability for next week. I anticipate that we may be able to meet onsite Monday afternoon but I won't know for sure until all staff are back on Monday morning. A meeting for Tuesday appears to also be possible and may work out better for all of you. I will touch base again as soon as possible Monday morning to update you on our availability/plans and coordinate a time that works for everyone, especially given the travel involved.

Respectfully,
Morgan

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0234
Mobile: (843) 214-5184
Connect: www.scdhec.gov<https://link.zixcentral.com/u/2b443fdf/gBfawGog6xGcUKGyKXgf9A?u=http%3A%2F%2Fwww.scdhec.gov%2F>
Facebook<https://link.zixcentral.com/u/ef888de7/XBXdwGog6xGcUKGyKXgf9A?u=https%3A%2F%2Fwww.facebook.com%2FSCDHEC>
Twitter<https://link.zixcentral.com/u/89fd336d/yPLewGog6xGcUKGyKXgf9A?u=https%3A%2F%2Ftwitter.com%2Fscdhec>

[https://link.zixcentral.com/u/09abaff5/uHt6MZ0i6xGIZF3fhnsoMg?u=http%3A%2F%2Fwww.scdhec.gov%2Fimages%2Flogo_email.jpg]

From: Timothy W. Stewart <TStewart@msahealthcare.com>

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Sent: Friday, November 6, 2020 2:10 PM
To: Ron Felkel <rfelkel@hlainc.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Cc: John A. Lester <jalester@hlainc.com>; Flake, Morgan <flakemh@dhec.sc.gov>; Jacqie Maynard <jmaynard@msahealthcare.com>
Subject: RE: [EXTERNAL] RE: Preserve at the Clam Farm

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Ms. Flake,

We look forward to meeting with you next week to hopefully address and resolve any issues or concerns. Please let us know your availability for next week. I will be coming from Columbia on the day of the site visit.

Thank you,

Timothy W. Stewart, Esq.

General Counsel

Medical Services of America, Inc.

171 Monroe Lane
Lexington, SC 29072

Phone (803) 358-6789

Fax (803) 358-5746

https://link.zixcentral.com/u/b92b36e9/ABvjwGog6xGcUKGyKXgf9A?u=http%3A%2F%2Fwww.msahealthcare.com

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From: Ron Felkel <rfelkel@hlainc.com>
Sent: Thursday, November 5, 2020 3:19 PM
To: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com>; John A. Lester <jalester@hlainc.com>; Flake, Morgan <flakemh@dhec.sc.gov>
Subject: [EXTERNAL] RE: Preserve at the Clam Farm

Ok thank you.

From: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Sent: Thursday, November 05, 2020 3:17 PM
To: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>; Flake, Morgan <flakemh@dhec.sc.gov<mailto:flakemh@dhec.sc.gov>>
Subject: Re: Preserve at the Clam Farm

Hi Mr. Felkel,

We are still in the process of finalizing a meeting time for next week but I wanted to let you know that I have some scheduled time out of the office, beginning tomorrow and into early next week. At this point, it does not appear that I will be able to attend a meeting on this matter but my supervisor Morgan Flake, who is copied on this email, plans to attend on behalf of OCRM Compliance & Enforcement. Ms. Flake plans to be in touch with you tomorrow to finalize details.

Respectfully,

Kathy

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Kathy V. Kowalchick
Compliance Project Manager

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Mobile: (843) 607-4940
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Facebook<https://link.zixcentral.com/u/77400a26/7iXbLaQf6xG165Xg5F7kRg?u=https%3A%2F%2Fwww.facebook.com%2FSCDHEC>
Twitter<https://link.zixcentral.com/u/1ae4d075/MKfbLaQf6xG165Xg5F7kRg?u=https%3A%2F%2Ftwitter.com%2Fscdhec>

[https://link.zixcentral.com/u/09abaff5/uHt6MZ0i6xGIZF3fhnsoMg?u=http%3A%2F%2Fwww.scdhec.gov%2Fimages%2Flogo_email.jpg]

From: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Sent: Thursday, November 5, 2020 9:01 AM
To: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>
Subject: RE: Preserve at the Clam Farm

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Thank You

From: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Sent: Thursday, November 05, 2020 9:01 AM
To: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>
Subject: Re: Preserve at the Clam Farm

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Hi Mr. Felkel,

Thank you for your email. Please be aware that our office will be closed next Wednesday in observance of Veterans Day. Let me check with some other staff on their schedules and see if next Monday or Tuesday will work.

Respectfully,

Kathy

Kathy V. Kowalchick
Compliance Project Manager

Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
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Twitter<https://link.zixcentral.com/u/1ae4d075/MKfbLaQf6xG165Xg5F7kRg?u=https%3A%2F%2Ftwitter.com%2Fscdhec>

[https://link.zixcentral.com/u/09abaff5/uHt6MZ0i6xGIZF3fhnsoMg?u=http%3A%2F%2Fwww.scdhec.gov%2Fimages%2Flogo_email.jpg]

From: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Sent: Thursday, November 5, 2020 8:57 AM
To: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>
Subject: RE: Preserve at the Clam Farm

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Kathy,

We are open for Monday, Tuesday or Wednesday of next week maybe around 10 or 11 in the mornings or later in the afternoon.

Ron

From: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Sent: Thursday, November 05, 2020 8:28 AM
To: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>
Subject: Re: Preserve at the Clam Farm

Hi Mr. Felkel,

Thank you for your call yesterday. As we discussed, there are portions of silt fencing that are located in the critical area at the properties for the Preserve at Clam Farm on Bowens Island Road.

I am aware that a critical area line was certified in 2016 and that the silt fencing was placed according to that 2016 line. But there is a strong likelihood that the line has changed since then. I think it would helpful to schedule a meeting at the properties to discuss this issue as well as for OCRM staff to show you the areas where the silt fencing is located in the critical area. Please let me know some times and dates that you are available to meet with OCRM staff at Bowens Island Road.

Please be aware that until this compliance action is resolved, there can be no impacts to the critical area. That includes no fill placed in the critical area, no equipment in the critical area, and any other additional impacts to the critical area are prohibited.

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Respectfully,

Kathy

Kathy V. Kowalchick
Compliance Project Manager

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S.C. Dept. of Health & Environmental Control
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Facebook<https://link.zixcentral.com/u/77400a26/7iXbLaQf6xG165Xg5F7kRg?u=https%3A%2F%2Fwww.facebook.com%2FSCDHEC>
Twitter<https://link.zixcentral.com/u/1ae4d075/MKfbLaQf6xG165Xg5F7kRg?u=https%3A%2F%2Ftwitter.com%2Fscdhec>

[https://link.zixcentral.com/u/09abaff5/uHt6MZ0i6xGIZF3fhnsoMg?u=http%3A%2F%2Fwww.scdhec.gov%2Fimages%2Flogo_email.jpg]

From: Ron Felkel <rfelkel@hlainc.com<mailto:rfelkel@hlainc.com>>
Sent: Wednesday, November 4, 2020 2:38 PM
To: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov<mailto:kowalckv@dhec.sc.gov>>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com<mailto:TStewart@msahealthcare.com>>; John A. Lester <jalester@hlainc.com<mailto:jalester@hlainc.com>>
Subject: Preserve at the Clam Farm

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Kathy,

Per our conversation see attached Approved Critical Line Plat, OCRM project approval stamped

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cover sheet and OCRM approved placard. See email below from Shannon for the project approval time frame.

Due to the permit extension bills passed by the State Legislature (See https://link.zixcentral.com/u/3b360167/YhTdLaQf6xG165Xg5F7kRg?u=http%3A%2F%2Fwww.scstatehouse.gov%2Fsess118_2009-2010%2Fbills%2F4445.htm and https://link.zixcentral.com/u/287a0618/1IPdLaQf6xG165Xg5F7kRg?u=http%3A%2F%2Fwww.scstatehouse.gov%2Fsess120_2013-2014%2Fbills%2F3774.htm for details), the stormwater permit coverage for the referenced project (SCR10E234) is still valid until 2/15/2021. The first bill added 5 years and the second added 4 to active permits. Since it was originally a 5 year permit that was issued on 2/15/07, the permit will expire on 2/15/2021. This has been verified by Richard Geer at SCDHEC\OCRM.

The OS-SWPPP has been updated to meet the requirements of section 3.1.1.F.I of the NPDES CGP. The approval\permit was for the entire Preserve at the Clam Farm build out.

NPDES Construction permit coverage issued to Clam Farm Partnership, LLC remains valid due to the 2 joint resolutions for permit extensions. This permit coverage is valid for this permittee and previously approved development plan through 2/14/2021.

Shannon Hicks, P.E.

Manager, Coastal Stormwater Permitting

S.C. Dept. of Health & Environmental Control

Office: (843) 953-0240

Note: All water and sewer utilities have been installed and accepted by all agencies.

If you have any questions please do not hesitate to call.

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Thanks,

Ron

Ronald A. Felkel, PLS

Senior Project Director

[cid:image001.jpg@01D6B446.8FA6C4F0]

29A Leinbach Drive

Charleston, SC 29407-9688

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[redacted]

From: Flake, Morgan <flakemh@dhec.sc.gov>
Sent: Wednesday, November 25, 2020 6:59 PM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>; Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>; Churdar, Bradley <churdabd@dhec.sc.gov>
Subject: The Preserve at Clam Farm

{EXTERNAL EMAIL}

Mary,

This is to confirm receipt of the "The Preserve at Clam Farm" email sent to Kathy Kowalchick on November 24, 2020 wherein you attached a response to Notice to Comply AI-0003434.

The Department will provide a more detailed response to your letter; however, I would like to address and provide a more expeditious reply to the portion of your letter where you state "Please note that the developer intends to continue with land disturbance and construction as authorized by SCDHEC and the City of Folly Beach and to complete construction before February 15, 2021."

The property owner/developer has been informed that critical area exists landward of portions of the installed silt fencing and that continued impacts in these areas are not authorized by OCRM. Any critical area that is additionally impacted as a result of continued land disturbance activities will be deemed a willful violation of the S.C. Coastal Zone Management Act and Coastal Division Regulations and result in the initiation of an enforcement action.

Respectfully,
Morgan

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0234
Mobile: (843) 214-5184
Connect: www.scdhec.gov Facebook Twitter

From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Tuesday, November 24, 2020 1:58 PM
To: Kowalchick, Kathlene V. <kowalckv@dhec.sc.gov>
Cc: Timothy W. Stewart <TStewart@msahealthcare.com>; Ron Felkel <rfelkel@hlainc.com>
Subject: The Preserve at Clam Farm

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Kathy: Please see attached response submitted on behalf of Clam Farm Partnership, LLC. I am available to discuss this matter at your convenience.

Mary D. Shahid
Member
Nexsen Pruet, LLC
205 King St, Suite 400
Charleston, SC 29401
Post Office Box 486 (29402)
T: 843.720.1788, F: 843.414.8242, M: 843.345.5838
MShahid@nexsenpruet.com

http://www.nexsenpruet.com

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dhec
Healthy People. Healthy Communities.

CEASE AND DESIST DIRECTIVE

VIA EMAIL: MSHAHID@NEXSENPRUET.COM; TSTEWART@MSAHEALTHCARE.COM

April 8, 2021

Clam Farm Partnership, LLC
Timothy W. Stewart, Registered Agent
c/o Mary D. Shahid, Esq.
171 Monroe Ln
Lexington, SC 29072

RE: Unauthorized cutting/mowing of critical area vegetation

Dear Mr. Stewart,

On April 6, 2021, the Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) staff conducted an inspection at your property located adjacent to Bowens Island Rd, Charleston, SC (PIN 3310000002) (Site). As a result of this inspection, Department staff observed that critical area vegetation adjacent to the terminus of Studdingsail Lane and near PINs 3310000337 through 3310000345 has been cut/mowed without authorization from the Department.

Such activity is a violation of the South Carolina Coastal Zone Management Act (Act) and Coastal Division Regulations (Regulations) which require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.[1] As a result, the Department is required to take appropriate corrective action and may assess civil penalties.

You are hereby directed to immediately cease and desist all work in the tidelands critical area that is in violation of the Act. The Department is issuing this directive as authorized by S.C. Code Ann. Regs. 30-8(B), *as amended*. If you do not comply with this directive, please be advised that the Department, pursuant to S.C. Code Ann. §48-39-160, may seek relief in the appropriate circuit court. If you have any questions or concerns regarding this directive and notice, you may contact Kelsey Murdaugh at (843) 953-1508 or murdaukm@dhec.sc.gov.

Respectfully,

Kelsey Marie Murdaugh

Kelsey M. Murdaugh
Enforcement Project Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management

ec: Bradley Churdar, Esq., Associate General Counsel
Morgan Flake, Compliance and Enforcement Section Manager

[1] S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

EXHIBIT “5”

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
CLAM FARM PARTNERSHIP, LLC,	)	CASE NO. 2021-CP-10-00562
Plaintiff,	)	
vs.	)	
THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, CHARLESTON COUNTY, AND THE CITY OF FOLLY BEACH,	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND PRELIMINARY INJUNCTION**
Defendants.	)	

On September 23, 2021, the Court conducted a hearing on Plaintiff Clam Farm Partnership, LLC's ("***Plaintiff***") Motion for Partial Summary Judgment and Motion for Preliminary Injunction.

Appearing for the Plaintiff was Matt Tillman. Appearing for Defendant South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("***OCRM***") was Randell Stoney. Appearing for Defendant City of Folly Beach ("***City***") was Chandler Rowh. Appearing for Defendant Charleston County was Andrew Halio.

For the reasons set forth below, the Court GRANTS Plaintiff's motion.

UNDISPUTED FACTS

1. This matter involves development of Charleston County TMS Numbers 331-00-00-336 through 331-00-00-349 (the "***Subject Property***"), which form a portion of a larger development located in The Preserve at Clam Farm (the "***Development***").

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A. NPDES Permit

2. In 2006, Plaintiff received permit coverage for site work on the Development under the NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities, commonly referred to as a "Land Disturbance Authorization" and identified as "S/W Permit Number 10-06-01-08" from Defendant OCRM (the "***NPDES Permit***").

3. Shortly thereafter, the subprime mortgage crisis signaled the beginning of the Recession of 2008, the effects of which were pervasive for several years. Because of the economic conditions created by the Recession, there was no market for the Development and Plaintiff significantly slowed its development schedule and efforts.

4. In 2009, the South Carolina Legislature adopted a "Joint Resolution to Extend Certain Government Approvals Affecting the Development of Real Property Within the State." This Joint Resolution is applicable to Land Disturbance Authorizations. In or around 2013 the South Carolina Legislature adopted a second Joint Resolution, identical to the first. The aggregate effect of both Joint Resolutions was to extend the NPDES Permit, such that it expired on February 14, 2021.

5. The NPDES Permit is necessary for the Plaintiff to conduct site work on the Subject Property. Because the NPDES Permit expired on February 14, 2021, it was critical to the Plaintiff to complete site work before that date.

B. Establishment of the OCRM Critical Line and Development Approval.

6. The Plaintiff restarted efforts to develop the Development Tract in 2012.

7. On September 29, 2016, OCRM approved a recorded plat which certified the OCRM critical line for the Development, including the Subject Property. The plat is entitled "OCRM Critical Line Drawing Clam Farm." ("***OCRM Plat***"). The OCRM Plat includes a

signature of OCRM employee D. J. Thompson and a date of September 29, 2016. Thompson's signature block includes the following language:

> THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.
>
> D J Thompson 9/29/16
>
> THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

The Plat established the operative critical line as of September 29, 2016 ("***2016 Critical Line***").

8. Following establishment of the 2016 Critical Line, Plaintiff began preparing development plans for the Subject Property for submittal to the City for approval.

9. On April 9, 2019, the City passed Amended Ordinance 05-19, which, among other things, amended Folly Beach Code § 166.04-03, "Marsh Buffers," to require a 15-foot buffer landward of the OCRM critical line.

10. Plaintiff's engineers then platted the Development Tract, including the Subject Property, to conform with the required 15' marsh buffer landward of the 2016 Critical Line.

11. The subdivision plat showing the marsh buffer landward of the 2016 OCRM critical line was approved by the City on July 10, 2020, and recorded in the Office of the Register of Deeds at Plat Book L20 Page 0259. ("***Subdivision Plat***").

12. The Subdivision Plat shows the OCRM critical line, marsh buffers, easements, and developable area of the Subject Property, as demonstrated from the below excerpt showing Lots

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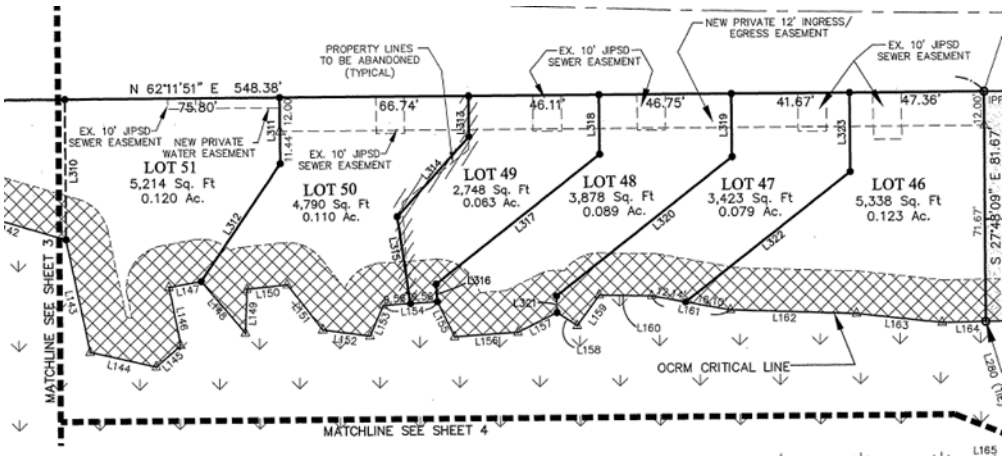
46-51. The developable portions of the Subject Property are effectively all of those portions landward of the marsh buffer delineation (checkered lines).



13. Upon recording the Subdivision Plat, Plaintiff entered into a purchase and sale agreement with Stanley Martin Homes in the amount of $4,038,000.00**.** Plaintiff's obligation under the terms of the purchase and sale agreement was to deliver 26 buildable residential lots (including the Subject Property) to Stanley Martin Homes.

C. Development Interruption and Subsequent Action of the Defendants.

14. Plaintiff commenced preparing the property for sale to Stanley Martin Homes by grading the lots for construction and installing or adjusting utility lines. As set forth in the affidavit of Tim Stewart, the Plaintiff spent 6 months and $ 298,402.89 on engineering and site work for the development of the site. Of this, Plaintiff spent approximately $68,730.24 on the 13 lots that comprise the Subject Property.

15. On October 20, 2020, Aaron Pope, City Administrator for Folly Beach, transmitted an email to a representative of Stanley Martin Homes expressing concern about king tides in the area. The email reads:

> I'm not sure how much time you guys have spent at that site lately but the high tides have generated a lot of interest. In particular, this one lot seems to go under pretty frequently. I wanted to see if there was any possibility that you guys would

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be interested in donating this particular plot to the folly beach nature Conservancy for preservation?"

16. On October 23, 2020, OCRM entered the Subject Property, an active construction site with the resulting land disturbances, to conduct an inspection of the Subject Property.

17. On November 2, 2020, Plaintiff received a "Notice to Comply" from OCRM disclosing the October 23, 2020 inspection and advising that the critical line on the Subject Property must be re-established, despite the fact that the Subject Property had been substantially disturbed by Plaintiff's lawful site work activities pursuant to the NPDES Permit.

18. OCRM again visited the Subject Property on November 9, 2020 without Plaintiff being present. During this site visit, OCRM staked and flagged a proposed revision to the critical line, adjusting it landward.

19. Also on November 9, 2020, Morgan Flake, the Manager for the Compliance and Enforcement Section of OCRM, verbally instructed contractors to cease work and transmitted an email to the Plaintiff and its consultants directing that the Plaintiff cease work on the site:

> The Department was just made aware that construction activities are currently ongoing at this development site. Please cease and desist any activities that are adjacent to/near the silt fencing since these are the specific areas to be evaluated by the Department and discuss as part of our meeting tomorrow.

20. By letter dated November 24, 2020, Plaintiff responded to OCRM's Notice to Comply, stating that Plaintiff acted in reliance on the NPDES Permit, informing OCRM that the site was heavily disturbed, and that it would be difficult to re-create the critical line as it existed on the date the alterations occurred. Plaintiff further advised that it intended to continue site prep work before expiration of the NPDES Permit on February 14, 2021.

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21. On November 25, 2020, Plaintiff received notification from Morgan Flake of OCRM that any further work in areas that OCRM believed to be critical areas would result in additional enforcement.

22. On December 10, 2020, Eric Lutz, the Director of Building/Facilities/Public Works for the City, advised the Plaintiff that it had asked Charleston County to "put on hold" any lot specific permits due to the issues with the newly-flagged critical line.

23. According to Ron Felkel, an engineer hired by the Plaintiff, the City advised that it would impose a 15' buffer adjacent to the proposed critical line flagged by OCRM.

24. Also according to Mr. Felkel, the revised critical line and proposed imposition of the City's 15' buffer to that new critical line would render most or all of the lots comprising the Subject Property unbuildable.

25. On January 8, 2020, Morgan Flake of OCRM sent a letter to the Plaintiff in which OCRM demands, among other things, that Plaintiff remove silt fencing in the newly-flagged critical area, remove fill in the newly flagged critical area, and discontinue plans for utilities and access points on lots 55 and 56.

26. On February 24, 2021, OCRM issued an "up to five-year" extension to the NPDES Permit on February 21, 2021 ("***NPDES Permit Extension***").

27. However, the NPDES Permit Extension contains certain qualifiers which effectively preclude further site work to prepare the lots for building pursuant to the Subdivision Plat, including a requirement that the Plaintiff provide an updated critical line plat evidencing the area flagged by OCRM and requiring plan updates which are "likely major in nature and subject to review and approval."

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28. On April 8, 2021, OCRM issued a cease and desist letter which instructed the Plaintiff to cease and desist all work in the newly-flagged critical area.

PROCEDURAL POSTURE

In its Complaint, the Plaintiff asserts numerous causes of action against OCRM and the City. In Plaintiff's Motion, it seeks summary judgment only on its declaratory judgment causes of action.

As to OCRM, Plaintiff seeks an order:

1. That the 2016 Critical Line did not expire until September 29, 2021;
2. That OCRM violated S.C. Code Ann. § 48-39-210 and improperly precluded site grading on the Subject Property issuing cease and desist notices prior to September 29, 2021; and
3. That OCRM may not prohibit or impede Plaintiff's site grading activities landward of the 2016 Critical Line, including enforcement of any provisions in the NPDES Permit Extension related to the new critical line.

As to the City, Plaintiff seeks an order:

1. That Plaintiff has a vested right to complete site grading and to construct buildings on the Subject Property, so long as those buildings are within the buildable footprint outlined in the Subdivision Plat and such buildings conform in all other respects to the applicable requirements for obtaining a building permit.

Further, Plaintiff seeks preliminary injunction precluding the expiration of the 2016 Critical Line during the pendency of this lawsuit, and prior to completion of site grading operations on the Subject Property.

LEGAL STANDARD

A. Summary Judgment.

Pursuant to Rule 56(c), SCRCP, summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Baird v. Charleston County*, 333 S.C. 519, 529 (1999). *See also Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579 (Ct. App. 2001) (explaining that "[t]he plain language of Rule 56(c)"

requires the court to grant summary judgment where a party "fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial").

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 558 (Ct. App. 2008). However, once that party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts,' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101 (1991) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (emphasis in original). *See also Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 390 (Ct. App. 2010) (non-moving party may not rely on speculation to survive summary judgment) (citations omitted); *McKnight v. S. Carolina Dep't of Corr.*, 385 S.C. 380, 389 (Ct. App. 2009) ("[E]vidence must amount to more than speculation and conjecture to submit a case to the jury.") (citations omitted).[1]

B. Injunction.

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, and our Supreme Court, when a prima facie showing has been made entitling the plaintiff to injunctive relief, an injunction will be granted without regard to the ultimate determination of the case on its merits. *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969). A preliminary injunction should issue "if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a

[1] The Declaratory Judgment Act gives the judge the discretion to make a declaratory judgment ruling that does not terminate the entire controversy, but does remove uncertainty. *Silverman v. Campbell*, 326 S.C. 208, 211-212, 486 S.E.2d 1, 2 (1997).

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likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-587, 694 S.E. 2d 15, 17 (2010).

ORDER

1. **The Court grants summary judgment as to Plaintiff's declaratory judgment claim against OCRM.**

It is undisputed that OCRM certified the 2016 Critical Line on September 29, 2016. The effect of that certification is clear under S.C. Code Ann. § 48-39-210, which provides that certification expire after five years except in narrow circumstances that are not applicable to this case:

> **(A)** The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter.
>
> **(B)** A critical area delineation for coastal waters or tidelands established by the department is valid only if the line is depicted on a survey performed by a professional surveyor, the line is reviewed by the department, the department validates the location of the boundaries of the coastal waters or tidelands critical area on the survey by affixing a stamp and date to the survey, and the survey contains clearly on its face in bold type the following statement: "The area shown on this plat is a representation of department permit authority on the subject property. Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not."
>
> **(C)** Notwithstanding any other provision of this chapter, a critical area line established pursuant to subsection (B) expires after five years from the department date on the survey described in subsection (B).
>
> **(D)** Exceptions to subsection (C) are eroding coastal saltwater stream banks where it can be expected that the line will move due to the meandering of the stream before the expiration of the five-year time limit and where manmade alterations change the critical area line.

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OCRM did not argue that the exceptions set forth in Paragraph (D) apply, and there is no evidence in the record that would support such a contention.

The undisputed evidence demonstrates that OCRM entered the Subject Property in October and November of 2020, flagged a proposed new critical line that was significantly landward of the 2016 Critical Line, and then instructed the Plaintiff to cease and desist any work in the area seaward of the proposed new critical line. OCRM further issued the NPDES Permit Extension which did not allow additional site work seaward of the proposed new critical line.

OCRM's actions effectively ceased the Plaintiff's work on the site starting on November 9, 2020, such that the Plaintiff could not complete its site work prior to the February 14, 2021 expiration of the NPDES Permit. Then, as set forth above, OCRM issued an extension to the NPDES permit which precludes work in the area seaward of the proposed new critical line and transmitted another cease work order. The effect of these actions is that the Plaintiff has been unable to complete site grading work to obtain additional permitting from the City (including building permits) to build on the Subject Property. As set forth in the affidavit of Ron Felkel, most or all of the lots are now unbuildable.

S.C. Code Ann. § 48-39-210(C) unambiguously provides that a certified critical line does not expire for 5 years. Therefore, OCRM had no authority to establish a new critical line before September 29, 2021, and no authority to preclude activities in the area landward of the 2016 critical line prior to that date. For that reason, the Court hereby grants Plaintiff's motion for summary judgment on its declaratory judgment cause of action, and holds as follows:

1. That the 2016 Critical Line did not expire until September 29, 2021;
2. That OCRM violated S.C. Code Ann. § 48-39-210 and improperly precluded site grading on the Subject Property issuing cease and desist notices prior to September 29, 2021; and

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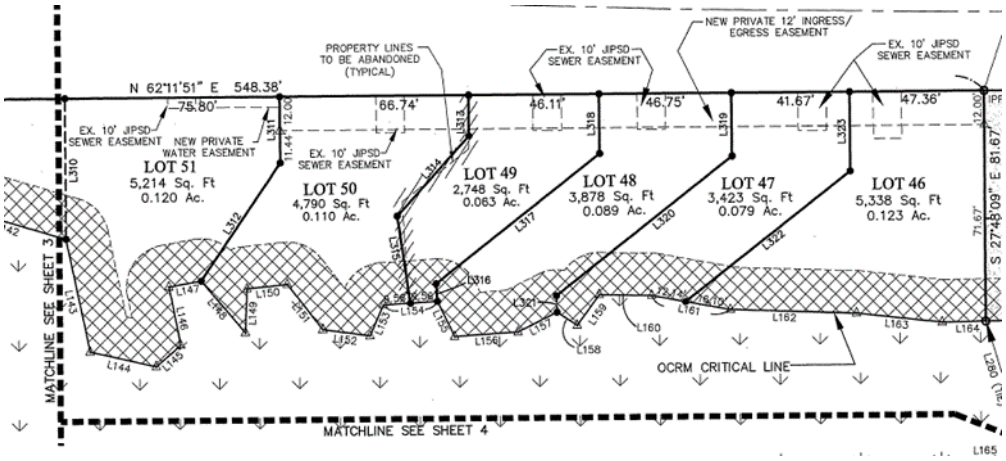
3. That OCRM may not prohibit or impede Plaintiff's site grading activities landward of the 2016 Critical Line, including enforcement of any provisions in the NPDES Permit Extension related to the new critical line.

2. The Court grants summary judgment as to Plaintiff's declaratory judgment cause of action against the City of Folly Beach because the Subdivision Plat provides Plaintiff with vested development rights.

The City approved the Subdivision Plat on July 10, 2020. The Subdivision Plat depicts the application of the 15' marsh buffer landward of the 2016 OCRM critical line and all easements, thereby delineating the developable area of each lot.:



There is no dispute that the Plaintiff relied on the Subdivision Plat to enter into its contract with Stanley Martin Homes and begin site grading activities on the Subject Property.

Folly Beach Code § 166.04-03 was amended in 2019 to require a 15-foot buffer landward of the OCRM critical line:

> (C) Marsh buffer standards. Except for development identified in § 166.04-03(B), Exemptions, all new construction, substantial improvements, impervious surface or land disturbing activities shall maintain a minimum marsh buffer of 15 linear feet landward from the critical area demarcation as identified or certified by the Office of Ocean and Coastal Resources Management (OCRM). The marsh buffer area is to remain undisturbed other than the planting of native plant material as approved by the Building Official. In the Marsh Island Residential District the setback shall be 35 feet from the OCRM critical line.

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Folly Beach Code § 166.04-03(C). This marsh buffer standard is subject to Folly Beach Code § 166.04-02 – "Time of Review" – which provides that the review for compliance is performed at the time of the subdivision preliminary plat:

> These standards shall apply to all development in the city. Review for compliance with the standards of this section shall occur at the time of site plan, § 162.03-06; zoning permit, § 162.03-13; planned development master plan, § 162.03-02; or ***subdivision preliminary plat***, § 162.03-07(D), as appropriate.

(emphasis added). Therefore, pursuant to its own ordinances, by approving the Subdivision Plat, the City applied the marsh buffer at the time of the subdivision preliminary plat.[2] This gave the Plaintiff vested rights to develop according to the dimensions in the Subdivision Plat, as set forth below.

The Vested Rights Act provides that "[a] vested right is established for two years upon the approval of a ***site specific development plan***." S.C. Code Ann. § 6-29-1530(A)(1)(emphasis added). The City's vested rights ordinance contains no specific provisions providing for vested rights, or what constitutes a site specific development plan. The Vested Rights Act defines "site specific development plan" as, among other things, "the following plans or approvals: . . . ***subdivision plat***; preliminary or general development plan . . .." S.C. Code Ann. § 6-29-1520(9) (emphasis added). Counsel for the City conceded that the Subdivision Plat was a preliminary subdivision plat.

In order to obtain vested rights in the site specific development plan (here, the Subdivision Plat), the Plaintiff must prove the elements set forth in S.C. Code Ann. § 6-29-1560(A), which provides:

[2] The City argues that Code § 166.04-02 permits it to apply the marsh buffer standard at multiple times during the development process. However, such a reading of the relevant code section flies in the face of the Vested Rights Act, which is designed to provide landowners with certainty when spending money in reliance on approved development plans, including subdivision plats.

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> (A) If a local governing body does not have land development ordinances or regulations or fails to adopt an amendment to its land development ordinances or regulations as required by this section, a landowner ***has a vested right to proceed in accordance with an approved site specific development plan for a period of two years from the approval*** . . . For purposes of this section, the landowner's rights are considered vested in the types of land use and density or intensity of uses defined in the development plan and the vesting is not affected by later amendment to a zoning ordinance or land-use or development regulation if the landowner:
>
> (1) obtains, or is the beneficiary of, ***a significant affirmative government act*** that remains in effect allowing development of a specific project;
>
> (2) relies in good faith on the significant affirmative government act; and
>
> (3) incurs significant obligations and expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.

One of the "significant affirmative governmental acts" enumerated in the Vested Rights Act is: "(6) the local governing body or its designated agent has approved a ***preliminary subdivision plat*** . . .." S.C. Code Ann. § 6-29-1560(B) (emphasis added).

Therefore, there is no dispute that the Subdivision Plat is a "significant government act" as contemplated by the Vested Rights Act. The Plaintiff submitted the affidavits of Tim Stewart and Ron Felkel to confirm that the Plaintiff relied in good faith on the Subdivision Plat to enter into the contract with Stanley Martin Homes and begin site grading on the Subject Property. Finally, there is no dispute that the Plaintiff spent significant sums of money in pursuit of that project before the Plaintiff was ordered to cease and desist. As such, the Court hereby grants Plaintiff's motion for summary judgment on its declaratory judgment cause of action against the City, and holds as follows:

> Plaintiff has a vested right to complete site grading and to construct buildings on the Subject Property, so long as those buildings are within the buildable footprint outlined in the Subdivision Plat and such buildings conform in all other respects to the applicable requirements for obtaining a building permit.

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3. The Court grants Plaintiff's motion for preliminary injunction against OCRM.

The legal requirements necessary to obtain an injunction are well established in case law. "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). Further, this Court has the authority to enjoin expiration of the critical line: "Although one may not generally enjoin a state agency from the performance of duties imposed by valid statutes, 43A C.J.S. *Injunctions* Sec. 116 at 192 (1978), where one is threatened with irreparable damage and does not have an adequate remedy at law, she may enjoin state officials who are acting in an illegal manner. 43A C.J.S. *Injunctions* Sec. 116 at 195-96. South Carolina courts have recognized the Court's power to enjoin enforcement of a statute where, as here, the Plaintiff has met its burden for injunctive relief. *Connor v. Town of Hilton Head Island*, 442 S.E.2d 608, 610, 314 S.C. 251, 254 (1994) (enjoining enforcement of statute); *Frady v. Student Loan Servicing Ctr.*, 313 S.C. 561, 564, 443 S.E.2d 580, 582 (Ct. App. 1994) ("Although one may not generally enjoin a state agency from the performance of duties imposed by valid statutes, where one is threatened with irreparable damage and does not have an adequate remedy at law, she may enjoin state officials who are acting in an illegal manner.")

The Plaintiff has demonstrated irreparable harm as OCRM's acts of flagging a new critical line, issuing cease and desist orders and issuing a conditional NPDES Permit Extension have precluded the completion of site grading efforts and rendered the properties undevelopable. As set forth in the above granting of partial summary judgment, the Plaintiff is likely to succeed on the merits of its claim, and now has, in part. There is no remedy at law for the Plaintiff because

OCRM improperly issued a cease and desist order which precluded site grading work that would have been completed prior to the expiration of the original NPDES Permit. Now, the Plaintiff is faced with the NPDES Permit Extension which also precludes grading work seaward of the proposed new critical line and is also faced with the expiration of the 2016 Critical Line on September 29, 2021. As such, the Plaintiff would be left without a remedy if the NPDES Permit Extension and the expiration of the 2016 Critical Line is allowed to moot the issues in this case.

Therefore, for the reasons set forth above, the Plaintiff is entitled to an injunction precluding the expiration of the 2016 Critical Line and precluding OCRM from enforcing any restrictions related to the newly proposed critical line in the NPDES Permit Extension until the conclusion of this litigation or completion of final lot grading on the Subject Property, whichever is later.

SO ORDERED.

_____
Circuit Court Judge Bentley Price

November __, 2021

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Charleston Common Pleas

Case Caption: Clam Farm Partnership Llc VS South Carolina Dept Of Health & Environmental Control The , defendant, et al

Case Number: 2021CP1000562

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

RECEIVED
May 24 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Charleston County
Court of Common Pleas in the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2022-000038
Circuit Court Case No. 2021-CP-10-00562

Clam Farm Partnership, LLC……RESPONDENT,

v.

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, Charleston County, and The City of Folly Beach,

Of which The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management and the City of Folly Beach are ……...APPELLANTS

PROOF OF SERVICE

I certify that I have served the foregoing **RESPONDENT'S MOTION FOR RELIEF FROM AUTOMATIC STAY TO FILE MOTION FOR TEMPORARY INJUNCTION** on all other parties to this matter via electronic mail on May 24, 2022, addressed to their attorneys of record as follows, as evidenced by Exhibit "A" attached hereto:

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Charleston, South Carolina
May 24, 2022

EXHIBIT “A”

Casey, Carol

From: Casey, Carol
Sent: Tuesday, May 24, 2022 3:24 PM
To: sbrown@ycrlaw.com; rhines@ycrlaw.com; crowh@ycrlaw.com; rstoney@barnwell-whaley.com; mdc@barnwell-whaley.com; aburns@barnwell-whaley.com; ashalio@bellsouth.net
Cc: Tillman, Matthew; Orvin, Daniel
Subject: Clam Farm Partnership, LLC v. SC DHEC et al. - Appellate Case No. 2022-000038
Attachments: Motion for Relief from Automatic Stay to File Motion for Temporary Injunction.pdf

All, attached for service, please find Respondent's Motion for Relief from Automatic Stay to File Motion for Temporary Injunction, to be filed with the Court of Appeals today.

Thank you,
Carol

Carol Casey
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