

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120



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Instrument Number: 2009- 00016791

As

Restrictive Covenants

Recorded On: July 27, 2009

Parties: RG-MWV LLC

To

SC DEPARTMENT OF HEALTH AND ENVIRONMENTA

Billable Pages: 6

Recorded By: BUIST LAW FIRM

Num Of Pages: 11

Comment:

**** Examined and Charged as Follows: ****

Restrictive Covenants	16.00
Recording Charge:	16.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

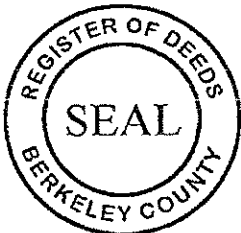
I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

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BUIST LAW FIRM
P.O. BOX 999
CHARLESTON SC 29402



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

**DECLARATION OF
RESTRICTIVE COVENANTS
(WETLANDS AND WETLAND BUFFERS)**

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this 23rd day of July, 2009, by RG-MWV LLC, a Delaware limited liability company (the "Declarant").

RECITALS

WHEREAS, Declarant is the owner of certain real property located in Berkeley County, South Carolina, more particularly described and shown in Exhibit "A" and Exhibit "A-1", attached hereto and incorporated herein by reference. For purposes of this Declaration, the term "Property" shall include only areas designated in Exhibit "A" and shown on the Plat attached as Exhibit "A-1" prepared by Thomas & Hutton Engineering Co., dated June 27, 2007 (the "Plat") consisting, in the aggregate, of 109.30 acres of Wetlands, more or less, and 66.21 acres of Buffers, more or less, and shall exclude all highland and all jurisdictional and non-jurisdictional wetlands permitted to be filled as shown on the Plat; and

WHEREAS, as compensatory mitigation under Federal and State law for Department of the Army Permit No. 2006-3529-21X ("Permit") issued by the U.S. Army Corps of Engineers, Charleston District ("Corps" or "Charleston District," to include any successor agency), and certification(s) and/or permit(s) issued by the S.C. Department of Health and Environmental Control ("DHEC," to include any successor agency), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever; and

WHEREAS, the Permit was issued to Declarant under its former name "Rock-Berkeley, LLC", which was changed to "RG-MWV LLC" pursuant to certificates of name change filed with the Delaware Secretary of State and the South Carolina Secretary of State.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Declarant," below), lessees, or other occupiers and users.

1. **Prohibitions.** Except as hereinafter provided, Declarant is and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, releasing wastes, or otherwise doing any work on the Property; introducing exotic species into the Property (except biological controls pre-approved in writing by the Corps and DHEC); and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or water pollution control laws and regulations, as amended. The following are expressly excepted from this paragraph:

a) Cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or educational activities, consistent with the continuing natural condition of the Property.

b) Removal or trimming of vegetation hazardous to person or property, or of timber downed or damaged due to natural disaster.

c) Restoration or mitigation required under law.

d) Construction of ditches, swales, and outfalls as pre-approved in writing by the Corps and DHEC that are both required and the minimum necessary for compliance with applicable stormwater management and sediment reduction laws and regulations. These ditches shall not be constructed so as to drain wetlands through alteration of the hydrology. Activities allowed under this exception shall be limited as follows:

1. All such activities shall be applicable to upland buffer areas only and not wetlands.
2. All such activities shall be the minimum size and number necessary.
3. Ditches and swales shall have a bottom width of not more than five feet (1.52 meters), a depth below adjacent natural ground elevation of not more than four feet (1.22 meters), and a side slope of not less than three feet vertical to one foot horizontal (3V: 1H).
4. The side slopes and surrounding areas of ditches and swales shall be stabilized and restored immediately following construction with natural vegetation. The bottoms of ditches and swales may be cleared and periodically maintained by removal of vegetation. Vegetation shall not be removed by use of herbicides or other chemical means.
5. Upon completion of the work, disturbed areas other than ditches and swales shall be restored to the original contours and elevations and shall be permanently stabilized by restoration of natural vegetation.

e) Installation and maintenance of necessary utilities in designated upland buffer areas as pre-approved in writing by the Corps and DHEC. All excavated areas shall be restored to pre-existing grade immediately following construction. Utility construction in wetland mitigation areas may be allowed if properly permitted by appropriate state and federal authorities.

f) Construction and maintenance of pedestrian paths and/or boardwalks up to five (5') feet in width as pre-approved in writing by the Corps and DHEC.

2. Amendment. After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and DHEC and Declarant. The recorded document, as amended, shall be consistent with the Charleston District model conservation restrictions at the time of amendment. Amendment shall be allowed at the discretion of the Corps and DHEC, in

consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Charleston District mitigation policy at the time of amendment. There shall be no obligation to allow an amendment.

3. Notice to Government. Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

4. Reserved Rights. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above, and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. Compliance Inspections. The Corps, DHEC, and their authorized agents shall have the right to enter and go upon the lands of Declarant, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. Enforcement. The Declarant grants to the Corps, the U.S. Department of Justice, and/or DHEC, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

7. Property Transfers. Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Property Subject to Declaration of Restrictive Covenants Recorded at Book _____, Page _____, in the ROD Office for Berkeley County on _____, 2009.

8. Marking of Property. The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. Recording of Plat. The Plat depicting the boundaries of the Property subject to these restrictive covenants is attached hereto as Exhibit "A-1" and incorporated herein by reference.

10. Separability Provision. Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

EXHIBIT "A"

All those certain pieces, parcels or tracts of land designated as "Jurisdictional Wetlands" and "Buffer", but excluding all "Jurisdictional Wetlands Permitted to be Filled" and "Non-Jurisdictional Wetlands Permitted to be Filled", and being a portion of the Gibbs Tract, TMS No. 221-00-00-001, all as more particularly shown and depicted on the plat prepared by Thomas & Hutton Engineering, Co. entitled "Plat of the Wetlands and Buffers on a 400.53 AC Tract Prepared for Rockefeller Group Development Corp.", dated June 27, 2007, and attached hereto as Exhibit "A-1" and incorporated herein by reference (the "Plat"); said tracts having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully appear.

SAVING AND EXCEPTING, however, all highland and all jurisdictional and non-jurisdictional wetlands permitted to be filled, as shown on the said Plat.

EXHIBIT "A-1"

Plat prepared by Thomas & Hutton Engineering, Co. entitled "Plat of the Wetlands and Buffers on a 400.53 AC Tract Prepared for Rockefeller Group Development Corp.", dated June 27, 2007, ATTACHED HERETO AND RECORDED IN PLAT CABINET N-153 P, N-154 P, N-155 P AND N-156 P.

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